

(2014) 09 BOM CK 0156

In the Bombay High Court

Case No : Writ Petition Nos. 3091, 5389, 5390, 5391, 5392, 5393, 5394, 5395, 5396, 5397, 5398, 5399, 5400, 5401, 5402, 5403, 5404, 5405, 5406 and 5407 of 2014

Godawari Marathwada Irrigation Development Corporation

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 15(1)(a), 18, 28A, 28A(3)
Maharashtra Godawari Marathwada Irrigation Development Corporation Act, 1998 —
Section 15, 15(1), 15(1)(a), 15(1)(b), 15(3)

Citation : (2014) 09 BOM CK 0156

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : S.G. Bhalerao, Advocate for the Appellant; D.V. Tele, A.G.P., A.B. Kale, Advocate and B.R. Sable, Advocate for the Respondent

Judgement

R.V. Ghuge, J.—Heard. Rule. Rule made returnable forthwith by the consent of the parties and heard finally. In all these petitions, Godawari Marathwada Irrigation Development Corporation Aurangabad (here-in-after referred to as the "petitioner") has raised an issue of violation of principles of natural justice as well as violation of the procedure laid down by law in relation to references in L.A.R. No. 331 of 1994 and 1106 of 1987.

2. The specific contentions of the petitioner in these petitions are set out in paragraph 3 onwards. It is alleged that the respondents/ agriculturists whose land has been acquired by the acquiring body, have intentionally, willfully and deliberately avoided adding the petitioner as a respondent/ defendant in their applications filed under Section 28A of the Land Acquisition Act, 1894 (Act of 1994).

3. It is further stated that by refraining from arraying the petitioner as a respondent, the said agriculturists have succeeded in getting a favourable order

in the L.A.R. Proceedings. It was the bounden duty of the concerned authority under the Act to conduct a proper enquiry by issuing notices to all the concerned, interested and necessary parties before conducting the adjudicatory process. The petitioner-Corporation was and continues to be a necessary and interested party in the said proceedings.

4. In paragraph 4 of the petition, it has been stated that notice in the said proceedings having not been issued to the petitioner, renders the entire proceedings illegal. The petitioner is the authority to pay compensation to the agriculturists for the acquisition of the land and is, therefore, required to be heard.

5. The petitioner has pointed out the Maharashtra Godawari Marathwada Irrigation Development Corporation Act, 1998, Maharashtra Act No. XXIII of 1998. The said Act has been brought into effect from 17-08-1998. Chapter III of the Act deals with the aspects of properties, assets, liabilities and obligations and transfer of employees. Section 15(1)(a) and (b) clearly indicate that the petitioner is a statutory authority.

6. It is, therefore, submitted that in the absence of the petitioner being arrayed as a respondent, renders the entire proceedings bad in law. The adjudicatory process conducted by the competent authority without hearing the petitioner, virtually amounts to an ex parte proceedings. The respondents/ agriculturists were under an obligation to array the petitioner as respondent/ defendant for enabling a free and fair trial of the proceedings.

7. It is also submitted that the petitioner is an autonomous body and it cannot be and ought not to be equated with the State Government, more so in relation to the applications filed by the respondents/ agriculturists under Section 28A of the Land Acquisition Act, 1894. It is, therefore, submitted that the impugned award in all these petitions dated 03-05-2013 is rendered unsustainable and deserves to be quashed and set aside. It is consequentially prayed that the proceedings be remitted back to the same authority which is S.L.A.O. for a proper hearing of the matter and the petitioner be granted the opportunity of applying for modification and/ or variation of the awards in question.

8. The petitioner has relied upon a reported judgment of this Court involving the petitioner i.e. Godawari Marathwada Irrigation Development Corporation Vs. State of Maharashtra and Others, . Reliance is specifically placed on paragraph Nos. 2 and 3 of the said judgment.

9. The petitioner contends that the facts of this case virtually stand on an identical footing with the facts emerging from the reported judgment. It is hence submitted that the petitioner be permitted to appear before the S.L.A.O. and apply for modification and/ or variation of the award by setting aside the impugned awards as was done in the above referred reported judgment.

10. Shri Kale learned Advocate appearing on behalf of the respondents submits

that the case of the petitioner is vexatious and frivolous. No purpose would be achieved if the impugned awards are set aside and the petitioner is given an opportunity to seek modification or variation in the awards before the S.L.A.O. He states that the facts in relation to these petitions would indicate that the petitioner has itself refrained from participating in the proceedings for reasons best known to it and for self-serving purposes. He further states that, in fact, the petitioner had allowed its Executive Engineer to participate in the said proceedings on its behalf.

11. It is strenuously pointed out that the petitioner was aware of the proceedings. The officer conducting the proceedings, was in fact an officer working under the petitioner and as such the petitioner has adopted a posture of a fence sitter waiting and watching the result of the proceedings. Because the proceedings have culminated in an award which mandates the petitioner to pay enhanced compensation to the respondents/ agriculturists, that the petitioner has now taken up the plea of non adherence to the principles of natural justice, which is a frivolous defence.

12. Shri Kale has drawn the attention of this Court to the impugned award which clearly indicates that the acquiring body was before the S.L.A.O. In an earlier round of litigation before this Court at the behest of one of the respondent/ agriculturist in Writ Petition No. 5049 of 2013, the Executive Engineer of Majalgaon Project Division, Kesapur Camp, Majalgaon was respondent No. 5. Notice was issued to the said respondent on 23-09-2013. After hearing the parties to the said petition including the said Executive Engineer who was represented by a lawyer, this Court had disposed of the petition filed by an agriculturist holding that an alternate remedy under Section 28A of the Land Acquisition Act, 1894 was available to him. Yet, the said Executive Engineer did not raise an issue that the GMIDC ought to be arrayed in the proceedings.

13. A communication at page No. 51 of the petition paper book is a letter dated 08-11-2013. The letter is written on the letter head of the petitioner. The Deputy Engineer on behalf of the petitioner has written to the Superintending Engineer of the Jayakwadi Project pertaining to the Writ Petition No. 5049 of 2013. Copy of the said letter was addressed to the said Executive Engineer, Majalgaon Project Division and another copy was supplied to the Sub Divisional Officer of the Majalgaon Project.

14. It is further pointed out that the said Executive Engineer of the Majalgaon Project has also informed the Superintending Engineer of the Jayakwadi Project about payment of enhanced compensation. Copy of the same has been served upon the petitioner.

15. The submission of the respondents, therefore, is that the petitioner which has come into existence in 1998, steps into the shoes of the State in so far as the L.A.R. proceedings are concerned. It is further submitted that the letters referred here-in- above do not indicate that the petitioner is made aware of the

proceedings for the first time. Therefore, it is submitted that the petitioner itself chose not to participate in the proceedings by title and as such no purpose would be served in assisting the petitioner who was in deep slumber. The respondents/agriculturists have unreasonably suffered rigours of litigation.

16. Having heard the submission of the learned Advocates and having gone through the petition paper book with their assistance, it is necessary to advert to Section 15 of under Chapter III of the Maharashtra Godawari Marthwada Irrigation Development Corporation Act, 1998 (Act, 1998). Section 15 of the Act 1998 reads as under :-

"Vesting of Property, assets, liabilities and obligations and transfer of employees

15) (1) From such date as may be specified, from time to time by the State Government (hereinafter in this section referred to as "the appointed date").

(a) the properties and assets comprising movables and immovables including irrigation Projects, Hydro-Electric Power Projects, works under construction and management of completed schemes, specified in that behalf, situated in the area of operation of the Corporation, which immediately before the appointed date vested in the State Government and were under the control of the Irrigation Department, shall vest in and stand transferred to the Corporation and all income derived and expenses incurred in that behalf be brought on books of the Corporation; and

(b) the rights, liabilities and obligations of the State Government, whether arising out of any contract or otherwise pertaining to the said projects of the State Government shall be deemed to be the rights, liabilities and obligations of its corporation.

(2) Such properties, assets, rights, liabilities and obligations shall be valued in such manner as the State Government may determine.

(3) All suits and other legal proceedings with respect to any scheme for the development of Irrigation projects and Hydro-Electric power Projects vested in the Corporation, under sub-section (1), instituted against or defended by the State Government before the appointed date may be continued, or defended by or against, the Corporation."

17. I find from the said provisions that the property of the State Government from the specified date stood transferred to the petitioner along with liabilities, obligations and encumbrances. Section 15(1)(a) specifically provides that the Irrigation projects involving works which are under construction and the management of completed schemes, which earlier vested in the State Government prior to the appointed date, shall stand transferred to the petitioner.

18. It is, therefore, provided that the petitioner shall automatically acquire the control of the said project properties and they shall all vests in and shall stand transferred to the Corporation with all income derived and expenses incurred in

that behalf which would be brought on the books of the Corporation.

19. Section 15(1) (b) accordingly vests the rights, liabilities and obligations of the State Government into the Corporation. Section 15(3) of the Act, 1998 specifically indicates that all suits and other legal proceedings with respect to any scheme for the development of Irrigation projects instituted by or against or defended by the State Government before the appointed date, may be continued or defended by or against, the Corporation.

20. I find that Section 15(3) of the Act, 1998 on account of its phraseology assumes significance. It indicates that the litigation instituted against or defended by the State Government, may be continued or defended by or against the Corporation in the said proceedings. This, therefore, means that the Corporation could have stepped into the shoes of the State in such on going proceedings.

21. In these circumstances and especially in view of the provisions discussed above, as it is proved that the Executive Engineer of the State participated in the proceedings, the outcome of the said proceedings would bind the petitioner Corporation. The correspondence between the petitioner and the Majalgaon Project officials and Jayakwadi Project officials, are also indicative of the fact that the petitioner was aware of the proceedings much prior to the dates mentioned on the said letters.

22. In an attempt to resolve this controversy, I called upon the learned A.G.P. and his assistance was sought to understand as to whether the Executive Engineer representing the respondent- State in L.A.R. proceedings was performing his function on behalf of the State or on behalf of the Petitioner Corporation. The reply offered by the learned A.G.P. was that the said officer is in fact discharging his duty and functions with the petitioner Corporation. Shri Kale, the learned Advocate for the respondents/ agriculturists also insists that this position is the correct position.

23. In the judgment relied upon by the petitioner in the case of Godawari Marathwada Irrigation Development Corporation, Aurangabad (*supra*), it does not appear that the provisions of Section 15 of the Act, 1998 were pointed out to the Court while seeking liberty to apply for modification and/ or variation of the award pursuant to the remand of the matter. The facts of the said case are also not very clear from the said judgment. By the said order, this Court had remanded the proceedings to the S.L.A.O. for re-hearing so as to enable the petitioner-Corporation to participate in the proceedings and seek modification and/ or variation of the awards. In the instant case, Section 15(3) of the Act, 1998 indicates that though the proceedings continued without formally impleading the petitioner, the same were defended by and conducted for and on behalf of the Corporation, by the Executive Engineer, who was on duty with the petitioner Corporation.

24. Nevertheless, the facts emerging from these proceedings indicate that the

petitioner was aware of its pendency. It is unbelievable that when the petitioner came into existence, the State Government under Section 15(1) of the Act, 1998 did not appraise the petitioner of the properties, liabilities and the pending litigation. I, therefore, find it difficult to accept the contention that the respondents/ agriculturists intentionally, willfully, and deliberately kept the petitioner away from the proceedings for self-serving purposes.

25. In the case of Mahadeo Rama Vaidya and Another Vs. State of Maharashtra and Another, , this Court dealt with a situation wherein the M.I.D.C. had contended of no opportunity of hearing. While holding that M.I.D.C. being the acquiring body must be joined as a party defendant in reference proceedings, it was held that a reasonably authorised officer represented the body corporate which could be said to be sufficient compliance of the principles of natural justice.

26. Paragraph 20 of the Mahadeo's judgment (supra) reads as under :-

"MIDC being acquiring body must be joined as party defendant in reference proceedings and has been joined but through "its regional officer" or "area manager". It is true that as per Section 3(2) of 1961 Act MIDC is a body corporate and may sue or be sued in its corporate name. Accordingly it has been so sued i.e. was made party in reference by the landowners. However Advocate Shri Agnihotri insists that it should have been arrayed as party through its Chief Executive Officer who is principal officer in-charge for all purposes. But then no such legal provision is being pointed out. Section 4(f) only stipulates that Chief Executive Officer shall be its ex- officio Secretary. Thus non-compliance with S. 3(2) is not demonstrated. Even before lower court no objection was raised in this respect and it was not urged that its "regional officer" through whom it was impleaded, was not competent to represent it. Further no prejudice suffered by it on that count is demonstrated to this Court. Not only this but all First Appeals presented to this Court on behalf of MIDC and being considered here, are filed by "MIDC through its regional officer" only. In these circumstances I do not find any merit in this belated objection raised after 12 years. Point "C" framed above is thus answered in affirmative i.e. against MIDC and in favour of the landowners."

27. In the case in hand, the acquiring body is the petitioner for the Majalgaon Project Division. The officer participating in the proceedings was representing the said Majalgaon project. As observed here-in-above, even in an earlier round of litigation, the Executive Engineer of the Majalgaon Project was respondent No. 5 before this Court and he entered into a correspondence on behalf of petitioner. The letter head has also been used in the said correspondence which is a significant indicator of the fact that the petitioner was aware of the proceedings and the Executive Engineer was working with the petitioner and on its behalf.

28. As such, I am unable to accept the contention of the petitioner that it was totally oblivious of the ongoing proceeding and had no idea about the proceedings. Similarly, I am unable to accept the contention that the petitioner become aware of the said proceedings only after it was informed that it had to

pay an amount of Rs. 28,32,833/- (Rs. Twenty Eight Lakhs Thirty Two thousand Eight hundred thirty three only) as an enhanced compensation to the twenty (20) agriculturists before this Court.

29. In the light of the above, I do not find that the principles of natural justice have been violated in the L.A.R. proceedings, in as much as, the petitioner was deprived of an opportunity of hearing thereby rendering the proceedings unsustainable.

30. The petitioner has further contended in paragraph No. 6 of the petition that the impugned awards delivered under Section 28A of the Land Acquisition Act, 1894 are based on an altogether different L.A.R. proceedings. So far as the L.A.R. No. 331 of 1994 and 1106 of 1987 are concerned, the respondents submit that the S.L.A.O. while dealing with the proceedings under Section 28A(3), has in fact, reduced the amount of compensation granted earlier by the Court in the proceedings under Section 18 of the Act, which is impermissible. His challenge to the same before this Court has been turned down. He has been relegated to the alternate remedy and Shri Kale, therefore, submits that the said proceedings are still pending and the petitioner, if so desires, can participate in the said proceedings.

31. In the above factual matrix, in my view, the contention of the petitioner set out in paragraph Nos. 6 and 7 need not be entertained by this Court, as the competent authority dealing with the said issue can to come an independent conclusion. The petitioners are given the liberty to appear in the said pending proceedings, if so desired.

32. The petitions are, therefore, dismissed. Rule is discharged. No costs. It is clarified that any amount deposited by the petitioner in this Court, may be remitted back to the S.L.A.O. dealing with the L.A.R. proceedings, with accrued interest.