

(2003) 08 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No. 3924 of 2003

Mirabai Shivaji Rote

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 6

Citation : (2003) 4 ALLMR 22 : (2004) 1 BomCR 85 : (2003) 4 MhLj 889

Hon'ble Judges : C.M. Thakker, C.J.;V.K. Tahilramani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

C.K. Thakker, C.J.—All these three petitions have been filed by the petitioners for an appropriate writ, direction or order quashing and setting aside land acquisition proceedings and final Award dated 23rd September, 1986, by which the land of the petitioners has been acquired.

2. When the matters came up for admission hearing, notice was issued by us on 27th June, 2003 and was made returnable after four weeks. It was clarified in the order of notice that the matters will be finally disposed of on the returnable date. The respondents then appeared and an affidavit in reply is filed on behalf of State authorities by Special Land Acquisition Officer, National Highway Project, Nashik as also by the Executive Engineer, Nandur Madhameshwar Canal Division, Vijapur.

3. The learned counsel for the petitioners contended that since Award was not made within a period of two years from the date of publication of notification u/s 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"), the entire proceedings were vitiated. It was submitted that the notification u/s 6 was issued on 3rd January, 1983 and was published on 21st January, 1983. The Award was passed on 23rd September, 1986 i.e. after more than three years. It was thus clear that the award was not passed within a period of two years, which

is the maximum period laid down in the Act. Hence, the land acquisition proceedings were liable to be quashed.

4. Reliance was placed by the learned counsel for the petitioners on the order passed by this Court on 6th December, 1999 in Writ Petition Nos. 2215 and 2216 of 1982. In both these petitions, on the basis of "Minutes of Order" signed by the learned Advocates of the parties, the petitioners were allowed and the Award was set aside. It was observed: "The entire land acquisition proceeding, therefore, lapses u/s 11A of the Land Acquisition Act, 1894". It was stated that the "entire land acquisition proceeding" would include the land in the present petitions also. It was, therefore, submitted that the petitioners are entitled to the relief which was granted to the petitioners in the above matters.

5. In an affidavit in reply filed by the acquiring body, certain facts, which were not before the Court in earlier petitions, have been placed on record and pressed into service and a prayer is made that the petitions deserve to be dismissed. It was stated that the land was acquired for public purpose i.e. Nandur Madhameshwar Project in 1979. A notification u/s 4 of the Act was issued in 1981 and notification u/s 6 of the Act was issued in 1983. It was also stated that the Award was passed in 23rd September, 1986.

6. Relying on the provisions of Section 116 of the Act, the learned counsel for the acquiring body submitted that it was in pursuance of insertion of Section 11A of the Act that the award was required to be passed within two years. The said section was inserted by Act 68 of 1984 with effect from September 24, 1984. The said section fixes time limit within which the Award must be passed. The main part of Section 11A enacts that the Collector shall make an Award within a period of two years from the date of publication of declaration and "if no Award is made within that period, the entire proceedings for the acquisition of the land shall lapse".

7. Proviso to Section 11, however, is material and reads thus:

"Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act 1984, the Award shall be made within a period of two years from such commencement".

A conjoint reading of section 11A with proviso thereof makes it abundantly clear and leaves no room of doubt that normal rule is that an Award must be declared within a period of two years from the date of publication of the declaration, and if no such Award is made the entire proceedings for the acquisition would lapse. The proviso, however, is in the nature of exception to the rule and clarifies that where the said declaration had been published before the commencement of the Amendment Act of 1984, then the Award shall be made within a period of two years from such commencement.

8 Now, when the amendment was made effective and brought into force with effect from 24th September, 1984, the last date for making an Award was 23rd

September, 1986. It is not in dispute that on 23rd September, 1986, an Award was made which was within time. In our opinion, therefore, it cannot be said that any illegality had been committed by the respondents and the Award was not passed within two years.

9. The learned counsel for the petitioners stated that it is not a final Award and something is still required to be done. In our opinion, the contention cannot be upheld in view of the fact the Award itself states that it is a final award. In pursuance of the Award, payment was made by the acquiring body and the amount has been received by the petitioners. Moreover, being aggrieved by the quantum of amount a reference was also made at the instance of the petitioner and the same is pending before the District Court, Nasik. Even in the prayer clause of the petitions a prayer is made by the petitioners that the "final Award" dated 23rd September, 1986 be declared null and void. Though the learned counsel for the petitioners stated that there was some error in the prayer clause wherein the Award was described as "final Award", in fact, it is not final Award. We are unable to uphold the contention. We, therefore, reject the contention.

10. In our opinion, the order passed by the Division Bench of this Court in the aforesaid two petitions also would not carry the matter of the petitioners further. First of all, it was a consent order. No doubt, the learned counsel for the petitioners contended that no consent terms had been arrived at between the parties and it was an order of the Court by which entire land acquisition proceedings were held vitiated. Looking to the order of the Court, however, it is clear that there was an agreement between the parties and it was an agreed order.

11. Firstly, the order is in the form of Minutes of the Order. The beginning of the order recites "The parties have tendered Minutes of the Order duly signed by them and their respective Advocates. They are taken on record and marked "X" for identification". The order then proceeds to state: "Order in terms of the Minutes of the Order. The petition is disposed of accordingly". The order also states: "MINUTES OF THE ORDER".

12. If one looks at the Minutes of the order, the Special Land Acquisition Officer has annexed the Minutes of the Order along with the affidavit in reply and the Minutes of the Order bears signatures of the petitioner as well as the respondent. Special Land Acquisition Officer, National Highway Project, Nasik. The "Minutes of the Order" also bear signature of the Advocate of the petitioner as well as of the learned Assistant Government Pleader. Thus, on the basis of such Minutes of the Order, final order was passed by the Court "in terms of the Minutes of the Order". Such order, therefore, can never be said to be a judgment of the court on merits.

13. Finally, so far as the acquiring body is concerned, it was never made a party respondent. No notice was issued to that body and it was never heard by the court before passing the order. In the circumstances, therefore, in our opinion, no reliance can be placed by the petitioners on the said order in these petitions

and no relief can be granted in their favour.

14. For the foregoing reasons, all the petitions deserve to be dismissed. The petitions are accordingly dismissed, however, with no order as to costs. Notice discharged.

Parties be given copies of this order duly authenticated by the Sheristedar/
Private Secretary.