(2015) 03 BOM CK 0339

In the Bombay High Court

Case No : Writ Petition Nos. 2614 and 3919 of 2014

Ganesh and Others — APPELLANT

Vs

The State of Maharashtra and Others — RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 26, 26(1), 26(2)

Citation : (2015) 03 BOM CK 0339

Hon'ble Judges : B.P. Dharmadhikari, J;A.S. Chandurkar, J

Bench : Division Bench

Advocate : K.S. Narwade, for the Appellant; N. Rode, Assistant Government Pleader, Advocates for the Respondent

Judgement

A.S. Chandurkar, J—Since common issues arise in both these writ petitions, they are being decided by this common judgment.

2. Rule. Rule made returnable forthwith and heard finally with the consent of the learned Counsel for the parties.

3. The petitioner No. 1 in Writ Petition No. 2614/2014 is the owner of House No. 312, situated at village Jigao, Tah. Nandura, District Buldana, while petitioner No. 2 is the owner of Gat No. 395, situated at Jigaon, Tah. Nandura, District Buldana, measuring about 0.67 R. In Writ Petition No. 3919/2014, the petitioners are owners of lands at village Kharkundi, Tah. Nandura, District Buldana. All the aforesaid properties were subject matter of acquisition under provisions of the Land Acquisition Act 1894 (for short the Act of 1894). After issuance of notification under provisions of Section 4(1) of the Act of 1894 and before any final award could be passed under the Act of 1894, the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the Act of 2013) came into force on 1-1-2014. As per provisions of Section 26 of the Act of 2013, the compensation was

required to be determined in the manner prescribed. Accordingly, a notification dated 19-3-2014 came to be issued by the Revenue and Forest Department of the State Government stating therein that the market value as calculated by the Collector under provisions of Section 26(1) of the Act of 2013 would be multiplied by the factor one. In these writ petitions, a challenge has been raised to said notification dated 19-3-2014. During pendency of the writ petitions, aforesaid notification dated 19-3-2014 came to be amended by issuing fresh notification dated 13-8-2014 and according to the provisions of the amended notification, the multiplier factor that was initially stipulated as one was to gradually rise in case of rural areas on the basis of radial distance from urban areas. By amending the writ petitions, a challenge was also raised to the subsequent notification dated 13-8-2014.

4. Shri K.S. Narwade, the learned Counsel appearing for the petitioners submitted that the notification dated 19-3-2014 as well as subsequent notification dated 13-8-2014 were bad in law. It was submitted that the notification dated 19-3-2014 was contrary to the principles applicable while calculating market value of the land in rural areas depending upon the distance of the project and the urban area. According to him, the Act of 2013 was enacted with a view to grant fair compensation while acquiring lands and by stipulating the factor at one, the petitioners would be deprived from receiving fair compensation for their lands. He submitted that village Jigaon was an isolated village situated at a far distance from urban area. There was a Gram Panchayat functioning in said village and the distance between the village Jigaon and Tah. Nandura was about 30 kms. Similar was the situation with regard to village Kharkundi. He then submitted that even the subsequent notification dated 13-8-2014 fixing the multiplier factor from 1 to 1.10 would not achieve the object of granting fair compensation for the lands acquired. Restricting the multiplier factor to the maximum of 1.10 was also unjustified. It was also submitted that without undertaking any basic exercise and without considering the ground realities, the multiplier factor had been fixed. He referred to the judgment of the Supreme Court in Transport Corporation of India Vs. Employees'' State Insurance Corpn. and Another, AIR 2000 SC 238 : (1999) 9 JT 12 : (1999) 9 JT 112 : (2000) 1 LLJ 1 : (1999) 7 SCALE 63 : (2000) 1 SCC 332 : (2000) SCC(L&S) 121 : (1999) 4 SCR 393 Supp : (2000) 1 UJ 287 : (1999) AIRSCW 4340 : (1999) 9 Supreme 370 to urge that in absence of any basis for determining the multiplier factor both the notifications were unsustainable in law.

5. Shri N.R. Rode, the learned Assistant Government Pleader appearing for the respondents relied upon affidavits dated 11-7-2014, 28-7-2014, 23-9-2014 and 29-1-2015 filed on record. While opposing aforesaid submissions, it was submitted that on the basis of aforesaid notification by applying appropriate multiplier factor, the petitioners would be receiving fair compensation for their lands. It was further submitted that the lands that were situated beyond 25 kms from urban area were entitled to the multiplier factor of 1.10 so that the lands situated at said distance could get more compensation. It was further submitted

that in the absence of any challenge to the competency of the respondent No. 1 to fix the multiplier factor, exercise undertaken by issuing said notifications could not be faulted. It was, therefore, submitted that there was no merit whatsoever in the challenge to the aforesaid notifications as raised.

6. Under provisions of Section 26(2) of the Act of 2013 while determining the market value of the land, the same has to be arrived at by multiplying the market value calculated as per Section 26(1) of the Act 2013 by a factor to be specified in the First Schedule. Under item No. 2 of the Schedule to the Act of 2013, a minimum factor of one and a maximum factor of two has been prescribed which is required to be applied based on the distance of the project from the urban area. Accordingly, notification dated 19-3-2014 came to be issued thereby fixing the multiplier factor at one. By subsequent notification dated 13-8-2014, the factor one was substituted and the same was to gradually rise on the basis of distance from an urban location. For 0 to 10 kms radial distance from nearest Municipal Corporation area, the multiplier factor was to be one, for the distance from 10 to 25 kms, it was to be 1.05 and for distance exceeding 25 kms, it was to be 1.10.

7. It may be noted that a similar challenge to both the aforesaid notifications had also been raised in Writ Petition No. 4274/2014 - Punjabrao Ganpatrao Borade v. State of Maharashtra and others before the Aurangabad Bench of this Court. The Division Bench to which one of us (B.P. Dharmadhikari, J) was a party decided aforesaid writ petition by judgment dated 9-3-2015 and held the notifications dated 19-3-2014 and 13-8-2014 to be bad in law. Various challenges as raised to both the notifications along with the defence in support of said notifications has been considered by the Division Bench in aforesaid decision and after considering the relevant law in that regard, said notifications have been held to be bad in law. Similar challenges that have been raised in these writ petitions have also been considered by the Division Bench while deciding said writ petition. Considering the detailed discussion therein, it is not found necessary to again go into very similar challenges in these writ petitions. Hence, agreeing with the view as taken in Punjab Borade (supra), and for the reasons recorded therein, the view as taken is being followed. The Division Bench in para 45 of aforesaid decision has observed thus:-

"45. It is required to be kept in mind that the notifications or rules which are examples of delegated legislation, cannot override the statutory mandate. The subordinate legislation has to supplement and not to supplant the statute. In the matter of Vasu Dev Singh and Others Vs. Union of India (UOI) and Others, (2006) 144 PLR 802 : (2006) 11 SCALE 108 : (2006) 12 SCC 753 : (2006) 9 SCR 565 Supp , and particularly, in paragraph 26 of said judgment, the Hon''ble Supreme Court has held that if by a notification, the Act itself stands effaced; then such notification needs to be struck down. It is further held in para 118 of the said ruling that a statute can be amended, partially repealed or wholly repealed by the legislature - The delegated legislation must be exercised, it is trite, within the parameters of essential legislative policy. The benefit granted by the statute cannot be nullified by the rules framed thereunder. This aspect is clear from the judgment of the Hon''ble Supreme Court, in the matter of State of Karnataka and Another Vs. H. Ganesh Kamath and Others, AIR 1983 SC 550 : (1983) 1 SCALE 705 : (1983) 1 SCALE 321 : (1983) 2 SCC 402 : (1983) 2 SCR 665 , and Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and Others, AIR 2006 SC 3480 : (2006) 5 JT 41 : (2006) 2 LLJ 529 : (2006) 3 SCALE 534 : (2006) 4 SCC 327 : (2006) SCC(L&S) 796 : (2006) AIRSCW 1869 : (2006) 4 Supreme 156 . Viewed from this angle, perusal of Clause 2 of the First Schedule to the Act of 2013 makes it clear that the same prescribes discretion regarding determination of different slabs of multiplier factors for multiplying the market value of land in rural areas depending upon its distance from urban areas. Neither any discretion nor corresponding guideline is provided for limiting the multiplier factor to a figure below 2 and, as such, the decision of the appropriate Government reflected in the impugned notifications cannot be upheld. The same is bad in law and deserves to be quashed and set aside."

On that basis, the notifications dated 19-3-2014 and 13-8-2014 have been set aside.

8. In view of aforesaid discussion and for reasons as assigned in Punjab Borade (supra), Rule in both the writ petitions is made absolute in terms of prayer clauses (i) & (viii) in Writ Petition No. 2614/2014 and (i) and (vii) in Writ Petition No. 3919/2014. There would be no order as to costs.

