
(2019) 07 BOM CK 0204

In the Bombay High Court

Case No : Writ Petition No. 784, 1024 Of 2018, 537 Of 2019

Rajaram Bandekar, (Sirigao) Mines Pvt. Ltd.

APPELLANT

Vs

Suresh B. Gonkar (Since Deceased Through Legal
Representatives: Smt. Suvarna S. Gaonkar And Others

RESPONDENT

Date of Decision : 18-07-2019

Acts Referred:

Goa, Daman And Diu Mamlatdar's Court Act, 1966 — Section 4, 22
Goa Land Revenue Code, 1968 — Section 36, 192

Citation : (2019) 07 BOM CK 0204

Hon'ble Judges : C.V. Bhadang, J

Bench : Single Bench

Advocate : A.D. Bhobe, Kalpa Govekar, Ankita Kamat, S.D. Lotlikar, J. Karn, R.G. Ramani, Pranav Kakodkar

Final Decision : Partly Allowed

Judgement

C.V. Bhadang, J

1. Rule in all the petitions made returnable forthwith. The learned Counsel for the respondents waive service. Heard finally by consent of parties.
2. All these petitions are between the same parties and arise out of the order dated 29.06.2015, passed by the learned Mamlatdar, Bicholim, directing the petitioners to pay compensation to the respondent nos. 1 to 11. As such, all these petitions are being disposed off by this common judgment.
3. These petitions involve a claim for compensation for damage caused to the agricultural land of the respondent nos. 1 to 11, on account of the silting of the fields, by the mining rejects of the petitioner Mining Companies.
4. Advai Farmers Society, a Society registered under the Societies Act alongwith others had approached this Court in Writ Petition No. 77/2001, setting out various grievances on account of the dumping of the mining rejects by Mining Companies, outside the leased area and the mining activities being carried out,

allegedly in breach of the Environmental Laws. A Division Bench of this Court disposed off the petition on 18.07.2003, issuing certain directions. Clause VII of the order, which is relevant for the purpose, reads thus:

(VII) Respondent No. 1 is directed to nominate in each Taluka, where mining operations are carried on, one Mamlatdar to specifically deal with complaints of damages to agricultural land, crop loss, etc., The said Mamlatdar to dispose of the complaint received within six months, by assessing the damages, if any. If it is contended by any of the mining companies by carrying on the mining activities in that area, that the damage or loss caused is not on account of their operations, but that of another or others, that shall not deter the Mamlatdar from deciding the compensation, and directing the Company or all such Companies to deposit the whole amount or in proportion that the Mamlatdar thinks fit and proper to the extent the Mamlatdar finds them liable. Liberty to those mining companies to thereafter recover the same from the mining company whom they contend is liable by taking action under law. In case the applications are not disposed of within six months from the date they are registered, Chief Secretary of Respondent No. 1 State of Goa to take steps including disciplinary proceedings, if any, against the Mamlatdar for failing to discharge their duties under the provisions of the Land Revenue Code.

5. Writ Petition No. 125/2011 was filed by Suresh Babani Gaonkar and others, seeking compensation from the Mining Companies, for the loss that is caused to them on account of silting of their paddy fields by the mining activities. A Division Bench of this Court disposed off the said petition on 26.04.2011, on the basis of the statement made on behalf of the State that the Mamlatdar will hold an inquiry, so as to satisfy himself that the compensation has been duly paid to the affected farmers. In pursuance of the same, the respondent nos. 1 to 11 filed separate applications on 09.05.2011, before the learned Mamlatdar, seeking compensation for damage caused to their land during the period from 2004 to 2012. These applications were filed against the petitioners herein. The Mamlatdar took up the matter and directed following compensation to be paid by the petitioners (respondents before the Mamlatdar) "proportionate to their share", within fifteen days from the receipt of the order.

Sr. No.

Name of the applicant/victim

Survey No.

Amount

1

Shri Suresh B. Gaonkar, since deceased through his legal heir Smt. Suvarna Suresh Gaonkar

39/23,40/21, 42/22 and 45/18

9,19,982/-

2

Shri Sadanand V. Gaonkar

10/19, 39/16-B, 40/5 & 42/6

44,43,464/-

3

Shri Nilu M. Gaonkar

13/20,29/11 & 65/26

21,54,825/-

4

Shri Digambar A. Gaonkar

33/7, 34/2 & 65/16

23,52,119/-

5

Shri Nakul Gopal Gaonkar

60/5, 70/9, 17, 25, 34 & 42, 75/9 & 75/23

31,38,000/-

6

Shri Chandan Bhaskar Gaonkar

13/11 & 29/6

11,67,591/-

7

Shri Ramakant Atmaram Chari

55/1 & 55/12

7,53,158/-

8

Shri Premdas Shambha Gaonkar

30/1 & 39/7

20,31,660/-

6. A perusal of the order passed by the Mamlatdar shows that the compensation

is determined on the basis of the "calculation made by the respondent nos. 1 to 11" (the applicants before the Mamlatdar). It also records that the petitioners despite of opportunity did not object to the claim of the respondent nos. 1 to 11.

7. The petitioners sought to challenge the said order before the Additional Collector, under Section 22 of the Goa, Daman and Diu Mamlatdar's Court Act, 1966. It appears that a preliminary objection was raised as to the maintainability of the said challenge, on the ground that the order passed by the Mamlatdar was not referable to Section 4 of the Mamlatdar's Court Act, in as much as under the said Act, the Mamlatdar is not entitled to grant any compensation. The learned Additional Collector also examined whether, the order passed by the Mamlatdar is referable to Section 36 of the Goa Land Revenue Code, 1968 (Code, for short) and whether the revisional powers, under Section 192 of the Code are available. The Additional Collector found that the order passed by the learned Mamlatdar was neither under Section 4 of the Mamlatdar's Court Act nor under Section 36 of the Land Revenue Code and therefore, refused to entertain the challenge by the petitioners, for want of jurisdiction and therefore, by an order dated 19.02.2018 has dismissed the application. Feeling aggrieved, the petitioners are before this Court.

8. I have heard the learned Counsel for the parties. Perused record.

9. It is submitted by the learned Counsel for the petitioners that the Additional Collector was in error in refusing to entertain the challenge to the order passed by the learned Mamlatdar. It is submitted that in the alternative, the petitioners are directly challenging the order passed by the Mamlatdar. It is submitted that the said order is passed without any inquiry and is practically an unreasoned order and is based purely on the claim made by the respondent nos. 1 to 11, without ascertaining the damage and the question whether the petitioner Mining Companies were responsible for causing the damage and if yes, to what extent and the proportion thereof. It is submitted that without ascertaining and holding any inquiry, the Mamlatdar could not have awarded the compensation, which according to the learned Counsel for the petitioners is exorbitant.

10. The learned Senior Counsel for the petitioners submitted that various amounts have been paid to the respondents, for such damage, during the period from 2004 to 2012. On account of closure of mining activities, in the year 2012, there is no question of further damage being caused.

11. Ms. Kamat, the learned Counsel for the respondent nos. 1 to 11 submits that the respondent nos. 1 to 11 are agitating their claim for compensation from the year 2004. It is submitted that the petitioners despite reasonable opportunity being granted, did not contest the application and now, they cannot turn around and complain about the Mamlatdar having accepted the computation of the compensation made by these respondents. The learned Counsel has referred to the chart annexed to the affidavit in reply showing the basis of the compensation claimed, spread over the year 2004 onwards. It is submitted that this was never

disputed on behalf of the petitioners. She, therefore, submits that no case for interference is made out.

12. I have considered the rival circumstances and the submissions made. I do not propose to go into the question about the maintainability of all the challenge before the Additional Collector, as I propose to examine the order passed by the Mamlatdar.

13. From the affidavit in reply filed by the respondent nos. 1, 2, 4, 5, 6, 9, 10 and 11 on 27.06.2019, it is not disputed that some of the private respondents have received the following amounts from the year 2004 to 2012.

Respondent Herein

Amounts paid in Rupees

Received in Year

1

16,018/-

2012

2

75,086/-21,450/-

2008 to 2010-2012

4

29,175/-

2012

5

17,881/-

2012

6

30,000/-

2012

9

4,201/-4,208/-

2008-2010-2012

10

34,697/-16,175/-

2008-2010-2012

11

14,340/-

2012

14. A perusal of para 7 of the order dated 18.07.2003 passed by this Court in Writ Petition No. 77/2011 would show that the Mamlatdar was to dispose off the complaints received by the respondent nos. 1 to 11 by ascertaining the damage, if any, which would mean that the Mamlatdar is expected to conduct some sort of an inquiry, albeit, summary inquiry to ascertain the damage, if any, and also to decide the extent to which a Mining Company is liable for such damage. Even where the Mining Companies claim that the damage or loss is not on account of their operation, that shall not deter the Mamlatdar from deciding the compensation and directed the Companies to deposit the whole of such compensation or the compensation which "the Mamlatdar thinks fit and proper. The exercise which the Mamlatdar is expected to conduct in pursuance of the directions of this Court as aforesaid, invariably would involve some kind of an inquiry for ascertaining the damage and the consequent liability of the Mining Companies.

15. Coming to the present case, it appears that the Mamlatdar has not conducted any inquiry whatsoever and quite to the contrary, the order specifically mentions that the compensation is determined only based on the calculations made by the respondent nos. 1 to 11. Even where there is no contest by the adversary, the Court or the Authority acting in a judicial or a quasi judicial manner is expected to conduct some sort of an inquiry in order to satisfy itself as to whether the claim put forth is justified and the quantum granted is reasonable or not. Thus, even where there is no contest, the Authority is not obliged to accept a claim as it is and ought to have conducted some inquiry to satisfy itself as to the liability and the quantum of the compensation.

16. It transpired during the course of the arguments at bar that normally, in these type of claims, the Mamlatdar calls for the report of the Zonal Agricultural Officer (ZAO) and then decides the matter. It appears that the Mamlatdar had called for such report vide letter dated 20.04.2012. The ZAO had replied vide communication dated 04.05.2012, which reads as under:

"With reference to the above, this office is in receipt of application of 6 farmers from Sirigao village for compensation of damages caused to paddy fields due to mining activities. In this regard it is to inform that the exact area owned by the applicant's cannot be assessed on the basis of Form I & XIV enclosed, as they are not the actual owners. It is requested to get the details of actual area owned by the farmer & submit to this office. A copy of the letter made to the farmer may be forwarded to this office for information. Later the inspection would be carried out."

17. The Mamlatdar thereafter by letter dated 01.06.2012 had asked the respondent nos. 1 to 11 to produce ownership documents giving exact details of the area owned by them. It is not known whether, such particulars were produced before the ZAO or his report was obtained or not. For the aforesaid reasons, in my considered view, the impugned order passed by the learned Mamlatdar cannot be sustained and will have to be set aside.

18. In the result, the following order is passed:

ORDER

(i) The petitions are partly allowed.

(ii) The impugned order dated 29.06.2019, passed by the Mamlatdar, Bicholim, is hereby set aside.

(iii) Case No. Mam/Bich/Mine/02/2011 is restored back to the file of the Mamlatdar, Bicholim, for disposal in accordance with law, and in the light of the observations made above.

(iv) Parties to appear before the learned Mamlatdar on 19.08.2019 at 10:00 a.m.

(v) Needless to mention that any final assessment made by the Mamlatdar will be after taking into consideration the amount already received by the respondent nos. 1 to 11.

(vi) Rival contentions of the parties are left open.

(vii) Rule is made partly absolute in the aforesaid terms with no order as to costs.