

(2006) 01 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 5060 of 1995

Hanumant Bhalekar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1), 6

Citation : (2006) 4 BomCR 880 : (2006) 2 MhLj 842

Hon'ble Judges : S.P. Kukday, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : N.R. Salunke, for the Appellant; Umakant Patil, AGP for respondents Nos. 1 to 3 and S.V. Jadhav, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Kukday, J.—The petitioner seeks to set aside award dated 29-10-1971 and claims damages for illegal acquisition of his land Survey No. 2, situated at village Sonwala, Tq. Ambajogai, District: Beed.

2. Brief facts giving rise to filing of this petition are that the petitioner, who claims to belong to Scheduled Caste, is the owner of land Survey No. 2 (wrongly typed in the petition as Survey No. 6 (old No. 9), situated at village Sonwala, Tq. Ambajogai, admeasuring 3A 20 G. There was a proposal for acquisition of Land Survey No. 2 of village Sonwala, for the purpose of extension of Gaothan. After following due procedure, the scheme for extension of Gaothan was sanctioned. Land admeasuring 3A 20 G was to be acquired from the land belonging to the petitioner. According to petitioner, at the time of initiation of proceedings of acquisition, sometime in the year 1971, he was 10-years old and was living with his widowed mother. No notice of the proceeding was served on him and without following the procedure, so also without giving any compensation, land admeasuring 3A 20 G has been acquired by the Respondents. As the procedure prescribed for the purpose of acquisition of land, is given a go-bye, the petitioner

prays that the impugned award in respect of acquisition of 3A 20 G of land, situated at village Sonwala, Tq. Ambajogai, Dist. Beed, be quashed and set aside and the Respondents be directed to pay requisite compensation, including interest at the rate of 18 per center annum since the year 1972.

3. Learned counsel for petitioner vehemently contended that the petitioner was 10-years old and was living with his widowed mother, at the time of initiation of proceedings. Notices, as required by the provisions of Land Acquisition Act, 1894 were not served on him, therefore, he could not take appropriate steps to protect his interests. Learned counsel made reference to Panchnama dated 10-11-1971 to show that the proceedings were carried out in the absence of the petitioner. For explaining the delay, learned Counsel contends that the petitioner got knowledge of the acquisition after judgments were rendered by this Court In Writ Petition Nos. 1078/1987 on 30-1-1990, He, then, approached the authorities, obtained necessary information and documents in the year 1994 and then filed the petition. As the petition can be disposed of on the ground of delay and laches, it is not necessary to advert to other contentions.

4. Main plank of the arguments of learned Counsel for the petitioner is that as the notices were not served on the petitioner, the award needs to be set aside. This contention is advanced to explain inordinate delay in challenging the award. However, the petitioner has not produced proof of his age during the relevant period. On the contrary, the cause title of the petition shows that in the beginning, age of the petitioner was typed as 35- years, then it was corrected as 52 years. If the petitioner is 52-years old at the time of filing the petition, it is quite obvious that he was not a minor at the time of initiation of proceedings, in the year 1971. Learned counsel for petitioner submits that as he did not receive notice, he could not participate in the proceedings and the land is acquired without determining appropriate compensation and payment thereof. It is not in dispute that the award has already been passed on 29-10-1979. Copy of the award is filed on record by the respondents. Perusal of the award shows that some claims in respect of valuation of land were made by the petitioner and were determined. The contents of the award falsify contention of the petitioner that he could not participate in acquisition proceeding for want of notice.

5. The petitioner has challenged the award passed on 29-10-1971, in the year 1995 i.e. after about 24-years. Explanation given by the petitioner for delay has been falsified by the recitals of the award. Even otherwise, the petition cannot be entertained since it suffers from inordinate delay and laches. For this purpose, reference can be made to the decision of the Apex Court reported in The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, . In that case, it is observed by the Apex Court in para No. 17 of the report, that in any event after the award is passed, no writ petition can be filed challenging acquisition notice or against any proceeding thereunder. After referring to observations in C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, it is observed in Para 18 of the Report, as under :

"18. Similar is the view in an earlier decision of this Court in the case of Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, . Incidentally, the decision last noted was also on the land acquisition and requisition under the Maharashtra Regional and Town Planning Act, 1966 and in paragraph 29 of the report, this Court observed:

It is well settled law that when there is inordinate delay in filing the Writ Petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the Writ Petition on the ground of laches."

6. Having regard to the well-established legal position and in the absence of plausible explanation in respect of delay and laches, the petition cannot be entertained and the award passed as far as back in the year 1971, cannot now be reopened.

7. We have also perused the copy of the award passed, in which there is a reference to the objection raised by the petitioner to the valuation of the land. Learned AGP has pointed out that the price was calculated and amount of Rs. 3,220/- was offered but was not accepted by the petitioner. Therefore, the amount is kept in Bank. The petitioner is entitled to this amount with whatever interest accrued thereon. Steps should be taken to ensure that the payment is made as early as possible. Having regard to the inordinate delay and the material on record, we cannot entertain the prayer for reopening of the award and fresh assessment of the price of the land. The petition is, therefore, dismissed. However, in the facts and circumstances of this case, there shall be no order as to costs. Rule discharged.