
(2009) 01 BOM CK 0106

In the Bombay High Court

Case No : Second Appeal No's. 36 - 71 of 2009

Executive Engineer

APPELLANT

Vs

Bhagwan Yashwanta Kulkarni and Another

RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Land Acquisition Act, 1894 — Section 18, 34, 4, 48, 6
Limitation Act, 1963 — Article 113

Citation : (2009) 5 BomCR 493 : (2009) 4 MhLj 593

Hon'ble Judges : Chandiwal K.U., J

Bench : Single Bench

Advocate : B.R. Survase, for the Appellant; S.K. Naikwade and R.R. Mane, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Chandiwal K.U., J.—These second appeals, being arising out of common judgment of Civil Judge, Senior Division, dt. 27.2.2004 and the common Order dt. 13.10.2008 passed in Miscellaneous Civil Appeal by the learned Principal District Judge, Beed, are heard together. The parties are referred by their original status.

2. The acquiring body, the Executive Engineer, is in the Second Appeal, to challenge the judgment and decree referred above, whereby invoking provisions of Section 34 of the Land Acquisition Act, the suits of respective plaintiffs for award of interest were decreed.

3. In the award passed in File No. 35/LNQ/SR/95 dated 2.7.2001, possession was taken on 1.3.1993, compensation of the land has been actually paid to the plaintiffs on 13.12.2001. It is also not in controversy that the land owners had moved reference u/s 18 of the Land Acquisition Act and respective references are allowed, award is passed in favour of the land owners/plaintiffs. In the award passed by the Special Land Acquisition Officer, there is no indication of interest.

Consequently, the plaintiffs urged the authorities to make payment thereof. Since no heed to the demands was taken, the suits came to be filed by issuing statutory notice of demand.

4. The contesting defendant No. 2 challenged the maintainability of the suit and claim that, by virtue of the provisions of Land Acquisition Act and pronouncement of the judgments by the Apex Court, such suit in the Civil Court is not maintainable as the procedure envisaged under the Land Acquisition Act, itself, takes care of all the disputes and controversies. The acquiring body disputed its liability to make payment of interest.

5. The learned Civil Judge, Senior Division, Beed, in the light of respective pleadings, has formulated the issues as under, with the findings recorded against them:

Being aggrieved by the said decree, writ petitions were preferred by the acquiring body before this Bench, being (Writ Petition Nos. 3679 to 3805 of 2006, dt. 7.4.2006), and were finally disposed of on 15.1.2008 with observation that the order impugned is appealable before the first Appellate Court (District Court) and the parties are at liberty to file the same.

6. It is in this situation, the acquiring body moved the learned District Judge for taking the appeals by condoning the delay of four years, five months, caused in filing the appeals. The learned Principal District Judge, taking recourse to judgment in the matter of The State of Maharashtra and Others Vs. Shri Vithu Kalya Govari and Others etc. etc., observed that the delay of more than two years in filing the appeals, on the ground that there was official hassles and, approval at different levels, would not constitute sufficient or reasonable cause to condone the delay, particularly in absence of any other explanation. Even after the directions of the High Court, the appeals were not moved for more than seven months, and learned Judge found that there is no sufficient ground, much less bona fide reason, to condone the delay.

7. In view of dismissal of application, the same can be taken by way of Second Appeal, as settled in the matter of Sheodan Singh Vs. Smt. Daryao Kunwar, and Shyam Sundar Sarma Vs. Pannalal Jaiswal and Others, .

8. The Counsel for the acquiring body, posed following substantial question of law:

Whether the Civil Court has jurisdiction u/s 9 of C.P.C. to entertain the suit in the matter of acquisition of property by acquiring body, through process of Collector.

In the matter of Achutananda Baidya Vs. Prafulla Kumar Gayen and others, .

In the matter of (Leela Nagesh Mandake and Ors. v. State of Maharashtra and Ors.) 2006 (4) Bom.C.R. 501 the Civil Courts powers to challenge acquisition was negatived. Those proceedings revolved to challenge the acquisitions and notices contemplated under sections 4, 6 or 9 of the Land Acquisition Act. In the matter

of S.P. Subramanya Shetty and others Vs. Karnataka State of Road Transport Corporation and others, , it was relating to grant of mandatory injunction against the State, restraining them from interfering with possession of a party or to denotify acquisition u/s 48 and it was observed, such contentions are not maintainable, in a suit.

9. To revert back to the facts of the present case, the plaintiffs have confined their claims to the extent of grant of interest in terms of Section 34 of the Land Acquisition Act, 1894. Section 34 conceives:

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of (nine per centum) from the time of so taking possession until it shall have been so paid or deposited:

(Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.)

It is, thus, obvious, the statute obligates on the Collector to pay and arrange to pay interest on the amount awarded at the rate of 9 per centum from the time of so taking possession until it shall have been paid or so deposited and the proviso, as stated above, also contemplates payment of interest for subsequent events. Thus, the language of the statute unambiguously binds the Collector to comply payment of interest. If the Collector fails to discharge his duties, the aggrieved landholders/claimants cannot be expected to wander and roam again, by taking recourse to Section 18 of the Land Acquisition Act as, such exercise has already been put in force and award for enhanced compensation in favour of the plaintiffs is apparently in subsistence.

10. The bar of Civil Court, in the light of Section 9, as tried to be canvassed to project as substantial question of law, again needs to be considered in the light of the judgment of the Hon"ble Supreme Court in the matter of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, the Lordships have observed:

(1) Where the statute gives a finality to the orders of the special Tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the Statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

11. To reiterate facts of the present case, it is more than clear that the Collector, being bound, competent and under obligation to order to make payment of interest, in the light of Section 34 of the Act, has obliterated its effect. Therefore,

the Statutory Authority having not acted in conformity with the principles laid down under the statute, the Civil Court's jurisdiction, by any implication, shall not be treated as barred.

12. The Hon'ble Supreme Court, in the matter of Abdul Gafur and Another Vs. State of Uttarakhand and Others, , decided on August, 11, 2008, taking recourse to the jurisdiction of Civil Court, as contemplated u/s 9 of C.P.C. have observed in paragraph 16 as under:

Section 9 C.P.C. provides that the Civil Court shall have jurisdiction to try all suits of a civil nature excepting the suits of which their cognizance is either expressly or impliedly barred. To put it differently, as per Section 9 CPC, in all types of, civil disputes, the Civil Courts have inherent jurisdiction unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication by any statutory provision and conferred on other Tribunal or Authority. Thus, the law confers on every person an inherent right to bring a suit of civil nature of one's choice, at one's peril, howsoever frivolous the claim may be, unless it is barred by a statute.

13. The scheme of Land Acquisition Act, to reiterate, in the light of Section 34 thereof will not bar the jurisdiction of the Civil Court to entertain demand of interest. 14. The acquiring body has not challenged the quantum of interest which, they reasonably could not do, in the light of very statutory arrangement contemplated u/s 34 of the Act.

15. The claims are within limitation, as the award is dt. 13.12.2001, while the suits are filed on 30th Sept., 2002. The plaintiffs have, before invoking their action, to file the suits, issued statutory notice upon the acquiring body and the defendant, making out their legitimate case. The defendants failed even in responding the notice in any manner. They have not challenged the compensation amount fixed by the Land Acquisition Officer, it cannot be said that the action taken by the plaintiffs, by resorting to civil suits, is barred by law of limitation. The provisions of Article 113 of the Limitation Act will be applicable, which provide a period of three years and, since the compensation amount is paid on 13.12.2001, they made demand by notice and then the suits are filed on 30th September, 2002, within ten months.

16. Taking recourse to the entire discussion, the present appeals do not project any substantial question of law to cause an interference in the orders of the Civil Judge, Senior Division, Beed, granting interest to the respective plaintiffs.

Second Appeals with Civil Applications are accordingly dismissed.