

(2023) 04 BOM CK 0054
In the Bombay High Court
Case No : Writ Petition No. 14354 Of 2022

Prakash G. Patel And Others

APPELLANT

Vs

Land Acquisition Collector And Others

RESPONDENT

Date of Decision : 28-04-2023

Acts Referred:

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 23, 33
Land Acquisition Act, 1894 — Section 13A

Citation : (2023) 04 BOM CK 0054

Hon'ble Judges : R. D. Dhanuka, J;Gauri Godse, J

Bench : Division Bench

Advocate : Rakesh D. Kumar, Shivkumar Mishra, Vijendra S. Jabra, Hiten S. Venegaonkar, Aayush Kedia

Final Decision : Partly Allowed

Judgement

Gauri Godse, J

1. Rule. Mr. Venegaonkar waives service for Respondents. Rule is made returnable forthwith. By consent of the parties, the petition is taken up for final disposal.

2. This Petition was initially filed for challenging the illegal action of partial demolition and damage caused to hotel premises, viz. "M/s. Hotel Grand Heritage" at the hands of Respondent Nos. 1 to 5. The Petitioners had prayed for directing Respondent Nos. 1 to 5 to forthwith restore and repair the demolished part of the building. In the alternative, the Petitioners had prayed for allowing the Petitioners to restore and repair the building as it existed prior to illegal partial demolition and recover the expenses from Respondent Nos. 1 to 5.

3. By way of amendment, the Petitioners challenged the corrigendum dated 31st May 2022 issued by the Land Acquisition Officer, Daman, as well as modification to the corrigendum issued on 23rd November 2022 by the Land Acquisition

Officer, Daman.

4. Initially the Petition was filed only by Petitioner No. 1 - husband of the owner of the writ property. Subsequently, by way of amendment, the owner of the property was also joined as Petitioner No. 2. The Petitioners contended that Petitioner No. 2 is the owner and occupier of the land in question along with the hotel building known as "M/s. Hotel Grand Heritage" situated at Survey Nos. 795/1 and 795/2 at Village Dabhel, Nani Daman. The Petitioners contended that after obtaining the necessary permissions, construction of the hotel premises was carried out. It was contended that without following any procedure of law, Respondent No. 2 initiated action and carried out partial demolition and caused damage to the hotel structure.

5. There was an Affidavit-in-Reply filed on behalf of Respondent No. 1, thereby contending that Respondents had acted as per the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. ("Act of 2013"). It was contended that after following the provisions under the Act of 2013, Award was passed on 14th March 2022 under Section 23 of the Act of 2013 in respect of the Petitioners' land being survey No. 795/1 and 795/2. It was stated in the affidavit that the compound wall and front structure of the hotel building of the Petitioners were under acquisition. At the time when the concerned officers visited the land under acquisition to verify whether the affected structure was demolished or not, it was brought to the knowledge of the concerned officers that only the compound wall was affected in view of the acquisition and the hotel structure was not affected under the acquisition proceedings. It was thus contended that the Award for Compensation was passed on 14th March 2022, a corrigendum Award was issued on 31st May 2022, and a modification order dated 23rd November 2022 was issued with respect to the affected portion of the hotel building of the Petitioners.

6. It was further stated in the Affidavit that the Petitioners were well versed with the issuance of the corrigendum, and the concerned authorities had on several occasions requested the Petitioners to demolish the affected structure. It was thus contended that the demolition of the affected structure was carried out by following the procedure under the Act of 2013 with respect to the structure which was affected by the acquisition.

7. Petitioners filed an Affidavit dated 22nd November 2022, thereby placing on record the photographs showing the demolition work that was carried out by Respondent No. 2 with respect to the hotel building of the Petitioners. By way of said Affidavit, Petitioners contended that under the land acquisition proceedings, only a portion of Petitioners' property, i.e. survey No. 795/1 and 795/2, admeasuring about 146 square meters and 83 square meters was affected, and the hotel building standing on the aforesaid land was not at all affected as per the land acquisition Award passed on 14th March 2022. In view of the contentions raised by the Respondents with respect to the corrigendum issued to the original Award, the Petitioners, by way of amendment, challenged the

corrigendum dated 31st May 2022 as well as modification to the corrigendum issued on 23rd November 2022.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

8. Learned counsel appearing for the Petitioners submitted that the Award dated 14th March 2022 passed under Section 23 of the Act of 2013 was regarding a total area of land admeasuring 20852 square meters. Learned counsel invited our attention to the summary of the Award, which shows that an amount of Rs. 15,01,23,142/- was awarded towards the value of structures and trees, including 100% solatium. The learned counsel further invited our attention to the corrigendum dated 31st May 2022, which summarised the Award for a total area of land acquired as 20611 square meters. He further invited our attention to the valuation of structures and trees, including 100% solatium increased to Rs. 16,18,97,534/- from the original valuation of the structures and trees as summarised in the original Award.

9. Learned counsel also invited our attention to an order dated 23rd November 2022 issued by the Land Acquisition Collector, Daman. The said order stated that in partial modification to Annexure – II of the corrigendum Award, the type of structure at serial No. 1 was directed to be read as "G+3 Hotel Building" instead of a compound wall. Thus, learned counsel for the Petitioners submitted that after the Award under Section 23 of the Act of 2013 was passed, the corrigendum Award, as well as modification to the corrigendum Award, recorded that there was a partial modification to the Award. He thus submitted that by way of a corrigendum Award, the area under acquisition was modified, and the value of structures and trees was increased. He further submitted that by the modification to the corrigendum Award, hotel building of the Petitioners was made subject matter of the Award in place of the compound wall as affected by the original Award. Learned counsel for the Petitioner submitted that after the Award was declared under Section 23 of the Act of 2013, Respondent No. 2 had no authority to modify the Award. He submitted that under Section 33 of the Act of 2013, only corrections to the Award are permissible within a period of six months from the date of the Award and before making Reference under Section 64 of the said Act of 2013.

10. Learned counsel submitted that Section 33 provides for only correction of any clerical or arithmetical mistakes in the Award or errors arising therein. He submitted that such corrections, which are likely to affect any person prejudicially, the same shall not be made unless such person is given a reasonable opportunity of making a representation in the matter. Learned counsel thus submitted that in any event, Respondent No. 2 could not have issued the corrigendum Award and modification to the corrigendum award without giving a reasonable opportunity to the Petitioner to make a representation with respect to the proposed modification. Learned counsel submitted that in any event, modifications carried out by way of corrigendum Award and the modification to the corrigendum Award amounts to a substantial

change in the original Award and corrections that are made cannot be termed to be clerical or arithmetical corrections as permissible under Section 33 of the Act of 2013. Learned counsel thus submitted that the corrigendum Award, as well as modification to the corrigendum Award issued by Respondent No. 2, is illegal and not permissible under any of the provisions of the Act of 2013. He, therefore, submitted that the corrigendum Award, as well as modification to the corrigendum Award, deserve to be quashed and set aside.

11. Learned counsel, in support of his submissions, has relied upon the decisions of the Hon'ble Supreme Court in the case of Naresh Kumar and Ors Vs. Govt. of NCT of Delhi (2019) 9 SCC 416, Judgment of this Court (Aurangabad Bench) in the case of Bhupendrasingh S/o Sardarsingh Parmar Vs. The Competent Authority and Ors Writ Petition No. 5286 of 2018, and the Judgment of this Court in the case of Shri Shrikant Govind Taklikar and others Vs. State of Maharashtra and others Writ Petition No. 5593 of 2022.

12. By relying upon the aforesaid decisions of the Hon'ble Supreme Court as well as this Court, learned counsel for the Petitioners submitted that the provisions of Section 33 of the said Act of 2013 do not permit to make any correction or pass corrigendum Award to change the original Award. He thus submitted that once the Award is declared, it is impermissible for the Competent Authority to reopen the same on the ground that the area affected under acquisition was required to be modified. He, thus, submitted that the action of Respondent No. 2 of demolishing the hotel structure under the guise of following the provisions for acquisition under the Act of 2013 is high-handed and illegal.

13. He submitted that perusal of the original Award clearly shows that a portion of the hotel structure which was demolished by Respondent No. 2 did not form part of the acquisition proceedings. He submitted that the very fact that Respondent No. 2 was required to issue the corrigendum Award and modification to the corrigendum Award for including the hotel structure in place of the compound wall, as mentioned in the original Award, shows that the structure that is demolished was not affected by the acquisition under the original Award dated 14th March 2022. He thus submitted that the action of Respondent No. 2 of demolishing the said structure is high-handed and arbitrary, and thus, the Petitioners are entitled to restore the hotel building to its original status and are also entitled to recover the expenses and compensation from the Respondents. He, therefore, submitted that the corrigendum Award, as well as the order modifying the corrigendum Award, be quashed and set aside, and the Petitioners be permitted to reconstruct the demolished part of the hotel building and restore the same to its original condition. He submitted that in view of the high-handed and illegal action on the part of Respondents, Petitioners are also entitled to recover the expenses towards restoration as well as claim damages against the Respondents.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

14. Learned counsel appearing for Respondents supported the action of the Respondents in issuing the corrigendum Award as well as order modifying the corrigendum Award. Learned counsel submitted that the demarcations done before passing the original Award clearly showed that the hotel structure of the Petitioners was affected by the acquisition. He further submitted that, inadvertently, the original Award referred to the compound wall instead of the hotel structure. He, therefore, submitted that the hotel structure being affected for the purpose of carrying out construction of the road, same was the subject matter of the original acquisition, however, in view of the inadvertent mistake of not specifying the hotel structure in the original Award, Respondent No. 2 has rightly passed the corrigendum Award as well as modification order to the corrigendum Award by taking recourse to Section 33 of the Act of 2013.

15. Learned counsel further submitted that in any event, Respondents are entitled to initiate fresh proceedings under the provisions of the Act of 2013 for the purpose of acquiring the hotel building of the Petitioners, which is affected for the purpose of carrying out construction of the road. He, therefore, submitted that, at the most, the Petitioners would be entitled to compensation towards the value of the hotel structure that is affected by the acquisition for the purpose of construction of the road. He thus submitted that the action of Respondents is sustainable and no interference is warranted in the present Petition.

CONSIDERATION OF THE SUBMISSIONS AND CONCLUSIONS:

16. We have considered the submissions made by both parties. We have carefully gone through the proceedings of the original Award as well as the corrigendum Award and the order modifying the corrigendum award. The Award dated 14th March 2022, passed under Section 23 of the Act of 2013, records that the total area of land acquired from the interested persons is 20852 square meters and it also states the value of the structures and trees, including 100% solatium, as Rs. 15,01,23,142/-. Annexure II of the said Award shows details of compensation for trees and structures. In the said Annexure II type of structure of Petitioners is shown as a compound wall. A perusal of the corrigendum Award dated 31st May 2022 records that the total area of the land acquired is reduced to 20611 square meters and the value of structures and trees, including 100% solatium, is enhanced to Rs. 16,18,97,534/-. Annexure II of the corrigendum Award again shows the type of structure of Petitioners as a compound wall.

17. By Order dated 23rd November 2022, Annexure II of the corrigendum Award is modified by directing that in partial modification of Annexure II of the corrigendum Award, the type of structure at Sr. No. 1 be read as "G+3 Hotel Building" instead of a "compound wall". In the original Award, the subject matter of Petitioners' property in Annexure II was only the compound wall. However, by way of partial modification to the corrigendum Award, Annexure II is modified and the entire hotel building is shown in place of the compound wall. By no stretch of the imagination, the said modification made to the original Award by changing the affected structure from the compound wall to the entire hotel

building can be termed as clerical or arithmetical corrections that are permissible under Section 33 of the Act of 2013.

18. The only provision permitting the Competent Authority to make minor corrections in the Award is Section 33, which permits only clerical or arithmetical errors. A plain reading of the corrigendum Award and order modifying the corrigendum Award shows that Respondent No. 2 has made substantial changes to the original Award, thereby affecting the entire hotel building of the Petitioners in place of the compound wall as originally stated in Annexure II of the Award. Such a modification amounts to changing the entire subject matter of acquisition. Such modification cannot be permitted under the guise of making corrections under Section 33 of the Act of 2013. Hence, the corrigendum Award dated 31st May 2022, as well as the order modifying the corrigendum Award, passed on 23rd November 2022, deserves to be quashed and set aside as being illegal and contrary to the provisions of the Act of 2013.

19. Respondents have contended that demolition of the part of the hotel building is carried out pursuant to the provisions of the Act of 2013, as the same was affected by acquisition proceedings. The original Award does not provide for the acquisition of the hotel building. As per the original Award, only the compound wall is shown affected by the acquisition. However, Respondents have sought to contend that by way of corrigendum Award and modification order to the corrigendum Award, the hotel building has been acquired. Thus, the change effected by the corrigendum Award and the modification to the corrigendum Award is substantial in nature and is not permissible under the provisions of the Act of 2013.

20. The decisions of this Court in the case of Bhupendrasingh S/o Sardarsingh Parmar, and in the case of Shri Shrikant Govind Taklikar, relied upon by the learned counsel for the Petitioners, are not applicable to the facts of the present case. In the said decisions, this Court has held that the provisions of Section 33 of the Act of 2013 are not applicable to the acquisition under the National Highways Act 1956. The decision of the Hon'ble Supreme Court in the case of Naresh Kumar relied upon by the learned counsel for the Petitioners deals with Section 13A of the Land Acquisition Act 1894. The Hon'ble Supreme Court has held that bare reading of Section 13A would make it clear that the same is not a provision for review of the Award but only for correction of clerical or arithmetical mistakes in the Award. In the present case, the Award is under the Act of 2013, and the modification done by the corrigendum Award and modification to the said corrigendum is substantial in nature. Section 33 of the Act of 2013 is *pari materia* with Section 13A of the Act of 1984. Thus, the principles laid down by the Hon'ble Supreme Court in the case of Naresh Kumar would be squarely applicable to the present case.

21. For the reasons stated above, we are of the opinion that the act of issuing a corrigendum Award, as well as the modification order to the corrigendum Award, is beyond the scope of Section 33 of the Act of 2013 and therefore is illegal. The

learned counsel for the Respondents was unable to support the action of issuing the corrigendum Award and the modification to the corrigendum Award with any legal procedure permissible in law. There is no merit in the submissions made by the learned counsel for the Respondents.

22. Thus, it is clear that the action of demolishing a part of the building, which is made subject matter of the acquisition only by way of the corrigendum Award and the modification order, cannot be termed legal. The action of Respondents of demolishing a part of the hotel building is high-handed and arbitrary. Hence, the Petitioners are entitled to reconstruct the demolished portion and restore the hotel building to its original status.

23. The Petitioners have suffered loss for no fault on their part. The hotel building was partly demolished by the Respondents without any due process of law, and the action of demolition is high-handed and arbitrary. Hence, Petitioners would be entitled to claim expenses towards the restoration of the hotel building and compensation for the damage caused to the Hotel structure in view of the illegal and high-handed action of demolition. Hence, the Petitioners would be entitled to take out appropriate proceedings to recover the cost of restoration of the hotel building as well as seek compensation towards loss suffered by the Petitioners due to the damage.

24. Hence, Writ Petition is partly allowed by passing the following order:

I. The corrigendum Award dated 31st May 2022 bearing No. 3/82/LND-ACQ/2020-21/2546 issued by the Land Acquisition Collector, Daman, is quashed and set aside.

II. Modification Order dated 23rd November 2022 bearing No. 3/82/LND-ACQ/2020-21/5108 issued by the Land Acquisition Collector, Daman, is quashed and set aside.

III. Petitioners are entitled to restore and repair the hotel building being "M/s. Hotel Grand Heritage" as it existed prior to partial demolition carried out on 27th September 2022 at their own cost.

IV. Petitioners are at liberty to make representation and/or adopt appropriate remedy as permissible in law to recover the expenses for restoration and repair of the hotel building and also seek compensation towards the loss suffered by the Petitioners. In the event such representation is made and/or any appropriate remedies are adopted, the same would be decided after considering the observations made by this Court in this order.

V. Respondents are at liberty to adopt appropriate proceedings for the purpose of acquiring the area of the land and/or structure as reflected in the corrigendum Award dated 31st May 2022 and modification order dated 23rd November 2022 by following due procedure of law under the Act of 2013.

VI. Rule is made absolute in the above terms. Writ Petition is partly allowed.

There will be no order as to costs.

VII. All the parties to act on authenticated copy of this order.