
(2005) 11 BOM CK 0058
In the Bombay High Court
Case No : First Appeal No. 90 of 1992

Kishorekumar Mohanlal Kothari

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 30-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Constitution of India, 1950 — Article 300A

Land Acquisition Act, 1894 — Section 18, 28A, 3, 31(1), 31(2)

Citation : (2006) 2 ALLMR 675 : (2006) 3 BomCR 842 : (2006) 2 MhLj 591

Hon'ble Judges : P.S. Brahme, J

Bench : Single Bench

Advocate : G.B. Lohiya, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

P.S. Brahme, J.—This appeal is preferred by the appellant challenging the judgment and order dated 19th September, 1991 passed by the learned District Judge, Akola in Land Acquisition Case No. 46 of 1987 rejecting the claim of the appellant for compensation in respect of his land acquired.

2. The facts which are no more in dispute are as follows :

The land of the appellant was acquired by the State Government in First Appeal No. 90 of 1992 decided on 30-11-2005, (Nagpur) Revenue Case No. 36/47/1980-81 of Malkapur. In that, by the Award passed on 19th September, 1986, the amount of compensation awarded for his land acquired was Rs. 4,62,642/-. As the compensation awarded was not adequate, the appellant filed an application u/s 18 of the Land Acquisition Act before the Special Land Acquisition Officer, Akola (who exercised powers of the Collector for enhancement of compensation). The said authority duly examined the application for reference and referred the same to Civil Court. The Civil Court, after recording the evidence held that the appellant was entitled to compensation of Rs. 1,00,000/- as claimed in Reference Application. However, the said claim was

dismissed by the Reference Court by its judgment and order dated 19-9-1991 holding that there was no written protest recorded by the claimant/appellant while receiving the amount of compensation under the Award. That is how, the present appeal has been preferred by the appellant challenging dismissal of his claim for enhancement of amount of compensation by the Reference Court.

3. Mr. G.B. Lohiya, learned Counsel appearing on behalf of the appellant submitted that the trial Court has committed an error in rejecting the claim only on the ground that the appellant has not recorded his protest while receiving the amount of compensation. He submitted that the Reference Court committed an error in holding that there was no protest. In fact, the appellant has stated, when he was examined before the trial Court, that he had received the amount under protest. That is the statement on oath, which has gone unchallenged. The State has not adduced any evidence before the Reference Court to show that no protest was made by the appellant while receiving the amount of compensation. The learned Counsel further submitted that the appellant complied with all the conditions for making reference and as the Land Acquisition Officer was satisfied that there was no bar for making reference, the same was referred to the Civil Court and therefore, it was implied and presumed that all the formalities and requirements for making reference have been complied with including the fact that there was oral protest by the appellant at the time when he received the amount of compensation.

4. Perusal of the judgment of the trial Court makes it clear that the trial Court has placed reliance on the judgment of this Court reported in 1991 Mh.L.J. 91, Sk. Kahaj Sk. Chotta v. State of Maharashtra, In that regard, the learned Counsel for the appellant submitted that this decision is not applicable to the facts and circumstances of case in view of the fact that there is amendment to Section 18 of the Land Acquisition Act by the State of Maharashtra and according to Sub-section 3 of the said Act, the order of making reference or refusing to make reference is revisable by the High Court u/s 115 of the CPC and the Collector is acting as a Court while making reference. Therefore, once the reference is made by the authority to the Court u/s 18, the Reference cannot be rejected by the Court on the ground that there was no protest by the land owner while receiving the amount of compensation.

5. Mr. G.B. Lohiya, Advocate for the appellant placed reliance on the decision of this Court in Tanaji Abaso Pawar and Others Vs. State of Maharashtra and Another, , in which identical issue was involved and that the High Court held that protest can be lodged in different forms either by specifically recording such protest at the time of acceptance of money or even by lodging an application for enhancement of compensation u/s 18 or even orally intimating the authorities that he is not satisfied with the compensation awarded at the time of disbursement of the amount by the Collector. The Court observed thus :

The second proviso to Section 31(2) uses the expression "who has received the amount otherwise than under protest". Admittedly, the word "protest" has not

been defined in the said Act. Undisputedly, the statutory provisions do not prescribe any specific mode of lodging the protest at the time of collecting the compensation awarded by the Land Acquisition Officer. Therefore, it cannot be said that the protest contemplated under the said proviso is necessarily by way of specific recording in writing about the protest in the receipt issued by the interested person while accepting the compensation. The Court further held that considering the phraseology of Sections 18 and 28-A of the said Act, a wider meaning will have to be given to the word "protest" to be found in the second proviso to Sub-section (2) of Section 31. Being so, the protest will have to be understood to be an act on the part of the interested person which will disclose his dissatisfaction about the compensation awarded by the Land Acquisition Officer. It can be lodged in different forms either by specifically recording such protest at the time of acceptance of money or even by lodging an application for enhancement of compensation u/s 18 or even orally intimating the authorities that he is not satisfied with the compensation awarded at the time of disbursement of the amount by the Collector u/s 31(1) of the said Act. In case of such an oral intimation, it will be the duty of the compensation disbursing officer to note such protest in the records relating to the payment of compensation for the land acquired. Bearing in mind the number of illiterate people in the country and taking judicial note of the bureaucratic red-tapism and carelessness prevailing almost in every public office, the principle that ignorance of law is no excuse should not be allowed to be stretched to such an extent that it can be a tool in the hands of the authorities to deny the statutory right in relation to the compensation to the owners whose properties are acquired. Otherwise, it may result in encouraging the acts to defeat the very purpose of Article 300-A of the Constitution of India. The provisions of the Act cannot be read and understood by ignoring the mandate of Article 300-A of the Constitution of India. Viewed from this angle, therefore, merely because in the records of the Government there does not find any endorsement by the interested parties that they had received the amount of compensation under protest, it cannot be presumed that the interested parties were satisfied or were not aggrieved by the compensation awarded by the Land Acquisition Officer even though they had filed their application expressing desire for enhancement of the compensation, and it could have been concluded by the Collector that the Collector was entitled to reject the application u/s 18.

6. The same view is taken by this Court in a case reported in State of Maharashtra Vs. Shridhar Mokasdar, . This Court held thus :

It is necessary for the concerned authorities to inform the land owner/claimants the basic procedure of filing the application of reference u/s 18 of the Act and consequences, if any party failed to receive the said compensation without any protest or under protest. The rule itself provides that the Collector shall ask such claimant to acknowledge the receipt of the payment by endorsing the words "received under protest" in writing. One fact which also plays dominant role in such land acquisition matters is that villagers or illiterate person's lands are

acquired by the authorities by following prescribed procedure under the Act. Such persons or villagers or persons interested may not be aware of the consequences of not putting a endorsement "received under protest" at the time of receipt of such amount or compensation. It is further held that once the reference is made, referring authority is normally bound by the same and cannot raise such objection about the maintainability of such reference, at least on the ground of no protest while receiving compensation by the claimant.

7. The learned Counsel for the appellant placed reliance on the decision of the Apex Court in *Ajit Singh and Others Vs. State of Punjab and Others*, The Apex Court observed that protest against the Award of the Collector is implied notwithstanding acceptance of the compensation. Therefore, the District Judge and the High Court, therefore, fell into patent error in denying the enhanced compensation to the appellants. That where the claimants receiving without protest the compensation awarded by the Collector, it is held that they are not merely for that reason disentitled to such enhanced amount of compensation. In another words, the decision of the Apex Court has concluded the issue by holding that the claimant cannot be denied enhanced compensation merely because he has received the amount of compensation without recording protest.

8. It is crystal clear that this decision of the Apex Court, so also the decision of this Court have given concurrent finding that the claimant is entitled to enhanced compensation by making a reference u/s 18 of the Land Acquisition Act and the Court cannot deny enhancement of compensation merely on the ground that the claimant has failed to record protest while receiving the amount under the Award. In view of this settled position of law, it has to be said that the trial Court has committed an error in rejecting the claim of the appellant for enhancement of compensation merely on technical ground that the appellant has not recorded his protest while receiving the amount of compensation. It is crystal clear that the protest required to be recorded by the claimant while receiving the amount of compensation need not be expressed in writing. That apart, the Land Acquisition Officer, who has paid the amount of compensation, accepts and refers the petition filed by the claimant to the Court for deciding enhancement of compensation, as claimed by the claimant, does imply that the claimant has received the amount of compensation under protest. If that is so, then it was not within the powers of the Civil Court to reject the application or reference on technical ground that the claimant has not expressed or recorded his protest while receiving the amount. That is much more so as in the instant case the Civil Court, considering the merits of the matter, has recorded a finding that the enhanced amount of compensation of Rs. 1,00,000/- as claimed by the appellant was reasonable and that he is entitled for the same. Not only that, but the Court has recorded a finding that the compensation fixed in the Award was inadequate. In that view of the matter, the appeal preferred by the appellant will have to be allowed holding that the appellant is entitled to enhanced amount of compensation, as claimed for. Consequently, the judgment and order passed by the Court will have to be set aside. Hence, the order.

ORDER

The appeal is allowed with costs.

The order dismissing the petitioner's application is quashed and set aside.

It is held that the appellant is entitled to enhanced amount of compensation amounting to Rs. 82,000/- with interest "12% p.a. from 7-8-1981 to 19-9-1986 and 30% Solatium on enhanced amount of compensation of Rs. 82,000/-, so also 9% interest on this amount from the date of Award till the payment.

Decree be drawn up accordingly.