
(2014) 03 BOM CK 0088
In the Bombay High Court
Case No : Writ Petition No. 11837 of 2013

Maharashtra Krishna Valley Development Corporation	APPELLANT
Vs	
The State of Maharashtra and Others	RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11 12 18 18 18

Citation : (2014) 3 ABR 376 : AIR 2014 Bom 74 : (2015) 2 ALLMR 271 : (2014) 4 BomCR 626 : (2015) 3 MhLj 463

Hon'ble Judges : M.S. Sonak, J;A.S. Oka, J

Bench : Division Bench

Advocate : Vijay Patil, for the Appellant; V.S. Gokhale, AGP for Respondent Nos. 1 to 3, Dr. R.P. Sabban and Mr. D.G. Dhanure for Respondent Nos. 4B-I to 4B-III, 4-C, 4-D, 5(1) to 5(40), 6 and 7, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka, J.—The petitioner is a statutory Corporation established under the Maharashtra Krishna Valley Development corporation Act, 1996. The dispute in this petition relates to the lands held by the respondent Nos. 4 to 48 which were acquired for construction of Minor Irrigation Percolation Tank at Village Pratapnagar in Solapur District. An Award was made u/s 11 of the Land Acquisition Act, 1894 (for short "the said Act") on 12th September 1994. After establishment of the petitioner Corporation, the said project of minor irrigation Percolation tank was transferred by the Irrigation Department of the State Government to the Petitioner-Corporation. An Application u/s 18 of the said Act was made by Shri Shamrao Rupa Pawar and Shri Narhar Vyankatesh Kulkarni. Their lands were notified under the same notification u/s 4(1) of the said Act under which the lands of the respondent Nos. 4 to 48 which are subject matter of the present petition were notified. On 13th February 2004, an Award was made in the said Reference under which the Civil Court granted enhanced compensation. On the basis of the said Judgment and Award, one Jagannath

Mehtre applied under sub-section 1 of section 28-A of the said Act for re-determination of the compensation. His lands were also notified under the same notification u/s 4(1). On 19th April 2007, the Special Land Acquisition Officer passed an Award under sub-section 2 of section 28-A of the said Act on the application made by the said Jagannath Mehtre and re-determined the compensation at enhanced rate. The said Jagannath did not accept the Award and applied for a reference to the Civil court in accordance with sub-section 3 of section 28-A of the said Act. The said reference under subsection 3 of section 28-A being LAR No. 1/2008 was decided by the Civil Court by Judgment and Award dated 7th April 2011. On the basis of the said Judgment and Award, the respondent Nos. 4 to 48 made an application under sub-section 1 of section 28-A of the said Act before the Special Land Acquisition Officer for re-determination of the compensation. An Award was made on 12th November 2012 by the Special Land Acquisition Officer No. 1, Solapur under sub-section 2 of section 28-A of the said Act. Compensation offered to the said respondents by the Award u/s 11 of the said Act was enhanced by the said Award dated 12th November 2011.

2. By this petition under Article 226 of the Constitution of India, the petitioner-Corporation has challenged the said Award dated 12th November 2012. The learned counsel for the petitioner submitted that an application under sub-section 1 of section 28-A is maintainable only on the basis of an Award made in a reference u/s 18 of the said Act. His submission is that an application under sub-section 1 of section 28-A cannot be filed on the basis of the Award made on a reference made under sub-section 3 of section 28-A of the said Act. He, therefore, submitted that the impugned Award is illegal. He pointed out that at highest the concerned respondents could have applied for re-determination of compensation in accordance with sub-section 1 of section 28-A of the said Act on the basis of the Award made on a reference u/s 18 of the said Act made at the instance of the said Shamrao Rupa Pawar and Narhar Vyankatesh Kulkarni. He pointed out that the said reference was decided on 13th February 2004 and the application made by the said respondents on the basis of which the impugned Award was made was filed in June 2011. He pointed out that sub-section 1 of section 28-A provides for a period of limitation of three months and therefore, the application was barred by limitation. He urged that a reference u/s 3 of section 28-A is distinct and independent from a reference u/s 18 of the said Act. Inviting our attention to sub-section 1 of section 28-A, he urged that the said provision specifically provides that an application for re-determination has to be made on the basis of an Award made on a reference u/s 18 of the said Act. He pointed out that if applications under sub-section 1 of section 28-A are entertained on the basis of the Awards made on a reference under sub-section 3 of section 28-A, the provision relating to the period of limitation of three months incorporated in sub-section 1 will become redundant. He urged that though petitioner is the Acquiring Body, no opportunity of being heard was granted before making the impugned Award.

3. The learned counsel for the respondent Nos. 4 to 48 opposed the petition. He

urged that the application under sub-section 1 of section 28-A is maintainable on of the basis of the Award made on a reference under sub-section 3 of section 28-A of the said Act. He urged that such a reference is in fact a reference u/s 18 of the said Act. The learned AGP supported the submissions made by the learned counsel for the petitioner.

4. We have given careful consideration to the submissions. Section 28-A of the said Act reads thus:

28-A. Re-determination of the amount of compensation on the basis of the award of the Court.--(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all the other land covered by the same notification u/s 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector u/s 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to reference u/s 18.

Section 28-A was brought on statute book by the Act No. 68 of 1984. It will be necessary to make a reference to the object underlying section 28-A which is found in clause (ix) of the statement of objects and reasons of the Amending Act which reads thus:

(ix) Considering that the right of reference to the civil court u/s 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised by the comparatively affluent landowners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek redetermination of compensation, once anyone of them has

obtained orders for payment of higher compensation from the reference court u/s 18 of the Act.

(Underline added)

5. It will be necessary to make a reference to the decision of the Apex Court in the case of Union of India and another Vs. Pradeep Kumari and others, . In paragraph 4 of the said decision, the Apex Court made a reference to the statement of Objects and reasons. In paragraph 8, the Apex Court laid down the tests for interpreting section 28-A of the said Act. In paragraph 8, the Apex Court observed thus:

8....In relation to beneficial legislation, the law is well settled that while construing the provisions of such a legislation the court should adopt a construction which advances the policy of the legislation to extend the benefit rather than a construction which has the effect of curtailing the benefit conferred by it. The provisions of Section 28-A should, therefore, be construed keeping in view the object underlying the said provision.

(underline added)

6. It will be necessary to make a reference to section 18 of the said Act which reads thus:

18. Reference to Court.--(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made,--

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, sub-section (2); or within six months from the date of the Collector's award, whichever period shall first expire.

7. It must be noted here that sub-section 1 of section 28-A enables any person aggrieved by the Award of the Collector u/s 11 of the said Act who has not applied u/s 18 of the said Act to apply for re-determination of the compensation on the basis of the Award of the Court. The opening portion of the sub-section 1 refers to the Award under "this part" by which the Court allows the applicant any amount of compensation in excess of amount awarded by the Collector u/s 11 of the said Act. Sections 18 to 28-A are in same part III of the said Act. Sub-section 3 of section 28-A provides that any person who has not accepted the Award

made under sub-section 2 thereof may require the matter to be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may, apply to such reference as they apply to a reference u/s 18 of the said Act. Thus, on plain reading of sub-section 3, a reference made thereunder to the Court partakes character of a reference made u/s 18 of the said Act to which provisions of sections 18 to 28 become applicable.

8. As far as the nature of Award under sub-section 2 of section 28-A is concerned, it will be necessary to make a reference to the decision of the learned Single Judge (A.S. Oka, J.) of this Court in the case of Krishnabai Padu Govari (since deceased by legal representatives) and others vs. State of Maharashtra 2013(7) BCR 122. In paragraph 9 of the said decision this Court held thus:

9 Thus, as held by the Apex Court, there is no difference between an Award under sub-section (2) of section 28(A) and an Award u/s 11 to which section 12 is applicable. It must be noted here that even sub-section (1) of section 11 contemplates an inquiry by the Collector into the objections of any person interested. Thus, the submission that the Award under sub-section (2) of section 28-A is not an offer will have to be rejected. It is an Award on par with an Award u/s 11 of the said Act.

9. On this aspect it will be necessary to consider what the Apex Court has observed in the case of Union of India vs. Pradeep Kumari in paragraph 13. An argument was canvassed that while redetermining the compensation u/s 28-A, it is not permissible for the Collector to grant interest u/s 28 of the said Act. This argument has been dealt with by the Apex Court in paragraph 13 of the said decision. The relevant part of paragraph 13 read thus:

13. Shri Goswamy has next contended that while redetermining the amount of compensation u/s 28-A it is not permissible for the Collector to award interest on the additional amount of compensation awarded by him for the reason that u/s 28 of the Act only the court can direct payment of interest on the excess amount awarded as compensation and no such power is conferred on the Collector and, therefore, interest cannot be awarded by the Collector on the additional amount of compensation determined u/s 28-A. It is no doubt true that u/s 28 only the court can direct payment of interest on the excess amount awarded as compensation and the Collector is not competent to award interest on the additional amount of compensation under the said provision. But sub-section (2) of Section 28-A provides that after an application has been submitted under sub-section (1) of Section 28-A the Collector after conducting an inquiry makes an award determining the amount of compensation payable to the applicants and under sub-section (3) of Section 28-A any person who has not accepted the award under sub-section (2) may move the Collector requiring that the matter be referred for determination to the court and the provisions of Sections 18 to 28 have been made applicable to such reference. This would show that after an application has been submitted u/s 28-A(1) for redetermination of the amount of compensation the process of such redetermination results in making of an award

by the Collector and a person not accepting the said award can move the Collector to refer the matter to the court for determination and such reference is governed by Sections 18 to 28. If that is so, Section 34 of the Act would be applicable to the award that is made by the Collector under sub-section (2) of Section 28-A and it would be permissible for him to award interest u/s 34 on the additional amount of compensation awarded by him. The second contention urged by Shri Goswamy is, therefore, rejected.

(underline added)

10. The object of 28-A seems to be to help a person interested, who for the various reasons was unable to file an application for Reference u/s 18 of the said Act. The object seems to be to pay the compensation to the person interested to which in law he was entitled by way of an award u/s 11 of the said Act. The object is to pay compensation to him to which he was legitimately entitled to on the date of passing an award u/s 11 of the said Act. If Sub-sections (2) and (3) of Section 28A are read together, it appears that an Award under Sub-section (2) is on par with an Award u/s 11 of the said Act in so far as the provisions of reference u/s 18 of the said Act are concerned. Once an Award under Sub-section (2) of Section 28A is made, it replaces an Award u/s 11 for all purposes as it becomes an offer of the Appropriate Government.

11. Thus, Award made by the Collector under subsection 2 of section 28-A of the said Act is on par with the Award made u/s 11 of the said Act in as much as the offer made by the original Award u/s 11 of the said Act in relation to a person interested who makes an application under sub-section 1 of section 28-A is substituted by an Award made under sub-section 2 of section 28-A. The effect of making an award under sub-section 2 of section 28-A offering additional compensation is that the Appropriate Government accepts that the compensation offered by the Award u/s 11 was not adequate. Under sub-section 3 of section 28-A, a remedy is provided to a person who has not accepted the Award under sub-section 2 of section 28-A to apply for a reference to the Court. Once such application is made, for all purposes, it becomes an application under sub-section (1) of section 18 of the said Act and it will be governed by the provisions of sections 18 to 28 of the said Act. For all purposes including for the purpose of a reference u/s 18, an Award under subsection 2 of section 28-A granting enhancement becomes an Award u/s 11. The submission of the learned AGP as well as the learned counsel for the petitioner was that sub-section 1 of section 28-A does not make a specific reference to the Award made on a reference under sub-section 3 of section 28-A. In fact, sub-section 1 of section 28-A provides that "Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11", a person aggrieved may apply for re-determination of compensation. Sub-section 1 applies when the Award of the Court allows the applicant any amount of compensation in excess of the amount awarded by the Collector by an Award u/s 11 of the said Act. The Award made on a reference under sub-section 3 of

section 28-A of the said Act will be an Award of the Court under part III which is specifically referred to in subsection 1 of section 28-A of the said Act. Thus, when such Award of the Court allows an amount in excess of the amount provided in the Award u/s 11, an application under sub-section 1 of section 28 will lie. Thus, an application will lie under said sub-section even on the basis of the Award made by the Court on a reference made in accordance with sub-section 3 of section 28-A of the said Act. Therefore, the first submission made by the learned counsel for the petitioner has no merit.

12. The second contention is that the petitioner being the Acquiring Body ought to have been heard while passing the impugned Award. We must note here that a notification u/s 4(1) of the said Act in relation to the lands of the contesting respondents was published on 28th August 1991 and the Award u/s 11 was made on 22nd June 1994. In paragraph 3 of the petition, the specific averment is that the acquisition of the lands of the respondents was at the instance of the Irrigation Department of the State Government. In fact, in paragraph 1 of the petition it is stated that the petitioner-Corporation was formed in the year 1996. Therefore, by no stretch of imagination, it can be said that either the petitioner-Corporation is the Acquiring Body or the acquisition of the land of the respondents was at the instance of the petitioner-Corporation. Therefore, even the second contention has no merit.

13. Now we turn to the impugned Award. The re-determination was sought on the basis of the Judgment and Award in LAR No. 11 of 2008 which in turn relies upon the Awards in LAR Nos. 34 and 37 of 1995. In paragraph 7, it is stated that a decision has been taken by the State Government not to challenge the Awards passed in LAR Nos. 34 of 1995 and 37 of 1995. It is not the case of any of the parties that the Award on the basis of which application for re-determination was made by the concerned respondents has been challenged by the petitioner or by the State Government. It is undisputed that notification u/s 4(1) of the said Act in relation to the lands of the contesting respondents as well as lands subject matter of the Award relied upon by the respondents is the same. No case is made out by the Petitioner that the lands of the contesting respondents and the lands subject matter of the Award relied upon by the contesting respondents are not comparable. The impugned Award is consistent with the Award of the Civil Court which has become final. Hence, we are of the view that no case is made out for interference in writ jurisdiction under Article 226 of the Constitution of India. We accordingly pass the following order:

(i) Writ Petition is rejected;

(ii) If the compensation amount payable under the impugned Award is not yet deposited by the petitioner with the Special Land Acquisition Officer, we direct that the same shall be deposited within a period of two months from today. If the amount is already deposited, the persons entitled thereto will be entitled to withdraw the same on expiry of a period of two months from today;

(iii) There will be no order as to costs.