
(2014) 03 BOM CK 0225
In the Bombay High Court
Case No : Writ Petition No. 2495 of 2003

Madhavrao

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17(3A), 18, 23, 23(1A), 28

Citation : (2014) 5 ALLMR 555 : (2014) 6 MhLj 76

Hon'ble Judges : S.V. Gangapurwala, J; N.W. Sambre, J

Bench : Division Bench

Advocate : A.G. Mukhedkar, Advocate holding, L.C. Patil and V.V. Muglikar, Advocate for the Appellant; S.B. Pulkundwar, A.G.P. and S.G. Sangle, Advocate for the Respondent

Judgement

N.W. Sambre, J.—Heard. The petitioners claim that their land was acquired for the purpose of K.T. Weir at Killari. The notification under section 4 of the Land Acquisition Act came to be issued on 29.3.1990. The possession of the land owned by the petitioners was taken on 15.11.1988, whereas after completing the acquisition proceedings, award came to be passed on 5.3.1992. In view of the fact that the possession of the land was taken on 15.11.1988 and award under Land Acquisition Act was passed on 5.3.1992, in view of the policy of the Government reflected in Govt. Resolution dated 1.12.1972, the petitioners are claiming rental compensation from the date of taking over possession till the date of passing of the award.

2. Learned Counsel for the petitioners invited attention of this Court to the judgment passed under section 18 of the Land Acquisition Act in a Reference moved by the petitioners on 4.9.1998. While dealing with the claim of the petitioners for enhancement of compensation and grant of interest under provisions of section 34 of the Act, the learned Reference Court has observed in paragraph 15 thus:--

"The lands of the claimants are acquired by the L.A.O. After amendment to Sections 23 and 28 of L.A. Act, therefore, all claimants are entitled for 30% solatium 12% interest from the date of possession i.e. 15.10.1988 till the date of award, i.e. 15.3.1994 and entitled for 9% interest for the first year from the date of possession and 15% interest for the subsequent year till depositing the amount by the L.A.O. in the Court. Accordingly, Issue Nos. 3 and 5 are answered in the affirmative and Issue No. 4 is answered in the negative."

The operative part of the judgment and award passed by Reference Court reads thus:--

"1. References are partly allowed.

2. Claimants in L.A.R. Nos. 92/95 and 97/95 do recover compensation of their acquired lands @ Rs. 40,000/- per Acre for dry-lands and rest of the claimants, except in L.A.R. No. 92/95 and 97/95 do recover compensation of their acquired lands @ Rs. 50,000/- per Acre for irrigated land and all claimants do recover 30% solatium, 12% increase from the date of possession i.e. 15.10.1986 till the date of award i.e. 15.3.1994 and do recover 9% interest for the first year from the date of possession i.e. 15.10.1988 and 15% interest for the subsequent year till depositing the amount by the L.A.O. in the Court.

3. Respondent do bear its own costs and pay the proportionate costs of the claimants.

4. Deficit Court Fees be recovered from the claimants, if any.

5. Decree be drawn up accordingly."

3. It is case of the petitioners that in addition to the above referred benefits which are granted by the Reference Court in exercise of powers under section 18 read with section 34 of the Act, they are entitled for the rental compensation in the light of policy of the Government dated 1.12.1972. The petitioners submit that the rental compensation is paid based upon estimated value of the lands to be ascertained from the Collector of the District or any other Revenue Officer but not by the Land Acquisition Officer. The petitioners further submit that they are entitled for yearly rental compensation to be worked out at 5% of the estimated value of the land and required to be paid yearly to the land owners. The petitioners further submit that these yearly payments will be provisional and are required to be paid after the date on which the full amount of final award is paid to the land owners. The said scheme of the Government further provides for payment of final amount of rental compensation to be worked out at 6-1/2 % of the award value after the declaration of the final award. It further provides that the balance amount if due should be paid to the landowner within three months from the date the award value is paid.

4. The petitioners submit that though in the present case the award was passed on 5.3.1992, the possession of the land in question was taken on 15.11.1988. It is claimed by the petitioners that the compensation ordered by the Reference

Court and the interest paid thereon in exercise of powers under section 34 of the Act cannot be mixed with the claim of rental compensation as the Reference Court is granting compensation/enhancement + interest under section 34 of the Act strictly in accordance with the Land Acquisition Act, whereas the rental compensation is provided by the Executive instructions of the State Government.

5. While responding to the above referred submissions of the petitioners, the learned A.G.P. has relied upon the observations made by the learned Reference Court, wherein Reference Court was aware of the fact that the possession of the property in question was taken on 15.10.1988 and the notification under section 4 of the Land Acquisition Act was passed on 29.3.1990 and still awarded 9% interest for the first year from the date of possession and 15% interest for the subsequent year till the deposit of the amount. The learned A.G.P. as such, submits that the payment of rental compensation as is claimed by the petitioners for loss of use of the land of which possession was taken in advance, is taken care of by the Reference Court.

6. Having considered rival contentions of the parties, prima facie it appears that the claim of the petitioners is based upon the policy of the Government reflected in the Government Resolution dated 1.12.1972, to which corrigendum was issued on 2.4.1979, to the extent of enhancing the rental compensation from 6-1/2% to 8%. Admittedly there is no source in the Land Acquisition Act for claim of rental compensation. However, the rental compensation is granted based upon the above referred Government decisions, which in any case, cannot be read down under the provisions of the Land Acquisition Act.

7. A reference to the judgment of the Apex Court in the matter of State of Maharashtra and Others Vs. Maimuma Banu and Others, is worth consideration. The Honourable Apex Court, while restricting the claim of rental compensation has, in categorical terms, observed that the directions about payment of rental compensation shall not apply to the cases where the payments have already been made prior to 1.4.2000. In the present case, it appears that the payment under the award was made to the present petitioners prior to 1.4.2000 and even the Reference Court has passed an award on 4.9.1998. There is no whisper in the petition by the petitioners that they were not paid the amount prior to 1.4.2000, either under the award or under the order passed by the Reference Court.

8. The observations of the Apex Court, in the matter of State of Mah. v. Maimuma (cited supra), more particularly in paragraphs No. 7, 8 and 9, fortifies the above referred view taken by this Court. The said observations read thus:--

"7. It is to be noted that the resolutions adopted by the Government were intended to benefit the landowners whose lands were acquired. To avoid unnecessary delays in payment urgency for follow-up action was indicated in the resolutions. To that extent, learned counsel for the landowners are on terra firma. But legally the landowners are not entitled to any interest. There is no

provision either in the resolutions or in the statutes concerned which entitles the landowners to payment of interest. Whatever is statutorily payable has been clearly indicated in the Act itself. Section 23(1-A) of the Act was introduced by the Amendment Act of 1984. There is no dispute, and in our opinion rightly, that rental compensation is not relatable to the act. The entitlement of the claimant is on the basis of the government resolutions i.e. on the basis of executive orders.

8. It is crystal clear from a bare reading of the provisions of the Act that it does not provide for payment of any rental compensation. Therefore, the appellants are correct in their stand to the extent that the liability for rental compensation does not have its source under the Act. Therefore, the logic of Sections 17(3-A), 23(1-A) and 28 of the Act and Section 34 has no application in law to rental compensation. That being the position, the High Court was not justified in relying on Sections 17(3-A), 23(1-A) or Section 28 of the Act to grant interest.

9. But the problem does not end there. Admittedly, the possession of the land was taken long years back. Thereafter, the landowner does not practically possess any right over the land in question except to the compensation as statutorily provided for. But it would be illogical and improper to turn a Nelson's eye to the factual position as highlighted by the respondents. It is not in dispute that in most of the cases the rental compensation has not been paid. If that factual position continues, it clearly is a case where the amount to which a person is entitled is withheld without any legitimate excuse. The learned Counsel for the appellants strenuously urged that in most of the cases the proceedings have not yet attained finality and are pending either before the Reference Court or in appeal. That does not provide a legitimate excuse to the appellants to withhold payment of the rental compensation. The amount calculated on the basis of award by the Land Acquisition Officer cannot be below than the amount to be ultimately fixed. If in appeal or the reference proceedings, there is any variation, the same can be duly taken note of as provided in law. There is no difficulty and we find none as to why the compensation on the basis of value determined by the Land Acquisition Officer cannot be paid. If there is upward revision of the amount, the consequences will follow and if necessary, redetermination of the rental compensation can be made and after adjustment of the amount paid, if any, balance can be paid. If, however, the Land Acquisition Officer's award is maintained then nothing further may be required to be done. In either event, payment of the rental compensation expeditiously would be an appropriate step. Looking at the problem from another perspective, one thing is clear that authorities have clearly ignored the sense of urgency highlighted in the various resolutions."

9. Furthermore, if the claim of rental compensation as is made by the petitioners is tested in the light of the interest awarded by the Reference Court, keeping in mind the date of possession, demonstrates that the right of the petitioners qua the compensation for taking advance possession of the land was redressed. In fact, petitioners were not entitled to interest @ 9% for first year and 15%

thereafter from the date of possession as possession was taken de hors the provisions of the Land Acquisition Act i.e. prior to section 4 notification. By granting such interest, the petitioners are benefited more than the rental compensation they could have got. Writ jurisdiction under Article 226 of the Constitution of India cannot be exercised in favour of such litigants. In case if the claim of the petitioners for rental compensation is allowed, the same will be a case of granting unjust enrichment to the petitioners, as the Reference Court in paragraph 17, clause (2) of the order has granted adequate compensation for taking advance possession of the land of the petitioners. In that view of the matter, no case for interference is made out. As such, the petition is dismissed. Rule discharged. No costs.