
(2001) 10 BOM CK 0079
In the Bombay High Court
Case No : Writ Petition No. 2999 of 1989

Bhiva Jadhav

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11A, 17, 4, 6

Citation : (2002) 3 ALLMR 887 : (2002) 2 BomCR 206

Hon'ble Judges : N.V. Dabholkar, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : B.N. Patil, for the Appellant; V.D. Sapkal, A.G.P. for respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Dabholkar, J.—By this writ petition under Article 226 of the Constitution of India, petitioner challenges the land acquisition award dated 30-3-1988 passed by respondent No. 3 u/s 11 of the Land Acquisition Act, 1894, thereby acquiring portion of 1 H 90 R from Gut No. 84 at Village Wakati, Tq. Vaijapur, Dist. Aurangabad, which is land owned by present petitioner.

2. Petitioner owns Gut No. 84, which admeasures 3 H 79 R. The canal of Nandur Madhameshwar Project passes through the land of petitioner. The work of the canal was started under the scheme to provide work to the labourers during scarcity. Possession of the land was taken by the acquiring body, by private negotiations with the petitioner, even before initiation of any acquisition proceedings.

Subsequently, the Executive Engineer, Nandur Madhameshwar Project, sent a proposal for acquisition to Special Land Acquisition Officer, B & C Project, Aurangabad. Notification u/s 4 of the Act without urgency clause dated 1-3-1983 was published in Maharashtra Government Gazette dated 19-5-1983. Although objections were invited u/s 5-A, since lands were already taken possession,

nobody raised any objections and straightway joint measurement was carried out by District Inspector of Land Records. Notification u/s 6, without urgency clause, dated 24-2-1986 was published in local newspapers "Nawa Maratha" and "Marathwada" on 6th and 7th March, 1986, respectively. After notices u/s 9 dated 18-3-1986, the award was declared on 30-3-1988. Notice u/s 12(2) dated 29-4-1988 was served upon the petitioner stating therein that an amount of Rs. 25,131/- is fixed as compensation and petitioner was directed to collect the same on 3-5-1988.

3. Petitioner has relied upon section 11-A as inserted in the Land Acquisition Act vide 1984 amendment. The amendment requires that Award u/s 11 should be declared within a period of two years from the date of publication of declaration u/s 6 and in case no Award is so declared within stipulated period, the entire proceeding for the acquisition lapses. By virtue of proviso to said section in the matters wherein declaration u/s 6 is published before the commencement of Land Acquisition (Amendment) Act, 1984, the Award is required to be made within a period of two years from such commencement.

In the present matter, since declaration u/s 6 was published on 6th and 7th March, 1986, the Award ought to have been passed on or before 6-3-1988, which was in fact declared on 30-3-1988. In these circumstances, it is the claim of petitioner that, whole the proceeding regarding acquisition of land has lapsed. In view of the fact that possession is already taken, petitioner prays that, it be declared that the land acquisition proceedings initiated with notification u/s 4 dated 1-3-1983 and concluded with the Award dated 30-3-1988 has lapsed and authorities may be directed to start the land acquisition proceedings afresh. In case, this relief is granted, the compensation will have to be determined on the basis of market value as prevalent on the date of fresh notification u/s 4 and, therefore, petitioner, who has already accepted the compensation under the impugned award, prays that the said amount may be allowed to be retained by him as advance payment towards the fresh award to be declared. A faint contention regarding correctness of the compensation fixed under the impugned award is also raised in para 9 of the petition. However, the same is irrelevant in view of challenge to the Award itself and in case the petitioner wishes to challenge the quantum of compensation fixed under the impugned award, this Court is not the forum.

4. A reply is filed by one Shri B.B. Pawar, Special Land Acquisition Officer, Jayakwadi Project No. 2, Aurangabad. The only contention raised in the reply is that the notification u/s 9 was published on 1-4-1986 and final award declared on 30-3-1988 is within a period of two years since then and, therefore, the land acquisition proceeding has not lapsed. In fact, on reference to section 11-A inserted by 1984 Amendment Act, it can be seen that, for the purpose of computation of period of two years, the date relevant is the date of publication of declaration u/s 6 and not the date of notice u/s 9 of the Act. The contention raised in the reply affidavit is thus of no assistance to the respondents.

5. It could be seen from the record of the proceeding produced for perusal that declaration u/s 6 of the Act dated 24-2-1986 was published in local newspapers on 6th and 7th March, 1986 and it was sent for publication in the Government Gazette to Government Printing Press, Nagpur, on 24-2-1986. The date of publication in the Government Gazette is not available either in the record of the writ petition or in the record of the acquisition proceeding. Couple of adjournments were allowed in order to enable learned Government Pleader to ascertain the date of publication of declaration in the Government Gazette and produce a copy of the said Gazette for ready reference. However, it appears that Government Printing Press, Nagpur, could not confirm to the learned Government Pleader that the said declaration u/s 6 was published in Government Gazette, much less it could provide the date of publication and a copy of said Gazette. We have thus proceeded on the assumption that 7th March, 1986 - the date of publication of the declaration in local Daily "Marathwada" is the last date of publication of declaration. Consequently, there can not be two opinions that Award declared on 30-3-1988 was beyond the period of two years since the declaration u/s 6.

6. It is not in dispute that possession of the land was taken by the acquiring body from the petitioner and this was before initiation of acquisition proceedings. Thus, although urgency clause u/s 17(1) was not applied, in order to enable the respondents to take possession of the land immediately after notices u/s 9 and before declaration of the award, fact remains that petitioner was divested of the possession even before declaration u/s 6. It is also admitted position that after award on 30-3-1988, petitioner has accepted the compensation, may be under protest regarding the quantum, upon service of notice u/s 12(2) of the Act.

7. Taking a clue from these facts, learned A.G.P. has contended that in the facts and circumstances of the case, the limitation as prescribed by section 11-A is not applicable to the case and, therefore, the award can not be said to have lapsed. He has placed reliance on the observations of the Supreme Court in *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, . In this matter, appellants were owners of 29 Bigha land situated at Patti Baru Dist. Meerut, which was included in the notification u/s 4 of the Land Acquisition Act issued on 29-7-1986. Acquisition was proposed for planned development and construction of a Mandi of APMC, Baraut. In view of urgency for the public purpose, section 17(4) of the Act was applied and proceedings u/s 5-A were dispensed with. Declaration u/s 6 was issued on 24-10-1986 with application of urgency clause. Notice u/s 9 was published on 2-12-1986. These acquisition proceedings were challenged by the appellants in a writ petition before Allahabad High Court, which was dismissed by the Division Bench on 19-1-1987. The possession of the land was taken on 27-2-1987. SLP filed by the appellants was also dismissed by the Apex Court on 19-4-1987.

Subsequently, on 13-1-1989, the acquiring body resolved to exclude from acquisition the land of the petitioners. Petitioners filed a writ petition seeking a

writ of mandamus against respondents to make and publish an award in respect of the said land.

On 27-6-1990, the Special Land Acquisition Officer, Meerut, wrote to the acquiring body that the amount for compensation for the purpose of making an award was not made available by the acquiring body and even after excluding the time consumed in the writ proceedings, period of two years had expired on 18-1-1989 since the notification u/s 6 of the Land Acquisition Act and the proceedings, therefore, would lapse. Allahabad High Court was pleased to dismiss the writ petition observing that by reason of provisions of section 11-A, the entire proceedings of acquisition had lapsed. It was also held that by the mere fact that possession had been taken in pursuance of section 17(1), the necessity of giving an award as amended by section 11-A within a period of two years could not be dispensed with.

While allowing the appeal, Hon"ble the Apex Court observed as follows :

"Ordinarily the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made u/s 11. Upon the taking of possession, the land vests in the Government, that is to say the owner of the land loses to Government the title to it. This is what section 16 states. The provisions of section 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of the section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration u/s 6, the land has still not vested in the Government and its title remains with the owner, acquisition proceedings are still pending and by virtue of provisions of section 11-A, lapsed. When section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award u/s 11 and thereby the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly section 11-A can have no application to the cases of acquisition u/s 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner."

7-A. No doubt in the matter under consideration, it is stated that neither notification u/s 4 nor declaration u/s 6 did indicate that powers vested in the State by section 17(1) were being exercised. Yet it can not be ignored that, admittedly; possession of the land was taken even before initiation of acquisition proceedings. The possession was taken directly by the acquiring body from the petitioner/land owners. There is also no dispute that possession was taken for the purpose of construction of canal of Nandur Madhameshwar Project, which work was being expedited in order to provide employment guarantee in the period of scarcity. All these admitted facts clearly indicate that the acquisition proceedings have all the requirements and trappings of urgency acquisition. Although notice u/s 4 or declaration u/s 6 did not make a reference to section 17(1), omission can be seen for obvious reasons. The exercise of powers u/s

17(1) was not necessary in view of the fact that the land owners had delivered the possession to acquiring body by private negotiations in anticipation of the acquisition proceedings. We are, therefore, of the view that even in the matters where the possession is taken at any stage, before the notice u/s 9(3) and (4) of the Land Acquisition Act, the limitation prescribed by section 11-A would not apply, more so when the facts and circumstances clearly indicate that land owners were divested of the possession in favour of the acquiring body in view of urgency of the purpose.

8. As observed by the Apex Court, section 11 is intended to benefit the land owner and to ensure that award is made within a period of two years from the date of section 6 declaration. This is because the land is still not vested in the Government. But when the land has vested in the Government even without drawing of an award, according to Hon"ble Apex Court, the limitation prescribed by section 11-A has no applicability. In the cases wherein possession of the land is taken without completion of formal acquisition proceedings or even before initiation of such formal proceedings, after declaration u/s 6, which is conclusive proof that the land is needed for a public purpose, land must be deemed to be vested in the State or the acquiring body as the case may be. Although there is no legal fiction, as is available to the acquisition under urgency clause of section 17(1) without declaration of award, acquisitions wherein possession is taken much before drawing of the award at any stage before or since initiation of the award, the acquisition ought to stand on the same footing as one u/s 17(1) irrespective of the fact whether notification u/s 4 or declaration u/s 6 did refer or not to the said provision. We are convinced that limitation prescribed by section 11-A would have no application to the cases wherein landlord has delivered the possession, either to the State or to the acquiring body, even before drawing of award and more so when such delivery of possession is by mutual consent during private negotiations. In such cases, the acquisition can not be said to have lapsed by mere expiry of period of two years since declaration u/s 6.

9. We have perused the file regarding the award made available by the learned A.G.P. Although it can be seen that notification u/s 6 issued on 24-2-1986 was forwarded to Government Printing Press, Nagpur, on the same day, the enquiries by the office of Government Pleader after this writ petition was heard, are not at all responded by the Government Printing Press and it is difficult to arrive at a conclusion that the notification u/s 6 was or was not published in the Government Gazette although it was published in the local newspapers on 6th and 7th March, 1986.

We have also observed that compensation to be paid to the petitioner is determined as follows:

Apparently interest at 12% is paid u/s 23(1-A) for the period between notification u/s 4 and the date of the award i.e. July, 1983 to March, 1988 (inclusive of both months).

10. In view of above position, petitioner, if at all would have been entitled to rental compensation for the period between delivery of possession and notification u/s 4 since admittedly delivery of possession was under negotiations and even before initiation of land acquisition proceedings, commencing with a notification u/s 4.

11. For all above reasons, the prayer of the petitioner to declare the land acquisition proceedings to have lapsed can not be considered favourably. The writ petition is, therefore, dismissed with no order as to costs. It is further clarified that dismissal of this writ petition shall not debar the petitioner from seeking a reference u/s 18 or claiming rental compensation or enhanced compensation u/s 28-A of the Land Acquisition Act, as may be permissible under law.