(2016) 12 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 3447 of 2015

Dayaram Bhondu Koche APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 05-12-2016

Acts Referred:

Citation : (2017) 171 AIC 411 : (2017) AIR(Bombay) 52 : (2017) 1 AIRBomR 441 : (2017) 2 BCR 12 : (2017) 1 MhLJ 487 : (2017) 1 RCRCivil 767

Hon'ble Judges : B.R. Gavai, R.K. Deshpande and V.M. Deshpande, JJ.

Bench : Full Bench

Advocate : K.B. Zinzarde and P.K.S. Mishra, Advocates, for the Petitioners; Bharti Dangre, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J. - The Division Bench of this Court (M/s. B.P. Dharmadhikari & V.M. Deshpande, JJ.) has expressed its disagreement with the decision of another Division Bench of this Court rendered in the case of Shrikant Shankarrao Daulatkar & Ors. v. State of Maharashtra & Ors., reported in 2015(4) ALL MR 845, in relation to the applicability of the provisions relating to determination of compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the 2013 Act") to the cases where in the land acquisition proceedings initiated under the Land Acquisition Act, 1894 ("the 1894 Act"), an award was passed within a period of five years prior to the commencement of the 2013 Act with effect from 1-1-2014. Hence, by an order dated 2-3-2016, the Division Bench directed the Registry to place this matter before Hon''ble the Chief Justice for consideration and reference to a Larger Bench. Accordingly, Hon''ble the Chief Justice has placed this matter before us for decision of the reference.

2. The Division Bench, which referred the matter, did not frame the question of law to be decided by the Larger Bench, except expressing its disagreement with the view taken by another Division Bench in the case of Shrikant Shankarrao

Daulatkar & Ors. v. State of Maharashtra & Ors., cited supra. We heard the learned counsels appearing for the parties on 5-12-2016 on the correctness of the view taken in the aforesaid decision and thereafter passed an order as under, pronouncing the ultimate decision for the reasons to follow.

"The learned Judges of the Division Bench have not framed a question which is required to be considered by the Larger Bench. With the assistance of the learned counsel for the parties, we have framed the following question for answering the same.

"Whether proviso to Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is also applicable to the awards which are covered under Clause (b) of sub Section (1) of Section 24 of the 2013 Act?".

For the reasons to follow, we answer the question by holding that the proviso to Section 24 of the 2013 Act is also applicable to the awards which are covered under clause (b) of Sub-section (1) of Section 24 of the 2013 Act.

Resultantly, we hold that all such beneficiaries, whose names are specified in notification under Section 4 of the Land Acquisition Act, 1894 and in case of which the awards have been passed within a period of five years prior to the date of commencement of the 2013 Act and wherein the compensation as construed by the Hon''ble Supreme Court in the case of Pune Municipal Corporation and Another v. Harakchand Misrimal Solanki and others; (2014) 3 SCC 183, is not paid to the majority of the beneficiaries would also be entitled to the compensation as per the 2013 Act.

The petition be placed before the appropriate Bench for appropriate orders."

3. We are concerned with the cases where an award under Section 11 of the 1894 Act was made within a period of five years prior to the date of commencement of the 2013 Act with effect from 1-1-2014, and we are not concerned with the cases where either no award was made or the award was made five years or more prior to the commencement of the 2013 Act. In the present case, the award was passed under Section 11 of the 1894 Act on 17-11-2010, and the 2013 Act came into force with effect from 1-1-2014.

4. Section 24 of the 2013 Act, being relevant, is reproduced below :

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.--

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),--

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

Sub-section (1) of Section 24 begins with non obstante clause and it has been given overriding effect over all other provisions of the 2013 Act. It deals only with the applicability of the provisions for determination of compensation under the 2013 Act in a case where the land acquisition proceedings are initiated under the 1894 Act. Sub-section (2) also begins with non obstante clause, and it has overriding effect over sub-section (1) of Section 24 of the 2013 Act. Sub-section (2) deals with the lapsing of proceedings initiated under the provisions of the 1894 Act.

5. The provision of clause (a) of sub-section (1) of Section 24 clearly spells out the intention of the Legislature to apply all the provisions of the 2013 Act only in relation to the determination of compensation where no award has been made under Section 11 of the 1894 Act before coming into force of the 2013 Act. Similarly, the intention of the Legislature to continue to apply the provisions for determination of compensation under the 1894 Act where an award under Section 11 of the 1894 Act has been made, is also clearly spelt out under clause (b) therein, and in such a case, the proceedings shall continue as if the 1894 Act has not been repealed. Thus, if no award is made under Section 11 of the 1894 Act before commencement of the 2013 Act, the provisions of the 2013 Act in relation to the payment of compensation shall apply, and if an award under Section 11 is passed prior to coming into force of the 2013 Act, the compensation payable shall be determined as per the 1894 Act, as if it is not repealed.

6. Sub-section (2) of Section 24 deals only with the lapsing of proceedings initiated under the 1894 Act, leaving the choice of the appropriate Government open to initiate the proceedings of such land acquisition afresh in accordance with the provisions of the 2013 Act. This provision enacts that in relation to the

land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act, and either of the two contingencies is satisfied, viz. (i) that the physical possession of the land has not been taken, or (ii) that the compensation has not been paid, such acquisition proceedings shall lapse.

7. The proviso below sub-section (2) of Section 24 deals with a situation where in respect of acquisition initiated under the 1894 Act, an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition in Section 4 notification become entitled to compensation under the 2013 Act.

8. The Scheme of Section 24 of the 2013 Act need to be seen. The provisions of the 1894 Act are repealed by the 2013 Act with effect from 1-1-2014 and, therefore, it was necessary to take care of the land acquisition proceedings initiated under the 1894 Act, which were pending at different stages. Section 24 is enacted to take care of all such situations with an intention to balance the conflicting interest of the land holders and the State and it has been given overriding effect over all the provisions of the 2013 Act. Section 24 divides all such proceedings in three categories - (A) the proceedings to which all the provisions relating to the determination of compensation under the 2013 Act shall apply, covered by clause (a) of sub-section (1), (B) where the provisions of the 1894 Act relating to the determination of compensation shall apply, as contemplated under clause (b) of sub-section (1), and (C) where the land acquisition proceedings initiated under the 1894 Act shall lapse in entirety in terms of sub-section (2) of Section 24. Categories (A) and (B) are covered by sub-section (1), whereas category (C) is covered by sub-section (2). The provisions of sub-sections (1) and (2) operate in different fields. Sub-section (1) relates to applicability of the provisions of the 2013 Act for determination of compensation, whereas sub-section (2) deals with lapsing of land acquisition proceedings initiated under the 1894 Act.

9. The provision of clause (b) of sub-section (1) of Section 24 of the 2013 Act covers the cases where an award under Section 11 of the 1894 Act was made within a period of five years prior to the commencement of the 2013 Act. The object of giving an overriding effect to the provision of sub-section (2) is to exclude the cases where an award under Section 11 of 1894 Act was made within a period of five years prior to the date of commencement of the 2013 Act from lapsing of acquisition. The period of five years or more prior to the commencement of the 2013 Act, specified under sub-section (2) of Section 24 of the 2013 Act, cannot, therefore, be imported or read in clause (b) of sub-section (1). The effect of such reading would be three-told, viz. (A) lapsing of the entire acquisition proceedings initiated under the 1894 Act upon establishing that the compensation in respect of a majority of land holdings has not been deposited in the account of beneficiaries, (B) the latter part of the proviso making the

beneficiaries entitled to the compensation as per the 2013 Act shall become redundant, and (C) the protection provided to save lapsing of acquisition in its entirety shall be lost.

10. The proviso below sub-section (2) deals with the subject of applicability of the provisions of the 2013 Act relating to the determination of compensation covered by clause (b) of sub-section (1) of Section 24 therein, subject to the satisfaction of condition that the compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries. In our view, the proviso has to be read as an exception to the provision of clause (b) in sub-section (1) of Section 24 of the 2013 Act so as to advance the intention of the Legislature to strike the balance of conflicting interest between the land holders and the State, and to award a fair compensation.

11. In the decision in the case of Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others, reported in AIR 2014 SC 982, the Apex Court was considering the question of lapsing of proceedings initiated under the 1894 Act upon bringing into force of the 2013 Act with effect from 1-1-2014. The undisputed factual position before the Apex Court was that the award was made under Section 11 of the 1894 Act on 31-1-2008, which was five years prior to the date of coming into force the 2013 Act on 1-1-2014. The Apex Court has held that the condition of payment of compensation by deposit of such amount in the Court, as provided by Section 31(2) of the 1894 Act, was not satisfied. The Apex Court, after recording its satisfaction about fulfilment of conditions under sub-section (2) of Section 24 of the 2013 Act, holds in paragraph 20 that the subject land acquisition proceedings shall be deemed to have lapsed.

12. While dealing with the provision of Section 24(2) of the 2013 Act, the Apex Court has held in paragraph 11 of the judgment as under :

"11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or

(ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject-matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act."

(Emphasis supplied)

In our view, the observations of the Apex Court, which we have emphasized, clinches the issue. It is held that the proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then all the beneficiaries specified in Section 4 notification become entitled to compensation under the 2013 Act. The view, which we have taken, gets support of these observations. No doubt, that the Apex Court was not considering a case under clause (b) of sub-section (1) of Section 24, where an award was made within a period of five years prior to the date of coming into force of the 2013 Act on 1-1-2014, but an obiter of the Apex Court, in the absence of any direct contrary pronouncement is binding upon us under Article 141 of the Constitution of India. For this proposition, we rely upon the decision of the Apex Court in the case of Oriental Insurance Co. Ltd. v. Meena Variyal and others, reported in (2007) 5 SCC 428, more particularly the portion in paragraph 26, wherein it is held that an obiter dictum of the Apex Court may be binding only on the High Courts in the absence of the direct pronouncement on that question elsewhere by the Apex Court.

13. It is urged by Smt. Dangre, the learned Government Pleader, that the proviso is appended to sub-section (2) of Section 24, and unless the conditions mentioned therein are fulfilled, the benefit under the proviso to make the beneficiaries entitled to compensation in accordance with the provisions of the 2013 Act shall not be available to the cases covered by clause (b) of sub-section (1) of Section 24. According to her, proviso applies to sub-section (2) of Section 24 only. The question as to whether the proviso applies to sub-section (2) of Section 24 of the 2013 Act, does not fall for our consideration, and we, therefore, refrain from commenting upon it and leave it open for the Court to decide it in appropriate case.

14. Before the Division Bench of this Court in the case of Shrikant Shankarrao Daulatkar & Ors. v. State of Maharashtra & Ors., reported in 2015(4) ALL MR 845, the question of lapsing of proceedings initiated under the 1894 Act, as contemplated by sub-section (2) of Section 24 of the 2013 Act, was not involved. The undisputed factual position before this Court was that the award was made on 9-7-2009 under Section 11 of the 1894 Act, which was within a period of five years prior to the date of commencement of the 2013 Act on 1-1-2014 and the question involved was whether in such situation the provisions of the 2013 Act were applicable for determination of compensation. This Court imported or read the provision of sub-section (2) of Section 24 while considering the provision of clause (b) under sub-section (1) therein.

15. According to us, the view, in the case of Shrikant Shankarrao Daulatkar & Ors. v. State of Maharashtra & Ors., cited supra, is contrary to the scheme of Section 24 of the 2013 Act, which we have explained in earlier paragraphs, and

also in ignorance of the binding precedent of the Apex Court in the case of Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others, cited supra, With respect, in our view, this Court, while deciding the case, seems to have wrongly mixed up two issues, viz. (i) relating to the applicability of the provision of determination of compensation under the 2013 Act in terms of clause (b) of sub-section (1) of Section 24, and (ii) lapsing of acquisition proceedings commenced under the 1894 Act after coming into force of the 2013 Act in terms of sub-section (2) of Section 24. The case before this Court was not of lapsing of the acquisition proceedings under the 1894 Act, and hence the Court should not have taken aid of sub-section (2) while deciding the applicability of proviso to clause (b) of sub-section (1) of Section 24. We, therefore, hold that the decision of the Division Bench of this Court in the case of Shrikant Shankarrao Daulatkar & Ors. v. State of Maharashtra & Ors., cited supra, is rendered per incuriam, and hence cannot be considered to be laying down a good law.

16. For the reasons stated above, the reference stands answered in terms of what we have stated in paragraph 2 of this order.