

(2019) 04 BOM CK 0044
In the Bombay High Court
Case No : Writ Petition No. 1461 Of 2018

Hardas (Haridas) And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 10-04-2019

Acts Referred:

Maharashtra Regional And Town Planning Act, 1966 — Section 37, 126(4)
Land Acquisition Act, 1894 — Section 4, 4(1), 6, 19
Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 19, 24(1)(a), 113
Constitution Of India, 1950 — Article 300A
Constitutional And Statutory Right Vide Constitutional Forty Fourth (Amendment) Act, 1978 — Section 19(1)(f), 31

Citation : (2019) 04 BOM CK 0044

Hon'ble Judges : Sunil B. Shukre, J; Pushpa V. Ganediwala, J

Bench : Division Bench

Advocate : M.G. Bhangde, V.V. Bhangde, R.M. Bhangde, S.N. Tapadia, V.P. Maldhure

Final Decision : Disposed Off

Judgement

Pushpa V. Ganediwala, J

1. Rule. Rule is made returnable forthwith and heard finally with the consent of Shri M.G. Bhangde, Senior Counsel appearing for the petitioners and Shri V.P. Maldhure, AGP for the respondents State.

2. In this petition, the petitioners sought to declare the land acquisition proceeding initiated under section 6 notification dated 18.12.1995 in respect of land Gat No. 176, Mz. Khelbar, Area 1.47 Hectare, Tq. Jalgaon Jamod, District - Buldhana (hereinafter referred to as 'subject land or said land') as lapsed and the Award No. 1/11994-95 dated 07.09.2017 passed in the said proceedings by respondent No. 2 - Land Acquisition Officer (LAO) be set aside.

3. It is stated that the petitioner Nos. 1 to 9 were the erstwhile owners of the

subject land and petitioner Nos. 10 and 11 are the purchasers of the same from petitioners No. 1 to 9 vide registered deed of Conveyance dated 29.03.2006 for the consideration of Rs. 3,00,00,000/-(Three crores).

4. In the year 1976, the aforesaid property was reserved in the Development Plan (D.P.) for Jalgaon-Jamod for the purposes of Civil Court, Jalgaon-Jamod vide reservation No. 14. However, the said purpose did not survive as the respondents acquired another land for construction of Civil Court building at Jalgaon.

5. It is further submitted that in the year 1992-93, the D.P. was modified under Section 37 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as MRTP Act) and the said land was re-reserved for the Government Technical High School.

6. Accordingly, respondent Nos. 1 & 2 initiated land acquisition proceedings and issued Notification on 18.12.1995 under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as Act of 1894) read with Section 126(4) of the MRTP Act and the same was published on 13.01.1996.

7. It is the grievance of the petitioners that the final Award dated 07.09.2017 came to be passed by Respondent No. 2 - LAO, by considering the market value of the property prevailing on the date of section 6 notification, which is nothing but the gross abuse of the powers by the officers dealing with the acquisition proceedings.

8. In the interregnum period between Section 6 notification and the final award dated 07.09.2017, it is stated that the petitioner Nos. 1 to 9 filed a writ petition challenging the acquisition proceedings on the ground of change of user and in the said petition, this Court passed an order of status quo for possession on 09.07.1996. The said petition, later on, came to be dismissed by this Court on 27.11.1997 and in consequence thereof the interim relief of status quo stands vacated. The SLP against the said order was also dismissed as withdrawn by an order dated 25.10.1999.

9. It is further stated that the Review Petition No. 97 of 2000 filed by the petitioners before this Court was also dismissed on 11.11.2014. However, there was no stay operating against the acquisition proceedings after dismissal of writ petition by this Court on 27.11.1997.

10. The petitioners state that it took more than 22 years for respondent No. 2 to pass an Award and that too on the basis of market value prevailing on the date of Section 6 notification, which is nothing but arbitrary exercise of powers on the part of the officers dealing with acquisition proceedings.

11. In this petition, the petitioners sought quashing and setting aside of the Award dated 07.09.2017 and also sought direction to issue a fresh notification under Section 19 of the New Land Acquisition Act of 2013, read with Section 126(4) of the MRTP Act.

12. Respondent No. 2 - Land Acquisition Officer, in his affidavit in reply branded the petition as baseless, unfounded and without any substance as according to him the challenge to the acquisition proceedings was already dismissed upto the level Hon'ble Apex Court and the Review Petition was also dismissed. The respondent No. 2, during the pendency of the proceedings before this court and thereafter before the Apex Court, rightly did not continue with the acquisition proceedings and after dismissal of the Review petition, respondent No. 2 proceeded with the acquisition proceedings and determined the Award strictly as per law, which is just, fair and proper. It is further stated that as the acquisition proceedings were under MRTP Act, there is no time frame provided under the Act for completion of the acquisition proceedings and, therefore, there is no infirmity, perversity, illegality or arbitrariness in the Award dated 07.09.2017 passed by respondent No. 2.

13. We have considered the submissions on behalf of both the parties.

14. At the outset, undisputedly, the Notification under Section 6 of the Act of 1894 read with Section 126(4) of the MRTP Act was issued on 18.12.1995 and was published on 13.01.1996. The Award in the said proceedings came to be passed on 07.09.2017, i.e. after a period of 22 years. The assessment of the compensation is on the basis of market value of the properties in the vicinity of the subject land prevailing on the date of Section 6 Notification i.e. 13.01.1996. In the text of the award, the delay in passing the award is wholly attributed to the pendency of litigation before the courts for 20 years.

15. Shri Bhangde, learned Senior Counsel for the petitioners restricted his argument to the assessment of the compensation in the Award and submitted that the Award which is passed after 22 years of passing of Section 6 notification and that too on the basis of rates of land prevailing at that time, is arbitrary and colourable exercise of powers on the part of the officers dealing with the acquisition proceedings. The learned Senior Advocate pressed for assessment of the compensation for the acquired land as per the provisions of the Act of 2013 at least on the basis of market value prevailing on 01.01.2014 as held by the Hon'ble Apex Court in the case of Hori Lal vs. State of Uttar Pradesh & Ors., reported at 2019 SCC OnLine SC 129. The learned Senior Counsel, in support of his arguments also relied on the judgments in the case of Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors., reported at (2013) 1 SCC 353 and Ram Chand & Ors. vs. Union of India & Ors., reported at (1994) 1 SCC 44.

16. In order to decide the issue of reasonableness of compensation on the basis of rates of the properties prevalent on the date of publication of section 6 Notification which was published prior to 22 years of the date of the passing of the impugned award, it is necessary to look into the relevant provisions of acquisition laws and the judicial pronouncements.

17. It is well known that under the inherent power of 'Eminent Domain' of the

State, the status of right to property of a citizen has been shifted from fundamental right (Articles 19(1)(f) and 31) to the constitutional and statutory right vide Constitutional Forty-Fourth (Amendment) Act, 1978. The Hon'ble Apex Court in catena of judgments reiterated that even after the right to property ceased to be a fundamental right, acquiring the property of a citizen most certainly tantamount to deprivation and such deprivation can take place only in accordance with the 'law' as the said word has specifically been used in Article 300-A of the Constitution.

The two essentials of 'Eminent Domain' are :

- i. Property is taken for public purpose
- ii. Just compensation.

18. As per section 24 (1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter referred to as the Act of 2013), in case the land acquisition proceedings have been initiated under the Act of 1894 and no Award has been made, all the provisions of the Act of 2013 relating to the determination of the compensation shall apply.

19. In the instant case learned Senior Counsel Shri Bhangde restricted his claim only to the assessment of damages on the basis of provisions of new Act of 2013 by taking 01.01.2014 as the date of section 19 Notification (analogous to section 6 of the old Act of 1894), as held by the Apex Court in the case of Hori Lal vs. State of Uttar Pradesh & Ors., (supra).

20. In Hori Lal vs. State of Uttar Pradesh & Ors., (supra) in somewhat similar facts and circumstances, the State placed reliance on the order of the Central Government issued under section 113 of the Act, 2013 and contended that the compensation payable to the appellant would be determined on the basis of the market value as it was prevalent on 01.01.2014, the date on which the Act of 1894 was repealed and was replaced by the new Act of 2013. In that case , Section 4 Notification of the Act, 1894 was dated 30.10.2002 and the award was dated 30.06.2016 and the petitioner in that case expressly gave up his challenge to the acquisition proceedings.

21. As regards delay in payment of the compensation by the State in the acquisition proceedings, the Hon'ble Apex Court in the case of Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors., (supra) observed that even under valid acquisition proceedings, there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest, and to make payment of requisite compensation for the sole reason that, if a person is not paid compensation in time, he will be unable to purchase any land.

22. In the case of Ram Chand & Ors. vs. Union of India & Ors., (supra), the Apex Court in para 24 observed that because of the delay and inaction on the part of

the respondents, the petitioners are in a great predicament and any amount determined as market value of their lands acquired with reference to the dates of issuance of notifications under sub-section (1) of section 4 of the Act at the rate prevalent 15- 21 years prior to the dates of the making of the Award, cannot be held to be compliance of the mandate regarding payment of market value of the land so acquired under the constitution of the Act.

23. Apart from the above authorities, Division Bench this Court in the case of Vishwas Namdeo Devare vs. The State of Maharashtra & Ors., (in Writ Petition No. 430 of 2009 delivered on 28.02.2019) (one of us, Pushpa V. Ganediwala, J., was a member), in a case having substantially similar facts and circumstances of the case, instead of vitiating the acquisition proceedings, directed the authority dealing with the Land Acquisition proceedings, to calculate the compensation on the basis of the market value prevailing on the date of the order of this Court as in that case the acquisition proceedings were initiated on the basis of the notification which later on came to be withdrawn by the Government.

24. In view of the observations of the Apex Court in the aforementioned judgments and the concept of 'just compensation' in case of compulsory acquisition of private land for public purpose by applying extra-ordinary power of 'Eminent Domain', it would be a gross abuse of powers if the impugned Award is allowed to be sustained on the basis of market value which was prevailing 22 years back. The ground as raised by the learned AGP Shri. Maldhure appearing on behalf of the State about the dismissal of writ petition, which was filed by petitioner Nos. 1 to 9 herein, challenging the acquisition proceedings on the ground of change of user of the acquired land, has no nexus at all to the grounds raised in the instant petition. We find no substance in the submissions made on behalf of the respondents - State. There was no stay operating against the acquisition proceedings since the dismissal of the petition by this court on 27.11.1997. The reasons for delay as stated in the text of the award is totally misconceived.

25. In conclusion, the impugned award deserves to be quashed and set aside and the same is accordingly quashed and set aside. The respondent is directed to initiate fresh inquiry for assessment of compensation on the basis of the provisions of the Act of 2013 by taking 01.01.2014 as the date of section 19 Notification of the Act of 2013 and pay compensation to the petitioner as expeditiously as possible and in any case within a period of 12 months from the date of the receipt of this order.

26. Rule is made absolute in the above terms. Writ Petition is disposed of. In the facts and circumstances of the case, there shall be no order as to costs.