

(2009) 11 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 1211 of 2009

Percival Joseph Pareira

APPELLANT

Vs

Special Land Acquisition Officer and Others

RESPONDENT

Date of Decision : 07-11-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Land Acquisition Act, 1894 — Section 18, 20, 3, 4, 50

Citation : (2010) 5 BomCR 344

Hon'ble Judges : Oka Abhay S., J

Bench : Single Bench

Advocate : S.S. Kulkarni, for the Appellant; A.P. Vanarase, A.G.P. for Respondents 1 and 2 and A.A. Kumbhakoni, instructed by A.M. Kulkarni, for the Respondent

Final Decision : Dismissed

Judgement

Oka Abhay S., J.—The submissions of the learned Counsel for the parties were heard on 7th October, 2009. The judgment was reserved. Accordingly, the petition is today placed for judgment.

2. This writ petition under Article 227 of the Constitution of India arises out of the proceedings of a reference u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act of 1894"). The petitioner is the claimant in the said reference. By the impugned order, the third respondent (The City Industrial Development Corporation of Maharashtra Limited hereinafter referred to as "CIDCO") has been directed to be added as an opponent to the land acquisition reference u/s 18 of the said Act of 1894.

3. A reference will have to be made to the facts of the case. The notification u/s 4 of the said Act of 1894 in respect of the acquired land was issued on 24th September, 1986. The declaration u/s 6 of the said Act of 1894 was issued on 17th September, 1987. After the award dated 18th September 1989 was made, an application u/s 18 of the said Act of 1894 was filed by the petitioner on the

basis of which a reference u/s 18 of the said Act of 1894 has been made to the Court. It must be noted here that the third respondent (CIDCO) made an application at Exhibit 38 on 7th April, 2004 contending that the said respondent was the beneficiary of the acquisition and on the basis of an agreement made by the said respondent with the Government of Maharashtra, compensation will be payable by the said respondent. Reliance was placed on Sub-section (2) of Section 50 of the said Act of 1894 and it was contended that the CIDCO was a necessary party to the land acquisition reference u/s 18 of the said Act of 1894. By the judgment and order dated 27th October, 2004 the said application was rejected.

4. On 7th April, 2008, the State of Maharashtra represented by the District Government Pleader moved an application Exhibit 113 contending that the CIDCO being acquiring body was a necessary party to the said reference u/s 18 of the said Act of 1894. It was contended that the State has acquired the land subject matter of reference and has transferred the land to CIDCO. Therefore, a prayer was made for impleading the CIDCO as the second opponent to the said reference. The petitioner opposed the same on various grounds contending that the CIDCO was not the acquiring body. It was contended that CIDCO was neither a necessary nor a proper party. By the impugned order, the said application made by the State of Maharashtra was allowed and the petitioner was directed to implead the CIDCO as a party opponent to the said reference.

5. The learned Counsel for the petitioner has made detailed submissions on this aspect. Submissions are made on the basis of various provisions of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as "the said Act of 1966"). It is submitted that under the provisions of the said Act of 1966 the CIDCO being a New Town Development Authority, there is no power vesting in CIDCO u/s 113-A to acquire a land for the purpose of setting up a new town. The submission is that CIDCO was merely an agency of the State of Maharashtra for implementing the project of setting up the new township of New Bombay. He submitted that the decision to acquire the lands has not been taken by CIDCO but it is the decision of the State of Maharashtra. It is submitted that Sub-section (2) of Section 50 of the said Act of 1894 has no application. He has placed reliance on various notifications. He has also placed reliance on the amendment made to the said Act of 1966 in the year 1971.

6. Learned Counsel for the third respondent CIDCO submitted that the CIDCO was established and appointed as a Special Planning Authority in relation to New Bombay. He submitted that the CIDCO is a Government company and the same is established u/s 113-A of the said Act of 1966. He pointed out that earlier the entire burden of paying the compensation on account of acquisition of lands for the project of the twin city of the New Bombay was of the State of Maharashtra. He placed reliance on a Government Resolution dated 12th February, 2008 and submitted that the entire responsibility for payment of enhanced compensation of the lands acquired for the project is that of CIDCO. He submitted that the

issue involved in the present petition is not whether the CIDCO is the acquiring body or local authority or whether the CIDCO acts as an agent of the State Government. But, the issue is whether the CIDCO was a "person interested" and whether CIDCO is going to ultimately end up in bearing the entire financial burden of paying whole amount of compensation. He submitted that the CIDCO is required to pay the compensation amount to the claimants. He submitted that the term "company" appearing in Section 3 of the said Act of 1894 excludes a Government company, but the company" referred to in Section 50 is different and the same words used will have to be construed differently. He has relied upon decisions of the Apex Court which are dealt with in the later part of this judgment. He submitted that the CIDCO, in any event, is a person interested, and therefore, is entitled to a notice of reference u/s 18 of the said Act of 1894 in view of Clause "b" of Section 20 of said Act of 1984. He submitted that the words "local authority" and "company" in the said Act of 1894 would include all bodies on whose behalf the land is acquired. He submitted that all such bodies are necessary and proper parties to a reference u/s 18. He submitted that no interference is called for with the impugned order.

7. The learned A.G.P appearing for the State supported the impugned judgment and order and submitted that as the CIDCO is required to bear the burden of payment of the compensation as well as the enhanced compensation, as rightly held by the trial Court, the CIDCO was a necessary and proper party to the reference and therefore no interference is called for. The learned Counsel for the petitioner pointed out from the Government Resolution dated 12th February, 2008 relied upon by CIDCO that even under the said Government Resolution, the CIDCO is required to pay the compensation amount on behalf of the Government of Maharashtra. He pointed out that the said resolution further provides that at the time of final settlement of the account , an adjustment would be made to give the credit to the CIDCO of the amount paid by way of compensation to the claimants.

8. I have given careful consideration to the submissions. Before dealing with the submissions, it will be necessary to consider the relevant provisions of Act of 1966. Under Sub-section (1) of Section 113, the State Government is empowered to issue a notification in the official gazette designating any area as a site for the proposed New Town which shall be named in the notification. Under Sub-section (2), after publication of the notification under Sub-section (1), for the purpose of acquiring, developing and disposing of land in the area of a New Town, the State Government is empowered to constitute a New Town Development Authority. Sub-section 3 (A) of the Section 113 reads thus:

(3A) Having regard to the complexity and magnitude of the work involved in developing any area as a site for the new town, the time required for setting up new machinery for undertaking and completing such work of development, and live comparative speed with which such work can be undertaken and completed in the public interest, if the work is done through the agency of a corporation

including a company owned or controlled by the State or a subsidiary company thereof, set up with the object of developing an area as a new town, the State Government may, notwithstanding anything contained in Sub-section (2), require the work of developing and disposing of land in the area of a new town to be done by any such-corporation, company or subsidiary company aforesaid, as an agent of the State Government; and thereupon, such-corporation or company shall, in relation to such area, be declared by the State Government, by notification in the Official Gazette, to be the New Town Development Authority for that areal.

It must be stated here that aforesaid sub-section 3(A) as well as Section 113-A were brought on the statute book by way of an amendment made by the Maharashtra Act No. 21 of 1971. Section 113-A of the said Act read thus:

113-A. Notwithstanding anything contained in this Act, or in any law for the time being in force, where any corporation or company is declared to be the New Town Development Authority under Sub-section (3A) of Section 113, the State Government shall acquire either by agreement or under the Land Acquisition Act, 1894 (and such acquisition may have been commenced before the coming into force of this section) any land within the area designated under this Act, as the site of the new town, any land adjacent to that area which is required for the purposes connected with the development of the new town, and any land whether adjacent to that area or not, which is required for provisions of services or amenities for the purposes of the new town; and vest such land in such Authority for the purposes of this Chapter]

In the light of the relevant provisions of the said Act of 1966, the factual aspects of the case will have to be considered. On 20th March, 1971, a notification was issued by the State Government which was published in the gazette by which the area mentioned in the schedule was designated as the site for the proposed new town known as "New Bombay". The said notification was issued in exercise of powers under Sub-section (1) of Section 113 of the said Act of 1966. On the same day, another notification was issued by the State Government which was published in the same gazette. The said notification was issued in exercise of powers conferred by the Sub-section (3-A) of the Section 113 of the said Act of 1966 by which the CIDCO was appointed as the New Town Development Authority for the area comprised in the site of New Bombay. The said notification records that the CIDCO was a subsidiary company of the State Government which was owned and controlled by the State Government. Thus, the appointment of the CIDCO is under Sub-section (3-A) of Section 113, and therefore, the CIDCO as a New Town Development Authority was required to do the work of developing and disposing of land in the area of new town of New Bombay as an agent of the State Government.

9. At this juncture, it will be worth making a reference to a notification dated 24th September, 1986 u/s 4 of the said Act of 1894 by which the land subject matter of the reference in the present case has been notified for acquisition.

There is a recital in the notification that under the provisions of Section 113-A of the said Act of 1966 read with Section 4 of said Act of 1894, the land described in the schedule under the said notification was likely to be needed for the development of the area designated as the site of the New Town of New Bombay. The notification u/s 6 of the said Act of 1894 issued on 10th September, 1987 is also placed on record. The notification specifically records the satisfaction of the Commissioner of the Konkan Division that it was necessary to acquire the land described in the schedule to the notification u/s 4 referred to earlier. The notification states that the same was issued under the provisions of the Section 6 of the said Act of 1894 read with Section 113-A of the said Act of 1966. The material recital in the said notification read thus:

And whereas, the Commissioner Konkan Division, is now satisfied that the said lands are needed to be acquired at the expenses of State Government for the said public purpose;

The aforesaid recital makes it very clear that the land was decided to be acquired "at the expenses of the State Government" for public purpose. This factual aspect has some bearing on the decision of this petition.

10. The learned Counsel for the CIDCO has relied upon the decision of the State Government which is reflected from the circular dated 12th February, 2008 which is placed on record by the learned Counsel for the CIDCO. In the preamble, it refers to the aforesaid notification dated 20th March, 1971. It also notes that the CIDCO has been appointed by the State Government as the New Town Development Authority for New Bombay. The said Government resolution notes that the CIDCO as newly formed in the year 1971 and at the time funds were not available with the CIDCO. It is further stated that as the funds were not available with CIDCO, it was decided that the State Government will acquire privately owned lands in the site of New Bombay and will thereafter transfer the same to the CIDCO. The said Government resolution further notes that the State Government has acquired various lands under the provisions of the said Act of 1894 and has transferred the same to the CIDCO. The said lands are being developed and sold through the CIDCO .It is further noted that considering the present financial condition of the State Government , hereafter it will not be possible for the State Government to make available funds for payment of compensation/enhanced compensation in respect of land acquired for the project of the New Bombay. The said Government resolution refers to earlier decision of the Government dated 2nd January 1985 by which the State Government decided to acquire private land for the project of New Bombay and thereafter to transfer the same to CIDCO. It is further noted that the said earlier decision has been modified and with effect from the 1st April 2008 , the CIDCO will have to pay the compensation amount on account of the acquisition of land for the New Bombay project and even the enhanced compensation amount granted by the Court will have to be paid by the CIDCO . It records that with effect from 1st April, 2008 the amount of compensation paid by the CIDCO will be "on account

of the Government". It further records that when an account of the amounts paid by the State Government towards compensation and enhanced compensation as well as the amounts paid by the CIDCO in that behalf will be made, the amounts paid by the CIDCO will be taken into consideration. Further part of the Government decision records that for the acquisition of the land for the purpose of New Bombay project , the Town Development Department of the State of Maharashtra is the acquiring body. However, by a letter dated 20th March, 2006 issued by the State Government, the Managing Director, Joint Managing Director, Chief Land Survey Officer of the CIDCO have been authorized to submit the proposals for acquisition on behalf of the Government. Therefore, the Government resolution directs that the CIDCO should actively participate in the Court proceedings relating to the payment of compensation in respect of the land acquired for the New Bombay project. Under the said decision, a direction was issued to the CIDCO that in the proceeding of a reference u/s 18 of the said Act 1894, the CIDCO shall oppose the claim for enhancement by pointing out that apart from compensation , allotment of developed plots is being made to the affected persons.

11. From consideration of the aforesaid documents the following factual position emerges:

a) For setting up of the new town of New Bombay, in exercise of powers under sub-section 3(A) of Section 113 of the said Act of 1966 under notification dated 20th March 1971, the CIDCO was appointed as the New Town Development Authority. Thus, the State Government decided to get the work of development of the site of the city of New Bombay done through CIDCO as an agent of the State Government.

b) The acquiring body for the acquisition of land for New Bombay project was the Town Development Department of the State Government and with effect from 20th March, 2006 certain Officers of the CIDCO have been empowered to submit the proposals for the acquisition of land on behalf of the State Government.

c) Till 1st April, 2008 not only that the CIDCO was not the acquiring body, but, even the compensation on account of acquisition of lands for the said project was paid by the State Government and not by the CIDCO.

d) The effect of the decision dated 12th February, 2008 is that from 1st April, 2008 the CIDCO will have to pay the compensation amount "on account of Government". However , the Town Development department of the State Government continues to be the acquiring body.

e) As far as the present acquisition is concerned, the notification u/s 6 of the said Act 1894 makes it clear that the land was acquired u/s 113-A at the instance of the State Government and at the expenses of State Government.

12. Where any company or Corporation is declared to be the New Town Development Authority under Sub-section (3-A) of Section 113 the said Act of

1966, as per Section 113-A, the State Government is required to acquire, either by an Agreement or under the said Act of 1894, any land within the area designated as the site of the new town. The Section 113-A requires the State Government to vest the acquired lands in such New Town Development Authority for the purposes of the development of the New Town. Thus, even if a New Town Development Authority is appointed under Sub-section (3-A) of Section 113 the acquisition of the lands for the purpose of setting up the New Town has to be by the State Government. The reason is that under Sub-section (3-A) of Section 113, the New Town Development Authority acts as an agent of the State Government. In the present case, the CIDCO has been admittedly appointed under Sub-section (3-A) of Section 113 of the said Act of 1966. Therefore, as reflected from the notifications under Sections 4 and 6 of the said Act of 1894, the acquisition of the land is u/s 113-A of the said Act of 1966 at the instance of the state Government. The notification u/s 6 makes it very clear that the acquisition is at the cost of the State Government. The acquisition has been made and completed prior to first April 2008 and therefore, going by the Government resolution dated 12th of February 2008, the compensation and enhanced compensation is payable by the state Government.

12-A. A reliance has been placed by the learned Counsel for the CIDCO on the decision of the Constitution Bench of the Apex Court in the case of U.P. Awasthi Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., . The question before the Apex Court was regarding the interpretation of Section 50 of the Act of 1894. The conclusions of the decision of the Apex Court are summed up in paragraph 24 of the decision. The relevant conclusions read thus:

24. To sum up, our conclusions are:

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.
2. The said right carries with it the right to be given adequate notice by the Collector as well as the Reference Court before whom acquisition proceedings are pending on the date on which the matter of determination of compensation will be taken up.

(emphasis added)

There are subsequent decisions of the Apex Court which consider the said decision in the case of U.P. Awasthi (Supra). In the case of (Agra Development Authority v. Special Land Acquisition Officer and Ors.) 2001 DGLS (soft) 206 : 2001 (2) S.C.C. 646 the Apex Court considered the same question. In paragraph 7, the Apex Court held thus:

...What is required by Section 50 of the Land Acquisition Act is that the body for whom the property is being acquired is given an opportunity to appear and

adduce evidence for the purposes of determining the amount of compensation. Nothing could be shown to us that this had been done. On this point the matter requires to be sent back to the Special Land Acquisition Officer for refuting compensation payable.

(emphasis added)

13. Learned Counsel for the second respondent CIDCO invited my attention to the decision of the Apex Court in the case of (NTPC Ltd. v. State of Bihar and Ors.) (2004) 12 S.C.C. 96. In paragraph 6 of the judgment, the Apex Court reiterated that the body on whose behalf the land has been acquired is not just a necessary party, but, is the proper party before the reference Court. In the decision relied upon by the learned Counsel for the CIDCO in the case (Regional Medical Research Centre, Tribal v. Gokaran and Ors.) 2004 DGLS (soft) 57 : 2004 (13) S.C.C 125, The Apex Court reiterated the settled law on the point. The Apex Court observed that

The definitions of "local authority" and "company" in the Land Acquisition Act are inclusive definitions. They include all bodies on whose behalf land is acquired.

Therefore, to that extent the learned Counsel for CIDCO is right when he made a submission that the aforesaid definitions are sufficiently wide to include all bodies on whose behalf the land is required.

14. Thus, in short, the Apex Court has laid down that the body on whose behalf the land was acquired is either a necessary or a proper party to the reference u/s 18 of the said Act of 1884. On facts, as already held earlier, the acquisition in the present case is in exercise of the powers u/s 113-A by the State Government. The notification u/s 6 of the Act of 1984 makes it very clear that the acquisition is on behalf of the State Government at the cost of the State Government. Moreover, in view of the notification dated 24th March, 1971 the CIDCO being the New Town Development Authority appointed under Sub-section (3-A) of Section 113 is doing the work of developing and disposing of the land in the area as an agent of the State Government. Therefore, the acquisition cannot be said to be at the instance of the CIDCO. As stated in Government resolution dated 12th April 2008, the acquiring body is admittedly the town development department of the State Government. After the acquisition, the acquired land may have been transferred to CIDCO. But as stated earlier, the appointment of the CIDCO being under Sub-section (3-A) of Section 113 of the said Act of 1966, the CIDCO acts as an agent of the State Government. The work of development of the site of the New Bombay is being carried out by the CIDCO on behalf of the State Government. Therefore, the acquisition of land in exercise of powers u/s 113-A of the said Act of 1966 cannot be said to have been made for the benefit of or on behalf of CIDCO. Therefore, none of the aforesaid decisions will apply in the present case. At least, till 1st April, 2008, the compensation amount in respect of the land acquired for the project of New Bombay was being paid by the State Government and now the decision of the State Government says that

the CIDCO will pay the compensation amount "on account of the State Government". Even assuming that the Government decision of April, 2008 brings about certain change, the said decision is of no relevance here as the acquisition has been initiated and an award has been made much prior to the said decision. Even assuming that the acquisition is governed by the Government resolution dated 12th April 2008, the enhanced compensation will be payable by the CIDCO on account of the State Government. In the circumstances, the CIDCO is neither the acquiring body nor the authority which is liable to pay compensation.

14-A. Now an argument made by the learned Counsel for the third respondent that the CIDCO is a "person interested" will have to be considered. The said argument was advanced as under the Clause "b" of Section 20 of the said Act of 1894 a person interested is required to be issued a notice of the reference. Section 20 of the said Act of 1894 read thus:

20. Service of Notice.- The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determining the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:

- a) the applicant;
- (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and
- (c) in the objection is in regard to the area of the land or to the amount of compensation, the Collector.

Clause "b" contemplates a notice to all persons interested in the objection. In a reference u/s 18, the objections contemplated are as regards (a) the measurement of the land acquired, (b) the amount of compensation, (c) the persons to whom it is payable, or (d) the apportionment of the compensation among the persons interested. In the facts of the case, the CIDCO is not concerned with any of the four categories of objections which can be raised in a reference u/s 18. The CIDCO is not interested even in the amount of compensation as the same is payable by the State Government. A reference will have to be made to Clause "b" of Section 3 of the said Act of 1894 which reads thus:

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act: and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

A person can be said to be a person interested provided that he is the person claiming an interest in the compensation to be made on account of acquisition. Thus, the person who claims to be entitled to compensation or a share in the compensation can only be a person who can be said to be claiming interest in the compensation. Here the CIDCO is not claiming interest in the compensation. In

fact, the CIDCO has no concern with the payment of compensation. Therefore, the CIDCO cannot claim right of audience on the ground that it is a "person interested.

15. Only possible provision under which the CIDCO could have claimed is Section 50 of the said Act of 1894 which reads thus:

50. Acquisition of land at cost of a local authority or company- (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of any incidental to such acquisition shall be defrayed from or by such fund or company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or company shall be entitled to demand a reference u/s 18.

In the present case, admittedly, land is not being acquired at the cost of any fund controlled or managed by the CIDCO. As held earlier, the acquisition cannot be said to be on behalf of CIDCO or for benefit of CIDCO in as much as while developing the site of New Bombay, the CIDCO is acting as an agent of the State Government. Therefore, Sub-section (2) of Section 50 will have no application in the present case.

15-A. Keeping in mind the aforesaid legal and factual position, now a reference will have to be made to the impugned order. The only ground on which the CIDCO is ordered to be impleaded is that the CIDCO is a local authority, and therefore, it is a proper party to the reference. The local authority can become necessary or proper party provided Sub-section (1) of Section 50 is applicable which is not the case here. In the circumstances, the impugned order will have to be quashed and set aside being completely illegal. Therefore, the petition must succeed.

16. Hence, I pass the following order:

a) The impugned order dated 29th September, 2008 is quashed and set aside and the application exhibit 113 in LAR No. 620/2000 stands dismissed.

b) The petition is allowed accordingly.

c) No order as to the costs.

d) On the prayer made by the learned Counsel for the third respondent, it is directed that the reference court shall not proceed with the hearing of the reference till the end of January, 2010.