

(2006) 07 BOM CK 0106
In the Bombay High Court
Case No : First Appeal No. 64 of 1991

Dwarkabai Gangarde

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 4, Order 47 Rule 7, Order 47 Rule 7(2), Order 47 Rule 7(3)
Land Acquisition (Amendment) Act, 1984 — Section 23A, 23A(1), 30(1), 4(1)
Land Acquisition Act, 1894 — Section 11, 11A, 18, 23(1A), 23(2)

Citation : (2007) 1 ALLMR 132 : (2006) 6 MhLj 604

Hon'ble Judges : S.B. Deshmukh, J

Bench : Single Bench

Advocate : P.M. Yelnurkar, instructed by M.P. Harjule, for the Appellant; R.R. Mane, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.B. Deshmukh, J.—Heard the learned Counsel Mr. P.M. Yelnurkar, instructed by learned Counsel Mr. M.P. Harjule, who appears for the appellant and learned A.G.P. Mrs. P.R. Mane for the respondent.

2. This appeal is directed against the judgment and order passed by the learned 2nd Joint Civil Judge, Senior Division in Review Application No. 93 of 1986 on 31st July, 1987. The appellant was the petitioner and the respondent was the Opponent in Review Application No. 93 of 1986. The parties, hereinafter, are referred to their status in Review Application No. 93 of 1986, as petitioner and opponent, respectively.

3. Petitioner had filed Land Acquisition Reference No. 1 of 1978 u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act of 1894, for short) for enhancement of compensation. This application was referred to the learned District Judge, Ahmednagar and, in turn, it was made over to learned 2nd Joint Civil Judge, Senior Division, Ahmednagar. It was, as noted above, L.A.R. No. 1 of

1978. The learned 2nd Joint Civil Judge, Senior Division, Ahmednagar, after hearing the parties, awarded an amount of Rs. 33,120/- as additional compensation and an amount of Rs. 4,968/- as 15% solatium, totalling to Rs. 38,088/-. Interest at the rate of 4% was directed to be paid to the applicant on the amount of additional compensation from the date on which the possession of the land was taken, till the date of final payment of such amount. Proportionate costs was also awarded by the learned 2nd Joint Civil Judge, Senior Division, Ahmednagar, by his judgment and award passed on 13th September, 1984 in L.A.R. No. 1 of 1978.

The petitioner filed Review Application No. 93 of 1986 in the Court of learned Civil Judge, Senior Division, Ahmednagar seeking review of the order passed in L.A.R. No. 1 of 1978. Learned 2nd Joint Civil Judge, Senior Division, Ahmednagar, after hearing the parties, partly allowed the Review Application No. 93 of 1986 and modified the order passed in L.A.R. No. 1 of 1978. The learned 2nd Joint Civil Judge, Senior Division maintained the amount of additional compensation to the tune of Rs. 33,120/-, however, solatium, at the rate of 30%, instead of 15%, was awarded. In other words, considering the earlier Award of 15% solatium, further additional solatium at the rate of 15%, was directed to be paid to the petitioner. On the amount of this additional compensation, the opponent was directed to pay interest at the rate of 9% p.a. from the date on which possession of the land was taken, till deposit of the amount of compensation in the Court, except for the period for which rent has been paid. In case of depositing the amount of compensation, beyond the period of one year, interest at the rate of 15% p.a. for the said period i.e. beyond one year, was made permissible. Proportionate costs was also awarded in favour of the petitioner by the order passed by the 2nd Joint Civil Judge, Senior Division, Ahmednagar on 31st July, 1987 in Review Application No. 93 of 1986.

4. The order passed in Review Application No. 93 of 1986 is challenged by filing First Appeal No. 64 of 1991. The first question, in this appeal, is regarding its maintainability. Learned Counsel for the appellant submits that review application, filed by the petitioner was partly allowed. He has no grievance regarding the part which is accepted and decreed in his favour. However, he is aggrieved by rejection of part of the review application. According to him, appeal is the proper remedy for such review petitioner whose claim is partly rejected. He relies on a judgment of the Apex Court in the matter of Rekha Mukherjee Vs. Ashis Kumar Das and Others, . Per contra, learned A.G.P. Mrs. R.R. Mane, for the respondent, submits that the appeal is not maintainable in case of rejection of part of the review application. According to her, if review application is allowed, such an order can be challenged by the opponent in review application, by filing an appeal. Apart from this, the learned Counsel for the appellant also submits that, on merits the appellant is entitled for the relief. Learned A.G.P. Mrs. Mane submits that the order impugned, in this appeal, is legal and proper. She, therefore, seeks dismissal of the appeal.

5. Having heard the learned Counsel for the parties, following are the points, which arise for my consideration :

(i) Whether the appeal against part rejection of the application for review, is maintainable?

(ii) Whether the petitioner is entitled to seek component at the rate of 12%, as per the amended Sub-section (1-A) of Section 23 of the Act of 1894?

(iii) Whether the petitioner is justified in seeking review of the judgment of the reference Court u/s 18 of the Act of 1894?

6. My findings to the above points, for the following reasons, are :

(i) No.

(ii) No.

(iii) No.

REASONS

POINT NO. 1 :

7. The learned 2nd Joint Civil Judge, Senior Division seems to have disposed of L.A.R. No. 1 of 1978 by the judgment and award passed on 13th September, 1984. It was an application filed by the present petitioner u/s 18 of the Act of 1894 for enhancement in the amount of compensation. Since I am dealing with an appeal, against review order, I am not referring to the survey numbers and area of the lands acquired. Suffice it to note that award u/s 11, in relation to the acquired lands, was passed by the Special Land Acquisition Officer on 28th March, 1977, it is Award No. LAQ/SR/5 of 1976. The judgment and award passed in L.A.R. No. 1 of 1978 can be challenged by filing an appeal u/s 54 of the Act of 1894. It is provided u/s 54 of the Act of 1894 that subject to the provisions of the Code of Civil Procedure, 1908, applicable to the appeals from original decrees, and notwithstanding anything to the contrary in any enactment, for the time being in force, appeal shall only be, in any proceedings under this Act, to the High Court from the Award, or from any part of the Award of the Court. From any decree passed by the High Court, on such appeal, further remedy of appeal is also made available to the Supreme Court. Undisputedly, in the present case, the award passed in L.A.R. No. 1 of 1978 was not challenged by filing of an appeal u/s 54 of the Act of 1894, by the appellant.

8. The petitioner, however, filed review application under Order 47 Rule 1 of the Code of Civil Procedure, in the Court of learned Civil Judge, Senior Division, Ahmednagar on 18th January, 1986. This review application was registered as Review Application No. 93 of 1986. In para No. 5 of the review application, petitioner sought 30% solatium, on the amount of additional compensation, 12% component, as per amended provision u/s 23(1-A) of the Act of 1894 and interest at the rate of 9% p.a. for the first year from the date of possession and

at the rate of 15%, if such amount is not deposited within one year from that date till the actual date of payment. Petitioner also sought review of the order passed in L.A.R. No. 1 of 1978, on the point of market price determined by the Reference Court. In this background, the provision laid down under Order 47 Rule 1 needs to be considered. It is provided under Order 47 Rule 1 of the CPC that any person feeling himself aggrieved by (i) a decree or order from which an appeal is allowed, but from which no appeal has been preferred, (ii) by a decree or order from which no appeal is allowed, or (iii) by a decision on reference from a Court of Small Causes and, who from the discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed, or made. Review also can be sought on the ground of some mistake or error apparent on the face of the record. Any other sufficient reason can be a ground seeking review. Rule 4 of Order 47 empowers to reject the review application, on insufficiency of grounds. Rule 7 of Order 47, in the present case, is material and, therefore, is reproduced hereinbelow :

7. Order of rejection not appealable. Objections to order granting application. -

(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under Sub-rule (2) unless notice of the application has been served on the opposite party.

Thus, in case of rejection of the application for review, said order is not made appealable. However, if review application is allowed by the Court, said order can be objected by filing an appeal. Such order also can be challenged, in an appeal from the decree or order finally passed or made in the suit. Sub-rule (2) of Rule 7 of Order 47, provides a remedy in case of rejection of the Review application in case of failure of the applicant to appear before the Court. In such circumstances, application is contemplated seeking restoration of the said review application on the file. If it is proved to the satisfaction of the Court that the applicant was prevented by any sufficient cause from appearing, the Court shall order it to be restored to the file and, thereafter, hear the application and decide the same. Sub-rule (3) of Rule 7 of Order 47 has forbidden consideration of an application filed under Sub-rule (2) thereof, unless notice has been served on the opposite party.

9. Having considered the scheme of Order 47 of the Code of Civil Procedure, in my view, rejection of the review application, is not made appealable. In other words, in case review application is rejected. Order 47 has not provided further appeal against such an order passed by the Court. In case review application is allowed by the Court or earlier decree or order is modified, in that contingency, appeal is made available under Sub-rule (1) of Rule 7 of Order 47 of the Code of Civil Procedure.

It is apropos to refer to the judgment of the Apex Court, relied upon by the learned Counsel for the appellant in the case of Rekha (supra). The Supreme Court has referred to Section 14, Order 47, Rules 4, 7, 8, Sections 96 and 100 of the Code of Civil Procedure. According to the learned Counsel for the appellant, paragraph No. 31 is relevant. He, therefore, submits that if request is for review of partly rejected application, that part of the order can be a subject-matter of the appeal. The Apex Court in the matter of Rekha (supra) has considered the scope of review in para No. 17, which is reproduced hereinbelow :

17. The suit filed by the respondents for grant of specific performance of contract was dismissed. The said decree although was appealable but in view of the order dated 15-7-2002, the said decree in its entirety ceased to operate. Order 47 Rule 1, CPC postulates filing of an application by a person considering himself aggrieved, by a decree or order from which an appeal is allowed but from which no appeal has been preferred, to file an application if he desires to obtain a review from a decree passed against him. An appeal during the pendency of the review petition was, therefore, not maintainable. In terms of Order 47, Rule 4, the Court may either reject or grant an application for review. In case a review is rejected, the order would not be appealable whereas an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit. Rule 8 of Order 47, CPC postulates that when an application for review is granted, a note thereof shall be made in the register and the Court may at once rehear the case or make such order in regard to the rehearing as it thinks fit.

The Apex Court, ultimately, considering the facts in the reported judgment and the provisions of law, held in para No. 35, that the High Court was not correct in holding that the first appeal, filed by the respondents, was maintainable.

10. The Apex Court has earlier also considered the provision laid down under Order 47 Rule 1 of the CPC in the matter of Sushil Kumar Sen Vs. State of Bihar, . In the matter of Sushil Kumar (supra), the appellant therein was owner of 3.30 Acres of land, which was acquired under the provisions of the Act of 1894. Award was passed on 12th October, 1957 and compensation, at the rate of Rs. 14/- per Katha was awarded. The appellant was dissatisfied with the Award and, therefore, filed an application for enhancement u/s 18 of the Act of 1894. He claimed compensation at the rate of Rs. 500/- per Katha. The Additional District Judge, Purnea, by the judgment dated 18th August, 1961, found that the appellant was entitled to compensation for the land acquired at the rate of Rs.

200/- per Katha. Modification in the Award was accordingly made in relation to market price and other heads also. On 22nd August, 1961, the respondent therein, the State of Bihar, filed an application for review under Order 47 Rule 1 of the CPC against the judgment dated 18th August, 1961, on the basis of new and important evidence as regards the market price of the land, which was not available to it in spite of exercise of due diligence. The learned Additional District Judge allowed the application for review and passed fresh judgment on 26th September, 1961 reducing the compensation for land from Rs. 200/- to Rs. 75/- per Katha. Thereafter, the respondent/State of Bihar filed Appeal No. 81 of 1962 in the High Court of Patna. It was mentioned in the memorandum of appeal that the appeal was being preferred against the decrees dated 18th August, 1961, 26th September, 1961. However, the grounds taken in the memorandum of appeal, as well as the Court fee paid, would show that the appeal was against the decree dated 26th September, 1961 awarding compensation at the rate of Rs. 75/-per Katha and not against the decree dated 18th August, 1961 awarding compensation at the rate of Rs. 200/- per Katha. The appellant therein also filed a cross appeal challenging the maintainability of the review petition filed by the respondent before the Additional District Judge, as also the order passed therein, by him, allowing the petition. The appeal was decided by the judgment of High Court dated 16th February, 1968. The High Court found that the Additional District Judge went wrong in entertaining the review and vacating the judgment and decree dated 18th August, 1961 thereby maintained the compensation awarded for the land at the rate of Rs. 75/- per Katha, by the judgment and decree dated 26th September, 1961 of the Additional District Judge. On this background, SLP was before the Apex Court. The Apex Court, held in para 3 of the judgment:

3. The respondent did not file any appeal from the decree dated August 18, 1961 awarding compensation for the land acquired at the rate of Rs. 200 per Katha. On the other hand, it sought for a review of that decree and succeeded in getting the decree vacated. When it filed Appeal No. 81 of 1962, before the High Court, it could not have filed an appeal against the decree dated August 18, 1961 passed by the Additional District Judge as at that time that decree had already been superseded by the decree dated September 26, 1961 passed after review. So the appeal filed by the respondent before the High Court could only be an appeal against the decree passed after review. When the High Court came to the conclusion that the Additional District Judge went wrong in allowing the review, it should have allowed the cross appeal. Since no appeal was preferred by the respondent against the decree passed on August 18, 1961 awarding compensation for the land at the rate of Rs. 200 per Katha, that decree became final. The respondent made no attempt to file an appeal against that decree when the High Court found that the review was wrongly allowed on the basis that the decree revived and came into life again.

11. In view of the aforesaid pronouncements of the Apex Court, considering the scope of review application, in my view, in the present case, appeal filed by the

appellant, either under Order 47 of the CPC or u/s 54 of the Act of 1894, is not maintainable. Finding on this point No. 1 accordingly is recorded against the appellant.

POINT NO. 2:

12. The learned Counsel for the appellant fairly admits that issue regarding entitlement of 12% component u/s 23(1-A) is now resolved by the Apex Court judgment in the matter of K.S. Paripoornan Vs. State of Kerala and Others, . The Apex Court, in para 62 of its judgment, held :

62. How to construe Section 23(1-A) of the Land Acquisition (Amendment) Act, 1984 (for short the Amendment Act) a substantive provision added in the Land Acquisition Act, 1894 (for short "the Act") after 90 years, for striking proper balance, "between the need of acquisition of land for private purpose and the rights of the individual whose land is acquired" is the simple issue but of far-reaching consequence both for the State or the acquiring body and the owners who, by process of law are deprived of their land. Should the interpretative process, which in public welfare measures has to be purpose-oriented, further the legislative objective by taking recourse even to the debates in the House, if necessary, to find out the mischief the Legislature intended to remedy or it should resort to strained or unduly restrictive construction by adding or subtracting words to the otherwise plain and simple language on assumptions of limited retrospectivity drawn from the transitional provision. Even a decade has not elapsed since the amendment was made yet there are no less than six decisions one of them being Constitution Bench on scope and applicability of the amending provision when it could not be disputed that the law was amended and the Legislature made the changes to mitigate the rigour of the owners on account of delays by providing for time frame in Section 11-A, additional compensation u/s 23(1-A), enhanced solatium u/s 23(2), and equality of compensation for persons affected by same notification u/s 28-A. But the divergence has arisen not on the purpose or objective, or the benefit the provision intends to confer but on construction arising out of difference in approach of interpreting such a provision. Brother Agrawal has opted for construction which restricts the operation of Section 23(1-A) to the proceedings for acquisition initiated after coming into force of the Amendment Act. This with profound respect to him is not made out either from the language of the provision or from the legislative objective as discerned from the Debates in the Lok Sabha. Therefore, despite deliberations and discussions it has not been possible to share the views expressed by him, that extended to the landowners whose references were or are pending u/s 18 it would amount to operating the provision retrospectively in respect of past truncations. Nor it has been possible to reconcile to the view that Section 30(1), the transitional provision, can be reflected into Section 23-A to curtail its ambit and scope and construe it as applicable to notification issued u/s 4(1) after September, 1984.

13. Undisputedly, in the present case, award was passed by the Special Land

Acquisition Officer on 28th March, 1977. The petitioner, therefore, is not entitled to seek benefit of Section 23(1-A) of the Act of 1894. My finding, therefore, on Point No. 2 is in the negative and against the appellant. POINT NO. 3 :

14. Though I have recorded a finding, regarding maintainability of the appeal, against the appellant, I have considered the points framed on merits also, as noted above. The review Court, while dealing with Review Application No. 93 of 1986, observed that the order sought to be reviewed was passed in L.A.R. No. 1 of 1978, dated 13th September, 1984. The review application was filed on 27th February, 1986. There is no explanation tendered regarding the delay. The Court below, therefore, has rejected the review application on limitation and refused to enter into the merits. In my view, the Court has justifiably recorded a finding on the point of limitation. Apart from this, in my view, there is no ground for seeking review, in relation to market price of the lands acquired. The finding on this point, therefore, has to be recorded against the appellant and in the negative.

15. In this view of the matter, appeal filed on behalf of the appellant/petitioner, deserves to be dismissed and accordingly stands dismissed. Having regard to the fact that appellant suffered a compulsory acquisition of immovable property, I am not inclined to award costs. Parties, therefore, are directed to bear their own costs.