
(2004) 04 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No's. 5568 and 5572 of 1997

Maresh Shivaji Dighe and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 18, 6

Citation : (2004) 3 ALLMR 260 : (2004) 4 MhLj 614

Hon'ble Judges : V.G. Munshi, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : S.K. Shinde, for the Appellant; N.B. Khandare, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Heard.

Perused the records.

2. In both these petitions common questions of law and facts arise and, therefore, they were heard together and are being disposed of by this common judgment.

In both these petitions, the petitioners challenge the award passed by the Land Acquisition Officer in the land acquisition proceedings, being contrary to the mandate of Section 11A of the Land Acquisition Act, 1894 (hereinafter called as "the said Act"), inasmuch as that, the award was not passed within a period of two years, from the date of last declaration of the notification u/s 6 of the said Act.

3. Few facts relevant for the decision are that, the respondent sought to acquire land for the purpose of Resettlement of Project Affected persons of Upper Pravara (Nilbande) Project, Taluka Akole, District Ahmednagar, by issuing notification u/s 4 of the said Act on 31st of October, 1992, and the same included

the land to the extent of 81 Rule from Gat No. 173 of the petitioners in Writ Petition No. 5568/1997 and 81 Rule from Gat No. 56 of the petitioners in Writ Petition No. 5572/1997. The gazette notification u/s 4 was published in the official gazette on 3rd of December, 1992. After hearing the objections by the parties and enquiry u/s 5A of the said Act, a notification u/s 6 of the said Act came to be issued on 3rd of December, 1993. The same was published on 20th December, 1993, in the local newspaper. It was declared in the concerned locality on 4th of December, 1993. The award came to be passed on 8th of March, 1996, and notices u/s 12(2) of the said Act came to be served upon the petitioners on 17th October, 1997.

4. It is the case of the petitioners that, on enquiry with the concerned officers, it was learnt that the last date of declaration of the notification u/s 6 was 4th December, 1993 and even the relevant register in that regard confirmed the said fact and the same was also revealed to the petitioner from the certificate issued in that regard by the Tahsildar, on request by the petitioners. It is, therefore, the case of the petitioners that, considering the provisions of Section 11A of the said Act and the law laid down by the Apex Court in Bihar State Housing Board Vs. State of Bihar and Others, , the award is liable to be set aside, being in violation of the mandatory provisions of law contained in Section 11A of the said Act. On the other hand, it is the case of the respondents that the records before the Land Acquisition Officer disclose that the declaration of the notification u/s 6 for the last time was made in the locality on 10th of March, 1994, and, therefore, the award was passed within the period of two years specified u/s 11A, and, besides that, as the petitioners have already preferred Reference u/s 18 of the said Act, asking for enhancement of the compensation, they are not entitled to challenge the validity of award as, by seeking reference u/s 18, they have accepted the decision for acquisition of the land, waived their right to challenge the acquisition of land and only dispute which remains to be considered is in relation to the compensation for the land acquired. It is, therefore, the contention of the respondents that the petition is liable to be dismissed.

5. Section 11A of the Land Acquisition Act provides that the Collector shall make an award u/s 11 within a period of two years from the date of publication of the declaration and, if no award is made within that period, the entire proceedings for acquisition of the land shall lapse. Proviso to Section 11A states that in a case where declaration has been published before commencement of Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from the commencement of the said Amendment Act. The explanation to Section 11A provides that in computing the period of two years, referred to in the said Section, the period during which any action or proceeding, to be taken in pursuance of the said declaration, is stayed by an order of a court, shall be excluded.

6. The facts that the award was passed on 8th of March, 1996, and communication thereof was made to the petitioners on 17th October, 1997, are

not in dispute. It is also not in dispute that the notification u/s 6 of the said Act was issued on 3rd of December, 1993. It is a matter of record that it was published in the newspaper on 20th December, 1993. The controversy relates to the last date of declaration of the said notification u/s 6 of the said Act. However, the said controversy stands resolved and put to rest consequent to the clear endorsement in that regard in the register maintained by the competent authorities to record such declaration in the village and confirmed by the Tahsildar. It is not in dispute that the competent authorities in the village maintained the register called "DAWANDICHE REGISTER". The Dawandiche Register (Exh. P-1) is produced in the court, certified copy of which was already placed on record by the petitioner along with the petition, which apparently discloses that the concerned notification u/s 6 was made known to the people in the locality by affixation of the copy of such notification in the office of Gram Panchayat as well as by pronouncement by beat of drums on 4th of December, 1993. The register bears the signature of the person who had declared the said notification by beat of drum on the said day. The said signature has also been confirmed by the Talathi, namely, Mohandas Kulkarni who had been Talathi at the concerned village at the relevant time.

7. An attempt was made on behalf of the respondents to contend that the declaration of the said notification u/s 6 was in fact made in the village on 10th March, 1994 and heavy reliance was placed in that regard on a letter dated 10th March, 1994, stated to have been written by the Talathi by name Mohandas Kulkarni. Consequent to the discrepancy disclosed, the Government Advocate was required to produce the original records regarding acquisition proceedings and also to secure presence of Mohandas M. Kulkarni in the court and we must place our appreciation on record for the learned A.G.P. Shri N.B. Khandare for having secured the presence of the said person and production of the documents within twenty four hours from the time it was informed to the learned A.G.P. When the matter was heard, consequent to the discrepancy, a statement on oath of Mohandas M. Kulkarni reveals that the letter dated 10th March, 1994, was in fact signed by the said Talathi under pressure from the officers belonging to the Land Acquisition relating to the concerned project and that the signature was obtained on a blank paper. In other words, the contents of the letter dated 10th March, 1994, could not be given any credibility and, on the contrary, it appears that the said letter was prepared only to save the award from being nit by the provisions of Section 11A of the said Act. Indeed, once the Dawandiche Register clearly disclosed that the declaration of Section 6 in the locality for the last time was made on 4th December, 1993, and there being no other material available before the Land Acquisition Officer to justify the declaration to have been made beyond the date of 4th December, 1993 the Land Acquisition Officer could not have proceeded to pass the award on 8th of March, 1996, as the said day was clearly beyond the period of two years from 4th of December, 1993. At this stage, it is also to be noted that the Tahsildar of Sangamner in his letter dated 24th November, 1997, has clearly stated that the concerned register maintained

by the competent authorities does not disclose declaration of notification otherwise than on the date mentioned in the register and particularly, on 10th of March, 1994. In other words, the authorities who are required to maintain the concerned register have clearly confirmed that there was no declaration of the notification made on 10th March, 1994. These facts disclose that the letter dated 10th March, 1994, sought to be relied upon by the respondents, cannot be given any credence, in relation to the point regarding declaration of the notification u/s 6 and the petitioner is justified in contending that the last date of declaration was 4th December, 1993.

8. The Apex Court, in Bihar State Housing Board's case, *supra*, has clearly ruled thus :

"The crucial words in Section 11A are "within a period of two years from the date of publication of the declaration". Section 6(2) deals with various modes of publication, as enjoined by the Legislatures and what is envisaged by the statute is a conjoint publication by all such methods. Various modes as prescribed in the provision itself are: (a) Publication in the Official Gazette, (b) Publication in two daily newspapers circulating in the locality in which the land is situate of which at least one should be in the regional language, and (c) Public notice of substance of such declaration at convenient place in the locality. There is no option left to anyone to give up or waive any one or other of the modes and all such modes have strictly to be resorted to. Sub-section (2) of Section 6, therefore, necessarily, makes it abundantly clear that the last of the dates of the publication and giving of such public notice shall "hereinafter" be referred to as the date of publication of the declaration. Therefore, the expression "the date of publication of declaration" appearing in Section 11A, a subsequent to Section 6, answering the stipulation "hereinafter" has to be the last of the dates out of the three modes of the publication ordained by the Statute. In substance, the triumvirate modes are cumulative and inseparable in the sense that unless all the three modes are resorted to and completed, there is no scope for the limitation period of two years beginning to run or for the penal consequences envisaged ensuing therefrom."

9. What follows from the provisions of law contained in Section 11A of the said Act and decision of the Apex Court in Bihar State Housing Board's case (*supra*) is that it is mandatory for the authorities to make an award u/s 11 within the period of two years as specified under the provision of law comprised u/s 11A of the said Act and, in case of failure to make such award, the entire proceedings for acquisition stand lapsed. Secondly, it follows that the period of two years has to be counted from the date of the last declaration of the notification u/s 6. Thirdly, that for the purpose of publication and declaration of notification all the three modes as prescribed under the law and clarified by the decision of the Apex Court are required to be followed strictly in consonance with the provisions of law. Any failure in that regard on the part of the authority may prove fatal to the acquisition proceedings and penal consequences may follow.

10. Applying to the facts of the case in hand the said law comprised u/s 11A of the said Act and further clarified by the Apex Court in Bihar State Housing Board's case (supra), it is apparent that the last date of declaration of the notification u/s 6 was 4th December, 1993, whereas the award was passed on 8th of March, 1996, i.e. much after lapse of period of two years. Consequently, the award in question necessarily has resulted in proceedings for the acquisition of the land, which is the subject matter of these petitions, to have lapsed.

11. It is sought to be contended on behalf of the respondents that, since the petitioners have already preferred reference u/s 18, they have accepted the decision of the respondents to acquire the land and only dispute which they have pursued in the matter is in relation to the compensation amount. The contention is liable to be rejected for more than one reason. Section 11A clearly mandates that the award has necessarily to be passed within a period of two years from the date of publication of the declaration of the notification u/s 6. It is already held that this provision is a mandatory provision. Once requirement of law clearly mandates the authorities to perform any particular act within the specified period and further provides for consequences in case of failure to comply with such mandate, any failure on the part of the authorities to ensure due compliance of the mandate of such provision is bound to result the act done in contravention of such provision to be ab initio void. It is well settled that when a duty is cast on the public body to perform an act within the specified period, such duty had to be performed within the specified period and such provision is to be construed as mandatory, and more so when the consequences for failure to comply such duty are also provided under the provision of law.

12. Undoubtedly, the general rule that the non-compliance of mandatory requirements results in nullification of the act is subject to one exception and the exception is that the requirements or conditions of that mandate may be waived by the person for whose interest the condition or requirement is provided for. Can invocation of remedy u/s 18 of the said Act would, therefore, amount to say that a person seeking reference u/s 18 would result in waiver of the mandatory requirement u/s 11A of the said Act?

13. If one peruses Section 11A it would disclose that it is primarily the duty of the Land Acquisition Officer to ensure strict compliance of the period of two years for the purpose of making of award u/s 11 from the date of last declaration of notification u/s 6. Undoubtedly, such obligation is cast upon the Land Acquisition Officer from the point of view of protecting the interest of the parties whose land is sought to be acquired. Being so, though it could be argued that the persons for whose benefit the mandatory limit of two years is prescribed u/s 11A would be entitled to waive such requirement or condition prescribed u/s 11A, it is difficult to accept the contention on behalf of the Government that the reference u/s 18 itself would amount to such a waiver.

14. Section 18(1) of the said Act which deals with the right of reference to the interested parties provides that, any person interested who has not accepted the

award or amendment thereof may, by written application to the Collector, require that the matter be referred by the Collector for determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable or apportionment of the compensation among the persons interested. Obviously, the reference u/s 18 is confined to four grounds. Firstly, the objections in relation to the measurement of the land, secondly, the amount of compensation, thirdly, as regards the quantum of apportionment of compensation and, fourthly, as regards the apportionment among the interested persons. The scope of the reference being limited to the four grounds specified in Section 18, and upon mere invocation of right to challenge the award on those four grounds, certainly, it cannot be said that a party seeking to exercise its right u/s 18 would waive his rights u/s 11A. It is well settled law that waiver has to be clear and specific. It cannot be by mere implication. Besides, there is no estoppel against law. Considering all these aspects, the contention on behalf of the respondents that, reference u/s 18 would amount to waiver of right u/s 11A cannot be accepted.

15. Before parting with the matter, it is necessary to issue certain directions to the respondents in view of certain unpleasant facts which have been revealed in the course of hearing of the matter. As already stated above, the respondents sought to raise the defence in the matter that the last declaration of the notification u/s 6 was on 10th of March, 1994 and, in that regard, sought to rely upon a letter dated 10th of March, 1994, stated to have been issued by the Talathi of the concerned village. The records apparently disclose that the Talathi was made to sign a blank paper in that regard and besides that, the Tahsildar himself has certificated that no such declaration was made on 10th of March, 1994. It, therefore, prima facie appears that the concerned Land Acquisition Officer had sought to procure the letter dated 10th March, 1994, to avoid the award being defeated u/s 11A. Prima facie, it amounts to a case of fabrication of document by a public officer. It is, therefore, necessary for the respondents and, particularly, the respondent No. 3, to hold necessary enquiry into the matter and to forward the report of the enquiry to the Chief Secretary of the State of Maharashtra who is expected to take appropriate decision in accordance with the provisions of law and to ensure that no such acts are committed by the public officers which can result in loss and harassment to the members of the public.

16. In the result, petitions succeed. The award in question as far as it relates to the land of the petitioners and which forms subject-matter of these petitions, is to be declared as contrary to the provisions of Section 11A and, therefore, that land acquisition proceeding, in relation to the said land which is a subject-matter of these petitions, is to be held as having been lapsed. This, however, shall not preclude the respondents from initiating fresh land acquisition proceedings, if so required, in relation to those pieces of land.

17. The petitions deserve to be allowed with costs. Though costs are liable to be paid by the respondent No. 1 initially, the respondents are entitled to hold

necessary enquiry and fix the liability in that regard and to recover the same from the concerned employee or the employees, as the case may be.

18. Hence, the impugned award, to the extent it relates to the properties of the petitioners covered by the Gat No. 173 and 56 of the village Jorwe, Taluka Sangamner, District Ahmednagar, is quashed with costs of Rs. 5,000/- in each of the petitions. Rule is made absolute accordingly.