

(2024) 03 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No. 12189 Of 2022

Administrator Nashik

APPELLANT

Vs

Sham Nariman Dumasia And Ors

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Land Acquisition Act, 1894 — Section 28, 28A, 34
Maharashtra Regional And Town Planning Act, 1966 — Section 126

Citation : (2024) 03 BOM CK 0067

Hon'ble Judges : Milind N. Jadhav, J

Bench : Single Bench

Advocate : Nitin V. Gangal, Prerna Shukla, Ashok Kadam, Prapti Karkera, Namita Mistry, Anil Ahuja, Bhavana Khemani

Final Decision : Dismissed

Judgement

Milind N. Jadhav, J

1. Heard Mr. Gangal, learned Advocate for the Petitioners and Mr. Ahuja, learned Advocate for Respondent Nos. 9C, 20C, 21C, 21D, 31(1A), 31(1D) to 31(1G), 31(2B) to 31(2G), 40(2) to 40(7), 40(8B), 40(9A) to 40(9C).

2. Present Writ Petition takes exception to the impugned order dated 29.08.2022 passed by the learned District Court in an Application seeking review of the order dated 04.08.2011 passed by the learned District Court in Land Reference Darkhast No.203 of 1995. An Application below Exhibit "17" was filed by the Decree Holders (80 in number) against the Judgment Debtors (Petitioner before me) seeking to verify and compute the calculations in respect of the compensation declared in the Award by the Reference Court as far back as in the year 1986.

3. Admittedly, possession of the Claimants' lands were taken over on different dates in the years 1982 – 1983. Award dated 12.02.1986 was passed allowing and granting compensation @ 6 per square meter to the advantageous group

and Rs.4 per square meter for the undeveloped plots. The said Award was challenged in Reference proceedings before the District Court. Reference Award was passed by the learned District Court on 26.10.1994 enhancing the rate to Rs.33 per square meter for the advantageous group and Rs.24 per square meter for the undeveloped plots. First Appeals were filed in this Court by the Writ Petitioners as also by some of the Claimants which came to be decided by judgment dated 31.01.2008 whereby the rate was enhanced to Rs.58.80 per square meter for the advantageous group and Rs.53.55 per square meter for undeveloped plots.

4. We are now in the year 2024, when the present Writ Petition is argued before me. This Court was seized of the matter for the first time on 09.02.2024 and substantive orders were passed directing the parties to comply with details of computation and objections, if any, namely the Writ Petitioner on 09.02.2024, 23.02.2024 and 01.03.2024.

5. Pursuant to the directions contained in the aforesaid orders, 16 out of 80 Claimants are today represented by Mr. Ahuja and he has placed on record the details of the compensation awarded and paid and which has remained to be paid to the Claimants. Rest of the Claimants have been served by substituted service. They are unrepresented. The delay has occurred only because of the issue of computation and calculation of the correct amounts. It is an irony that in respect of land acquisition which had taken place in the year 1986, the Claimants have had to wait for receiving the entire compensation amount for a period of more than 38 years until today. Many of the Claimants may have unfortunately perished and are now probably survived by legal heirs and successors-in-title as argued by Mr. Ahuja. Mr. Gangal at this juncture has interjected the dictation and would submit that whatever amounts came to be deposited by the Petitioner were withdrawn by the Claimants from time to time That is no solace. He may be right but the entire amounts have not been paid over to the Claimants till date and substantial balance remains to be paid and the balance as on today in respect of the 80 Claimants is more than Rs.14 Crores i.e. approximately 25%. Hence, Mr. Gangal appearing for the Writ Petitioner cannot make virtue by stating that out of the total amount of Rs.38 Crores only an amount of Rs.14 Crores remains to be paid over after 38 years of acquisition. This submission is not appreciated by the Court.

6. Being aggrieved, the Claimants had no option than to file Darkhast proceedings in 1995 and this is a very sorry state of affairs in our Country that Claimants and owners of the land whose lands stand acquired under the power of eminent domain are required to file Execution proceedings before the Executing Court for getting the compensation which is awarded under the Land Acquisition Act, 1894 (for short "the said Act") and enhanced by the Reference Court and the High Court.

7. It is seen that, an Application is filed below Exhibit "17" by the Claimants before the Executing Court in Reference Darkhast No.203 of 1995 and order is

passed after a thorough exercise is undertaken by the concerned Executing Court in respect of payment of outstanding amounts to the 80 Claimants whose lands are acquired as far back as in the year 1982 – 1983. That thorough exercise is undertaken and replicated in the order dated 04.08.2011. The operative part of the said order is delineated hereinbelow for reference:-

"1. Application is hereby allowed as under-

2. The J.D. Nos. 1 and 2 are hereby directed to pay jointly and severally compensation amount of Rs. 4,21,53,152/-towards unpaid interest within a period of two months from the date of this order.

3. The J.D. Nos. 1 and 2 are hereby directed to pay jointly and severally interest on amount of Rs. 4,21,53,152/- at the rate of Rs. 15% pa. from the date of decree passed by Hon'ble High Court i.e. from 21/1/2008 till realization of the said amount.

4. A copy of this order be placed in each Darkhast in all 72 Land Reference Darkhasts.

5. The statement enclosed with application and 79 claim statements with list at Exh. 21 shall be treated as part and parcel of this order."

8. By virtue of the above order, a direction is given to the Writ Petitioner to pay the amounts of compensation within a period of two months from the date of that order. The date of order is 04.08.2011. The said amounts are not paid and the order is not honored by the Writ Petitioner until the deposit is made on 30.09.2023. The amount of Rs.12,70,96,342/- is deposited on 30.09.2023 and that is only after the impugned order is passed. Though an Application is preferred by the Writ Petitioner for review of the order dated 04.08.2011 in the year 2012, the same is not prosecuted. The prosecution of that Application takes place only in the year 2022, when that Application stands comprehensively rejected with a direction to the Decree Holder to proceed further as per law.

9. Once again this is an irony that Decree Holders (80 in number) in the present case are Claimants and owners whose lands were acquired against their wishes and all that they now await is payment of compensation from the past 38 years as per law.

10. Being aggrieved by the fact that order dated 04.08.2011 is now sustained by the Executing Court, Writ Petitioner has filed the present Writ Petition. Petitioner has no case whatsoever to challenge the impugned order dated 29.08.2022 or even the order dated 04.08.2011. The filing of the present Petition is an abuse of the due process of law.

11. Mr. Gangal in his usual fairness would submit that until the filing of the Writ Petition, substantial amounts have been deposited at different points of time by the Writ Petitioner either with the Special Land Acquisition Officer (SLAO) or in the Executing Court as per the orders passed in the Land Reference Darkhast

case. He would submit that at four different points of time amounts of Rs.68,01,643.70 Rs.20,66,257.00, Rs.6,16,52,446.57 and Rs.19,83,45,618.00 have been deposited in the interregnum. In so far as the order dated 04.08.2011 is concerned, he would submit that an amount of Rs.12,70,96,342.00 has been deposited now only on 30.09.2023. According to Mr. Ahuja, in view of the fact that there has been a delay in deposit of the aforesaid amount i.e. the last installment in the Court, the Claimants would be entitled to interest which on computation, comes to Rs.1,10,48,404.00 as on the date of deposit i.e. on 30.09.2023. This computation is accepted by the Petitioner. Undoubtedly, 80 Claimants would be entitled to the aforesaid amounts in respect of their respective apportionment.

12. However, Mr. Gangal has drawn this Court's attention to two issues which require Court's consideration and an order of the Court. He would submit that the case for receipt of compensation of 14 Claimants out of the 80 Claimants in the order dated 04.08.2011 stands on a different footing. He has filed Affidavit-in-Rejoinder dated 12.03.2024 and appended to that Affidavit-in-Rejoinder Exhibit "1" - page No.384 to the Writ Petition. He would submit that undoubtedly, all Claimants would be entitled to the enhanced amount, but the 14 Claimants whose names and details are stated in Exhibit "1" to the Affidavit-in-Rejoinder have admittedly not filed any statutory First Appeal before this Court for seeking enhancement over and above the compensation awarded by the Reference Court nor have they preferred any Application under Section 28-A of the said Act within the prescribed period as stated in the said Section for being entitled to the enhancement awarded in the First Appeal by this Court. Hence, he would submit that out of the total compensation amount of Rs.12,70,96,342.00 deposited by the Writ Petitioner, the 14 Claimants as stated in Exhibit "1" of the Affidavit-in-Rejoinder would not be entitled to the enhanced amount determined by this Court in First Appeal. Hence, the order dated 04.08.2011 which has been made absolute by the Reference Court shall not enable these 14 Claimants to claim enhanced amount. He would submit that appropriate directions therefore be passed by this Court to the concerned Executing Court to take further appropriate steps in so far as these 14 Claimants are concerned and withhold disbursement of their proportionate amount.

13. Next, Mr. Gangal would submit that in so far as one particular Claimant, namely Shivaji Valu Jagtap appearing at Sr. No.23 in the order dated 04.08.2011 is concerned, the said Claimant has already been paid over the entire compensation amount of Rs.6,93,514.56 by way of principal amount and further amount of Rs.13,72,742.44 by way of interest by the Writ Petitioner in Land Reference No.54 of 1889 and confirmation to that effect is also appended to the Writ Petition of having made such payment. He has placed on record a Statement which is titled as "Statement showing decretal amount recoverable". This statement showing decretal amount recoverable is taken on record and marked "X" for identification today. The said document is in 3 pages and numbered as page Nos.1, 2 and 3 and also initialed by the Court. Mr. Gangal has drawn my

attention at Sr.No.15 in that statement which pertains to payment made in Land Acquisition Reference Darkhast No.151 of 1995 pertaining to Land Reference No.54 of 1989 to Shivaji Valu Jagtap according to the Petitioner.

14. Mr. Gangal has immediately drawn my attention to the title of the said statement which is in respect of Land Reference No.54 of 1989 in respect of the Claimant namely Shivaji Valu Jagtap. In view of the above, he would submit that the amount which has already been paid over to Shivaji Valu Jagtap, Claimant at Sr. No.23 in the list of Claimants in order dated 04.08.2011, will have to be deducted from the decretal amount which is deposited in the Darkhast proceedings and returned to the Petitioner. Hence, he would submit that appropriate directions be passed by this Court with respect to this particular amount which can be returned back to the Writ Petitioner.

15. Coming to the merits of the order in review which is the subject matter of the present Writ Petition as also the order dated 04.08.2011, Mr. Gangal would submit that computation as arrived at by the learned District Court in its order dated 04.08.2011 in paragraph No.13 of the said order is incorrect. He would submit that the learned District Court while determining the Application has directed the Writ Petitioner and held that interest on the said amounts is liable to be paid @ 15% per annum on the shortfall amount which has been computed and calculated as on that date. He would strongly submit that the rate of 15% per annum on the shortfall amount would amount to allowing interest on the interest amount that was required to be deposited before the District Court. He would therefore make a plain vanilla statement before the Court that interest on interest cannot be permitted by the Court. I have considered this submission. I have heard Mr. Ahuja on the issue of the interest which has been allowed by the learned District Court in its order dated 04.08.2011.

16. After hearing the submissions of the respective Advocates, I am of the clear opinion that there is a clear and admitted delay in depositing the compensation amount allowed by this Court in its First Appeal and if the Writ Petitioner is guilty of not depositing the said amount, then the Writ Petitioner will have to deposit interest on the shortfall amount which has been delayed to be deposited. The compensation enhanced by this Court in the First Appeal is nothing but the true market value / market rate of the land as on the relevant date for the land which is acquired as far back as in the year 1982 – 1983. Notification under Section 6 alongwith Section 126 of the Maharashtra Regional and Town Planning Act, 1966 was issued at that time. The Award was passed thereafter in the year 1986. Most importantly, possession of land was taken over in 1982 – 1983 itself.

17. Deposit of that amount once directed by Court is sacrosanct and if there is any delay in depositing that amount then the defaulter has to pay interest even if it is the Government. In that view of the matter, the order dated 04.08.2011 has been correctly passed. The power of allowing interest to be paid under the said Act is derived from the provisions of Section 28 read with Section 34 of the said Act. Once it is ascertained, rather undoubtedly clear that the Claimants have not

been paid over their dues as per the computation awarded by the SLAO; enhanced by the District Court and subsequently enhanced by the High Court in First Appeal, there can be no reason for the Writ Petitioner to advance an argument that they will not pay interest for the delay caused by them. Section 34 of the said Act contemplates payment of interest @ 9% per annum for the first year and @ 15% per annum for all subsequent years in respect of compensation that is awarded to the Claimants or land owners and in that view of the matter, I do not find any reason to interfere with the order dated 04.08.2011 passed by the learned District Court. Rather, the Review Application preferred and filed by the Writ Petitioner after a hiatus of 11 years was infact not maintainable at all.

18. The Application for review stands rightly rejected by the learned District Court on 29.08.2022. Filing of such an Application is nothing but an abuse of the due process of law by the Writ Petitioner, is my opinion in the present case. The review is maintained for a material error on the face of record and without any material error having been pointed out, review is filed in the year 2012 and prosecuted in the year 2022 by the Writ Petitioner. This is certainly not acceptable. Hence, the order dated 29.08.2022 is sustained as also the order dated 04.08.2011 is sustained.

19. However, the two issues pointed by Mr. Gangal in respect of the 14 Claimants who would be disentitled to the enhanced amount of compensation and the Claimant at Sr. No.23 in the order dated 04.08.2011 namely Shivaji Valu Jagtap will have to be looked into by this Court since compensation amount cannot be handed over to the Claimants who are disentitled to the same in accordance with law or who has already received the same. When I asked Mr. Ahuja, he would submit that he represents only 16 Claimants and has no instructions to represent the above mentioned Claimants. He would further submit that he is not representing Shivaji Valu Jagtap either. In that view of the matter, a direction is passed to the learned District Court that the corresponding and proportionate amount of the 14 Claimants whose names and details are appended to Exhibit "1" at page – 386 of the Affidavit-in-Rejoinder dated 12.03.2024, shall be withheld by the learned District Court and shall be so determined in accordance with law later.

20. Mr. Ahuja, at this juncture would submit that a direction can also be given to the learned District Court to issue appropriate notices to those the Claimants since they are not represented before the Court. Be that as it may, despite the publication notice being issued and in response to the said publication notice, these 14 Claimants are not before this Court, I am directing the learned District Court to issue appropriate notices to these 14 Claimants and inform them about their claim.

21. Needless to state that, all contentions of the 14 Claimants are expressly kept open, if so available to them in law. Similar shall be the case of Shivaji Valu Jagtap whose name appears at Sr. No.23 in the order dated 04.08.2011. Learned

District Court shall issue appropriate notice to Shivaji Valu Jagtap and bring to his notice the details of payment of compensation paid by the Writ Petitioner to him as delineated in this order herein above. Needless to state that, all contentions of Shivaji Valu Jagtap are also expressly kept open, if so available to him in law.

22. Mr. Ahuja would submit that an amount of Rs.1,10,48,404.00 is the shortfall amount which is required to be deposited. Mr. Gangal after taking instructions from the Administrator of Petitioner present in Court would submit that this amount shall be deposited by the Petitioner before the learned District Court within a period of 8 weeks from today. In view of the statement made by Mr. Gangal, the interest @ 15% per annum shall stand arrested immediately after the deposit is made in the District Court and subject to the Writ Petitioner depositing amount of Rs.1,10,48,404.00 within a period of 8 weeks from today.

23. The learned District Court is thereafter directed to undertake the exercise of disbursing the amounts to the Claimants whose names appear in the order dated 04.08.2011 barring the 14 Claimants who have not challenged the Reference Award and Shivaji Valu Jagtap after appropriate notice is issued to all Claimants and disburse the said amount to them strictly in accordance with law within a period of 4 weeks from the date of deposit of Rs.1,10,48,404.00 by the Writ Petitioner. It is clarified that disbursement shall be made to the Claimants or their legal heirs, strictly in accordance with law.

24. Mr. Ahuja represents 16 Claimants only and hence in that view of the matter, the learned District Court is directed to issue appropriate notices either to the remaining Claimants who are entitled to the amount of compensation or their legal heirs after ascertaining their details strictly in accordance with law.

25. As observed by this Court, Claimants' lands have been acquired in the year 1982 – 1983 and they have had to wait for a period of almost 38 years due to filing of the Review Application in the year 2012 to receive a substantial claim of compensation and not prosecuting the same and waiting for a further period of 12 years to prosecute the same on the part of the Writ Petitioner. This act is certainly not appreciated by this Court. Considering the enormous delay, which is involved in the present case, Writ Petitioner is solely responsible for the delay and hence is directed to pay exemplary costs of Rs.1,00,000/- to A.K. Munshi Yojana's J.T. Sheth Mandbuddhi Vikas Kendra, a Special School imparting education and training to the needs of 150 special children in the field of Education (Classes for 6 to 18 years), early intervention (upto 6 years) and vocational training (18 years above) having its school address and building at A.K. Munshi Yojana Chowk, 3rd Panjarapole Lane, C.P. Tank, Mumbai – 400 004 [Contact Nos. 22425513 / 22423654] registered under the Society Registration Act, XXI of 1980 under No. : 387/81 GGBSD and the Public Trust Act, XXIX of 1950 under No. F-6809. RCI Reg. No. 0163 . The above costs shall be paid within a period of four weeks from today and receipt of payment shall be placed before the Court for compliance on 25.04.2024.

26. With the above directions, Writ Petition is dismissed.