

(2010) 09 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 6274 of 2010

Pandhari Gangaram Patil and Others

APPELLANT

Vs

Special Land Acquisition Officer, Upper Tapi Project and Others

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 18, 4

Citation : (2011) 7 ALLMR 642 : (2011) 2 MhLj 579

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : A.B. Kale, for the Appellant; K.S. Patil, A.G.P. for Respondent Nos. 1 and 2 and S.D. Dhongde, for the Respondent

Final Decision : Allowed

Judgement

Shrihari P. Davare, J.—Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, taken up for final hearing at the admission stage.

2. By the present petition filed by the Petitioners, under Article 227 of the Constitution of India, the Petitioners have prayed that the order dated 4-5-2009, passed by learned Jt. Civil Judge, Senior Division, Jalgaon, asking for the Bank Guarantee in Regular Darkhast No. 204/2009 be quashed and set aside and also prayed that the Bank guarantee furnished by the Petitioners in Regular Darkhast No. 204/2009 in the Court of Jt. Civil Judge, Senior Division, Jalgaon in pursuance of the aforesaid order dated 4-5-2009 be revoked and cancelled.

3. The Petitioners claim to be the owners and possessors of the land situated at village Shingayat, Taluka Jamner, District Jalgaon, which was acquired by the Respondents for the purpose of Waghur Project. Accordingly, the notice u/s 4 was published on 2-7-1997 and Special Land Acquisition Officer passed an award on 18-8-2000. Since the amount awarded by Special Land Acquisition Officer was not proper and since it was inadequate, the Petitioners accepted the same under

protest and further preferred Reference u/s 18 of the Land Acquisition Act, which was registered as Land Acquisition Reference No. 1972/2005. Accordingly, the Reference Court allowed the reference vide judgment and award dated 30-11-2007 and awarded enhancement of amount to the claimants along with interest @ 9% p.a. for the first year from the date of taking possession and interest @ 15% p.a. thereafter till the realisation of the said amount.

4. It is the contention of the Petitioners that, they have neither received any notice of interim relief passed by this Court in Appeal, if preferred by the Respondents against the said judgment and award dated 30-11-2007 nor it was produced in the lower Court. Moreover, the Petitioners were neither served with any notice from this Court in respect of the interim stay nor it was received by the lower Court.

5. The Petitioners further contended that after passing the judgment and award dated 30-11-2007, the Petitioners filed execution petition bearing Regular Darkhast No. 204/2009, wherein Respondents deposited entire decretal amount as claimed in the execution. Thereafter, the Petitioners filed an application for withdrawal of the said decretal amount deposited by the Respondents. However, the learned executing Court passed an order on 4-5-2009 and thereafter directed the Petitioners herein to furnish the Bank guarantee for the said amount. Accordingly, in pursuance of the said order, the Petitioners have furnished the Bank guarantee to the satisfaction of the learned executing Court on 6-5-2009.

6. It is the contention of the Petitioners that since the Petitioners were not served with any notice regarding any interim relief, granted by this Court in First Appeal filed by the Respondents, against the judgment and order dated 30-11-2007 passed by the learned Civil Judge, Senior Division, Jalgaon after a lapse of considerable period, the Petitioners are entitled to get back the amount deposited towards the Bank guarantee in view of the order passed by learned lower Court. Even otherwise also imposition of condition by learned lower Court regarding furnishing Bank guarantee, is contrary to the provisions of the Code of Civil Procedure, and imposition of such condition is unnecessary and unwarranted. The Petitioners pointed out that this Court, in Civil Application No. 3933/1999 in First Appeal No. 652/1994 and Writ Petition No. 2956/2008 and many such other matters, has revoked the Bank guarantee imposed by the learned lower Court. Hence, the Petitioners submit that, the order dated 4-5-2009, passed by learned Civil Judge, Senior Division, Jalgaon, asking the Petitioners to furnish the Bank guarantee in Regular Darkhast No. 204/2009 deserves to be quashed and set aside and consequently, the Bank guarantee furnished by the Petitioners herein in the said Darkhast deserves to be revoked and cancelled.

7. The Respondent No. 3 filed affidavit-in-reply which is sworn in by Rajesh s/o Murlidhar More, Executive Engineer, Jalgaon and opposed the present petition, and denied the averments made therein unless specifically admitted. The affidavit-in-reply filed by Respondent No. 3 is taken on record and marked "X" for

the purpose of identification. In the said reply, the Respondent No. 3 contends that the judgment and award dated 30-11-2007, passed by learned Jt. Civil Judge, Senior Division, Jalgaon has been challenged by filing the First Appeal before this Court under Stamp No. 19157/2008 and same is pending. It is also submitted by the Respondent No. 3 that since the appeal has been filed, there is every possibility to order the stay in execution proceedings by this Court and there is likelihood to modify the decision by this Court and it would be safeguard to obtain the Bank guarantee from the decree holders. The Respondent No. 3 further submits that there is nothing illegal or wrong in asking for furnishing the Bank Guarantee for the reasons that if whole of the amount decreed by the learned trial Court is paid to the Petitioners, the very purpose of filing appeal against the order passed by the learned trial Court would be frustrated and there would be nothing in the hands of Respondent No. 3. Accordingly, the Respondent No. 3 submitted that the present petition bears no substance and same is devoid of any merits and, therefore, same be dismissed.

8. Heard learned Counsel for the parties.

9. After perusal of the present petition and annexures thereto and after considering the rival submissions advanced by learned Counsel for the parties, it is apparently clear that, although the Respondents have filed First Appeal challenging the judgment and award dated 30-11-2007, passed in Land Acquisition Reference No. 1972/2005, the said appeal is still under Stamp No. 19157/2008 and no interim relief/stay has been granted by this Court therein and, therefore, imposition of the condition of furnishing Bank guarantee by learned Jt. Civil Judge, Senior Division, Jalgaon below application Exh. 19 in Regular Darkhast No. 204/2009 was unwarranted. In the said context, the Petitioners pointed out that in Civil Application No. 3933/1999 in First Appeal No. 652/1994 and Writ Petition No. 2956/2008, this Court has revoked the Bank guarantee imposed by the learned lower Court in identical situation.

10. Hence, considering the judgments and orders passed by this Court (cited supra) and also in other various matters, it is crystal clear that in identical situation, the trial Court was directed to permit the withdrawal of the amount without asking the parties to furnish the Bank guarantee. In the present matter also, even today nothing is placed before this Court by the Respondents indicating that any interim relief/stay is granted in the First Appeal. Under these circumstances, the observations made by this Court in earlier judgments and orders cited supra are squarely applicable and, therefore, present petition deserves to be allowed.

11. In the result, present petition succeeds and same is allowed in terms of prayer Clauses (B) and (C) thereof, and the order passed by the learned Jt. Civil Judge, Senior Division, Jalgaon, dated 4-5-2009 in Regular Darkhast No. 204/2009 imposing the condition of furnishing Bank Guarantee, stands quashed and set aside, and further the Bank guarantee furnished by the Petitioners in Regular Darkhast No. 204/2009 in the Court of Jt. Civil Judge, Senior Division,

Jalgaon in pursuance of the aforesaid order stands revoked and cancelled. Rule made absolute in the aforesaid terms.