

(2011) 06 MAD CK 0103

In the Madras High Court

Case No : Review Application No's. 30 and 31 of 2010 and M.P. No's. 1 and 3 of 2010 in Review Application No. 30 of 2010 and M.P. No. 1 of 2010 in Review Application No. 31 of 2010 Review Application No. 30 of 2010

Bharat Petroleum Corporation Ltd.

APPELLANT

Vs

Arun Kumar Dharambir Agarwal and Others

RESPONDENT

Date of Decision : 27-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 181, 182
Land Acquisition Act, 1894 — Section 18, 4(1), 5, 6
Limitation Act, 1963 — Section 5

Citation : (2011) 06 MAD CK 0103

Hon'ble Judges : T. Raja, J;D. Murugesan, J

Bench : Division Bench

Advocate : S. Ramasubramaniam and S. Ramasubramaniam and Associates, for the Appellant; M.S. Subramanian, for R1 to R4, for the Respondent

Judgement

T. Raja, J.—The Review Applicant Bharath Petroleum Corporation Limited, No. 7, Kodambakkam High Road, Madras-600 034, is the

land requisitioning body. For the benefit of the Review Applicant, a proposal to acquire an extent of 227.15 grounds of land in various Survey Nos.

including Survey Nos. 3821/2, 3822/3, 3825/2 at Tondiarpet Village in Madras City was made and after grant of approval in G.O. Ms. No.

211, Industries Department, dated 27.3.1987, Notification u/s 4(1) of the Land Acquisition Act, 1894 was issued on 27.11.1987. Thereafter, on

completion of Section 5-A enquiry and other legal requirements, the Land Acquisition Officer determined the land value at the rate of Rs. 54,153/-

per ground. Aggrieved by the said determination of compensation, the land owners/claimants had requested the District Collector to refer the

matter to the Reference Court u/s 18 of the Land Acquisition Act and such request was complied with. The Reference Court finally determined the compensation at the rate of Rs. 2,25,000/-per ground. Aggrieved by the said order, an appeal was filed by the land owners seeking enhancement of compensation from Rs. 2,25,000/-toRs.4,00,000/-per ground and the requisitioning body also filed an appeal questioning the enhancement of compensation made by the Reference Court. This Court, after detailed consideration of the case and claims of both sides in the appeals, enhanced the compensation from Rs. 2,25,000/-toRs.3,00,000/-per ground; thereby, allowed the appeal filed by the land owners and dismissed the one filed by the requisitioning body-Bharat Petroleum Corporation Ltd. Aggrieved by the said judgment, the Bharat Petroleum Corporation Limited has preferred the present Review Applications on the sole ground that the High Court,without referring to or dealing with the various points put forth by them in Appeal No. 1064/94 and the appeal filed by the State Government in A.S. Nos. 687/2002, while deciding the appeals, solely dealt with the contentions raised by the land owners in Appeal No. 1109/1994 and enhanced the compensation and the same is an error apparent on the face of the record.

2. Mr. S. Ramasubramanian, learned senior counsel appearing for the Review Applicant contended that the landowners/claimants did not produce any document or proof of transaction to show that any land adjacent to the claimants' land was sold at the price of Rs. 4,00,000/-perground at the relevant time. He further contended that the claimants should have shown substantive and concrete evidence to establish their case for enhancement of compensation that the land acquired was fully developed and would fetch the price claimed. When the claimants had not let in any substantial evidence, the enhancement of compensation to Rs. 3,00,000/-per ground is totally uncalled for. On this basis, it was pleaded that the judgment impugned needs to be reconsidered.

3. (i) On the above said pleadings, Mr. M.S. Subramaniam, learned Counsel appearing for the Respondents submitted that the present Review Applications do not call for consideration since the Review Applicants failed to demonstrate convincingly that the impugned judgment suffers from any error apparent on the face of the record.

(ii) When an appeal was made by the land owners challenging the small amount of compensation determined by the Reference Court, the Review

Applicant also filed their appeal challenging the order, enhancing the compensation fixed over acquisition of the claimants' land. While jointly taking

up the matter for common disposal, when this Court considered the case of the claimants on the basis of the documentary evidence including

various sale deeds relating to the adjacent lands of the claimants after delving into various core and relevant aspects, the contention raised by the

Review Applicant that the documents produced by them were not considered by the Court while the ones produced by the claimants for

enhancement of compensation were relied upon does not constitute any ground for review of the order impugned herein.

(iii) Ex facie, the Review Applications seem to have been filed only with the calculation of delaying the payment of compensation to the land losers.

Even though the acquisition proceedings were initiated in the year 1987, the Review Applicant-Bharat Petroleum Corporation Limited, which is one

of the leading and profit making oil Companies in the country, instead of settling the compensation to the land owners, is relentlessly fighting with

the claimants almost for about 23 years by scrupulously resorting to delaying tactics and successfully prevented the claimants from receiving the

compensation for their lands. Merely because the Review applicant is aggrieved by the impugned judgment, enhancing the compensation to Rs.

3,00,000/- from Rs. 2,25,000/- per ground on the ground of non-consideration of the documents, no Review Application can be maintained

because the review jurisdiction cannot be invoked as the appellate jurisdiction for the sole reason that there is a clear distinction between an

erroneous decision and an error apparent on the face of the record. In other words, rehearing the matter for detecting an error in the earlier

decision and correcting the same do not fall within the ambit of review jurisdiction. For this, the learned Counsel for the Respondents relied upon

the judgment of the Apex Court rendered in Parsion Devi and Others Vs. Sumitri Devi and Others, and on this basis, he prayed for dismissing the

Review Applications.

4. Heard the learned Counsel appearing for both sides.

5. (i) On the requisition made by the Review Applicant-Bharat Petroleum

Corporation Limited/requisitioning body for expansion of their existing facilities in Tondiarpet area, a huge land of 227 grounds came to be acquired after issuance of a Notification u/s 4(1) of the Land Acquisition Act 1894 on 27.11.1987. After all other legal formalities, namely, enquiry u/s 5 and Declaration u/s 6 of the Act etc., the Land Acquisition Officer fixed the compensation at Rs. 54,153/-per ground. Aggrieved by the compensation, a representation was made for reference to the Reference Court u/s 18 and thereafter, the Reference Court after taking the matter for trial, enhanced the compensation from Rs. 54,153/-to Rs. 2,25,000/-perground. Since the value of the land in Tondiarpet Village, which is a well known place in the Chennai city, is much costlier, aggrieved by the determination of compensation by the Reference Court, the claimants filed appeals. In parallel, the requisitioning body-the review applicant also filed appeals, questioning the enhancement of the compensation made by the Reference Court. All these appeals were taken up together for consideration and disposal.

(ii) Though the claimants advanced their arguments that the Reference Court, while fixing the compensation for their acquired land at the rate of Rs.

2,25,000/-, decided the issue contrary to the ratio laid down by the Apex Court in fixing the correct market value of the land, the ReviewApplicant

also placed their case stoutly opposing enhancement of compensation by relying upon various documents, Ex.R4-sale deed dated 28.9.1989

relating to a land, which is adjoining the compound wall of the acquired land sold for Rs. 1,25,000/-per ground. On that basis, they pleaded that

the market value cannot be fixed atRs.4,00,000/-per ground. This Court, by specifically mentioning that the following factors have not been kept in

mind by the Reference Court, namely, location and situation of the property, facility of two important roads, Railway siding, 700 feet frontages,

availability of Electricity, Water, Drainage, etc., nearness to Madras Harbor, Madras Refinery etc., high compound wall provided by land owner

all around the acquired land, specifically laid roads to take heavy loads, culverts, bridges, giant electric lights to facilitate movements of vehicles in

both day and night, pipelines laid to connect harbor and oil refinery and all such developments made at huge cost in addition to necessary

infrastructure facility for any oil company, enhanced the value of the land at Rs.

3,00,000/-as againstRs.4,00,000/-. Therefore, the argument of the learned senior counsel appearing for the Review Applicant that their case was not considered is not correct. When the valuation report marked as Ex. C 35 by the land owners was relied upon by the land owners, the same was objected by the Review Applicant that it should not be relied upon. Admittedly both sides filed umpteen number of documents to support their respective claims. After taking into account the case of both sides interlay, this Court considered various sale deeds which were marked as Exs.C.30 to 33before the lower court to show that one ground of adjacent land was sold at the rate of Rs. 2,21,590.91ps as perEx.C.30-sale deed. When adjacent land was sold atRs.2,21,590.91ps, the sale deed marked as Ex.C.32 indicated that another land per ground was sold at Rs. 2,59,711.43ps. Yet another adjacent land was also sold at Rs. 2,50,000/-per ground. One more sale deed as per Ex.C.34 shows that another piece of one ground was also sold at the rate of Rs.2,66,666.67ps. Above all, this Court also consider another vital aspects, namely, the capitalization method for arriving at a proper market value of the land and the documents of the Oil and Natural Gas Corporation showing that the Review Applicant has paid Rs. 1,48,79,028/-as loan without interest to the land owners for the same land. Therefore, the records relied on both by the claimants as well as the Review Applicant having been considered well by this Court, hardly we can go by the stand, rather vague in its kind, taken by the applicant inasmuch as there is a clear distinction between an erroneous decision and an error apparent on the face of the record. The Apex Court in Parsion Devi and Others Vs. Sumitri Devi and Others, had an occasion to decide what is an erroneous decision and an error apparent on the face of the record. Paragraphs 9 and 10 of the said decision are extracted hereunder:

9. Under Order 47 Rule 1 CPC a judgment maybe open to review inter alias if there is a mistake or an error apparent on the face of the record.

An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be ""reheard and corrected"". A

review petition, it must be remembered has a limited purpose and cannot be allowed to be ""an appeal in disguise.

10. Considered in the light of this settled position we find that Sharma, J. clearly overstepped the jurisdiction vested in the Court under Order 47

Rule 1 CPC. The observations of Sharma, J. that ""accordingly, the order in question is reviewed and it is held that the decree in question was of

composite nature wherein both mandatory and prohibitory injunctions were provided" and as such the case was covered by Article 182 and not

Article 181 cannot be said to fall within the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an

error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only be corrected by exercise of the review

jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25-4-1989 as an erroneous decision, though

without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error

apparent on the face of the record which was not of such a nature, ""which had to be detected by a long-drawn process of reasons"" and proceeded

to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order

passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The

aggrieved judgment-debtors could have approached the higher forum through appropriate proceedings to assail the order of Gupta, J. And get it

set aside but it was not open to them to seek a ""review"" of the order of Gupta, J. on the grounds detailed in the review petition. In this view of the

matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and we accordingly accept this appeal and set aside the

impugned order dated 6-3-1997.

When the ratio laid down by the Apex Court in the above reported case law makes the crux of this issue clear that when an erroneous decision

can be corrected by a higher forum while any decision questioned on the ground of an error apparent on the face of the record can be corrected

by the exercise of review jurisdiction, so far as the present applications are concerned, the Review Applicant has not made out any case of error

apparent on the face of the record in the impugned judgment.

(iii) It is well settled legal position that there view applications by no means an appeal in disguise whereby erroneous decision is reheard and

corrected but lies only for patent error. For this proposition, reference can be had from Thungabhadra Industries Ltd. Vs. The Government of

Andhra Pradesh, .

6. It is also relevant to refer to the ratio laid down by the Apex Court in RAJENDER KUMAR V. RAMBHAI 2007 (15) SCC 513, wherein, it

has been vividly held that there view applicant has to specifically mention the error apparent on the face of the judgment leading to failure of justice.

So far as the case of the applicant is concerned, when the impugned order is not shown to be suffering from any error apparent on the face of the

record or judgment and the review applicant, a profit making oil company in the country, is attempting somehow only to get endless respite to

prolong disbursal of the compensation, hyper-technique tactics should not be allowed to delay the payment of compensation to which the land

losers are legally entitled to.

7. The Hon''ble Apex Court, while emphasizing the importance of bringing an end to the land acquisition matters particularly in respect of payment

of compensation to the land losers, in Pundlik Jalam Patil By Lrs v. Exe. Eng. Jalgaon Medium Project (2009 SCCR 104), has ruled thus:

It needs no restatement at our hands that the object for fixing time limit for litigations based on public policy fixing a life span for legal remedy for

the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly.

Salmond in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

24. Public interest undoubtedly is a paramount consideration in exercising the courts discretion wherever conferred upon it by the relevant statutes.

Pursuing stale claims and multiplicity of proceedings in no manner sub-serves public interest. Prompt and timely payment of compensation to the

land losers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the

beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by

resorting to avoidable litigation unless the claimants are guilty of deriving benefit which otherwise not entitled in law in any fraudulent manner. One

should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to

be kept in mind by the courts while exercising the discretion dealing with the application filed u/s 5 of the Limitation Act. Dragging the land losers to

courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by

condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no

public interest.

8. Applying the said ratio to the facts of the present case where the Respondents, having acquired the lands of the claimants about two decades

back ie., before 24 years in the year 1987, are not prepared at least now to pay the compensation, this Court, by discerning the intention behind

filing of the present petition by the review applicant/Corporation as a delaying tactics to further prolong disbursement of the compensation amount,

holds that the review applications are totally devoid of any merit and that it is not made out or demonstrated before this Court that the impugned

judgment suffers from any error apparent on the face of the record.

9. Therefore, we are of the opinion that both the Review Applications do not call for interference and accordingly, they are dismissed, however,

there is no order as to costs. Consequently, connected pending M.P. No. 1 of 2010 in Review Application No. 30 of 2010 and M.P. No. 1 of

2010 in Review Application No. 31 of 2010 are also dismissed.

10. After the pronouncement of the order, Mr. M.S. Subramanian, learned Counsel appearing for the Respondents-claimants has submitted that

pursuant to the interim order, the review applicant-M/s Bharat Petroleum Corporation Limited deposited a sum of Rs. 12,00,00,000/- (Rupees

twelve crores only) to the credit of L.A.O.P. No. 3 of 1991 on the file of VI Assistant Judge, City Civil Court, Chennai and the said amount was

directed to be invested in fixed deposit with Indian Bank, High Court Branch initially for a period of three months by order dated 3.1.2011 made

in M.P. No. 3 of 2010 in Review Application No. 30 of 2010 in A.S. No. 1064 of 1994, which was renewed for a further period of six months

by the subsequent order dated 26.4.2011. In view of the dismissal of the review applications, the beneficiaries are entitled to withdraw the said amount.

11. We have heard the respective learned Counsel. In our opinion, the above amount was deposited by the review applicant-M/s Bharat

Petroleum Corporation Limited and in view of the dismissal of the review applications, M/s Bharat Petroleum Corporation Limited is entitled to

withdraw the said amount. Equally, the Respondents-claimants are entitled to proceed with the E.P., which has already been filed before the Court

below for recovery of the amount as per the decree. M.P. No. 3 of 2010 is closed with the aforesaid observation.