
(2015) 01 BOM CK 0079
In the Bombay High Court
Case No : Writ Petition No. 6097 of 2013

Padmaja Arun Pande

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Bombay Highways Act, 1955 — Section 19A, 19E, 3, 4, 6
Land Acquisition Act, 1894 — Section 4, 5A, 6, 9

Citation : (2015) 2 ABR 469 : (2016) 2 ALLMR 230 : (2015) 5 BomCR 790

Hon'ble Judges : C.V. Bhadang, J.;A.P. Bhangale, J.

Bench : Division Bench

Advocate : R.L. Khapre, for the Appellant; B.H. Dangre, Government Pleader and N.S. Rao, Assistant Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

C.V. Bhadang, J.—Rule. Rule made returnable forthwith. The petition is heard finally with consent of the parties.

2. By this petition, the petitioners challenge the acquisition of their land under the Land Acquisition Act, 1894 ("Central Act" for short) for the purpose of laying of bypass at Buldhana which is said to be the part of Malkapur Solapur State Highway.

3. The brief facts are that the petitioner nos.1 to 4 (the name of the petitioner no.1 has, since been deleted) are the owners of Gat No. 170, while the petitioner nos.5 to 7 are the owners of Gat No. 169 of mouza Sagwan, Tahsil and District Buldhana. A proposal for acquisition of portion of the said fields of the petitioners along with others was received in the office of the respondent no.5-Executive Engineer, Public Works Department, Zilla Parishad, Buldhana on or about 8.4.2008. According to the petitioners, they had not received any notices for joint measurement. The petitioners also contended that the proposed acquisition was not necessary for laying the bypass, as the said purpose was already taken care of by portion of the road from Buldana to Nandrakoli. The petitioners

contended that thus the proposed acquisition was not in public interest. It appears that a Notification under Section 4 of the Central Act was published on 28.8.2012. The petitioners sent their objections, although specifically Section 5A of the Central Act was not mentioned therein. That objection was jointly sent on 24.9.2012. It appears that a Resolution was also adopted by the concerned Gram Panchayat on 13.9.2012 raising objection to the acquisition, on the ground that several agriculturists would be affected thereby. The petitioners also sent their individual objections. The petitioner nos.1 to 4 had received a notice dated 28.3.2013 calling upon them to remain present in the matter of hearing on their objections under section 5A of the Central Act. However, no such notice was received by the petitioner nos.5 to 7. According to the petitioners, without holding any effective inquiry under Section 5A of the Central Act, a proposal for issuance of Notification under Section 6 of the Central Act, was sent by the respondent no.4 Special Land Acquisition Officer, followed by a proposal for issuance of notices, under Section 9 of the Central Act. The petitioners filed this petition, initially challenging the acquisition on the ground that there was no opportunity of hearing given, resulting into noncompliance of Section 5A of the Central Act. The petition came to be amended by addition of paras 3A and 3B on the ground that inasmuch as the acquisition was for the purposes of a State Highway, the acquisition could not be undertaken under the provisions of the Central Act. In short, it is contended that the acquisition ought to have been under the provisions of the Maharashtra Highways Act, 1955 ("State Act" for short).

4. The contesting respondents have filed an affidavit thereby contesting the petition. It is denied that no notice of the proposed acquisition was given and/or the inquiry under Section 5A of the Central Act was not conducted. It is denied that the purpose for which the proposed acquisition is being made can be served by the portion shown as E, F, G, A in the map annexed to the petition. The respondents denied that there is no public purpose involved in the acquisition. It is contended that the area proposed to be acquired from Gat No. 170 is about 0.30 hectors, as against the total area of the field, which is 2 Hector 78 R, while an area admeasuring 0.380 HR from out of total area 3 Hector 47 R from field Gat No. 169 is sought to be acquired. Thus, the land proposed to be acquired from the concerned field nos. 169 and 170 is minimal. The respondents have not chosen to file any affidavit in reply after the petition was amended, incorporating the challenge based on the provisions of the State Act.

5. We have heard Shri R.L. Khapre, the learned counsel for the petitioners and Mrs. B.H. Dangre, the learned Government Pleader for the respondents.

6. It is submitted on behalf of the petitioners that the State Act is a complete code in itself and Section 19A of the State Act in terms excludes the applicability of the Central Act to the acquisition of land for the purposes of a State Highway. It is submitted that the acquisition proceedings, which are initiated under the Central Act, are liable to be quashed. The learned counsel would submit that it is

only the authorities appointed under Sections 4 and 6 of the State Act, by the State Government, who can exercise powers in relation to such acquisition. It is submitted that the respondent no.4 has not been so authorized or appointed and in that view of the matter, the acquisition would be void ab initio. Reliance is placed on an unreported decision of this Court in Satyanarayan s/o Modulal Dayma and others. vs. The State of Maharashtra and others (Writ Petition No. 705/2008, decided on 22.8.2008) in order to submit that in respect of acquisition for the purpose of State Highway, the provisions of the Central Act would stand excluded. The learned counsel has taken us through the proposal including the provision of funds for the proposed acquisition which is shown under the Head 03 i.e. for State Highway, in order to submit that undisputedly the acquisition was for the purposes of the State Highway. He, therefore, submitted that the proposed acquisition needs to be quashed and set aside.

7. On the contrary, it is submitted by Mrs. Dangre, the learned Government Pleader, that the proposed acquisition is only for the limited purpose of laying a bypass on the outskirts of the city of Buldana. The learned Government Pleader submitted that it is only in respect of the State Highway/portion, which is notified under Section 3 of the State Act, as such, which would attract the provisions of the State Act. In other words, it is submitted that unless and until the portion of the land sought to be acquired is notified under Section 3 of the State Act, the provisions of the Central Act would not stand excluded. The learned Government Pleader also submitted that merely because funds for the proposed acquisition are shown to be under the head 03 State Highway, would not be sufficient to attract the provisions of the State Act. The learned Government Pleader submitted that it is the head under which funds are ordinarily sanctioned to the Public Works Department and that would not be decisive. The learned Government Pleader, therefore, submitted that the petition is devoid of any substance and is liable to be dismissed.

8. We have given our anxious consideration to the rival circumstances and the submissions made. As a subsequent development to the filing of the petition, it is not in dispute that by Notification dated 5.3.2014, the said State Highway has now been notified as a National Highway under the National Highways Act, 1956. There was, however, no dispute during the course of argument at bar, that this may not have any relevance for the purpose of deciding the present controversy in question.

9. At the outset, it may be mentioned that the learned counsel for the petitioners has not pressed the ground based on noncompliance of Section 5A of the Central Act. The challenge is thus confined to the submissions based on applicability of the State Act, thus excluding the applicability of the Central Act to the proposed acquisition. The learned Government Pleader has produced a Notification dated 19.4.1967, (pertaining to the notification of the concerned road as a State Highway) during the course of the arguments, which is to the following effect :

Deptt. No. BHA.3765/116348C(2).In exercise of the powers conferred by

sections 3, 4 and 6 of the Bombay Highways Act, 1955 (Bom. Act. of 1955), the Government of Maharashtra, hereby

(i) declares the roads specified in column 2 of Schedule I appended here (more particularly described in column 3 of the said Schedule I) to be highways; and classifies the said highways as State Highways to be known the names respectively specified against them in column 4 of the said Schedule I;

(ii) appoints the Executive Engineers mentioned in column 5 of said Schedule I to be Highway Authorities for the purposes of the said A for the highways so declared and more particularly described against the in column 3 of the said Schedule I; and

(iii) appoints the officers and servants specified in column 3 of Schedule appended hereto to work under the Highway Authorities respective specified against them in column 2 thereof for the purpose of enabling those Highway Authorities to exercise the powers conferred and to discharge the duties imposed upon them by or under the provisions of the said Act.

The relevant entry is at Sr. No. 42 of Schedule I which is as under :

It would be thus clear that initially the road has been notified as a State Highway under Section 3 of the State Act (although the portion proposed to be acquired is not so notified) and the State Government has also appointed the Competent Authority, as required under Sections 4 and 6 of the State Act. A perusal of the relevant entry of Schedule I would show that the Notification of any road as a State Highway is not with reference to any survey number/s or gat number/s. The relevant entry describes the road generally by reference to the villages/towns and the mile numbers. It is not in dispute that the proposed acquisition is for laying a bypass on the State Highway around the Buldana city. The perusal of the administrative sanction granted on 2.2.2007 (Annexure19) would show that the funds for the said acquisition were sanctioned under the head, as "5054" Capital Expenditure on Road and Bridge, 03 State Highway. The proposal annexed to the said acquisition and in particular Clause 14 thereof would make it clear that the acquisition was for the purpose of the State Highway. It would be thus clear that the acquisition indeed was for a State Highway, namely Malkapur, Buldana, Chikali, Jalna, Ambad, Wadigodri, which is now designated as the main State Highway-13. The question is, whether the acquisition which is started under the Central Act is susceptible to challenge as posed.?

10. Section 19E of the State Act may be reproduced as under :

19E. Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act. We have already noticed that there is enough material to show that the acquisition is for the purpose of a bypass on a State Highway. The Notification under Section 3 of the State Act describes the State Highway generally with reference to villages and miles and not with reference to any survey number/gat numbers. Thus, the submission on behalf of the respondents that there is no

notification in respect of the particular area falling under the bypass and, therefore, the provisions of the State Act would not be attracted, cannot obviously be accepted. We find that the acquisition indeed would be required to be undertaken under the provisions of the State Act. The preamble of the State Act states that the Act is enacted for restriction of ribbon development along highways, for the prevention and removal of encroachment thereon, for the construction, maintenance and development of highways, for the levy of betterment charges and for certain other matters.

11. In an unreported decision in Writ Petition No. 705/2008 (*supra*), although the dispute related to a challenge to the notice for removal of encroachment, issued by the Competent Authority under the Act, this Court has held that the State Act is a complete code in itself and Section 19E of the State Act excludes the provisions of the Land Acquisition Act, 1898.

12. It would be thus clear that whenever the acquisition is for the purposes of a State Highway governed by the State Act, the application of the Central Act would stand excluded. We, therefore, find that the impugned acquisition, which is initiated under the Central Act, thus cannot be sustained.

13. Consequently, the petition is allowed. The impugned acquisition and the Notification under Section 6 of the Land Acquisition Act, 1894 is hereby quashed and set aside. It is needless to mention that the State/Competent Authority would be at liberty to initiate fresh acquisition proceedings, in accordance with law. Rule is made absolute in the aforesaid terms with no order as to costs.