
(2014) 10 BOM CK 0170
In the Bombay High Court
Case No : W.P. Nos. 6982 and 6983 of 2013

Mahadu and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Constitution of India, 1950 — Article 299

Evidence Act, 1872 — Section 115

Land Acquisition Act, 1894 — Section 23 23(1A) 23(2) 28(1A) 34

Citation : (2015) 6 ALLMR 718 : (2015) 4 MhLj 818

Hon'ble Judges : R.M. Borde, J;V.L. Achliya, J

Bench : Division Bench

Advocate : P.G. Sontakke, Advocate for the Appellant; S.K. Kadam, AGP,
Advocate for the Respondent;

Final Decision : Disposed off

Judgement

R.M. Borde, J.

1. Heard. Rule. Rule made returnable forthwith. With the consent of the parties, both the petitions are taken up for final disposal at admission stage.

2. Petitioners whose landed properties have been acquired by the State for public purpose are praying for issuance of direction to the Collector and the Land Acquisition Officer to determine the amount of rental compensation payable under the policy prescribed by the Government and further direction is sought against the acquiring body to pay such amount on determination by the Collector.

3. In Writ Petition No. 6982/2013, it is contended by petitioners that their landed properties have been taken in possession for the purpose of construction of Hangarga Minor Irrigation Tank. Notification under section 4 of the Land Acquisition Act was issued on 29-8-1998 and, after following the procedure prescribed under Land Acquisition Act, award came to be passed on 14-2-2001. It is the contention of petitioners that although notification under section 4 has

been published in the year 1998, possession of properties has been taken before initiation of proceeding under Land Acquisition Act. Petitioners contend that they were not satisfied with the amount of compensation awarded by the Land Acquisition Officer and as such they preferred reference applications for determination of amount of compensation which were decided by the learned Civil Judge, Sr. Dn., Nilanga on 10-3-2007 and the reference Court directed enhancement in the amount of compensation and prescribed the rate of acquired property at ` 63,000/- and ` 42,000/- per acre. Petitioners claim rental compensation on the basis of value of the landed properties determined by the reference Court.

4. In Writ Petition No. 6983/2013 it is contended that lands have been acquired for construction of Tail Canal of Katpur Minor Irrigation Tank at Katpur. Notification under section 4 of the Act came to be issued on 11-5-1994 however, possession of the lands was already taken prior to issuance of section 4 notification in the year 1993 by entering into private negotiation. The Land Acquisition Officer passed award on 7-4-1998. Petitioners were not satisfied with the amount of compensation awarded by the Land Acquisition Officer as such, they tendered applications for reference of matter to the Civil Court for determination of value of the acquired lands. Reference Court decided the matters by judgment and award dated 23-2-2007 and prescribed compensation of the acquired lands at the rate of ` 10,000/- per R in respect of dry crop lands, at the rate of ` 15,000/- per R for seasonal irrigated lands and at the rate of ` 20,000/- per R for irrigated lands. Petitioners claim rental compensation on the basis of the value of the lands determined by the reference Court. In both petitions petitioners claim that though the applications are presented to the acquiring body in the year 2007, the amount of rental compensation has not been determined and they have not been paid the amount.

5. The State Government has formulated policy in respect of payment of rental compensation to the claimants in such of those cases where the landed properties have been taken in possession prior to initiation of proceeding under Land Acquisition Act. Under Resolutions dated 1-12-1972 and 2-4-1979 the State has provided for the circumstances in which possession of land can be taken by private negotiation and has also prescribed for payment of rental compensation at 6.5% of the final award value in respect of both nonagricultural and agricultural lands. The amount of rental compensation has been enhanced to 8% in view of Government Resolution dated 2-4-1979. In the matter of Maimune Banu Hamidali Khan and Others Vs. State and Others, the Division Bench of this Court upheld entitlement of such of those claimants whose lands have been taken over in possession by the acquiring body or the State prior to initiation of proceeding under Land Acquisition Act to receive rental compensation at the rate prescribed under Government Resolution dated 24-3-1988 and, it was further directed to release the amount as expeditiously as possible. The matter was carried to the Supreme Court by the State and the Supreme Court in the matter of State of Maharashtra and Others Vs. Maimuma Banu and Others, confirmed

the order passed by the High Court. The question that was considered by the Supreme Court is as regards payment of amount of rental compensation on the basis of determination or re-determination of the land value. In paragraph No. 9 of the judgment the Supreme Court has observed thus:

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 re-determination 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.

The Supreme Court has also directed the State and the acquiring body to pay interest at the rate of 6% per annum.

6. In the matter of Bhagwat Nathu Patil Vs. State of Maharashtra and Others, while considering the request of petitioners for payment of rental compensation the Division Bench of this Court referring to the judgment of Maimuma Banu and other judgments including the judgment in the matter of Dinkar Sandipan Gholve and others vs. The State of Maharashtra and others observed in paragraph Nos. 9 and 13 of the judgment thus:

9. -----In the same Judgment, where possession was taken before initiation of proceedings under section 4 of the Land Acquisition act, the Supreme Court has held that land owners are not entitled to the benefit under section 23(1A), between the date of possession and publication of notification nor are they entitled to the interest in terms of section 34 of the Act. Thus, a land owner whose land has been taken in possession without initiation of proceedings under the Land Acquisition Act, is denied interest in terms of section 34 of the Act, though they cease to be in possession of the land having surrendered the land by virtue of private negotiations between the parties and promise held out by the State Government that for such dispossession, they would be paid rental compensation in terms of the Government Resolutions.

13. Even if it is to be read that there is a departure in Government Resolution of 26-12-2003, in our opinion, the respondent State and/or acquiring body, would be bound by the promises made and which were held out to the land owner, who surrendered possession of his land on the express understanding that he would be paid rental compensation in terms of the Government Resolutions as they stood at the time possession was taken. Question of payment of rental compensation would not arise in the cases wherein possession is taken after 26-12-2003, except in those cases covered by Government Resolution dated 17-10-2003. If possession is taken after 26-12-2003, the rental compensation would be payable in terms of Government Resolution dated 26-12-2003. If a party has acted on a promise by the State to his detriment, the State would be

bound to be held by its promise. The doctrine of promissory estoppel and the principle thereto has evolved over a period of time in this Country. The Supreme Court in *M.P. Mathur and Others Vs. D.T.C and Others*, has observed that promissory estoppel is based on equity or obligations. It is not based on vested right. In equity the Court has to strike a balance between individual rights on one and the larger public interest on the other hand. The principle of promissory estoppel was invoked by the Supreme Court in the Case of *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, wherein it was laid down that even though the case would not fall within the terms of section 115 of the Indian Evidence Act, which indicates the rule of estoppel, it would be still open to a party who has acted on the representation made by the Government to claim that the Government should be bound to carry out the promise made by it even though the promise was not recorded in the form of formal contract as required by Article 299 of the Constitution. The principle has been evolved by equity to avoid injustice and is neither in the rule of contract nor in the rule of estoppel.

The Division Bench has issued directions in paragraph No. 17 of the judgment. Direction Nos. 1 to 4 are relevant for consideration and those are as quoted below:

(1) Rental compensation is payable on the awarded value at the rate of 6 and 1/2 % from 1-12-1972 and at the rate of 8% from 2-4-1979 till the full amount of final award is paid to the land owner. Awarded value would include all amounts determined under section 23, except section 23(1A) and section 23(2).

(2) If in reference or in proceedings under section 28(1A) or in appeal, the awarded amount is increased, the rental compensation will have to be re-determined in terms of the market value as re-determined.

(3) The interest payable on the rental compensation, not paid, would be at the rate of 6% for the period in default. This amount would be, however, payable only from 1-4-2000.

(4) Considering the observations in *R.L. Jain (D)*, the rental compensation will be decided by the Special Land Acquisition Officer. While deciding rental compensation, the Special Land Acquisition Officer, Collector, would hear the interested persons, i.e. land owners or other parties have interest as also the acquiring body. While do so, if the date of taking possession of the land is not set out in the award, the Special Land Acquisition Officer to decide the same.

7. In the matter of *Dinkar Sandipan Gholve and others vs. State of Maharashtra and others* in Writ Petition No. 2559/2008 decided by Division Bench of this Court on 24-7-2008, the points framed for consideration were as recorded below:

1. Whether the land owners whose land were taken by private negotiations before the Notification under section 4 are entitled for additional amount under section 23(1A) of the Land Acquisition Act as also interest on the compensation awarded under section 34 of the Land Acquisition Act?

2. In the alternative are the petitioners entitled to rental compensation in terms of Government Resolution dated 1st December, 1972 read with G.R. Dated 2nd April, 1979 and if so whether rental compensation is to be worked out on the market value or the Award value and in that context what will be the meaning of expression "Award value" and secondly whether such rental compensation is to be paid from the date of taking possession till the date on which the full amount of final Award is paid or the date of section 4 Notification.

So far as entitlement of land owners whose lands were acquired by private negotiation before issuance of notification under section 4 of the Act to claim amount under section 23(1A) of the Act and interest under section 34 of the Act is concerned, the Division Bench held in negative. Referring to the judgment in R.L. Jain's matter, the Division Bench held that such claimants are not entitled to benefits under section 23(A) and section 34 of the Land Acquisition Act in respect of amount payable from the date of possession which is prior to issuance of section 4 notification. So far as entitlement of such of the claimants to receive rental compensation in terms of Government Resolutions dated 1-12-1972 and 2-4-1979 are concerned, the Division Bench has held in affirmative and further upheld their entitlement to claim compensation on award value i.e. on consideration of full amount of the final award i.e. either passed by the Land Acquisition Officer or by the civil Court. Relevant observations are found in paragraph Nos. 11 and 14 of the judgment which read thus:

11. The rental compensation has to be paid in terms of the Government G.R. In terms of the Government Resolution rental compensation is worked out at 8% of the Awarded value. The awarded value, therefore, considering section 23 of the Land Acquisition Act would include all components included under section 23. It must be borne in mind that this rental compensation is payable based on two aspects (1) possession has earlier been taken and for possession earlier taken, the interest in terms of section 34 is not payable and also nonpayment of additional amount under section 23(1A). The rental compensation, therefore, payable is the compensation worked out at the rate of 6 1/2 per cent or 8 per cent as the case may be on the awarded value and is payable from the date of taking possession till the full amount of final award is paid to the land owner.

14. Having answered the issue in our opinion, it would be appropriate that the petitioners are relegated to appear before the Special Land Acquisition Officer who will consider the following aspects:--

(i) Date of actual taking over possession.

(ii) Date of publication of Notification under section 4(1) (whichever is first) gazette, newspaper or publication in the locality.

The Special Land Acquisition Officer will then work out the rental compensation at 8 per cent from the date of taking possession till the amount awarded under the Award has been paid or in the case of dispute till the amount is deposited before the reference Court. Interest will be payable on the said rental

compensation at the rate of 6% from the expiry of six months as contemplated in Government G.R. dated 24th March, 1988 till payment as contemplated by Government G.R. dated 1st December, 1972.

8. Survey of aforesaid judgments referred by us would indicate that petitioners would be entitled to claim amount of rental compensation on the basis of the policy prescribed by State of Maharashtra in that behalf. Claimants would be entitled to claim rental compensation on award amount i.e. land value determined by the reference Court dealing with references presented by petitioners and petitioners would be entitled to claim rental compensation from the date of taking over possession of the property till the date of the award. Petitioners would also be entitled to claim interest on the amount of rental compensation. It is informed that petitioners have tendered applications claiming rental compensation to the acquiring body and the amount of rental compensation is required to be determined by the Collector and/or the Land Acquisition Officer. In the circumstances, it would be open for the petitioners to tender appropriate applications to the concerned Collector and the Land Acquisition Officer. If petitioners tender fresh application claiming rental compensation to the Collector and the Land Acquisition Officer within a period of eight weeks from today, we direct the Collector as well as the concerned Land Acquisition Officer to determine the amount of rental compensation after extending an opportunity of hearing to petitioners as well as acquiring body, on consideration of merits of claim, as expeditiously as possible, preferably within a period of four months from the date of receipt of such applications. It is clarified that this Court has not considered the merits of claim of petitioner and it would be open for Collector and Land Acquisition Officer to take appropriate decision in accordance with merits of application. On determination of value of rental compensation and in the event of upholding entitlement of petitioners to receive the amount, concerned acquiring body shall disburse the amount to petitioners in accordance with determination by the Collector and/or the Land Acquisition Officer, as expeditiously as possible, preferably within a period of four months from the date of such determination. With directions as above, both writ petitions are disposed of. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.