

(2010) 07 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 525 of 2009

Pravinkumar Gosalia

APPELLANT

Vs

Special Land Acquisition Officer and Another

RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 12(2), 18, 18(1), 18(2)

Citation : (2010) 5 BomCR 152

Hon'ble Judges : Britto N.A., J

Bench : Single Bench

Advocate : M.S. Usgaonkar and Amira Razak, for the Appellant; S. Dessai and P.S. Rao, for the Respondent

Final Decision : Allowed

Judgement

Britto N.A., J.—Rule. By consent heard forthwith.

2. This writ petition is directed against order dated 29.4.2009 of the learned Reference Court (District Judge, 3) Margao, by which the petitioner's reference claiming compensation, on account of acquisition, has been rejected.

3. Some facts may be stated to disposed of this writ petition.

4. The petitioner's father had a mining lease granted to him by the Government for a period of 30 years from 13.12.1968. It was then transferred in the name of the petitioner on 26.4.1991. The petitioner has made an application for renewal of the lease and the said application is pending with the Government and according to the petitioner the lease stands extended till the application for renewal is disposed of. The petitioner was extracting bauxite from the mining lease.

5. A vast property, has been acquired by the Government, for setting up of an Industrial Estate/Food Park at Quitol Village of Quepem Tatuka, by virtue of notification issued u/s 4 of the Land Acquisition Act, 1894 published on Gazette

dated 4.10.2007, and by award dated 1.6.2008, the Land Acquisition Officer has fixed the compensation payable at the rate of Rs. 22/- per square meter in respect of bharad/rocky land, Rs. 12 per square metre in respect of rice land and Rs. 11/- per square metre in respect of Bharad/tenanted land. The petitioner's mining lease extended to a number of survey numbers of Quitol Village, which have been mentioned in the letter of reference of the Special Land Acquisition Officer dated 28.8.2008 and it is not necessary to reproduce them herein.

6. The petitioner claimed a sum of Rs. 5,50,02,72,051/- as compensation due and payable to him, on account of expected loss of his lease holds rights for extracting of bauxite. The said claim was made by the petitioner by letter dated 18.7.2008 based on reply submitted by him by letter dated 5.6.2008 which in turn was based on a valuation report prepared by Sankalpana, a recognized Mining Engineer of Indian Bureau of Mines, but the same was denied to him by the Land Acquisition Officer.

7. The petitioner had received a notice under Sections 9 and 10 of the Land Acquisition Act, 1894 and the petitioner had furnished various particulars including his net profits made by him for the certain years including his claim for compensation for the said amount of Rs. 5,50,02,72,051/-. Subsequently, the petitioner by his letter dated 18.7.2008 requested the Special Land Acquisition Officer to refer the matter to the District Court bringing to his notice that he had rejected his claim as it did not reflect market price of the land. The petitioner had invited Land Acquisition Officer's attention, to the reply to the questionnaire dated 5.6.2008 and the Special Land Acquisition Officer by his letter dated 28.8.2008 had referred the matter to the District Court whereupon the Respondent No. 2, for whose benefit the said land was acquired, filed an application dated 16.4.2009 taking certain objections, one of them being that the reference made was not maintainable because it was vague and the other ground of objection was that the petitioner had not stated the grounds of objection. It is this application which came to be upheld by the learned Reference Court as a result of which the reference came to be rejected. In the impugned order, assailed in this writ petition, inter alia it is observed, that in deciding a reference, by taking into consideration the reply to the notice under Sections 9 and 10 of the Land Acquisition Act, would amount to deciding an issue which was not referred to the Court and which may also amount to allowing the petitioner to amend his reference.

8. At the hearing of this writ petition, a faint attempt was made by learned Senior Counsel on behalf of Respondent No. 2 that a writ petition was not maintainable against the impugned order but it was given up as fast as it was made, after Shri Usgaonkar, the learned Senior Counsel appearing on behalf of the petitioner placed reliance on the case of Mangilal Jawanmal and Others Vs. The Special Land Acquisition Officer (I), Thana, wherein the Division Bench of this Court has held that an appeal will only lie against an award or part of award which specifies the amount awarded under clause first of Sub-section (1) of

Section 23 and also the amounts (if any, respectively awarded under each of the other clauses of the same sub-section, together with grounds of awarding each of said amounts) and that only against award contemplated u/s 26 that an appeal will lie u/s 54 of the said Land Acquisition Act.

9. Shri Vahidulla, appearing on behalf of Respondent No. 1, the Special land Acquisition Officer has submitted that the reference was validly made and therefore, could not have been rejected.

10. Shri Dessai, the learned Senior Counsel has fairly conceded that the petitioner's reply dated 5.3.2008 in answer to the notice under Sections 9 and 10 could have been read as part of letter dated 18.7.2008 of the petitioner calling upon the Special land Acquisition Officer to make a reference u/s 18 of the Land acquisition Act which was sent without prejudice to the writ petition filed by him. In any event, the Special Land Acquisition Officer, must have certainly considered the report of Sankalpana as part of letter dated 5.6.2008 and that in turn as part of letter dated 18.7.2008 at the time of making the reference. The letter requesting reference to be made dated 18.7.2008 did refer to letter dated 5.6.2008 and obviously to the said report and all the three documents necessarily had to be read together and therefore learned Reference Court was not right in concluding that the reference to the reply to the notice under Sections 9 and 10 would amount to deciding an issue which was not referred to.

11. Section 18 Sub-section (1) of the Land Acquisition Act provides that any person interested who had not accepted the award may, by written application to the Collector, require that the matter be referred by Collector for determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or apportionment of the compensation among the persons interested. Sub-section (2) of Section 18 of the Act provides that application shall state the grounds on which objection to the award is taken: provided that every such application shall be made to (a) if the person making it was present or represented before the Collector at the time when he made his award, within 6 weeks from the date of Collector's award; (b) in other, cases within 6 weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2) or within six months from the date of Collectors award, whichever period shall first expire, (emphasis supplied)

12. Senior Counsel appearing on behalf of the parties concede that the issue involved was not one of limitation covered by Sub-clauses (a) and (b) of Sub-section (2) of Section 18 of the Land Acquisition Act, though most of the cases cited on behalf of the parties relate to the issue of limitation. Shri Usgaonkar, the learned Senior Counsel appearing on behalf of the petitioner submits that it is only in case of enhancement that amendment of a reference would not be allowed. Learned Senior Counsel further submits that the judgments relied by the learned Reference Court were not at all applicable. Learned Senior Counsel further submits that petitioner had sought an amendment of reference

application but it was rejected on the same day as that of impugned judgment, which amendment otherwise could have been allowed. Learned Senior Counsel submits that petitioner had made a specific claim for the grant of compensation on account of being deprived of extraction of ore from the leasehold rights on account of acquisition and whether the same claim could be granted or not was a matter which was required to be decided at the trial of the reference.

13. Shri Dessai, the learned Senior Counsel appearing on behalf of Respondent No. 2 submits, that the petitioner would not be entitled to any compensation in the light of relevant provision of Land acquisition (Mines) Act, 1885. Learned Senior Counsel submits that the case of the petitioner is not a claim for the amount of compensation but it is a claim for apportionment of compensation amongst the person interested. The learned Senior Counsel further submits that the application for reference does not state the grounds on which the objection to the award is taken and the petitioner ought to have mentioned in the application as to why other persons were awarded compensation could not have been awarded the same. Learned Senior Counsel submits that there is non-compliance with the requirements of Section 18 of the Land Acquisition Act. In rejoinder, Shri Usgaonkar, the learned Senior Counsel submits that the compensation fixed by the Special Land Acquisition Officer at different rates to be paid to the different persons is for acquisition of surface rights. Learned Senior Counsel further submits that the minerals which the petitioner was entitle to extract belong to the Central Government and it is on account of being deprived of the said extraction that the petitioner had claimed compensation of Rs. 5,50,02,72,051/-.

14. The case of Mahadeo Krishna Parkar Vs. The Mamlatdar of Alibag, was followed by the Apex Court in Mohammed Hasnuddin Vs. State of Maharashtra, . The observation of learned Chief justice are reproduced by the Apex Court and they are as follows:

it seems to me that the Court is bound to satisfy itself that the reference made by the Collector complies with the specified condition, so as to give the Court jurisdiction to hear the reference. It is not a question of Court sitting in appeal or revision on the decision of the Collector, it is a question of the Court satisfying itself that the reference made under the Act is one which it is required to hear. If the reference does not comply with the terms of the Act, then the Court cannot entertain it, I have myself some difficulty in seeing on what principle the Court is to be debarred from satisfying itself that the reference, which it is called upon to hear, is a valid reference. I am in entire agreement with the view expressed by Chandavarkar J., that it is the duty of the Court to see that the statutory conditions have been complied with.

15. The Apex Court in Mohammed Hasnuddin (supra) observed that "the condition laid down in Section 18 are "matters of substance and their observance is a condition precedent to the Collector"s power of reference", as rightly observed by Chandavarkar J. We are inclined to the view that the fulfilment of

the conditions, particularly the one regarding limitation are the conditions subject to which power of the Collector to make the reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to Section 18, Sub-section (2) is a sine qua non for a valid reference by the Collector."

16. The Apex Court further held that "even a reference is wrongly made by the Collector the Court will still have to determine the validity of the reference because the very jurisdiction of the Court to hear the reference depends on a proper reference being made u/s 18, and if the reference is not proper, there is no jurisdiction in the Court to hear the reference. It follows that it is the duty of the Court to see that the statutory conditions laid down in Section 18 have been complied with, and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the Court and, therefore, the Court has to ask itself the question whether it has jurisdiction to entertain the reference.

17. In *The State of Maharashtra Vs. Shri Ashok Laxman Wani*, it has been stated that the application shall state the grounds on which objection to the award is being taken. In other words the application u/s 18 is not a mere formality but is exercise of a substantive legal right in the manner specified in the provisions. It is expected of the applicant to be aware what was the value of his land at the time of issuance of the notification u/s 4 of the Act as that date alone is relevant for the determination of the compensation payable to the claimant. It was observed that the applicant as well as Collector is expected to adhere to the requirements of law in this regard.

18. In the light of decision of this Court in *Mahadeo Farhar* and that of the Apex Court in *Mohammed Hasnudin*, it is not necessary to refer to other decisions cited on behalf of Respondent No. 2. The petitioner has challenged only one order i.e. the order dated 24.4.2009. From the law laid down, it can be clearly seen that a reference can be rejected not only on point of limitation set out under Sub-section (2) of Section 18 of the Land Acquisition Act but also if it is not in accordance with Sub-section (1) of Section 18 of the Land Acquisition Act. In other words, a reference made by the Collector can be rejected in case it is not in conformity with Section 18 of the Land Acquisition Act.

19. I am entirely in agreement with the submission made by the learned Senior Counsel on behalf of the petitioner. Whether the petitioner would be entitled to the claim made by him is a matter which was required to be decided at the trial of the reference. If the application for reference dated 18.7.2008 was read with the previous reply of the petitioner dated 5.6.2008 as well as expert report and the learned Reference Court was bound to read them together, as was presumably done by the Collector, it would be clear that the petitioner was seeking compensation of Rs. 5,50,02,72,051/- on account of future loss of extraction of ore on account of acquisition based on the said report of Sankalpana. The petitioner's application was certainly an application for the

amount of compensation within the meaning of Sub-section (1) of Section 18 of the Act and the ground on which it was claimed was stated by the petitioner. Petitioner's claim was not for apportionment, apportionment of compensation offered/awarded by the Land Acquisition Officer for surface rights to different persons, mentioned in the award. Therefore, it cannot be said that the petitioner's application was not in conformity with the provisions of Sub-sections (1) or (2) of Section 18 of the Land Acquisition Act, and, it was nobody's case that the petitioner's application was covered by sub-clause (a) or (b) of Sub-section (2) of Section 18 of the Land Acquisition Act. Whether the petitioner would be eventually entitled to the claim made by him, or whether the claim made by him could not be allowed under the Act of 1885 or any other law or for any other reason was a matter which could be decided only at the trial of reference. In fact, it is the application of Respondent No. 2 which was rather vague and which ought to have been dismissed, as such. It was not expected of Respondent No. 2 as a State to have taken a frivolous objection in a reference made by the Government when its actions are bound to be fair.

20. Consequently the writ petition succeeds. The impugned order is hereby set aside. Respondent No. 2 shall pay Rs. 5000/- by way of costs to the petitioner. Parties to appear before the Reference Court on 13.8.2010 at 2.30 p.m. Costs to be deposited before the Reference Court on that day to be paid to the petitioner. Rule made absolute in terms of prayer (a) of the petition.