A

GULAM MUSTAFA & ORS.

v.

THE STATE OF MAHARASHTRA & ORS.

September 18, 1975

B [V. R. KRISHNA IYER AND S. MURTAZA FAZAL ALI, JJ.]

Hyderabad Land Acquisition Act—Acquisition of land for a village market—If a public purpose—Excess land sold to a housing colony—If acquisition mala fide.

Certain lands belonging to the appellants were compulsorily acquired under the Hyderabad Land Acquisition Act for running a country fair or market (*mondha*). After the acquisition, the municipality parcelled out the excess land C and sold it for a housing colony. The High Court dismissed the appellants' writ petition, *in limine.*

On appeal to this Court it was contended that the acquisition was not for a public purpose and that it was *mala fide.*

Dismissing the appeal,

HELD : (1)(a) Providing a village market is an obvious public purpose. D [876C-D]

(b) A *mondha* is a country fair or village market. Market is defined in s. 2(20) of the Hyderabad District Municipalities Act in wide terms and s. 72 of the said Act enumerates the purposes for which property may be vested in a municipality. This includes markets. It inexorably follows from a joint reading of Ss. 2(20) and 72(a) of the District Municipalities Act that the purpose of providing a market for the townsfolk falls within the powers of the municipality. [876G-H]

E

(2)(a) Striking down any Act for *mala fide* exercise of power is a judicial reserved power exercised lethally, but rarely. The charge of *mala fides* against public bodies and authorities is more easily made than made out. It is the last refuge of a losing litigant. [876D]

(b) What has to be established is *mala fide* exercise of power by the State Government although the beneficiary is the municipality. There is no evidence of *malus animus* in Government. [877B]

F

(c) Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the municipality how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the declaration. [877C]

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 675 of 1968.

From the judgment and order dated the 19th January, 1967 of the Bombay High Court in S.C.A. No. 16 of 1967.

S. J. Deshpande and *A. G. Ratnaparkhi,* for the appellant.

H *M. C. Bhandare* and *M. N. Shroff,* for respondent nos. 1, 2 and 4.

D. V. Patel, K. Laxmanrao and *S. Gopalakrishnan,* for respondent no. 3

The Judgment of the Court was delivered by

KRISHNA IYER, J. Brevity will do no inequity in this appeal where three points were urged but only one survives for serious scanning. The subject matter is the validity of land acquisition proceedings whereby a Municipality compulsorily purchased the appellant's land for the stated public purpose of running a country fair or market (mondha) under the Hyderabad Land Acquisition Act (for short, the Act) which is closely similar to the Land Acquisition Act, 1923 (Central Act). The first charge is that the High Court dismissed the Writ Petition *in limine*. Seven years after the 1968 event, we cannot consider sending back the case even if there be justice in the submission. We have therefore heard counsel Shri Deshpande on his substantive grievances. The second contention is that there is no 'public purpose' to support the acquisition which is allegedly *ultra vires* the Municipality's powers. We disagree. Providing a village market is an obvious public purpose and a municipal facility. The last plea which has been pressed strenuously is that the acquisition exercise is bad being *mala fide*—an uphill task to make out against a public body. Was this colourable exercise of power?

Striking down any act for *mala fide* exercise of power is a judicial reserve power exercised lethally, but rarely. The charge of *mala-fides* against public bodies and authorities is more easily made than made out. It is the last refuge of a losing litigant. Even so, we will examine the merits of the contention here from the point of view of the serious factors placed for our consideration.

Was this acquisition done *colore officii*? The circumstances relied on may be examined from this standpoint. Section 5(3) of the Act provides for declaration of the public purpose, like s. 6(3) of the Central Act. This declaration was made in 1960 and covered at least 28 acres of land belonging to the appellant. His counsel contends that there in no public purpose mentioned in the notification because what is stated is 'government purpose'. There is no force in this terminological deviation. The purpose has been set down as for a 'mondha' or 'country fair' which is obviously a public purpose. So counsel shifted to another shade of the same argument and stated that 'mondha' is not a word known to law and has not been defined anywhere and so such a purpose cannot be taken cognizance of by the law. We cannot agree to the linguistic game masquerading as a legal point. It is plain that a 'mondha' is a country fair or village market. 'Market' is defined in s. 2(20) of the Hyderabad District Municipalities Act in wide terms, and s. 72 of the said Act enumerates the purposes for which property may be vested in a municipality. This includes 'markets'. It inexorably follows from a joint reading of ss. 2(20) and 72(a) that the purpose of providing a market for the townsfolk falls within the powers of a municipality.

Failing here, counsel finally stressed that in any case no market for a small municipal town requires 28 acres of land, especially because the Master Plan prepared for the Municipality had allotted

A only 15 acres for this purpose. It is not for the Court to investigate into the area necessary for running a market. Moreover there is no *mala fides* emerging from this circumstance. What has to be established is mala fide exercise of power by the State Government—the acquiring authority—although the beneficiary of the acquisition is eventually the Municipality. There is no scintilla of evidence suggestive of *malus animus* in Government.

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At this stage Shri Deshpande complained that actually the Municipal Committee had sold away the excess land marking them out into separate plots for a housing colony, apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the C basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisiton stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the s. 5(3) declaration.

There is no merit in the appeal which is dismissed without costs.

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P.B.R. *Appeal dismissed.*