(2016) 01 BOM CK 0240

In the Bombay High Court

Case No : Writ Petition No. 5493 of 2014

Nana	APPELLANT
Vs	
The State of Maharashtra and Others	RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 32
Land Acquisition Act, 1894 — Section 11, Section 18, Section 24, Section 24(2), Section 31, Section 31(1), Section 31(2), Section 32, Section 33, Section 34, Section 4, Section 48(1), Secti

Citation : (2016) 01 BOM CK 0240

Hon'ble Judges : R.M. Borde and A.I.S. Cheema, JJ.

Bench : Division Bench

Advocate : V.D. Sapkal, Advocate, for the Appellant; V.M. Kagane, A.G.P., for the Respondent

Final Decision : Disposed Off

Judgement

R.M. Borde, J.—1. Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2. The petitioner is praying for issuance of a direction to quash the award in respect of acquisition of land declared on 12.10.1981, in view of provisions of Section 24(2) of the Right to Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "Act of 2013"). Petitioner seeks a declaration that in view of failure of the Respondent-acquiring body to pay amount of compensation to the petitioner or his predecessor, the proceedings in respect of acquisition and award declared earlier shall be deemed to have lapsed.

3. The Notification in respect of acquisition of land G. No. 73 admeasuring 81 areas, situate at Mukindpur, Taluka Newasa, District Ahmednagar, was issued, which was followed by a declaration dated 20.11.1972 under Section 6 of the Act. After completing the acquisition proceedings under the provisions of Land

Acquisition Act, 1894, award came to be declared on 10.12.1981 by the Special Land Acquisition Officer.

4. The father of the petitioner presented a suit bearing Regular Civil Suit No. 1082 of 1987 in the Court of Civil Judge, Senior Division, Ahmednagar, claiming a declaration that the award is illegal; and to restrain the Government from taking possession of the land. Regular Civil Suit No. 1082 of 1987 stood abated on account of death of father of the petitioner. The petitioner, along with his brother filed another suit bearing R.C.S. No. 35 of 1991 against the State of Maharashtra for identical relief. The suit came to be decreed on 22.12.1995. Respondent-State presented an appeal bearing Regular Civil Appeal No. 106 of 2001 to the District Court. Appeal presented by the State of Maharashtra was allowed on 22.11.2007 and judgment and decree passed by the trial Court was set aside. Petitioner presented Second Appeal bearing No. 486 of 2010 to this Court. Appeal came to be admitted, however, in view of presentation of instant writ petition, petitioner withdrew the appeal.

5. The petitioner, after decision by the District Court, which was adverse to his interest, presented an application under Section 48(1) of the Land Acquisition Act, 1894 (for short, "the Act of 1894"), to the State of Maharashtra claiming deletion of land. Since the application was not decided by the State, he moved this Court by presenting Writ Petition No. 3121 of 2010. This Court, while disposing of the writ petition, issued directions to the Divisional Commissioner to decide the application in accordance with law within a period of two months from 08.04.2010. The Divisional Commissioner rejected the application presented by petitioner by an order dated 14.06.2010, recording therein that possession of the land has already been taken over and same has been allotted to project affected persons.

6. Petitioner contends that although award came to be declared in the year 1981 and though appeal presented by the State Government, challenging decision in respect of quashing of the award, was allowed in the year 2007, the State Government did not pay amount of compensation to the petitioner nor deposited the amount in the Court. According to the Respondents, amount came to be deposited in the Treasury in compliance of Section 31 of the Act of 1894. Petitioner contends that since the amount has not been paid to the petitioner in view of provisions of Section 24 of the Act of 2013, which became operational since 01.01.2014, the proceedings in respect of acquisition of the property shall be deemed to have lapsed.

7. An affidavit-in-reply has been presented on behalf of Respondents No. 1 to 3 by the Deputy Collector, Rehabilitation, Ahmednagar. It has been stated in the affidavit-in-reply that after declaration of the award, amount of compensation has not been withdrawn by the petitioner, as such, Respondent-authorities have deposited the amount under revenue deposit. It is the contention of Respondents that in view of deposit of amount by the State Government by way of a revenue deposit, proceedings in respect of acquisition shall not lapse. It is contended that

the land under acquisition has already been distributed to the beneficiaries and as such, it is not possible to direct deletion of land from acquisition under Section 48(1) of the Act of 1894.

8. The controversy in the matter is in a quite narrow compass. Petitioner claims that after decision by the District Court in Regular Civil Appeal No. 106 of 2001 on 22.11.2007, there was no impediment for the State Government to deposit the amount towards compensation receivable by the petitioner in the Court where proceedings of Reference are presented or in the account of the petitioner. It is pointed out that although petitioner presented Second Appeal No. 486 of 2010, there was no question of grant of any interim relief since the suit itself was dismissed by the first appellate Court.

9. Section 24 of the Act of 2013 reads thus:

"24 Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases:--

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894) -

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1984), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an ''award'' has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

10. In view of sub-section (2) of Section 24, though award in the instant matter has been made five years or more prior to the commencement of the Act and that the compensation has not been paid to the petitioner, proceedings in respect of acquisition shall be deemed to have lapsed and the appropriate Government, if

it so chooses, shall initiate proceedings in respect of land acquisition afresh in accordance with provisions of the Act of 2013. The contention of the State Government, that the amount has been deposited by way of revenue deposit, is not a sufficient compliance of Section 24(2) of the Act of 2013. It has been held by the Supreme Court in the matter of Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others, reported in , 2014(3) SCC 183, that the deposit of compensation amount in Government Treasury is not enough and for the purposes of Section 24(2), the compensation shall be regarded as paid if the compensation is actually tendered to the land owners or is offered to them, and on their refusal to accept the same, such compensation is deposited in the Court. In paragraphs No. 12 to 16 of the judgment, it is observed thus:

"12 To find out the meaning of the expression, "compensation has not been paid", it is necessary to have a look at Section 31 of the 1894 Act. The said section, to the extent it is relevant reads as follows:

"31 Payment of compensation or deposit of same in court- (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the court to which a reference under Section 18 would be submitted."

13 There is amendment in Maharashtra-Nagpur (City) in Section 31 whereby in Sub-section (1), after the words "compensation" and in sub-section (2), after the words, "the amount of compensation", the words "and costs if any" have been inserted.

14 Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to compensation do not consent to receive it, (ii) there is no person competent to alienate the land, and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.

15 Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that

the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the Court to which reference can be made under section 18.

16 The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the Court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such Government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be."

11. On reading the interpretation put to the provision of S.24 by the Supreme Court, it is thus clear that where the award has been made five years or more prior to the commencement of Act of 2013, and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. Thus, the two contingencies mentioned above do have relation with declaration of award five years or more prior to commencement of Act of 2013 and unless the award is within stipulation of Section 24(2), the situation, covered by two contingencies specified hereinabove, is not attracted. The judgment of the Supreme Court in the matter of Pune Municipal Corporation (supra) has been followed in the matters of Union of India and others v. Shiv Raj and others, reported in , 2014(6) SCC 564; Rajiv Chowdhrie HUF v. Union of India and others, reported in , (2015) 3 SCC 541; Karnail Kaur and others v. State of Punjab and others, reported in , (2015) 3 SCC 206; Bimla Devi and others v. State of Haryana and others, reported in , (2014) 6 SCC 583; and Government of NCT of Delhi & others v. Jagjit Singh and others {Civil Appeal No. 2592 of 2015, decided on 27th February, 2015}.

12. In the instant matter, since the amount of compensation has not been paid to the petitioners, proceedings in respect of acquisition of the land shall be deemed to have lapsed in view of provisions of Section 24(2) of the Act of 2013. The consequence of such a declaration would be that the State Government shall have to initiate the proceedings afresh in accordance with the Act of 2013 and declare the award.

13. The contention of the respondents that possession of the property has been taken for public purpose long back and after lapse of number of years, this Court shall not cause interference since public interest would be jeopardized, would be of relevant consideration. It is not a matter of dispute that the land has been taken in possession by the respondents for public purpose and that the property

has been utilised for rehabilitation of project affected persons. It has been recorded in the matter of Ramniklal N. Bhutta v. State of Maharashtra, reported in , 1997 (1) SCC 134, thus:

"Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-?-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the person interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

14. The petitioner has approached this Court praying for a relief in respect of quashing the award. It is, thus, clear that the object of petitioner is to claim enhanced price of the land.

15. In the facts of the case, even without issuing direction to quash the award on the ground that there is breach of provisions of Section 24 (2) of the Act, ends of justice can be met by directing the Respondents to compensate petitioners adequately. In this context, reliance can be placed on the judgment in the matter of Ram Chand: Ved Prakash v. Union of India, reported in , 1994 (1) SCC 44. In paragraphs No. 25 and 27 of the judgment, the Hon''ble Supreme Court has observed thus:

"25 There appears to be some force in the contention of the petitioners that the object of respondents was to peg the price of the lands acquired from the different cultivators to a distant past and not to proceed further because if the awards had been made soon after the declarations under Section 6, respondents had to pay or tender the compensation to the claimants, which for some compulsion, respondents were not in a position to pay or tender them. But, nonetheless, the exercise of power in the facts and circumstances of the cases by the respondents has to be held to be against the spirit of the provisions of the Act, tending towards arbitrariness. In such a situation, this Court in exercise of power under Article 32 and the High Court under Article 226, could have quashed the proceedings. But, taking into consideration that in most of the cases, the Delhi Administration and Delhi Development Authority have taken possession of the lands and even developments have been made, it shall not be proper exercise of discretion on the part of this court to quash the proceedings because, in that event, it shall affect the public interest. Moreover, third party interests created in the meantime are also likely to be affected and such third parties are not impleaded. The relief of quashing the acquisition proceeding having become inappropriate due to the subsequent events, the grant of a modified relief, considered appropriate in the circumstances, would be the proper course to adopt. The High Court or this court, can grant a modified relief taking into consideration the injury caused to the claimants by the inaction on the part of respondents and direct payment of any additional amount, in exercise of power under Article 226 or Article 32 of the Constitution.

27 According to us, after the judgment of this Court in Aflatoon case on 23/08/1974, the reasonable time for making the awards was about two years from that date. Beyond two years, the time taken for making of the awards will be deemed to be unreasonable. As such, after expiry of the period of two years, some additional compensation has to be awarded to the cultivators. Taking into consideration the interest of the cultivators and the public, instead of quashing the proceedings for acquisition, we direct that the petitioners shall be paid an additional amount of compensation to be calculated at the rate of twelve per cent per annum, after expiry of two years from 23/08/1974, the date of the judgment of this court in Aflatoon case till the date of the making of the awards by the Collector, to be calculated with reference to the market value of the lands in question on the date of the notifications under sub-section (1) of Section 4."

16. In the instant matter, possession of the property has been taken over by the acquiring body long back, as is evident on perusal of the award. The award has been declared by the Collector taking into consideration valuation of the property on the date of publication of Section 4 notification. The petitioner, in the facts of the given case, is entitled to claim compensation on the basis of present valuation of the property. However, taking into consideration public interest involved in the matter and also on consideration of the injury caused to the claimant by the illegalities committed by the respondents, we shall have to take recourse to issuance of directions which would weigh balance between the claimant on the one hand and the liability which may accrue to the acquiring body on the other hand.

17. In the peculiar facts of this case, the relief can be molded to make complete justice since the property, which has been taken in possession by the State Government long back, has been distributed to the project affected persons, it would be nearly impossible to take the property back in possession and restore it to the petitioner. The petitioner would be entitled to receive higher amount of compensation if the proceedings are initiated afresh. The acquisition authorities shall have to take into account rates of the acquired property prevailing as on

today. Considering totality of the circumstances, we deem it appropriate to direct Respondent-State to make lump sum payment in favour of the petitioner.

18. In our view, considering the fact that the proceedings in respect of acquisition, in the instant matter, were initiated in the year 1972 and award came to declared in 1981, possession of the property has already been taken by the State Government and the property has also been distributed to the project affected persons, the State Government will have to pay, in case of initiation of fresh proceedings, apart from prescribing rate of the properties prevailing as on today, the amount of solatium to the extent of 100% and by applying appropriate factor in respect of rural properties, the compensation, that would be required to be paid to the petitioner on calculation of interest accruable thereon from 1972 onwards, would be a quite huge sum. Taking into consideration totality of the circumstances, we deem it appropriate to direct the Respondent-State to pay Rs. 25,00,000/- (Rs. Twenty five lacs) towards amount of compensation, solatium, interest, etc., which would be a fixed sum and it would not be open for the petitioner to object to the amount of compensation arrived at, by initiating further proceedings.

19. We direct the Respondent-State to pay an amount of Rs. 25,00,000/- (Rs. Twenty five lacs) to the petitioner as a lump sum compensation, as expeditiously as possible, preferably within a period of four months from today.

20. Rule is accordingly made absolute to the above extent. There shall be no order as to costs.