
(2015) 03 BOM CK 0426
In the Bombay High Court
Case No : Writ Petition No.4721 of 2014

Bhausahab

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Citation : (2015) MCR 739

Hon'ble Judges : R.M.Borde and V.K.Jadhav, JJ.

Bench : Division Bench

Advocate : Mr. Sandeep N. Lute, Advocate, for the Petitioners; Mr. K.J. Ghute Patil, A.G.P, for the Respondents No.1 to 3; Mr. D.B. Pawar, Advocate, for the Respondent No.4.

Final Decision : Disposed Off

Judgement

R.M.Borde, J.—Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The petitioners are agriculturists residing at village Koradgaon Hilalpur, Tq. Vaijapur, District Aurangabad. The agricultural land belonging to the petitioners, admeasuring 1 hectare 73 ares (4 acres and 13 ares) approximately out of G.Nos.33, 54 and 55, situate at village Koradgaon Hilalpur has been taken in possession by the Zilla Parishad without observing the procedure prescribed under Land Acquisition Act. The possession of the land has been taken over, according to the petitioners, on 06.04.2001, which fact has not been disputed by the Respondents.

3 Although possession has been taken over in the year 2001, the acquisition proceedings were initiated by the State with publication of notification under Section 4 of the Land Acquisition Act on 16.05.2005. The Gazette notification was published on 09.06.2005 and date of local publication in the village is 25.02.2006. The notification has been published in the local news papers on 29.05.2005 and 28.05.2005. After publication of notification under Section 4,

declaration under Section 6 was issued on 15.02.2007 and said declaration was published in the Official Gazette on 19.04.2007. The declaration under Section 6 is published in the local news papers on 28.04.2007 and 30.04.2007, respectively.

4 Petitioners contend that though steps were taken under the provisions of Land Acquisition Act, award has not been passed and petitioners have not been paid compensation. After presentation of the petition, notice was directed to be issued to the Respondents by an order dated 16.06.2014. The acquiring body i.e. Zilla Parishad has caused appearance and presented an affidavit-in-reply sworn by Deputy Executive Engineer, Irrigation, Zilla Parishad, Aurangabad. It has been admitted by the acquiring body that the possession of the property has been taken. The factum of initiation of proceedings under Land Acquisition Act has also been stated in the affidavit-in-reply. However, there is no reference in the affidavit-in-reply in respect of declaration of award. The affidavit has been presented on 05.09.2014.

5 Surprisingly enough, in an affidavit presented on behalf of Respondent No.3 i.e. Special Land Acquisition Officer, Aurangabad, a stand is taken that award has been declared and amount of compensation has been determined on 09.03.2012. It is admitted, however, that in spite of declaration of award, notice under Section 12(2) directing the petitioners to receive amount of compensation has not been received nor the petitioners have been paid the amount of compensation. The copy of the award has been presented along with affidavit-in-reply. The petitioners sought leave to amend the petition and incorporated a prayer seeking to quash the award allegedly declared by the Respondents on 09.03.2012.

6 On perusal of copy of the award, it transpires that the proceedings in respect of acquisition of the property were initiated with publication of notification under Section 4 on 16.05.2005, whereas, declaration under Section 6 has been issued on 15.02.2007 by the office of Divisional Commissioner, Aurangabad. The declaration under Section 6 has been published in the Official Gazette on 19.04.2007, however, surprisingly the date of local publication of the declaration in the village is stated to be 25.05.2010 and that the award is stated to have been declared on 09.03.2012.

7 As has been referred to above, even the acquiring body i.e. Zilla Parishad does not appear to have been informed in respect of declaration of award as disclosed in the affidavit-in-reply presented on behalf of Zilla Parishad. On the contrary, it is stated in the affidavit-in-reply that it is for the State and Land Acquisition Officer to declare the award and on such declaration, the acquiring body has undertaken to pay the amount to the petitioners.

8 The award passed by the Land Acquisition Officer deserves to be quashed and set aside on more than one grounds. Firstly, although the award is stated to have been declared on 09.03.2012, till this date, the claimants have not been

informed in respect of declaration of award nor they have been served with notice under Section 12(2) calling upon them to receive the compensation. It is an admitted position that the amount of compensation has not been offered to the claimants. Mere declaration of award in the year 2012, without offering amount of compensation for the period of three years cannot be said to be a valid award within contemplation of provisions of Land Acquisition Act. The award under the Land Acquisition Act is an offer which can either be accepted by the claimants and if they do not accept the same, they are entitled to claim enhanced value of the land by taking recourse to the provisions of Section 18 of the Land Acquisition Act, 1894. Publication of the award without offering the amount of compensation as determined is not an award within meaning of Section 11 of the Act. It, thus, appears that the Land Acquisition Officer merely prepared the award and kept it in his office without intimating either to the acquiring body or to the claimants calling upon them to receive the amount of compensation.

9 On bare perusal of the dates in respect of publication of notification under Section 6 of the Act, it appears that the Land Acquisition Officer has made an attempt to bring the award within prescribed period of limitation and with a view to save the limitation and escape from the consequences provided under Section 11A of the Act, has manipulated the date of local publication of declaration under Section 6 in the village. The declaration under Section 6 has been issued by the Divisional Commissioner on 15.02.2007, which has been published in the Official Gazette on 19.04.2007 and same was published in the local news papers on 20.04.2007 and 30.04.2007. Surprisingly enough, the said declaration has been published in the locality on 25.05.2010 and award has been declared on 09.03.2012. The date of local publication of Section 6 notification has been adjusted obviously to bring the award within prescribed period of limitation. Sub-section (2) of Section 6 provides thus:

6 Declaration that land is required for a public purpose:

(1) ? . ? . ? . ? . ? . ? . ? .

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

Whereas, Section 11A of the Act reads thus:

11A Period within which an award shall be made:

(1) The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1894, the award shall be made within a period of two years from such commencement.

Explanation: In computing the period of two years referred to in this section, the period during which any action or proceedings to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

10 It would, thus, transpire that for consideration of the dates in respect of various stages of publication of notification under Section 4 and making of a declaration under Section 6 and publication thereof, are required to be considered in the context of phraseology mentioned in the aforesaid sections. In view of subsection (2) of Section 6, the last of the date of such publication shall be considered as the date of publication of the declaration. Whereas, Section 11A mandates the Collector to make an award within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for acquisition of land shall lapse.

11 On considering the dates in respect of publication of declaration under Section 6, it is obvious that although the said declaration was published in the local news papers in the month of April 2007, the Land Acquisition Officer took three years for publication of declaration in the locality. The award has been declared on 09.03.2012 and in order to adjust the dates i.e. two years preceding the date of publication of the award, the declaration under Section 6 is shown to have been published in the locality of the village on 25.05.2010. The local publication of the declaration under Section 6 is a manipulation by the Land Acquisition Officer in order to bring the final award within the prescribed period of limitation and escape from the consequences of Section 11A of the Act of 1894.

12 The inference, as referred to above, shall have to be drawn necessarily because admittedly notice under Section 9(2) of the Land Acquisition Act calling upon the petitioners to submit their objection as regards the amount of compensation has been served on them on 09.05.2007. The stage in respect of raising an objection as regards quantum of compensation shall obviously fall after the declaration under Section 6 of the Act. In any eventuality, the petitioners cannot be called upon to submit their objection as regards amount of compensation payable to them before issuance of declaration under Section 6 of the Act. If, at all, the date of declaration of notification under Section 6, as contemplated by Section 6(2) of the Act, is to be taken as on 25.05.2010, the stage of issuance of notice under Section 9(3) in no case shall precede the date of declaration under Section 6. The fact that petitioners have been served with the notice under Section 9 on 09.05.2007 makes it more than clear that the local

publication of declaration under Section 6 in the village dated 25.05.2010, is a manipulation.

13 This Court was called upon to consider a similar challenge on identical grounds in the writ petition presented by one Ramrao Pralhadrao Deshmukh & others v. State of Maharashtra and others, reported in 2008 (Supp) Bom.C.R. 415, to which, one us (R.M.Borde, J.) is a member. The Division Bench of this Court, in paragraphs no.19 and 20 of the aforesaid judgment, has observed thus:

"19 On consideration of the scheme of the Land Acquisition Act, it would be seen that in the matters concerning compulsory acquisition of the property, after completing the preliminary survey, the State authorities are expected to publish a preliminary notification for acquisition of the land under section 4(1) of the Act. Publication of the notification under section 4(1) is an expression of intention of the State to acquire the property. A further stage is provided in view of Section 5-A of the Act, whereby a person interested in the land can raise objections in respect of proposed acquisition which are required to be considered by the Collector. On consideration of such of the objections, a stage in respect of a declaration of intended acquisition is prescribed under section 6 of the Act. A declaration is required to be made to that effect by the State Government by issuing a necessary order and which declaration is required to be published in view of sub-section (2) of Section 6 of the Act. Section 7 of the Act provides that after publication of a declaration as contemplated under section 6, the appropriate Government, or some officer authorised by the appropriate Government, in this behalf or, as the case may be, the Commissioner shall direct the Collector to take order for acquisition of the land. The Collector then proceeds to cause the land to be marked out and measured and if no plan has been made thereof, a plan is to be made of the same in view of provisions of section 8 of the Land Acquisition. Then comes the stage of calling upon the persons interested in land to lodge the claim in respect of the compensation with the Collector. Whereas section 11 of the Act lays down the procedure in respect of the inquiry and award by the Collector. The stages enumerated by various provisions of the Act are required to be followed chronologically.

20 In the instant case, we find that the publication of a declaration under sub-section (2) of section 6 is stated to be, according to the Government, on a date which follows after a notice issued to the claimant calling upon him to submit his claim in respect of valuation of the land. Considering the state of affairs of the record that has been maintained by the office of the Land Acquisition Officer, we find that the mode of the publication of a notification under section 6(2) of the Act at village Chawadi is not worthy to be accepted and cannot be relied upon. As observed above, the panchanamas which are drawn in respect of publication of a notification at Chawadi under section 6(2) of the Act, being not worthy of acceptance, we find that whole proceedings of acquisition are vitiated as the award does not seem to have been published within the time frame prescribed under section 11-A of the Act.

14 It is, thus, clear on considering the scheme of the Act the various stages provided under the Act commencing from Section 4 notification till the declaration of award under Section 11 have to be observed in chronological order. The stage of issuance of notice under Section 9(2) can never precede a declaration under Section 6.

15 As has been observed by the Supreme Court in the matter of Padma Sundara Rao v. State of Tamil Nadu, reported in (2002) 3 SCC 533, the purpose for providing the period of limitation seems to be the avoidance of inconvenience to a person whose land is sought to be acquired. Compensation gets pegged from the date of notification under section 4(1). Section 11 provides that valuation of the land has to be done on the date of publication of notification under Section 4(1). Section 23 deals with matters to be considered in determining the compensation. It provides that the market value of the land is to be fixed with reference to the date of publication of the notification under section 4(1) of the Act. The prescription of time-limit in that background is, therefore, peremptory in nature.

16 In the instant matter also, since the Respondent Collector has failed to pass a valid award within contemplation of provisions of the Land Acquisition Act, the petitioners are deprived from receiving the amount of compensation in respect of acquired land although they have lost the possession of landed property in the year 2001. Even after lapse of 14 years from the date of taking over of the possession, the petitioners have not been paid. This approach of the Respondent-authorities i.e. State Government as well as the acquiring body shall have to be branded as callous. The petitioners, poor agriculturists, whose valuable properties have been lost 14 years back, have been deprived of the just compensation. Instead of providing relief to the poor farmers, the Respondent - Land Acquisition Officer appears to have indulged in manipulating the record so as to create evidence of declaration of award and deprive the petitioners-agriculturists from receiving just compensation. If, at all, the date of publication of Section 4 notification of the year 2005 is accepted, the petitioners would be deprived of the market value of the land to which they are entitled and Respondents are required to be directed to initiate proceedings in respect of acquisition of land de novo in accordance with the provisions of the Land Acquisition Act, 2013.

17 This Court, by an order dated 09.09.2014, directed Respondent No.4 - Zilla Parishad to deposit amount of Rs.4,00,000/- (Rs.Four lacs) in this Court. The amount has been deposited in observance of the directions and petitioners have been permitted to withdraw the said amount. While determining the amount of compensation and on declaration of the award, the Respondents shall take into consideration the amount withdrawn by the petitioners in pursuance to the orders passed by this Court and said amount shall be adjusted while determining the amount of compensation payable to the petitioners.

18 For the reasons recorded above, Rule is made absolute. There shall be no

order as to costs.