

(2017) 09 GUJ CK 0069
In the Gujarat High Court
Case No : 6496 of 2017

JIVABHAI MALUBHAI DODIYA

APPELLANT

Vs

STATE OF GUJARAT & 4

RESPONDENT

Date of Decision : 01-09-2017

Acts Referred:

Constitution of India, Article 226, Article 142 - Power of High Courts to Issue certain writs - Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc Land Acquisition Act, 1894, Section 4, Section 18, Section 11(1) - Publication of preliminary notification and powers of officers thereupon. - Reference to Court - Enquiry and award by Collector

Citation : (2017) 09 GUJ CK 0069

Hon'ble Judges : M.R. Shah, B.N. Karia

Bench : Division Bench

Advocate : VALMIK VYAS, AJ YAGNIK, ROHAN YAGNIK, NIRZAR S DESAI

Judgement

1.] By way of this petition under Article 226 of the Constitution of India, the petitioner as such prayed for the following reliefs. "10(a)Be pleased to issue an appropriate writ, order or direction and thereby modify the impugned award dated 13122013 passed by respondent No.3 herein by awarding an appropriate amount of compensation as prayed for by the petitioner.

(b) Be pleased to issue an appropriate writ, order or direction and thereby respondent No.5 to accept the application of petitioner under section 18 of the Act for enhancement of compensation.

(c) Be pleased to issue an appropriate writ, order or direction and thereby direct respondent Nos.3 and 4 to award an amount of compensation pari passu with other similarly situated land owners for whom a consent award under section 11(2) of the Act was passed at relevant point of time."

2.] The facts leading to the present Special Civil Application in nutshell are as

under: 2.1] That the land of the petitioner herein came to be acquired alongwith other land owners for the public purpose and for Sardar Sarovar Narmada Nigam Limited (hereinafter referred to as "SSNNL"). That a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "Act") was issued on 06.12.2010 and notification under Section 6 of the Act was issued and published on 22.02.2011. That thereafter the land owners including the petitioner herein were offered the compensation at the rate of Rs.1,97,000/per hectare so that if the agriculturist / land owners are agreeable, in that case, a consent award can be passed. It appears that all other land owners agreed to accept the aforesaid compensation and also entered into the relevant agreements and therefore, so far as other land owners are concerned, they were paid the compensation accordingly as agreed and consent awards came to be passed. It appears that however the petitioner was agreeable to the same but with certain conditions and therefore, he stated that he will be agreeable to accept the aforesaid amount provided his other conditions are satisfied.

However, thereafter, the talks did not materialize and consequently the petitioner was not agreeable for the consent award and was not agreeable to accept the compensation offered and therefore, subsequently a regular award under Section 11(1) of the Act came to be declared by the Special Land Acquisition Officer awarding the compensation at the rate of Rs.79,008/per hectare and looking to the area of the land acquired the petitioner - original land owner was held entitled to get Rs.25,334/towards compensation. Thus, a regular award came to be passed under Section 11(1) of the Act on 13.12.2013. That thereafter the Special Land Acquisition Officer and SSNNL made efforts to pay the compensation to the petitioner, however the petitioner did not accept the same and therefore, ultimately the SSNNL deposited the said amount with the Government / Treasury in the month of April 2015. It appears that thereafter beyond the period of limitation prescribed under Section 18 of the Act, the petitioner submitted the application under Section 18 of the Act for reference to the District Court on 28.06.2016. It is the case on behalf of the petitioner that as the same was beyond the period of limitation prescribed under Section 18 of the Act, the same was not accepted by the District Court, Surendranagar. Hence, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India for othe aforesaid reliefs.

3.] Shri Valmik Vyas, learned Advocate appearing for Shri A.J. Yagnik, learned Advocate appearing on behalf of the petitioner has submitted that when the others were paid the compensation at the rate of Rs.1,97,000/per hectare. The petitioner being similarly situated land owner whose land has been acquired alongwith other land owners, the petitioner is also required to be paid the same compensation. It is submitted that however while passing the award under Section 11(1) of the Act, the petitioner has been offered to pay the compensation at the rate of Rs.79,008/per hectare. It is submitted that the action of the respondent in offering to pay the compensation to the petitioner at the rate of Rs.79,008/per hectare is discriminatory and violative of Article 14 of

the Constitution of India. 3.1] It is further submitted by Shri Vyas, learned Advocate appearing on behalf of the petitioner that as such in the year 2012 when the other land owners were offered the compensation at the rate of Rs.1,97,000/per hectare, the petitioner was also agreeable to the same, however with certain conditions. It is submitted that even the conditions which were suggested by the petitioner were under consideration by the appropriate Authority also. It is submitted that therefore, however as the talks did not materialize and therefore, when the petitioner was agreeable to accept the amount of compensation, which was paid to others, the petitioner is also required to be paid the compensation for the land acquired at par with other land owners whose lands are also acquired alongwith the petitioner's land.

Making above submissions and it is requested to admit / allow the present petition.

4.] Present petition is vehemently opposed by Shri Rohan Yagnik, learned Assistant Government Pleader appearing on behalf of the State Authorities and Shri Nirzar Desai, learned Advocate appearing on behalf of the acquiring body.

5.] It is vehemently submitted by learned Advocates appearing on behalf of the respective respondents that as such the case of the petitioner cannot be compared with other land owners who were paid the compensation as agreed and in whose case as such the consent awards were passed. It is submitted that at the relevant time the petitioner was also offered the compensation which was being offered to others, however the petitioner's acceptance of the offer was conditional one which was not agreeable to the acquiring body and the State Authorities. It is submitted that thereafter as the petitioner did not agree for the consent award, thereafter a regular award under Section 11(1) of the Act came to be declared. It is submitted that if the petitioner was aggrieved by the amount of compensation awarded under the regular award, in that case, he ought to have submitted the application for reference under Section 18 of the Act within the period of limitation as provided under Section 18 of the Act. It is submitted that in the present case admittedly till July 2016, the petitioner did not make any application for reference under Section 18 of the Act. It is submitted that the petitioner submitted the application under Section 18 of the Act after a period of approximately 3 years from the date of the award under Section 11(1) of the Act and even after a period of approximately 1 year after the amount of compensation was paid / deposited. It is submitted that therefore any order in the present petition would be entertaining application under Section 18 of the Act which as such was beyond the period of limitation. Reliance has been placed upon the decisions of the Hon''ble Supreme Court in the case of Officer on Special Duty (Land Acquisition) and Another vs. Shah Manilal Chandulal and Others reported in (1996) 9 SCC 414; State of Gujarat vs. Gopalbhai Becharbhai reported in (1996) 9 SCC 125 and State of Karnataka vs. Laxuman reported in (2005) 8 SCC 709. Relying upon the decision of the Hon''ble Supreme Court in the case of Steel Authority of India Limited and Sutni Sangam and Others

reported in (2009) 16 SCC 1, it is submitted that as held by the Hon'ble Supreme Court in the said decision when the references are barred by section 18 of the Act, they are not even maintainable under writ jurisdiction under Article 226 of the Constitution of India. 5.1] It is further submitted by Shri Desai, learned Advocate appearing for the acquiring body that if at this stage the acquiring body agrees to pay more compensation to the petitioner more than what is offered in award under Section 11(1) of the Act, in that case, the acquiring body has to give similar term to others and in other cases which is not permissible as far as the acquiring body is concerned and more particularly circumventing the provisions of making reference under Section 18 of the Act. Shri Yagnik, learned Assistant Government Pleader has submitted that so far as the Special Land Acquisition Officer is concerned, once the award is declared under Section 11(1) of the Act, in that case, except the arithmetic error the Special Land Acquisition Officer has no authority and/or jurisdiction to amend the award. It is submitted that if any land owner is aggrieved by the compensation offered under the award under Section 11(1) of the Act, in that case, the aggrieved party has to submit an appropriate application for reference under Section 18 of the Act to the Collector to make a reference to the concerned District Court and that too within the period of limitation as provided under Section 18 of the Act. It is submitted that so far as the Special Land Acquisition Officer and/or even Collector and/or the District Court has no jurisdiction to entertain the references which are beyond the period of limitation prescribed under Section 18 of the Act.

Making above submissions and relying upon above decisions, it is requested to dismiss the present Special Civil Application.

6.] Heard learned Advocates appearing for respective parties at length. At the outset it is required to be noted that by way of this petition under Article 226 of the Constitution of India the petitioner has prayed for an appropriate writ, direction and order directing the respondents to pay the compensation to the petitioner on the acquired land at par with other land owners whose lands came to be acquired along with petitioner i.e. considering the market price at Rs.1,97,000/per hectare. However, it is required to be noted and it is not in dispute that all those other land owners are concerned, prior to the award under Section 11 of the Act, they agreed to accept the amount of compensation offered without any condition and as a full and final settlement and thereafter the agreements were executed between the parties and a consent award came to be passed. It is not in dispute that at the relevant time the petitioner was also offered compensation which was offered to other land owners. However, at the relevant time the petitioner put certain conditions and therefore, did not enter into any agreement and thereafter a regular award under Section 11(1) of the Act came to be declared. Therefore, the case of the other land owners cannot be compared with that of petitioner. The case of the other land owners in whose case the consent awards were passed, cannot be compared with the petitioner in whose case a regular award under Section 11(1) of the Act is passed.

[6.1] If the petitioner was aggrieved by the amount of compensation under Section 11(1) of the Act, in that case, the remedy available to the petitioner was to prefer and submit the application for reference under Section 18 of the Act and that too within a period of limitation as prescribed under Section 18 of the Act. It is an admitted position that as such no application was preferred by the petitioner to the Collector to make a reference under Section 18 of the Act. Straightway the reference application was tendered before the District Court which according to the petitioner has not been accepted on the ground that the same was beyond the period of limitation. At this stage it is required to be noted that even the application before the District Court under Section 18 of the Act was in the month of June 2016 i.e. after a period of 3 years from the date of award under Section 11 of the Act and even after a period of one year from the date of deposit of the amount of compensation with the treasury, as the petitioner did not accept the amount of compensation when it was being paid to him. At this stage it is required to be noted that as such there is no provision under the Act straightway to make a reference to the District Court. Under Section 18 of the Act within the period of limitation prescribed under Section 18 of the Act the aggrieved interested person is required to make an application to the concerned Collector to make a reference to the concerned District Court. Assuming that the application which was directly made to the District Court can be said to have been an application under Section 18 of the Act, in that case also, admittedly the same is beyond the period of limitation prescribed under Section 18 of the Act. Therefore, the prayer of the petitioner to direct the respondent No.5 to accept the application of the petitioner under Section 18 of the Act for enhancement of the compensation cannot be accepted / granted more particularly in view of the aforesaid decisions of the Hon'ble Supreme Court in the case of Shah Manilal Chandulal (Supra); Gopalbhai Becharbhai (Supra); Laxuman (Supra) and Sutni Sangam and Others (Supra). As observed and held by the Hon'ble Supreme Court in the aforesaid decisions, there is no power to condone the delay in submitting the application under Section 18 of the Act, once the same are beyond the period prescribed under Section 18 of the Act. As held by the Hon'ble Supreme Court in the case of Sutni Sangam and Others (Supra), even a petition under Article 226 of the Constitution of India shall not be maintainable once the references are barred by limitation. In the aforesaid decision, in paras 45 and 50, the Hon'ble Supreme Court has observed and held as under:

"45. When the statute provides for a law of limitation, compliance thereof is mandatory. For the purpose of applying the statute of limitation, the courts should, however, be liberal in their approach. Section 18 (2) (b) of the Act provides for the maximum period of six months from the date of the Collector's award. It was, therefore, impermissible to direct references to be made after a long period particularly when the provisions of Section 5 of the Limitation Act, 1963 cannot be said to have any application.

50. We will, however, proceed on the assumption that most of the awardees were

poor and illiterate and they were not aware of their rights. It is one thing to say that an Association, like the first respondent, takes up its cause but it would be another thing to say that only due to the said reason the mandatory provisions of the statutes would not be necessary to be complied with."

At this stage it is required to be noted that in a case before the Hon''ble Supreme Court the writ petition was preferred by the Association on behalf of the land owners whose lands were acquired and it was requested to exercise powers under Article 226 of the Constitution of India. The High Court in absence of the reference application under Section 18 of the Act in some cases and in the cases where section 18 applications were barred by limitation, refused to exercise powers under Article 226 of the Constitution of India. Before the Hon''ble Supreme Court it was requested to exercise the powers under Article 142 of the Constitution of India. Even to that also the Hon''ble Supreme Court while confirming the order passed by the High Court not exercising the powers under Article 226 of the Constitution of India even refused to exercise powers under Article 142 of the Constitution of India by observing that as no applications for reference were made, no case is made out for exercising the extraordinary jurisdiction under Article 142 of the Constitution of India. Therefore, even the prayer of the petitioner directing the respondents to pay the compensation to the petitioner at par with other land owners (in whose case the consent awards were passed), in exercise of powers under Article 226 of the Constitution of India cannot be accepted, more particularly when the application under Section 18 of the Act is barred by limitation.

7.] Now, so far as the relief sought by the petitioner to direct the respondent No.3 to modify the award dated 13.12.2013 is concerned, the same also cannot be granted in exercise of powers under Article 226 of the Constitution of India. An award once declared under Section 11(1) of the Act can be amended or modified only in case where there is an arithmetic error and/or the case falls within section 11(1) of the Act. In the present case as such the case does not fall within any of the parameters of section 13A of the Act. Under the circumstances also, the petitioner is not entitled to the said relief.

8.] Another prayer of the petitioner is to direct the respondent No.5 - District Court, Surendranagar to accept the application of petitioner under Section 18 of the Act for enhancement of the compensation, also cannot be granted de hors the period of limitation prescribed under Section 18 of the Act. It does not seem to be in dispute that as such the application under Section 18 of the Act would be barred by limitation as provided under Section 18 of the Act. Therefore, what cannot be done directly cannot be permitted to be done in exercise of powers under Article 226 of the Constitution of India. What is prohibited by the Collector and/or the District Court i.e. the delay cannot be condoned beyond the period of limitation prescribed under Section 18 of the Act, the same cannot be permitted to be done in exercise of the powers under Article 226 of the Constitution of India. Considering the aforesaid decisions of the Hon''ble Supreme Court it

cannot be disputed that once the applications for reference under Section 18 of the Act are beyond the period of limitation prescribed under Section 18 of the Act, thereafter there is no power to condone the delay. Under the circumstances also, the petitioner is not entitled to the said relief.

9.] In view of the above and for the reasons stated above, present Special Civil Application fails and the same deserves to be dismissed and is, accordingly, dismissed. Notice is discharged. No costs.