

(2003) 01 BOM CK 0090

In the Bombay High Court

Case No : First Appeal No's. 325 to 328 and 411 of 1994

Maharashtra State Electricity Board

APPELLANT

Vs

Pralhadsa Lahanusa Kashtriya and Another

RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2004) 1 MhLj 649

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

Bench : Division Bench

Advocate : H.T. Joshi, for the Appellant; A.V. Gondhalekar, A.G.P., A.H. Kasliwal, S.V. Gangapurwala, R.F. Total, D.K. Dagadkhair and Uday B. Dube, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—The Government of Maharashtra had acquired the agricultural land located in Survey Nos. 374/1, 374/1/2, 375/1/2, 375/3 and 378 of Sangamner for the purpose of construction of 138 KV Sub Station of Maharashtra State Electricity Board (M.S.E.B., for short) at Sangamner and the total area admeasured 7 Hectares 97 Ares. Award came to be passed on 7th April, 1986. Being dissatisfied with the award amount some of the land holders applied, u/s 18 of the Land Acquisition Act, 1894, for reference and accordingly Reference Nos. 25, 26, 27, 28 and 29 of 1989 came to be made before the Court of learned Civil Judge, Senior Division at Sangamner. All these References were decided by a common judgment rendered on 25th of November, 1991.

2. The M.S.E.B., for whom these lands were acquired, has challenged the common award by filing these appeals, which have been admitted in July, 1994. We have also noted that some of the land owners have challenged the same common award in First Appeal Nos. 268, 269, 367 of 1992 and 267 of 1993.

3. The M.S.E.B. has raised a preliminary grievance that it was neither impleaded

as Respondent in the Reference proceedings before the Court below nor it was issued a notice by the said Court for being heard and offered an opportunity of placing its evidence on record to contest the enhancement claim made by the land owners. Shri H.T. Joshi, the learned Advocate for the M.S.E.B., has invited our attention to the decision in the case of Agra Development Authority Vs. Special Land Acquisition Officer and Others, and submitted that there being an enhanced decree, which goes to the root of the matter, viz. the M.S.E.B. having not been impleaded as an additional respondent, as well as issued notice by the Courts below for being heard, the award impugned cannot be sustained and the Reference are required to be remanded to the said Court for fresh determination, after hearing all the parties concerned, including the M.S.E.B. In the case of Abdul Rasak and Ors. v. Kerala Water Authority and Ors. AIR 2002 SCW 477 the view taken in Agra Development Authority (supra) was reiterated after considering the Constitution Bench judgment in the case of U.P. Awas Evam Vikas Parishad v. Gyan Devi 1995 AIR SCW 393 and the decision of the High Court of Kerala (Division Bench) remanding the references for fresh decision by the Reference Court, after affording the parties an opportunity of adducing evidence in support of their respective contentions, was upheld.

4. Shri Joshi also submitted that the M.S.E.B. did not, at any time, object to the award passed by the Land Acquisition officer and, therefore, it would not be appropriate to remand the claims for enhanced compensation to the Land Acquisition Officer and instead the references be remanded to the Reference Court with a direction to hear and decide the same within a fixed period. Respective parties, in view of the enunciations cited above, also submitted that ends of justice would be met if the references are remanded to the Court below for fresh determination by affording an opportunity to all the parties concerned to adduce evidence, if any, and decide the same within a fixed period.

It is also understood that the amounts which have been received by the [and owners would always be subject to the final adjudication by the Reference Court and in case the land owners' claim for higher compensation is accepted they would be entitled for the difference and if the Court slashes down the compensation amount, the land owners would be required to refund the amount of difference, subject, however, to the legal rights of the respective parties.

5. Following the law laid down by the Apex Court in the case of Agra Development Authority (supra) as well as Abdul Rasak (supra) we allow these appeals filed by the M.S.E.B. and quash and set aside the impugned award. All the Land Acquisition References, which were decided by the said common award, are hereby remanded to the Court of learned Civil Judge, Senior Division at Sangamner for fresh determination, as expeditiously as possible and, in any case, within a period of six months from the date the parties appeared before it consequent to this order. The parties, including the M.S.E.B., shall appear before the said Court on 10th of February, 2003. The M.S.E.B. shall place its application for being impleaded as a Respondent in all the concerned References and the

Court below shall pass an order on the said application, on that day itself, impleading the Applicant M.S.E.B. as an additional respondent. No fresh notice shall be necessary to be issued to the M.S.E.B. after this Application is allowed.

6. Needless to mention, all the parties concerned shall be entitled to bring on record evidence or additional evidence in support of their respective claims and the compensation amount, if has been paid pursuant to the award impugned in these appeals, shall be subject to the fresh award to be passed by the Court below.

7. Costs in cause.

8. Order to go forthwith along with the R. and P., if received.