
(1937) 11 BOM CK 0003
In the Bombay High Court
Case No : First Appeal No. 14 of 1932

Mahadev Balkrishna Arekar	Vs	APPELLANT
The District Deputy Collector		RESPONDENT

Date of Decision : 26-11-1937

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : AIR 1938 Bom 325 : (1938) 40 BOMLR 432

Hon'ble Judges : Rangnekar, J;Macklin, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rangnekar, J.—This appeal arises out of proceedings under the Land Acquisition Act, and it appears from the evidence in the case that the village of Sawla, taluka Mawal, was notified for acquisition under the Act for Andhra Valley Power Supply under Government Notifications No. 2904, dated August 3, 1920, and No. 2984, dated October 10, 1920, The village was granted in inam originally to one Damodar Gopal Karve. The sanad granted to the Karves by the Inam Commission inter alia provides that the inam is to continue in the family so long as there may be in existence descendants of the original grantee in the male line. The grant was of the entire village with the exception of hakdars, kadim inamdars and the mokasa ammal.

2. Before this sanad the village had been entered as an inam in the Government records in the name of the father of the said Damodar. This apparently was done under a sanad to the family by the Peshwas, and this sanad showed that the grant was of the soil to be continued from generation to generation but exclusive of the hakdars, etc.

3. The village was partitioned under a decree of the civil Court in 1879, and since then every inamdar sharer was in possession of his share. The appellant-claimant is a purchaser of a two fifth share in the inam village from some of the sharers.

4. The usual preliminary proceedings for the compulsory acquisitions and for determining the amount of compensation appear to have taken place, and the Land Acquisition Officer then made an award. By the award the officer capitalized the amount of assessment received by the inamdars at twenty years' purchase and fixed the amount of compensation to be paid to the inamdars including the appellant at Rs. 3,926-10-8, but directed that the amount should be credited to Government and the inamdars should be paid an annual cash allowance of Rs. 196-5-0, which was the amount of assessment received by the inamdars in proportion to their shares. This he did in view of the condition in the sanad to which I have referred above.

5. The award was not accepted by the appellant, and at his instance the Land Acquisition Officer made a reference u/s 18 of the Act to the District Court at Poona. Various contentions were raised by the appellant in the District Court both as regards the amount of compensation and as to the actual order for payment of the cash allowance made by the Collector. These contentions were negatived by the learned District Judge who, however, held that the claimant was entitled to the statutory fifteen per cent, increase on the amount awarded by the Collector and declared that the amount due to the claimant was Rs. 1,8064-3. Then he directed that the said amount should be deposited in Court and invested in Government securities and the interest thereon should be paid to the appellant during his lifetime, and after his death to his descendants so long as any male descendant in his family was in existence. From this order the appellant appeals.

6. The learned Counsel on behalf of the appellant has raised various contentions, one of them being that the award made by the Land Acquisition Officer was not a legal award such as could properly be referred to the civil Court u/s 18 of the Act.

7. After the case had proceeded for some time, the parties came to an agreement as to the actual amount of compensation which would become due to the appellant. Having regard to that agreement, it is not necessary for us to express any opinion on the contentions other than those left outstanding for our decision in this appeal. But I cannot help remarking that there is considerable force in the argument of the learned Counsel for the appellant as regards the legality of the award. In his letter forwarding the application for reference made by the appellant to the District Court, the Land Acquisition Officer observed as follows :-

In framing the award I felt doubtful on certain points and applied for the orders of the Collector. The matter was thereafter referred to Government and was decided by them in Government Resolution No. 2900/24, dated January 18, 1926, Revenue Department. I framed an award order accordingly and declared it on June 26, 1926.

This contention is not without force, and it may perhaps be useful to refer in this connection to the observations of Mr, Justice Batchelor in *Dossabhoy Bejanyl v. The Special Officer, Salselte Building Sites* ILR (1912) Bom. 599: 14 Bom. L.R.

592. But as we have not heard the learned Government Pleader and as the parties are now agreed as to the amount of compensation due to the appellant, the matter need not be pursued further.

8. It is now agreed that in addition to the compensation declared by the District Judge the claimant should be entitled to receive further compensation to the extent of Rs. 2,500. The questions which now fall to be decided, and on which we have heard arguments of the learned Counsel, are :-(1) whether the order made by the learned District Judge directing that the amount of compensation should be deposited in the Court and invested in Government securities and interest thereon only should be paid to the claimant is a proper order and one which is justifiable under the provisions of the Act; (2) whether the appellant would be entitled to any interest and, if so, what, and from what date; and (3) what order of costs should be made under the circumstances of this case ?

9. Now, before dealing with the relevant provisions of the Act, it is necessary to see what exactly happened before the Land Acquisition Officer. In his award, after giving details of the lands and discussing the question of assessment, the Collector came to the conclusion that the amount of compensation payable to the inamdars would be Rs. 3,926-10-8. Then in paragraph 10 at p. 115 of the record he stated that as Sawla was a personal inam village, the inamdars were entitled to get the above amount in lump sum. Then he referred to the condition in the sanad set out above and ordered that the whole amount should be credited to Government and the inamdars be paid Rs. 196-5-0 annually. This decision, it may be remarked, has no precedence in support of it nor any provision of the Act justifying it. In his judgment the learned Judge did not, we think rightly, accept the decision of the Land Acquisition Officer, but apparently acting u/s 32 of the Act directed the amount of compensation to be deposited in Court and invested in Government securities.

10. Under the Act, what has to be acquired in every case is the aggregate of the rights in the land. The particular piece of land in question has to be valued including all interests in it. The compensation has to be awarded in this way. First, the market value of the land has to be ascertained on the footing that all interests have agreed, or combined to sell, and then the sum calculated has to be distributed among various persons found to be interested. If the persons interested agree in the apportionment of the amount of compensation, the details as to such apportionment have to be specified in the award, but if any dispute arises, the Collector may refer such dispute for the decision of the Court. This is clear from Sections 3, 11, 18, 19, 20, 23, 29 and 30. [See *Bombay Improvement Trust v. Jalbhoy* ILR (1909) Bom. 483 : 11 Bom. L.R. 674] It is important to note in this case that the reference to the District Court was not made u/s 30 but: u/s 18 of the Act. Section 31(1) provides that on making an award u/s 11 the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies

mentioned in Sub-section (2). The contingencies specified in Sub-section (2) are : (1) if the persons interested are not competent to alienate the land (2) there is a dispute as to the title to receive the compensation or as to apportionment of it, and in such cases the sub-section provides that the Collector shall deposit the amount of compensation in the Court to which a reference u/s 18 has to be submitted. It is clear from the record here that this course was not followed by the Land Acquisition Officer, and admittedly no deposit" was made in the District Court when the matter was referred to it. That is clear from the order made by the District Judge. There is an important proviso to Section 31, and it says that if a person has received the whole or any part of any compensation awarded under the Act, nothing in Section 31 shall affect his liability to pay the same to any person lawfully entitled thereto. Sub-section (3) is in these terms :-

Notwithstanding anything in this section the Collector may, "with the sanction of the Local Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

Assuming that the appellant is a person having a limited interest in the land as is argued on behalf of Government, it is difficult to hold that the orders made either by the Land Acquisition Officer or by the District Court are justified by this section. The sub-section clearly contemplates an arrangement between the Collector and a person having a limited interest, and it is clear that on the facts of this case the sub-section does not come into operation at all. Section 32 provides that if the amount of compensation is deposited in Court under Sub-section (2) of Section 31, and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall (a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or (b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit, and shall direct the payment of interest arising from such investment to the person entitled to the possession of the land. The moneys are to continue to be deposited and invested either until the same are applied in the purchase of other lands or until the same are paid over to the person becoming absolutely entitled thereto. The rest of the section is not relevant.

11. It is difficult, in my opinion, to support the order made by the District Judge u/s 32. As I have pointed out, there was no deposit of the amount of compensation in the Court as required by Section 31(2). But apart from that, it is difficult to hold that the appellant and co-sharers had no power to alienate the land. The appellant himself was a purchaser of a two-fifth share. Nobody had objected to the alienation, and the record such as it shows that alienations of

the shares of the members of the family of the inamdars were permitted. The different co-sharers were allowed to partition the land. The appellant was in possession of the land pertaining to his share and notices were served on him. There was no question raised about his title to alienate his land. Further, the proceedings taken by the Collector in this matter show a recognition of the appellant's right as owner, and the award concedes that the inamdars would be entitled to compensation but for the condition in the sanad as to the duration or continuity of the inara. The inam was granted by the Peshwas even before the British Government came on the scene. It was granted as a personal inam to the family. The grant was of the soil and conveyed a full interest in the land. The grantee had a heritable estate in full proprietorship. There was no condition in restraint of alienation in either of the sanads. It was not a service inam. In our opinion, the inamdar or his assigns were owners of the village and in any event had an interest in the land which is what matters for the purpose of Section 21 of the Act. That interest being assessed for the purpose of compensation, it is difficult to see why the owners of that interest are not entitled to the benefit of it.

12. It is argued by the learned Government Pleader that because of the condition in the sanad the appellant must be deemed to be a person having only a limited interest in the land. But assuming that is so, still it is difficult to see that such a person can be said to have no power to alienate the land. Apart from the authorities which show that a person having a limited interest in the land is entitled to have it valued for the purpose of compensation under the Act, Section 31(3) clearly shows that such a person cannot be said to be a person not competent to alienate the land within the meaning of Section 31(2) or has no power to alienate the land within the meaning of Section 32(1). In my opinion what Section 31 contemplates is the present power to alienate. The Act clearly contemplates the valuation of different interests of all persons interested in the land. A person may have an absolute title to convey the property, or he may have a limited title to do so. In, either case that interest is one which is capable of being valued for the purpose of the acquisition of the land by the Collector, and the words " if there be no person competent to alienate the land" must, therefore, necessarily apply to the case where there is no present title in the person who has come forward as a claimant to the compensation fixed by the Collector. That section and the following section seem to provide for the case of persons who by reason of a personal disability have no absolute power to alienate and are. intended to protect the interest of rever-sioners when the land is taken away from the possession of such persons who hold it only on a life estate or similar limited estate, such as minors, lunatics, Hindu widows, administrators, etc., where the legal estate is in one person and the beneficial estate in another.

13. Under the Act the amount of compensation is to be divided in proportion to the value of the interests of all persons interested in the land. But the question of apportionment of the sum awarded between the several interests must not be based on hypothetical grounds. In *Bombay Improvement Trust v. Jalbhoy ILR*

(1909) Bom. 483 : 11 Bom. L.R. 674. Batchelor J. pointed out that what is to be regarded in awarding compensation is the market value of the land on the footing that all separate interests combined to sell. Had Government in this case any interest which was saleable of which the law could take note ? I think not. Their interest at best was a remote contingent interest. The only thing of which they could be said to be deprived is the chance of the inam coming to an end by failure of the line of Karves. But there was no evidence either before the Land Acquisition Officer or before the District Judge as to the pecuniary value of such a chance and for the simplest of reasons that the chance of the inam coming to an end can scarcely be appreciable by a money value or money payment. It does not appear from the record that the Secretary of State was made a party to the proceedings, nor does it appear that the special notice required by Section 9(3) was served on the Government. There was no issue raised as to whether Government was a claimant, and, if so, what was their interest ?

14. In these circumstances, we think that, apart from the fact that Sections 31 and 32 are inapplicable, the appellant is entitled to receive the whole amount now agreed upon.

15. The learned Government Pleader relies on Collector of Belgaum Vs. Bhimrao V. Patel, Whatever our view of the actual order made in that case may be, the decision would have been binding on us if it applied to the facts of this case. But that was a case of vatan property which, as the law is, stands on a different footing as to the power of a vatandar to alienate vatan property. The decisions in Assistant Collector of Karia v. Vithaldas ILR (1915) Bom. 254 : 17 Bom. L.R. 1140 and in Mahammed Ali Raja Avergal v. Ahammed Ali Raja Avergal ILR (1902) Mad. 287 seem to us to justify the conclusion we have reached.

16. We think, therefore, that the compensation which now comes to Rs. 1,806-4-3, plus Rs. 2,500 plus fifteen per cent, increase on Rs. 2,500, must be paid to the appellant forthwith. Now, as to interest, if the amount had been deposited in Court, then, of course, the claimant would not have been entitled to interest from the date of the deposit. But it is difficult to see why he is not entitled to interest from the date when possession was taken by Government from him. We think, therefore, that he is entitled to interest at six per cent., which is the usual Court rate, on this amount from the date of possession until payment. Credit will of course be given to the respondent for any money paid in pursuance of the directions in the award and in the order of the District Court.

17. Having regard to the fact that interest is allowed by this order from the date of possession, the obligation to pay cash allowance is dissolved. i

18. Having regard to the circumstances of the case, we think that each party should bear its own costs of the proceedings before the District Judge. The appellant will be entitled to have the costs of this appeal. The costs of the lower Court if recovered by the respondent to be refunded to the appellant.

Macklin, J.

19. I agree.