

(2003) 01 BOM CK 0094
In the Bombay High Court
Case No : First Appeal No. 478 of 2002

Maharashtra Industrial Development Corporation	APPELLANT
Vs	
Ahmad Abdul Raheman and The Special Land Acquisition Officer (I)	RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 18, 26(2)
Maharashtra Industrial Development Act, 1961 — Section 32(2), 33, 34, 34(1), 34(2)

Citation : (2003) 01 BOM CK 0094

Hon'ble Judges : P.B. Gaikwad, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.D. Dande, for the Appellant; A.B. Bajpai, AGP for respondent No. 2 in F.A. 478/02 and R.P. Phatke, A.G.P. in F.A. 481 and 483/2002, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—The Government of Maharashtra had, by notice u/s 32(2) of the Maharashtra Industrial Development Act, 1961 (for short, "the Industrial Development Act") sought to acquire agricultural lands from four different villages in Jalgaon District, namely, Manyar Khede, Kusumba Khurd, Khedi Buzark and Mehrun for the proposed Jalgaon Industrial area and the said notice was issued on 25.9.1980.

2. An award u/s 33 came to be passed by the Collector, Jalgaon on 30th May, 1998 and it was a common award for all the pieces of land under acquisition from these four villages. At the instance of some of the land owners, references were made u/s 34(1) of the Industrial Development Act, for enhancement of compensation and these references, listed separately from time to time, were decided in the month of January 2001 by the court below and the compensation payable was enhanced to Rs.35,000/per hectare. Though the present appellant i.e. the Maharashtra Industrial Development Corporation, which is a creation of

Industrial Development Act and an undertaking of the State of Maharashtra, it was not impleaded as a necessary party either before the Collector while passing the award u/s 33 or before the Court below in the reference u/s 34 of the Industrial Development Act.

3. A group of other appeals arising from the common award dated 30.5.1986 and separate awards passed by Reference Court came to be decided by a common judgment dated 28th August, 2001, by a Single Bench of this Court (Vagyaji J.). These appeals were registered as First Appeal No. 172 to 233 of 2001. This Court, by placing reliance on the decision in case of "Agra Development Authority Vs. Special Land Acquisition Officer" (2001) 2 SCC 646, held that the common award passed by the Collector u/s 33 of the Industrial Development Act, on 30/5/1986 as well as the individual awards passed by the Court below u/s 34(1) of the said Act, were vitiated on account of the failure to implead the present appellant as a necessary party and offer it an opportunity of hearing to contest the claims made for compensation or for enhanced compensation, as the case may be. The law laid down in the case of "Agra Development Authority " (Supra) has been reiterated in the case of "Abdul Rasak and others Vs. Kerala Water Authority" reported in AIR 2002 SCW 477.

4. This group of First Appeals, came to be listed before another Single Bench (A.B. Naik, J.) of this Court and by order dated 26th August, 2002, a point for consideration by the Division Bench was framed regarding the maintainability of these appeals u/s 96 of the C.P.C. against the award passed by the court below u/s 34(1) of the Industrial Development Act. The scheme of the Industrial Development Act, on all the relevant issues raised in this reference has been duly considered by another Division Bench of this Court (Pendse and Tipnis, JJ) in the case of State of Maharashtra and another Vs. Chandrakant " Pomaji Vasudev Somshetti (since deceased by LRS) and others, . Section 34(1) of the Industrial Development Act states that any person aggrieved by the decision of the Collector determining the amount of compensation may, within sixty days from the date of such decision, in so far as it affects him, by written application to the Collector require that the matter be referred by him for determination of the Court as defined in the Land Acquisition Act, 1894, in its application to the State of Maharashtra, and when any such application is made, the provisions of Part III of the said Act shall mutatis mutandis apply to further proceedings in respect thereof and, therefore, when such a reference is made, it would be treated to be a reference u/s 18 of the Land Acquisition Act, before the Court as defined in the said Act. An award passed in such a reference would be a decree of the Court in terms of Section 26(2) of the Land Acquisition Act. A Division Bench of this Court, in Chandrakants case (supra), therefore, held that the award passed u/s 34(1) of the Industrial Development Act by the Court, being a decree within the meaning of Section 26(2) of the Land Acquisition Act, can be challenged by filing an appeal u/s 96 of the C.P.C. We are in respectful agreement with the view so recorded in Chandrakants case and, therefore, these appeals filed by the appellant Corporation are maintainable.

5. Initially, Section 34 of the Industrial Development Act, read as under :-

"34(1) Any person aggrieved by the decision of the Collector determining the amount of compensation may, within sixty days from the date of such decision, in so far as it affects him, appeal if the land acquired is situate in Greater Bombay to the City Civil Court, and elsewhere to the District Court. (2) The decision of the Court on such appeal, and subject only to such decision, the decision of the Collector determining the amount of the compensation, shall be final."

The same was subsequently amended by the Maharashtra Legislature vide Maharashtra Industrial Development (Amendment) Act, 1974. The amendment received assent of the President on 17th June, 1975 and the amended provisions of Section 34 read thus :-

"34 (1) Any person aggrieved by the decision of the Collector determining the amount of compensation may, within sixty days from the date of such decision, in so far as it affects him, by written application to the Collector require that the matter be referred by him for determination of the Court as defined in the Land Acquisition Act, 1894, in its application to the State of Maharashtra, and when any such application is made, the provisions of Part III of the said Act shall mutatis mutandis apply to further proceedings in respect there. (2) The decision of the Court, on such reference, and subject only to such decision, the decision of the Collector determining the amount of the compensation, shall be final."

6. As per the old scheme of Section 34, the proceedings before the Court were by way of an appeal against the decision of the Collector in determining the amount of compensation, whereas in the amended provision, the said proceedings are in the nature of a reference and, therefore, the decision of the reference Court shall be an award within the meaning of Section 26(2) of the Land Acquisition Act.

7. We conclude that these appeals are maintainable u/s 96 of the C.P.C. and the provisions of sub section 2 of Section 34 of the Industrial Development Act, in any way, do not hamper the remedy of an appeal u/s 96 of the C.P.C.

8. Now, coming to the legality of the award impugned in these appeals, we have noted that the common award dated 30/5/1986 passed by the Collector has already been quashed and set aside by the Single Bench of this Court (Vagyani, J.) on 28th August, 2001 and we are informed that all the parties concerned including the respondents in these three appeals, as well the appellant Corporation have been served with the notices by the Collector, for fresh determination of the compensation payable to the land owners u/s 33 of the Industrial Development Act. We deem it appropriate to follow the same view taken by the learned single Judge vide judgment dt. 28th August, 2001 in these appeals as well, without, however, making it as a precedence in future appeals.

9. In the result, we allow these appeals and quash and set aside the impugned

awards passed by the Court below in Reference No. 174/1990 (impugned in First Appeal No. 478/02), Reference No. 170/1990 (impugned in First Appeal No. 481/02) and Reference No. 10/1988 (impugned in First Appeal No. 483/02). As the common award passed by the Land Acquisition Officer on 30/5/1986 has already been quashed and set aside, we direct the respective parties , to appear before the Collector, who shall proceed afresh for determining the compensation payable to the respective land owners (respondents in these appeals) u/s 33 of the Industrial Development Act. We further direct that the Collector shall complete these Denovo proceedings as expeditiously as possible and in any case, within a period of six months from today, after giving an opportunity of hearing to all the parties concerned. Civil Applications do not survive.