

(2019) 07 BOM CK 0176
In the Bombay High Court
Case No : Writ Petition No. 10129 of 2015

Ashok Narayan Lande

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 13-07-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 9(3), 9(4), 11, 12(2), 16
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(1), 24(2), 24(1)(a), 114, 114(2)
Maharashtra Regional And Town Planning Act, 1966 — Section 125, 126, 126(4), 127
General Clauses Act, 1897 — Section 6
Constitution of India, 1950 — Article 226

Citation : (2019) 07 BOM CK 0176

Hon'ble Judges : B.P. Colabawalla, J;K.K. Tated, J

Bench : Division Bench

Advocate : Uday Warunjikar, Pushpalata N. Diwan

Final Decision : Dismissed

Judgement

B.P. Colabawalla, J

1. This Petition has been filed under Article 226 of the Constitution of India challenging an award dated 24th September, 2015 and the notice issued under Section 12(2) read with Section 16 of the Land Acquisition Act, 1894 (for short "the old Land Acquisition Act").

2. It is the case of the Petitioner that he is the owner of land admeasuring 9 Gunthas of City Survey No. 3328 situated at Bhosari (hereinafter referred to as "said property"). It is his case that in respect of said property a resolution came to be passed by the Local Town Planning Authority, namely, Pimpri Chinchwad Municipal Corporation and Resolution No. 417 was introduced for school purpose. This property was sought to be acquired under the provisions of the Maharashtra Regional Town Planning Act, 1966 (for short the "MRTP Act").

3. It is the case of the Petitioner that insofar as the said property is concerned,

already construction had been made by the Petitioner on the said property. Not only that, according to the Petitioner, the Shops Act License had been obtained by the persons who are occupying the said structures and the structure that was constructed on the said property by the Petitioner has been assessed and property tax has been paid for the same by the present Petitioner. There are several other details set out in paragraph Nos. 6 to 9 of the Petition in relation to the said property.

4. It is the Petitioner's case that in these circumstances, he was surprised to receive the communication dated 24th September, 2015 which was styled as a notice under Section 12(2) read with Section 16 of the old Land Acquisition Act. The name of the Petitioner is shown at Sr. No. 16 in the said notice. In the said communication it was stated that an award has been passed by virtue of which an area admeasuring 500 square meter of C.T.S. No. 3328 had been acquired and the date of handing over possession was fixed on 14th October, 2015. It is being aggrieved by this communication that the present Petition has been filed.

5. The challenge to acquisition is on several grounds as set out in the Writ Petition. However we shall only deal with grounds argued and raised before us by Mr. Warunjikar. The first ground that was raised by Mr. Warunjikar, learned counsel for the Petitioner was that by operation of the provisions of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (for short the "New Land Acquisition Act") the entire acquisition proceedings had lapsed, and therefore, consequently the award dated 24th September, 2015 also had to fall along with the notice that was issued on the same date under Section 12(2) read with Section 16 of the old Land Acquisition Act. On a plain reading of section 24(2) we are unable to agree with this submission of Mr. Warunjikar. Section 24(2), on an ex-facie reading, has absolutely no application to the facts of the present case. Section 24(2) categorically states that, notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the old Land Acquisition Act, where an award under section 11 of the said Act has been made five years or more prior to the commencement of the said Act, but physical possession of the land has not been taken or compensation has not been paid, the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate proceedings for such land acquisition afresh in accordance with the provisions of the New Land Acquisition Act.

6. What is clear is that for section 24(2) of the New Land Acquisition Act to apply, the Award has to be passed at least five years before the New Land Acquisition Act came into force. As mentioned earlier, the award in the present case was made on 24th September, 2015. It was not an award that was made/published five years prior to coming into force of the New Land Acquisition Act. This being the case, Section 24(2), at least prima facie has absolutely no application.

7. Be that as it may, even assuming for the sake of argument that Section 24(2) were to apply in the present case, we find that this issue is squarely covered by a

Full Bench Judgment of this Court in the case of Mehtab Laiq Ahmed Shaikh v. State of Maharashtra 2017 (6) Mh.L.J. 408. In this Full Bench Judgment, this Court has held that Section 24(2) of the New Land Acquisition Act provides a different time frame and lapsing of acquisition on default and it cannot be applied to an acquisition initiated under Sections 125 to 127 of the MRTP Act. It has held that the MRTP Act has not undergone any change from its character as a complete Code. According to the Full Bench, Section 24(2) of the New Land Acquisition Act will apply only if the acquisition proceedings are "initiated" under the old Land Acquisition Act and would not apply if they are initiated under Sections 125 to 127 of the MRTP Act. In the facts of the present case, admittedly the acquisition is under the provisions of the MRTP Act. In these circumstances and in view of what has been held in the Full Bench Judgment of this Court, it is quite clear that the reliance placed by Mr. Warunjikar on section 24(2) to contend that the acquisition proceedings have lapsed is wholly misconceived. We, therefore, have no hesitation in rejecting this argument.

8. Mr. Warunjikar, then, next submitted that in the facts of the present case since the award was not passed under Section 11 of the old Land Acquisition Act, by the time the New Land Acquisition Act had come into force, the proceedings under the old Land Acquisition Act should be deemed to have lapsed. In view of the fact that the old Land Acquisition Act was repealed by coming into force of the New Land Acquisition Act, the Respondent could not have invoked the provisions of the old Land Acquisition Act, was the submission. He further submitted that in the facts of the present case notices were issued under Section 9(3) & (4) of the old Land Acquisition Act on 6th April, 2005. According to Mr. Warunjikar, they were not taken to its logical conclusion and for this reason also the acquisition proceedings had lapsed. He further submitted that when the award was passed, namely, on 24th September, 2015, the provisions of the New Land Acquisition Act had already come into force and were, therefore, applicable. This being the case no award could have been passed by resorting to any provisions under the old Land Acquisition Act.

9. We find this argument to be wholly unmeritorious. Section 114 of the New Land Acquisition Act deals with repeal and saving. It categorically states that the Land Acquisition Act, 1894 is hereby repealed. Sub-Section 2 of Section 114 clearly stipulates that save as otherwise provided in the New Land Acquisition Act, the repeal under sub-section (1) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeals. Section 6 of the General Clauses Act, 1897, deals with effect of repeal and reads thus:

"6. Effect of repeal.-Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes

effect; or

(b) affect the previous operation of any enactment so repealed or any thing duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

10. On a reading of Section 6 of the General Clauses Act, 1897, what becomes clear is that the proceedings that have been initiated under the old Land Acquisition Act are to be continued and completed under the provisions of the said Act. This of course is subject to otherwise being provided in the New Land Acquisition Act [Section 114(2)].

11. In the facts of the present case, the acquisition was notified by the District Collector, Pune vide notification dated 23rd December, 2004 under Section 126(4) of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 which was published in the Government Gazette on 6th January, 2005. Thereafter, as per Section 9(3) & (4) of the old Land Acquisition Act, notices were issued to the concerned persons on 6th April, 2005 to file suggestions, objections, if any, in respect of the land to be acquired. This notice stated that the Government intends to take possession of the land and the claims to compensation by all interested in such land may be made to the office of the Collector. Thereafter, the award came to be passed under Section 11 of the old Land Acquisition Act. This award is dated 24th September, 2015. This being the case, and looking to the provisions of Section 114 of the New Land Acquisition Act (which deals with repeal) read with Section 6 of the General Clauses Act, 1897, it is quite clear that the acquisition proceedings that were initiated under the old Land Acquisition Act had to be completed by taking recourse to the provisions under that Act only and not by taking recourse to the provisions of the New Land Acquisition Act. One exception to this can be found in Section 24(1)(a) of the New Land Acquisition Act which clearly stipulates that where no award under section 11 of the old Land Acquisition Act has been made, then, all provisions of the New Land Acquisition Act relating to the determination of compensation shall apply. In other words, the exception carved out in Section 24(1)(a) is that where acquisition proceedings have commenced under the old Land Acquisition Act and no award has been made under Section 11 of the said Act, then compensation would still have to be calculated as per the provisions of

the New Land Acquisition Act and not as per the old Land Acquisition Act. We, therefore, find that the argument of Mr. Warunjikar that the award dated 24th September, 2015, could not have been passed under Section 11 of the old Land Acquisition Act, and that the provisions of the New Act were applicable, is wholly without any substance.

12. Faced with this situation, Mr. Warunjikar sought to contend that the award passed on 24th September, 2015 was not only passed under the old Land Acquisition Act but also under the provisions of the New Land Acquisition Act. In this regard he was at pains to point out the award which is annexed to the affidavit-in-reply dated 11th April, 2017 filed by the Special Land Acquisition Officer. We have gone through this award and we find that this argument of Mr. Warunjikar is wholly misconceived. What this award rightly states is that the award is made under the provisions of the Land Acquisition Act, 1894 (old Land Acquisition Act), but the compensation is calculated as per the provisions of Section 24(1)(a) of the New Land Acquisition Act and that is why one finds reference of both the Acts in the award. As mentioned earlier, even though the proceedings have commenced under the old Land Acquisition Act, if no award was made under Section 11 of that Act after its repeal, an award still could be made under Section 11 of the old Land Acquisition Act, but the compensation ought to be calculated as per the provisions of the New Act as mentioned in Section 24(1)(a). We, therefore, find that this argument of Mr. Warunjikar that the award is a composite award is wholly misconceived. We find that the authority concerned has correctly applied the provisions of the old Land Acquisition Act for the purposes of passing the award and, thereafter, calculated the compensation by applying the provisions of Section 24(1)(a) of the New Land Acquisition Act.

13. This being the case and in view of the foregoing discussions, we find no merit in this Writ Petition and it is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.