
(1977) 06 BOM CK 0006

In the Bombay High Court

Case No : O.C.J. Miscellaneous Petition No. 275 of 1977

Jethmal Dhanji

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-06-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 4, 6, 9

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 2, 42, 6, 8

Citation : (1977) 79 BOMLR 721

Hon'ble Judges : Kania, J

Bench : Single Bench

Judgement

Kania, J.—This is a petition under Article 226 of the Constitution of India praying for a writ, direction or order directing the respondents to declare an award in respect of a plot of land situated at Kandivli, Bombay, and to pay to the petitioners the compensation payable under the award.

2. The petitioners are the owners of a plot of land situated at Kandivli admeasuring approximately 3986.1 sq. mts. I propose to refer to this plot hereinafter as "the said Plot". Respondent No. 1 is the State of Maharashtra, respondent No. 2 is the Special Land Acquisition Officer (7), Bombay and Bombay Suburban District and respondent No. 3 is the Municipal Corporation of Greater Bombay.

3. There is no controversy as regards the material facts necessary for the disposal of this petition. Sometime prior to 1965 respondent No. 3 made a Development Plan for Greater Bombay and the same was sanctioned by the Government of Maharashtra as far as the R-Ward is concerned. The said plot is situated in the R-Ward. The said Development Plan for the R-Ward showed that the said plot was reserved for a public purpose viz. for a play-ground, a welfare centre and a thirty-feet wide development road for respondent No. 3. Thereafter several representations were made for and on behalf of the petitioners for the

release of the said plot from the said reservation, but the said representations were rejected. On June 10, 1971 the petitioners served a purchase notice on respondent No. 1 u/s 49 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the said Town Planning Act") requiring respondent No. 3 to purchase their interest in the said plot. The said notice was confirmed by respondent No. 1 u/s 49(4) of the said Town Planning Act on or about August 13, 1971. It is not disputed that within one year of this confirmation the appropriate authority made an application to acquire the said plot. Thereafter respondent No. 1 issued a notification dated November 5, 1973 u/s 151 read with Sections 126 and 49 of the said Town Planning Act along with the provisions of Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Land Acquisition Act") declaring that the said plot was required for the said public purpose. The said notification appointed the then Special Land Acquisition Officer (7), Bombay, to perform the functions of the Collector for all proceedings to be taken in respect of the said plot. This notification was duly gazetted and one S.M. Kasbekar, Special Land Acquisition Officer (7) commenced proceedings in respect of the said plot u/s 9 of the said Land Acquisition Act and invited claims on or about January 18, 1974. In response to the notice issued by the said Kasbekar, the petitioners filed statements of claim before him. The petitioners were given a hearing by the said Kasbekar. As considerable delay took place thereafter in declaring the award, the petitioners' advocate approached the said Kasbekar in this connection. By his letter dated June 19, 1975 the said Kasbekar informed the said advocate that the draft award in respect of the said plot prepared by him had been approved by respondents Nos. 1 and 3 and that the award would be declared by him on receipt of the funds from respondent No. 3, being the acquiring body. In February 1976 respondent No. 3 issued a cheque to respondents Nos. 1 and 2 for the amount of compensation payable under the proposed award. The said Kasbekar was succeeded in his office by one G.R. Nagvekar and thereafter by respondent No. 2. On February 17, 1976 the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the said Urban Land Act") came into force with effect from that date. On, July 7, 1976 a circular was issued by the Revenue and Forests Department of the Government of Maharashtra purporting to give certain clarifications regarding the impact of the said Urban Land Act on land acquisition proceedings. I shall come to this circular in some detail a little later. By their advocates' letter dated February 25, 1977 addressed to the respondents, the petitioners set out the facts and called upon the respondents to forthwith declare the award in respect of the said plot. Respondent No. 2 by his reply dated March 5, 1977 addressed to the said advocates stated that the cheque was received from the acquiring body, respondent No. 3, and duly credited. He further stated that as per the Government circular dated July 7, 1976 in view of the said Urban Land Act, the case had been referred to the competent authority by his office letter dated November 10, 1976 and that further action would be considered after receipt of orders.

4. The submission of Mr. Setalvad, the learned advocate for the petitioners, is that in the present case the said plot was reserved in the said Development Plan for a public purpose. The petitioners thereafter served a purchase notice, as referred to in Section 49 of the said Town Planning Act on respondent No. 1 and this notice was duly confirmed by respondent No. 1 u/s 49(4) of that Act. Thereafter a notification u/s 6 of the said Land Acquisition Act has been issued in respect of the said plot. Claims have been considered u/s 9 of the said Land Acquisition Act. The letter and the correspondence which has been referred to earlier clearly show that the award in respect of the said plot is ready and the acquiring body viz. respondent No. 3, has even given a cheque in respect of the compensation to be paid under the said proposed award. It was submitted by him that in these circumstances it was incumbent on respondent No. 2 to declare the award within a reasonable time, and as respondent No. 2 had failed to do so, a writ should issue against him to make his award within, a stated time.

5. In order to examine the correctness of these contentions, it is necessary to take note of a few provisions. Section 49 of the said Town Planning Act provides that where any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes for any functions of any such Government, authority or body, the owner or person affected may serve on the State Government a notice requiring the appropriate authority to purchase his interest in the land in accordance with the provisions of that Act. Sub-section (4) of Section 49 of that Act, inter alia, provides that if the State Government is satisfied that the conditions specified in Sub-section (1) thereof are fulfilled it may confirm the purchase notice. Sub-section (6) of Section 49 of that Act runs as follows:

Upon confirmation of the notice, the State Government shall proceed to acquire the land or that part of any land regarding which the notice has been confirmed, within one year of the confirmation of the purchase notice, in accordance with the provisions of Chapter VII.

It is common ground that this acquisition has to be in accordance with the manner prescribed under the said Land Acquisition Act except that the declaration u/s 4 is not necessary. Section 6 of the said Land Acquisition Act provides for a declaration that the land is required for a public purpose. Section 9 provides for a public notice stating that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to the Collector, who has caused such notice to be given. The material portion of Section 11 of that Act runs as follows:

On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land at the date of the publication of the notification u/s 4, Sub-section (1) and into the respective

interests of the persons claiming the compensation and shall make an award under his hand....

In view of these provisions, it does appear that once a declaration has been issued u/s 6 of the said Land Acquisition Act in respect of a plot of land, claims invited in respect of compensation and enquiry held in that regard as well as regarding any objections, as aforementioned, the Collector is bound to make an award. It has not been suggested before me that the Collector has, as it were, the discretion whether to make an award or not. There is no doubt that once the enquiry is completed the Collector is under a mandatory duty to make an award.

6. The contention of Mr. Thakore, the learned Counsel for respondents Nos. 1 and 2, is that normally speaking respondent No. 2, who was discharging the functions of the Collector under the said Land Acquisition Act, would have been bound to make an award. But, in the present case, he is not bound to do so in view of the coming into force of the said Urban Land Act. It was urged by him that the possession of the said plot was not taken by the respondents and hence it continued to vest in the petitioners. As the petitioners were holding vacant land in excess of the ceiling limit of 500 sq. mts. on or after February 17, 1976, they were bound to file a statement u/s 6 of the said Urban Land Act and the excess land would vest in the State Government, the respondent No. 1 herein, u/s 10 of that Act. The amount payable as compensation for such excess vacant land vesting in the State Government would be payable only in accordance with the provisions of the said Urban Land Act. It was further urged by him that u/s 42 of the said Urban Land Act it has been expressly provided that the provisions of that Act would have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or any custom, usage or agreement or decree or order or a Court, tribunal or other authority. It was submitted by Mr. Thakore that in view of this, the provisions of the said Land Acquisition Act could not be given, effect to in respect of the said plot as far as the making of an award or payment of compensation are concerned. I find it difficult to accept the submissions of Mr. Thakore. It is true that persons holding land in excess of 500 sq. mts. are required to make a statement regarding such excess u/s 6 of the said Urban Land Act. Section 9 of that Act provides for a final statement after the disposal of the objections referred to in Section 8. Section 10(1) provides that after the service of the statement u/s 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating, inter alia, that such vacant land is to be acquired by the concerned State Government to be published in the Official Gazette of the State concerned. Sub-section (3) of Section 10 of the said Urban Land Act provides that at any time after the publication of the notification under Sub-section (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such

declaration, such land shall be deemed to have vested absolutely in the State Government. The provisions of the said Urban Land Act do not provide that merely because a person is in possession of excess vacant land, namely, in excess of the ceiling limit prescribed thereunder, the said excess land automatically vests in the Government, nor is there any provision in that Act which prevents proceedings being taken or pending proceedings being continued under the said Land Acquisition Act for acquisition of any vacant land which a person may be holding in excess of the ceiling limit. In my view, Section 42 of the said Urban Land Act does not come into play in this regard, because no provision in that Act has been shown to me by reason of which proceedings under the Land Acquisition Act cannot be taken or continued in respect of the excess vacant land held by a person or as to why an award under the said Land Acquisition Act cannot be made in pending proceedings in respect of such land. In view of this I fail to see how the provisions of the said Urban Land Act can justify the action of respondent No. 2 in failing to make an award within a reasonable time.

7. The next submission of Mr. Thakore was that respondent No. 2 by his letter dated March 5, 1977, to which I have already referred, has not refused to make an award, but has merely stated that as per the Government circular of July 7, 1976 in view of the said Urban Land Act, the case had been referred to the competent authority and that further action would be considered after receipt of orders from the competent authority. It was submitted by him that in view of this letter, respondent No. 2 was entitled to wait till the necessary orders or clarifications were received from the competent authority. It was suggested by him that the competent authority referred to in the said letter must be the competent authority under the said Urban Land Act. Coming to the circular dated July 7, 1976, the said circular, as I have already pointed out, was issued by the Revenue and Forests Department of the Government of Maharashtra to give some clarifications regarding the impact on the said Urban Land Act on the land acquisition proceedings in progress in urban agglomerations. Paragraph 5 of that circular points out that certain lands are excluded from the definition of vacant land u/s 2(g) of the said Urban Land Act and that the said Act does not apply to them. Clause (ii) of para. 5 states that vacant land on which it was not admissible to construct a building on account of its inclusion in the Development Plan or in the Master Plan for a purpose such as "green area", playground, park, road widening etc. would not come within the purview of the said Urban Land Act and there should be no objection to process further the land acquisition proceedings regarding such land. In the first place, in my view, an administrative circular of this kind cannot absolve respondent No. 2 from the performance of his mandatory duty to make an award within a reasonable time. A circular merely giving certain administrative guidance cannot be used to defeat or delay the rights of the petitioners, who are entitled to have an award made in respect of their land notified under the said Land Acquisition Act. Even apart from this in view of the contents of the circular, to which I have already referred earlier, it

appears somewhat doubtful whether the circular contemplated staying of acquisition proceedings in respect of land such as the one in question before me. In my opinion, the contention of Mr. Thakore that respondent No. 2 is entitled to delay declaring his award till the receipt of orders from the competent authority under the said Urban Land Act is unsound and must be rejected.

8. Before parting with the matter, it may be pointed out that a somewhat similar question came up for consideration before my learned brother Rege J. in *Adi C.P. Wadia v. The Special Land Acquisition Officer* (1976) O.C.J Miscellaneous Petition No. 623 of 1976. That was a petition for a writ of mandamus calling upon the Special Land Acquisition Officer concerned to file a reference in this Court against his award as applied for by the petitioners and to pay to the petitioners the undisputed amount awarded as compensation and costs. In that case also, possession of the land was not taken by the Government and the land continued to vest in the petitioners. It was contended by the learned advocates for the respondents there that the provisions of the said Land Acquisition Act, under which the petitioners' land was acquired and the award made in favour of the petitioners, were inconsistent with the provisions of the said Urban Land Act and that the provisions of the Urban Land Act had an overriding effect over the provisions of the said Land Acquisition Act. It has been pointed out by the learned Judge in his judgment that the purposes for which both the said Acts are enacted are distinct. The Land Acquisition Act empowers the Government to acquire any land only for a public purpose, while the said Urban Land Act empowers the Government to acquire only that land which is in excess of the permissible limit of 500 sq. mts. The procedure for acquiring land and the method of fixing the compensation are also distinct in both the said Acts. Further, the said Urban Land Act nowhere prohibits the acquisition of land by the Government under the said Land Acquisition Act or in any manner other than the one provided under the said Urban Land Act. In these circumstances, Rege J. came to the conclusion that it cannot be said that the provisions of the said Land Acquisition Act were inconsistent with the provisions of the said Urban Land Act so that the latter could have an overriding effect on the former. The case before me is, if at all, a little stronger from the point of view of the petitioners, than the case before Rege J., because once a purchase notice under the said Town Planning Act has been confirmed by the Government u/s 49(4) thereof, there is an obligation on the Government to acquire the land. Hence, in the facts and circumstances of the present case, respondent No. 1 was, under an obligation to acquire the said plot in view of the confirmation of the purchase notice issued by the petitioners, to which I have already referred.

9. In the result, there will be an order against respondent No. 2 directing him to declare his award in respect of the said plot within four weeks from the service of the certified copy of the minutes of the order made in this petition upon him and to pay to the petitioners the compensation payable under such award in accordance with law. As far as respondent No. 3 is concerned, no relief is prayed for against respondent No. 3 and the rule will be discharged against it.

Respondents Nos. 1 and 2 to pay to the petitioners the costs of this petition fixed at Rs. 300.