

(2008) 09 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 4943 of 2008

Bhagwat Nathu Patil

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:

Constitution of India, 1950 — Article 299

Evidence Act, 1872 — Section 115

Land Acquisition Act, 1894 — Section 23, 23(1A), 23(2), 28(1A), 3

Citation : (2009) 1 BomCR 328

Hon'ble Judges : Rebello F.I., J;Chandiwal K.U., J

Bench : Division Bench

Advocate : R.A. Thakre, for the Appellant; S.K. Tambe, A.G.P. for respondent
Nos. 1, 2 and 3, for the Respondent

Judgement

Rebello F.I., J.

Rule. Heard forthwith.

1. Petitioner has approached this Court praying that the application made by the petitioner for rental compensation dated 29/1/2008 be decided by respondent No. 3, who represents the acquiring body.

2. We may mention some facts from this petition and refer to some additional facts from the other petitions which are fixed today but in respect of which we propose to pass separate orders based on the Judgment to be pronounced in this petition.

3. The State of Maharashtra has issued Government Resolutions for payment of rental compensation where possession was taken from land owners by private negotiations before the Notification was issued u/s 4(1) of the Land Acquisition Act. The first such resolution is of 1/12/1972. Para (6) of the said resolution provides for payment of rental compensation. It sets out, the rental compensation would be paid for the period from the date on which possession of

the land is taken over till the date on which full amount of final award is paid." The sub para determines the manner in which the rental compensation is to be paid. Sub para (i) of Para (6) sets out that the yearly rental compensation at the rate of 5% of the estimated value of the land is to be paid yearly to the land owners as soon as possession is taken over and the Collector of the District is to estimate the value of the land, or any Revenue Officer not below the rank of Tahasildar on his behalf, but not the concerned Land Acquisition Officer. It is further provided that the yearly rental compensation is to be provisional and should be paid up to the date on which the full amount of final award is paid to the land owner. The Government Resolution then records as under:

After the award is declared and the award value is known, final amount of rental compensation should be worked out at 6 and 1/2 percent of the award value and the balance amount if due, should be paid to the land owner within three months from the date the award value is paid.

It is thus clear that the rental compensation is payable on the award value, meaning thereby, the compensation as determined u/s 23 of the Land Acquisition Act.

Para (10) of this Government Resolution independently deals with the payment of compensation for crops which are standing on the land at the time of private negotiations. In other words, the value of the crop has to be independently assessed and paid in terms set out there, irrespective of the rental compensation as set out in Para (6) of the resolution sub-para (4) of Para (10) provides for a panchanama to be done of the condition of crop, trees etc. and while deciding to pay compensation for cash crops like sugar cane, fruit trees etc., it must be ensured that the plantation was done before the fact that the land was going to be acquired was known and that the land was capable of growing or sustaining the crop.

4. The Government Resolution of 1/12/1972 was amended by further Government Resolution dated 2/4/1979, whereby the rental compensation was increased from 6 and 1/2% to 8%.

5. The Government, thereafter, notified another resolution dated 26/12/2003. This Government Resolution records that by Government Resolution dated 17/4/2003 the Government Resolution of 1/12/1972 has been cancelled and as a consequence also Government Resolution dated 2/4/1979. The said Government Resolution proceeds on the footing that there is no provision for rental compensation in the Land Acquisition Act and that this Court in one of its Judgment, has taken the view that acquisition of land by private negotiation is illegal and unconstitutional. However in the matter of payment of rental compensation, this is what the Government Resolution observes, in terms of the translation provided by the State Government reads:

Accordingly though the provision of payment of rental compensation has been cancelled automatically, several matters are filed in the Court for payment of

rental compensation along with interest in the old land acquisition matters. Therefore considering the financial burden on the Government towards payment of rental compensation and as there is no provision of rental compensation in the Land Acquisition Act, instead of making payment of rental compensation on the price fixed under the award for the "land" as defined under the Land Acquisition Act, the Government has decided to pay rental compensation on the basis of price of open lands which was expected by the Government vide Government Resolution of the year 72 and year 79 which are cancelled.

What this means is that as upto 17/4/2003 from which date no further possession by private negotiations is to be taken, the rental compensation will be paid but on the market value of the open lands.

There is still one more resolution, which petitioner's Counsel has placed before us, and that is Government Resolution dated 17/10/2003. By this resolution, though taking possession of lands by private negotiations has been cancelled on the ground that it is illegal and unconstitutional, yet the State Government, in respect of land for Scarcity Works and Employment Guarantee Scheme, has still permitted taking possession of lands by private negotiations and when such possession is taken, the Government Resolution dated 17/4/2003 would not apply and rental compensation would be paid in terms of earlier Government Resolutions and as explained by the Government Resolution of 26/12/2003.

6. Some of the Government Resolutions and the compensation payable thereof, was the subject matter of Appeal before the Supreme Court in State of Maharashtra and Others Vs. Maimuma Banu and Others, . Earlier, Division Bench of this Court in Maimune Banu Hamidali Khan and Others Vs. State and Others, had framed two questions for consideration, out of which question No. 1 was as under:

(i) Whether the land holders whose land was acquired by private negotiations or otherwise before the land acquisition proceedings under the Act were initiated are entitled for the payment of rental compensation for the period from the date of possession till the date of the award by the Land Acquisition Officer or by the Reference Court.

The question was answered by the learned Division Bench, as under:

We have, therefore, no hesitation to hold that when the land/property is acquired by consent or by private negotiations, the owner concerned is entitled for the payment of rental compensation as well as interest thereon.

This very judgment was the subject matter of appeal in State of Maharashtra v. Maimuma Banu, supra. The Supreme Court in this appeal, noted that the only point involved in the appeal is whether the High Court of Bombay was justified in directing payment of interest on rental compensation awarded to persons whose lands were acquired under the Land Acquisition Act, 1894. Therefore, the finding of this Court insofar as rental compensation is concerned, was not in issue,

neither at the instance of the State Government nor did the Supreme Court think it fit to reverse the findings on that point. The Court however, observed that, on reading of the provisions of the Act, it does not provide for payment of any rental compensation and that the liability for rental compensation does not have any source under the Act. However, insofar as Government Resolution is concerned, this is what the Supreme Court observed:

It is to be noted that the resolutions adopted by the Government were intended to benefit the land owners whose lands were acquired. To avoid unnecessary delays in payment urgency for follow up action was indicated in the resolutions. To that extent, learned Counsel for the land owners are on terra firma.

The Supreme Court then observed that:

There is no dispute, and in our opinion rightly that rental compensation is not relatable to the Act. The entitlement of the claimants is on the basis of Governments resolutions i.e. on the basis of executive orders.

Further, in the matter of payment of rental compensation on enhancement of market value, this is what the Supreme Court observed:

The amount calculated on the basis of award by the Land Acquisition Officer cannot be below than the amount to be ultimately fixed. If in appeal or the reference proceeding, there is any variation, the same can be duly taken note of as provided in law. There is no difficulty and we find none as to why the compensation on the basis of value determined by the Land Acquisition Officer cannot be paid. If there is upward revision of the amount, the consequences will follow and if necessary re-determination of the rental compensation can be made and after adjustment of the amount paid, if any, balance can be paid. If however the Land Acquisition Officer's award is maintained then nothing further may be required to be done. In either event, payment of the rental compensation expeditiously would be an appropriate step.

It would thus, be clear from this judgment that the Supreme Court has upheld the payment of rental compensation under the Government Resolutions and on the awarded amounts or the amount that would be recovered in appeal or otherwise.

7. We may also point out that such an issue had come up for consideration before us in case of (Dinkar Sandipan Gholve and Ors. v. State of Maharashtra) W.P. No. 2559/2008 dt. 24/7/2008. Factually, in those cases, it appears the possession of the land was taken after the Government Resolution of 17/4/2003, which cancelled the Government Resolution of 1/12/1972. This resolution was not placed before us. Counsel for the State has informed that the State proposes to file review. It is in these circumstances, that we are independently answering the issue also considering also the on Government Resolutions of 17/4/2003, 26/12/2003 and 17/10/2003 and the arguments advanced by the State based on the said Government Resolutions.

8. In answer to the petition, which claims rental compensation, a reply has been filed on behalf of respondent No. 2, by Rambhau Dalsing Rathod, Special Land Acquisition Officer, Jayakwadi Project No. 2, Aurangabad. It is admitted that possession of the petitioner's land was taken by respondent No. 3 by private negotiations on 17/4/2002 and award was passed on 9/5/2007. It is, however, pointed out that by Government Resolution dated 17/4/2003, the State of Maharashtra has cancelled the Government Resolution dated 1/12/1972. It is then set out that consequent upon the Government Resolution dated 26/12/2003 there is no question of granting rental compensation for acquired land which was acquired by private negotiations. The affiant then sets out that, however, it is made clear that in pending cases lands which are acquired by private negotiations prior to 26/12/2003 the Government has decided to pay the rental compensation on the amount of open land awarded by the Land Acquisition Officer and not on the amount of trees, structure etc. i.e. total amount of award value. It is reiterated that rental compensation payable, has to be calculated based on Government Resolution dated 26/12/2003.

9. There is, therefore, no dispute that rental compensation in respect of lands where possession was taken prior to 17/4/2003, the rental compensation is still payable and also in respect of those lands where possession was taken after that date, which are covered by Government Resolution dated 17/10/2003. The question that we are called upon to answer is, whether the rental compensation should be paid based on the Government Resolution dated 1/12/1972 read with Government Resolution dated 2/4/1979 or based on the Government Resolution dated 26/12/2003. Reason for payment of rental compensation is that the State takes possession of the land even before proceedings are initiated under the provisions of the Land Acquisition Act. The loss by way of income to the land owner on account of such dispossession is not provided for under the provisions of the Land Acquisition Act. In fact the Supreme Court in the case of (R.L. Jain (D) by L.Rs. v. D.D.A. and Ors.) AIR 2004 S.C.W. 1627, has observed as under:

18. In a case where the land owner is dispossessed prior to the issuance of preliminary Notification u/s 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period to Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary Notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.

In the same judgment, where possession was taken before initiation of proceedings u/s 4 of the Land Acquisition Act, the Supreme Court has held that land owners are not entitled to the benefit u/s 23(1-A), between the date of possession and publication of notification nor are they entitled to the interest in terms of Section 34 of the Act. Thus, a land owner whose land has been taken in possession without initiation of proceedings under the Land Acquisition Act, is denied interest in terms of Section 34 of the Act, though they cease to be in possession of the land having surrendered the land by virtue of private negotiations between the parties and promise held out by the State Government that for such dispossession, they would be paid rental compensation in terms of the Government Resolutions.

10. Is it therefore, open to the State Government, by a subsequent Resolution dated 26/12/2003, to provide for determination of rental compensation on a different yardstick than that provided by Resolution dated 1/12/1972 and 2/4/1979? Insofar as Resolutions dated 1/12/1972 and 2/4/1979, we have earlier referred to Para (6). It is clear from the language of the said resolution that, rental compensation is based on "the award value". The award value in terms of Section 23 of the Act would be what is payable u/s 23 to the exclusion of additional compensation payable u/s 23(1-A). This, as pointed out earlier, was in issue in the judgment before this Court in *State of Maharashtra v. Maimuna Banu*, supra. The Supreme Court in appeal accepted the principle, that the land owner is entitled for rental compensation in terms of the Government Resolution and that in the event in a reference or otherwise the market value is enhanced, the rental compensation will have to be re-determined. Under the Government Resolution of 1/12/1972, the rental compensation was 6 and 1/2% of the award value. By Resolution of 2/4/1979 it has been made 8%. Therefore, from 2/4/1979, the rental compensation payable would be at the rate of 8% of the market value.

11. The learned A.G.P. contends that Government Resolution dated 26/12/2003, however, seeks to make a departure on the basis of which rental compensation has to be paid. The language of the Government Resolution dated 26/12/2003 is as under:

The Government has decided to pay rental compensation on the basis of price of open lands which was expected by the Government vide Government Resolution of the year 72 and year 79 which are cancelled.

In other words, the rental compensation is on the basis of the price of the open lands and does not include standing crops and trees, as set out in the earlier part of the preamble to the Government Resolution. Even as per the Affidavit filed by Rambhau Dalsing Rathod, the rental compensation would be the value of the open land. In other words, the compensation payable for the open land.

12. The further question is, whether the value of the crop or the price of the trees are included in the awarded value. In our opinion, this is a total

misconception on the part of the State Government. The price of standing crop or for that matter the value of trees or timber is to be paid separately under Para 10 of the Government Resolution dated 1/12/1972 and is not to be taken into consideration for determining compensation u/s 23 of the Act. The award could have considered the value of trees or crops if they were standing on the date of Section 4(1) Notification. Under the Government Resolution dated 1/12/1972, the value of the standing crop is provided for separately under Para (10) and has nothing to do with the rental compensation under Para (6). The price for standing crop has to be paid based on Para (10) of the resolution. Similarly, the price of the trees are also in terms of Para (10).

The price of the crop though cannot be included in the Award made under the Land Acquisition Act, as on the date of Section 4 Notification, normally, due to passage of time, such crop would not be available. It is possible, however, that there could be cases where between possession and the date of Notification u/s 4(1) of the Act, there could be a standing crop or trees. In such a cases if the value of the standing crop is provided for in the award, then it would not be payable under Para (6) of the resolution. Similarly, if the compensation for trees is paid under Para (10) of the resolution, it would not be payable under the Award. In our opinion, therefore, there is not much difference considering the provisions of the Land Acquisition Act and determination of compensation and the Government Resolution dated 1/12/1972 as modified by Government Resolution dated 2/4/1979 and the Government Resolution of 26/12/2003.

13. Even if it is to be read that there is a departure in Government Resolution of 26/12/2003, in our opinion, the Respondent State and/or acquiring body, would be bound by the promises made and which were held out to the land owner, who surrendered possession of his land on the express understanding that he would be paid rental compensation in terms of the Government Resolutions as they stood at the time possession was taken. Question of payment of rental compensation would not arise in the cases wherein possession is taken after 26/12/2003, except in those cases covered by Government Resolution dated 17/10/2003. If possession is taken after 26/12/2003, the rental compensation would be payable in terms of Government Resolution dated 26/12/2003. If a party has acted on a promise by the State to his detriment, the State would be bound to be held by its promise. The doctrine of promissory estoppel and the principle thereto has evolved over a period of time in this country. The Supreme Court in *M.P. Mathur and Others Vs. D.T.C and Others*, has observed that promissory estoppel is based on equity or obligations. It is not based on vested right. In equity the Court has to strike a balance between individual rights on one hand and the larger public interest on the other hand. The principle of promissory estoppel was invoked by the Supreme Court in the case of *(Union of India v. Anglo Afghan Agencies)* 1967 DGLS 344 :A.I.R. 1968 S.C. 718, wherein it was laid down that even though the case would not fall within the terms of Section 115 of the Indian Evidence Act, which indicates the rule of estoppel, it would be still open to a party who has acted on the representation made by the

Government to claim that the Government should be bound to carry out the promise made by it even though the promise was not recorded in the form of formal contract as required by Article 299 of the Constitution. The principle has been evolved by equity to avoid injustice and is neither in the rule of contract nor in the rule of estoppel,

The law is also well settled that there can be no promissory estoppel against statute. This, however, has been explained in *L.M.L. Ltd. Vs. State of U.P. and Others*, . The Supreme Court has observed that relevant considerations while determining whether act of State in making representation is contrary to statute or not, ordinarily, would not apply against Statute. However, a distinction should be borne in mind between an Act which goes clearly contrary to the mandatory provisions of the State and a case where irregularities have been committed. A difference however, has been made insofar as delegated legislation is concerned. The principle of inapplicability of estoppel against statute is held not applicable in the case of delegated legislation (See *U.P. Power Corporation Ltd. and Another Vs. Sant Steels and Alloys (P) Ltd. and Others*, . In *Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others*, , the Court observed that unlike an ordinary estoppel, promissory estoppel gives rise to a cause of action. It indisputably creates a right and also acts on equity. The doctrine would be applicable where a person alters his position pursuant to the promises made by the State, as in the instant case. Based on a policy decision as reflected in the Government Resolution, land holders who would surrender their lands, were given to understand and/or a promise held out to them that they would be paid rental compensation. Rental compensation is not compensation payable by the Statute under the Land Acquisition Act as there is no provision thereto. It is, however, payable based on the executive instructions issued by the State Government.

The doctrine is premised on the conduct of the party making a representation to the other so as to enable him to arrange his affairs in such a manner as if the said representation would be acted upon. It provides for cause of action. It need not necessarily be by way of a defence see *LML supra*) Ltd., [*supra*]). We are, therefore, clearly of the opinion that the petitioners having acted on the Government Resolution and surrendered their lands, acted to their detriment as otherwise possession of the land would have to be taken under the provisions of the Land Acquisition Act in which event the petitioners would have been entitled to all statutory benefits including the interest payable u/s 34 of the Act, as also the other benefits under-section 23(1-A) of the Land Acquisition Act upto the date of the Notification. 14. As pointed out by us, earlier, *R.L. Jain (D)*, *supra*, has decided both the issue of additional payment u/s 23(1-A) of the Act, wherein the Supreme Court observed as under:

For the reasons already indicated, we are of the opinion that the view taken in Special Tehsildar is legally correct and the view to the contrary taken in Assistant Commissioner, Gadag (*supra*) is not in accordance with law and is hereby

overruled.

The view taken in *Special Tahsildar (LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar*, was that the claimant would not be entitled to additional sum for the period anterior to publication of Notification u/s 4(1) of the Act. In *R.L. Jain (D)*, supra, the Court also held that if possession of the land was not taken under the provisions of the Land Acquisition Act, considering the language of Section 34 interest would also be not payable in those cases where possession of the land was taken before issuance of Notification u/s 4(1) of the Land Acquisition Act.

In our opinion, therefore, State Government was duty bound, considering that the land owners would be denied the use of the land and also in view of the application of the provisions of Section 34 to provide for rental compensation. The object being that, the person who is dispossessed from his land, may be by private negotiation, loses the benefit arising from the said land. The compensation worked out by the State Government is based on the awarded value as ultimately held by the Land Acquisition Officer and that is paid at the rate of 6 and 1/2% by Resolution dated 1/12/1972 and from 2/4/1979 at the rate of 8%.

15. We then come to the issue of cases where a party though entitled to be paid rental compensation on yearly basis after possession is taken, has not been paid rental compensation. In *State of Maharashtra v. Maimuma Banu*, (supra), the Supreme Court while interfering with the interest awarded by this Court, held as under:

It would therefore be appropriate if appellants pay interest @ 6% from 1/4/2000 till amounts payable as rental compensation are paid to the concerned land owners. This direction shall not apply to those cases where the payments have already been made prior to 1/4/2000.

It is thus, clear that interest on delayed rental compensation is also payable, but the same is fixed at the rate of 6% and from 1/4/2000. The Supreme Court took the approach as many land owners approached the Court after considerable lapse of time. In our opinion, therefore, the interest on unpaid rental compensation, would be payable at the rate of 6% and that would be from 1/4/2000. It is true that we have not fixed any cut off period for payment of interest in the Judgment of *Dinkar Sandipan Gholve*, supra, the same is fixed now, considering the Judgment of the Supreme Court in *State of Maharashtra v. Maimuma Banu*.

16. Before the judgment could be signed, our attention was invited to a communication dated 14th September, 1982 by the Assistant Secretary to Government of Maharashtra addressed to the Executive Engineer, Minor Irrigation Department, Jalgaon regarding payment of rental compensation on the price of mango trees. It is clarified that considering the definition of land" as contained in Section 3(a) of the Land Acquisition Act, it would include all things thereon like houses, wells, trees.

Under Section 23 also under the nomenclature "secondly", the price of the trees and crops have to be included towards compensation. The awarded value, therefore, in the event the value of crops or trees are included in the award, will include this value of trees and crops. If it has been paid separately under the Government Resolution, then there would be no question of including it for the purpose of computing awarded value. We may also clarify that awarded value will include all components payable u/s 23 except what is payable u/s 23(1-A) and Section 23(2) i.e. solatium.

17. CONCLUSIONS:

(1) Rental compensation is payable on the awarded value at the rate of 6 and 1/2 % from 1/12/1972 and at the rate of 8% from 2/4/1979 till the full amount of final award is paid to the land owner. Awarded value would include all amounts determined u/s 23, except Section 23(1-A) and Section 23(2).

(2) If in reference or in proceedings u/s 28(1-A) or in appeal, the awarded amount is increased, the rental compensation will have to be re-determined in terms of the market value as re-determined.

(3) The interest payable on the rental compensation, not paid, would be at the rate of 6% for the period in default. This amount would be, however, payable only from 1/4/2000.

(4) Considering the observations in R.L. Jain (D), the rental compensation will be decided by the Special Land Acquisition Officer. While deciding rental compensation, the Special Land Acquisition Officer, Collector, would hear the interested persons, i.e. land owners or other parties have interest as also the acquiring body. While doing so, if the date of taking possession of the land is not set cut in the award, the Special Land Acquisition Officer to decide the same.

(5) The rental compensation along with interest would be paid by the State or the acquiring body as the case may be, within four months of the Special Land Acquisition Officer determining the rental compensation and amount of interest.

18. Considering the above, this Petition is allowed. The petitioner is held entitled to rental compensation from 17/4/2002 till the amount under the award is finally paid, along with interest thereon, in terms what we have set out in earlier part of the judgment.

The matter is remanded back to respondent No. 2 to determine the rental compensation and interest in terms what we have set out in the judgment.

Rule is made absolute, accordingly. No order as to the costs.