

(2019) 08 BOM CK 0079

In the Bombay High Court

Case No : Writ Petition No. 2776, 4083 Of 2018

Sandeep S. Metange And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24, 24(1), 24(2), 24(1)(a), 114
Land Acquisition Act, 1894 — Section 4, 4(1), 4(2), 5(A), 6, 11, 17(2), 17(4), 18, 24(1)(a), 34, 39, 40(b), 41, 41(5), 48

Citation : (2019) 08 BOM CK 0079

Hon'ble Judges : Sunil B. Shukre, J;S.M. Modak, J

Bench : Division Bench

Advocate : J.T. Gilda, A.J. Gilda, K.S. Joshi, V.G. Palshikar

Final Decision : Dismissed

Judgement

S.M. Modak, J

1. As the issues involved in both these petitions are common, we are deciding them by common judgment. The issue involved in these petitions are about validity of the award dated 28th January, 2016 and award dated 27th March, 2015 passed as per the provisions of the Land Acquisition Act, 1894. (herein after referred as " Act, 1894"). The main ground of attack is Land Acquisition Officer ought not to have continued the acquisition proceedings initiated earlier as per Act 1894 after 01.01.2014 (i.e date of which the new Act came into force). Both the sides relied upon the true interpretation of the provisions of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as "Act, 2013").

2. The petitioners claim that on 1st January, 2014, the proceedings under the old Act were said not to be initiated, whereas the respondents contend that proceedings under the old Act have already been initiated on 1st January, 2014

and as such the impugned order award is legal and proper. So we are required to consider the factual aspects as well as true interpretation of the provisions of Section 24 of Act, 2013". Sub Section 1 to Section 24 of Act, 2013 is relevant for our purpose, is reproduced below.

"24. Land Acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases. - (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1) of 1894), -

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed."

3. On plain reading, we quite find that there are two contingencies laid down therein. They are as follows :-

(1) Award has not been declared

(2) Award has been declared.

If the award has not been declared (clause a) proceedings can be continued and only those provisions of Act 2013 relating to determination of compensation will be applicable. Whereas if the award has been declared then the remaining proceedings will be continued as per the provisions of the old Act. However, before invoking this provision, one initial condition needs to be fulfilled. It reads as follows :-

"in any case of land acquisition proceedings initiated under Land Acquisition Act, 1894".

4. The entire emphasis is on the word 'initiated'. The dispute amongst the rival parties pertains to true meaning of the word "initiated". On the basis of the facts, the petitioners contend that publication of notification under Section 6 of the old Act amounts to initiation of proceedings. Whereas the respondents contend that publication of notification under Section 4 of the Old Act amounts to initiation of proceedings. Both the sides relied upon various judgments. Before going into ratios laid down therein it will be material to consider few relevant facts. They are as follows:-

Facts of Writ Petition No. 2776 of 2018

Publication of preliminary notification under Section 4 of the old Act.

Sr. No.

Date

Particulars

1

09.05.2013

Publication in official gazette.

2

03.05.2013

Publication in daily Maha Vidharbha

3

07.07.2013

Publication in newspaper Daily Amravati Khabar

4

13.09.2013

Publication on notice board of Gram Panchayat, Alangaon

5

17.07.2014

Publication of corrigendum of section 4 notification in official gazette

Publication of declaration under Section 6 of the old Act.

6

03.08.2014

Publication in newspaper Dainik Rastra Dut

7

28.08.2014

Publication in official gazette

8

29.08.2014

Publication in Apna Maha Vidharbha

9

26.12.2014

Publication on notice board of Gram Panchayat, Alangaon

5. From the above dates, it is clear that notification under Section 4 was

published in all the modes earlier to 1st January, 2014 whereas the corrigendum to Section 4 notification and publication of declaration under Section 6 in all the modes was after 1st January, 2014.

Facts of Writ Petition No. 4083 of 2018

Publication of preliminary notification under Section 4 of the old Act.

Sr. No.

Date

Particulars

1

12.04.2012

Publication in official gazette.

2

03.04.2012

Publication in daily Yuwamanch

3

07.04.2012

Publication in newspaper Daily Mahasagar

4

09.08.2012

Publication of corrigendum of section 4 notification in official gazette

5

01.08.2012

Corrigendum published in daily newspaper, Mahasagar and Yuvamanch

6

13.08.2012

Publication of notice board at Tehsil Office

7

17.08.2012

Publication of notice board of local Grampanchayat

Publication of declaration under Section 6 of the old Act.

Sr. No.

Date

Particulars

8

11.08.2013

Publication in newspaper Prenapunj

9

20.08.2013

Section 6 notification published in daily Nirbhay Sanchar

10

15.01.2014

Publication in the notice board of local Grampanchayat

6. From the above dates, it is clear that amongst various modes of publication, only by way of one mode notification under section 6 was published after 1st January, 2014 i.e on 15th January, 2014. It means, publication of notification under Section 4 on the different modes was earlier to 1st January, 2014. So also, two modes of publication of notification under Section 6 were carried out prior to 1st January, 2014.

7. On this background, we are required to decide following question :

Whether it is the notification under Section 4 of the old Act or whether it is the notification under Section 6 of the old Act amounts to "initiation of the proceedings" as contemplated under Section 24(1) of the new Act ?

The decision rests on two pillars. One is issuance of preliminary notification under Section 4 of the Old Act and second is issuance of declaration under Section 6 of Old Act. Either one of them may amounts to initiation of proceedings. It is true that stages of issuance of these declarations and their purposes are different. At the same time, there are certain common points in between them. These preliminary notification / declaration has to be published for general awareness of the public. There are four modes of their publication mentioned in those sections. They are identical. They are as follows :-

- (1) in the official gazette,
- (2) in news paper circulated in the locality in the regional language,
- (3) in the news paper published in any language in the locality,
- (4) by public notice giving at a convenient place in the locality.

It may happen that out of the four modes, some mode might have taken place earlier to 01.01.2014 and some might have taken place after 01.01.2014. Ultimately, publication by how many modes have taken place earlier / after cut off date of 01.01.2014 will be question of fact. And if such question will arise, it can be decided by concerned Court. On this background, we will decide the issue involved before us.

Meaning of the word "initiated".

8. The petitioners relied upon two judgments directly on this point. Whereas, respondents relied upon the judgments in which under different backgrounds, the provisions of Sections 4 & 6 of the old Act were interpreted. We will deal with those two judgments later on.

JUDGMENTS RELIED UPON BY BOTH THE SIDES

9. The Government required the land for construction of a factory building for M/s. Mukund Iron & Steel Works Limited in the District of Thane. Notification under Section 4 of the Act was issued. Hearing of objections under Section 5(A) of the old Act started. The petitioners are the owners of the said land. They also took various objections. They directly approached the Hon'ble Supreme Court thereby challenging the constitutionality of land acquisition proceedings. The acquisition was for the purpose of company and as such the consent under Section 39 and agreement under Section 41 with the company was required. A notification under Section 6 can be issued only after obtaining of consent. On this background, by interpreting the nature of notification under Section 4 of the said Act, the Hon'ble Supreme Court in the case of Babu Barkya Thakur vs. State of Bombay (now Maharashtra) and Ors., reported in AIR 1960 SC 1203, observed thus :

"The proceedings begin with a Government notification under S.4 that land in any locality is needed or is likely to be needed for any public purpose. On the issue of such a notification, it is permissible for a public servant and workmen to enter upon the land to do certain acts specified therein with a view to ascertaining whether the land is adapted for the purpose for which it was proposed to be acquired as also to determine the boundaries of the land proposed to be included in the scheme of acquisition."

10. These observations were relied upon by the respondents, whereas the petitioners relied upon the following observations from paragraph 12. They are as follows :

"12. The purpose of the notification under S.4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary digging or boring into the subsoil whether the land was adapted for the purpose for which it was sought to be acquired. It is only under S.6 that a firm declaration has to be made by Government that land with proper description and so as to be identifiable is needed for a public purpose or for a Company. What was a mere proposal under S.4 becomes the subject

matter of a definite proceeding for acquisition under the Act."

The Hon'ble Supreme Court refused to set aside Section 4 notification. These observations were followed in the case of Bastyan Jao Patil vs. The Special Land Acquisition Officer, Thana, reported in 1970 Bom.Law Reporter 643. It was also a case, wherein there was acquisition of land for construction of factory buildings for M/s. Voltas Limited in the District Thane. After completing the initial procedure, award was declared. The petitioner filed a writ petition before the Hon'ble High Court. During its pendency, the Hon'ble Supreme Court delivered the judgment in case of R.L. Arora vs. State of U.P., reported in AIR 1962 SC 764.

The provisions of Section 40(b) and Section 41(5) of the old act were interpreted. The construction to be carried out on lands proposed to be acquired must be capable of being used by the public and not the product manufactured by the company. On the basis of this interpretation, the Government issued fresh notification under Section 6 of the old Act. The Hon'ble High Court refused to quash Section 4 notification on this background. The observations in case of Babu Barkya (supra) were reproduced as follows :

".... They have further pointed out that a notification under S.4 of the Act envisages a preliminary investigation and it is only under S.6 that the Government makes a firm declaration. It is clear, therefore, that although no doubt SS.4, 5A and 6 have to be read together, the effect of these sections is that action preliminary to acquisition is taken under S.4 read with S.5A. This preliminary action is taken with a view to enabling the Government to make up its mind whether it should acquire or not when the acquisition is for a public purpose and if so, what definite portion of the land notified under S.4 should be acquired. Till then all that is done is that a piece of land is generally notified as likely to be required for a public purpose or for the purpose of a company and that decision may be implemented by acquisition or may not be implemented by acquisition...."

11. In case of Narendrajit Singh vs. The State of U.P. and others, reported in AIR 1971 SC 306, again there was an occasion to decide the nature of notification under Section 4 of the old Act. Respondents heavily relied upon following observations:-

"8. It becomes clear from a perusal of the said sections of the Act that the process of acquisition must start with a notification under Section 4. Even in extremely urgent cases like those mentioned in sub-section (2) of Section 17, the notification under Sec.4 is a sine qua non. In some cases the Government may not follow up the notification under sub-section (1) by further proceedings specially where it finds that the land was unsuited for the purpose for which it is required."

In this case, the Hon'ble Supreme Court noticed certain defects in the notification under Section 4 of the old Act and accordingly decision of the Division Bench of the High Court was set aside.

12. The Hon'ble Supreme Court in the case of R.L. Jain (D) by Lrs. vs. DDA and others, reported in (2004) 4 SCC 79, dealt with an issue of duration of payment of interest under Section 34 of the old Act, possession was taken prior to issuance of fresh section 4 notification. As the said possession was not as per the provisions of the Act, interest was not awarded from the date of taking over possession. The nature of notification under Section 4 was interpreted as thus : The observations in case of Union of India vs. Budha Singh reported in 1995(6) SCC 233, were reproduced as follows.

"8.It was also held that the parameter for initiation of proceedings is the publication of the notification under Section 4(1) of the Act which would give legitimacy to the State to take possession of the land in accordance with the provisions of the Act and further any possession taken otherwise would not be considered to be possession taken under the Act....."

It is relied upon by the respondents.

13. An issue of withdrawing from the acquisition proceedings as contemplated under Section 48 of the Land Acquisition Act was involved before the Hon'ble Supreme Court in case of Pimpri Chinchwad New Township Development Authority vs. Vishnudev Co-operative Housing Society and others, reported in 2019(3) Mh.L.J. 562. The Revenue Minister exempted certain land in view of the provisions of Section 48 of the Old Act and the said order was challenged before the Hon'ble High Court. It was upheld. However, it was set aside by the Hon'ble Supreme Court. There was an occasion to interpret the provisions of Section 4 of the old Act. It reads as follows :

"51. Third, though section 48 of the Act, in terms, does not provide that release of the land from any acquisition proceedings is required to be done by issuance of the notification by the State but, in our view, having regard to the scheme of the Act, which begins with the process of issuance of notification under Section 4 of the Act for acquisition of any land, the release of land from such acquisition is complete only when a notification is issued by the State in that behalf."

RELEVANT JUDGMENTS

14. The judgments relied upon by the appellants interpreting the word "initiate", are as follows:-

- 1] Nilima Mahesh Bhole vs. State of Maharashtra & others - 2017 (5) Mh.L.J. 643.
- 2] Sheetalkumar Sadashiv Zambare vs. The State of Maharashtra and others - 2018 SCC Online Bom 249.

Apart from these two judgments, we came across judgment in case of Smt. Sakarbai Shedke Vs. S.D.O., Shrirampur, reported in 2014(6) ABR 257. A notification under Section 4 and under section 6 of the said Act were published earlier to 1st January, 2014. The provisions of Section 24(1)(a) of the New Act were held applicable. The proceedings were allowed to be continued with

observations to determine the compensation as per the provisions of New Act. There was occasion to consider the co-relation in between the provisions of Section 114 and Section 24 of 2013, Act. The relevant observations are reproduced below -

"11. In fact, in view of Sec. 24 of the Act of 2013, there is no room for any ambiguity or interpretation of a statute. Sec. 24(1) starts with a non obstante clause. The general purpose is to give the provision contained in the non obstante clause an overriding effect in the event of conflict between it and the rest of the sections, having overriding effect over other provisions of the said Act. The said non obstante clause clarifies the whole position and does not leave any room for speculation. The proceedings will have to be governed by Sec. 24 of the Act of 2013".

The facts involved in that petition are different. Section 4 notification and Section 6 declaration were published earlier to 1st January, 2014. There was no occasion to interpret the word 'initiated' in that judgment.

The observations in case of Nilima Bhole (supra) were followed in case of Sheetalkumar Zambare (supra). It will be material to consider few facts.

NILIMA BHOLE'S JUDGMENT

15. In case of Nilima Bhole (supra), notification under Sections 4 and 6 were issued and the award was also passed. Gazette publication of a notification under Section 4 of the old Act was prior to 1st January, 2014. All other events took place after that. On reading this judgment, we can find that the observations by the Hon'ble Supreme Court in case of Babu Barkya Thakur (supra) were relied upon. There is an argument by learned Advocate Shri Palshikar that those observations were wrongly interpreted in case of Nilima Bhole. The observations by the Hon'ble High Court of Gujarat in case of Patel Gandhal Somnath and others vs. State of Gujarat and others reported in AIR 1963 Gujarat 51 were also relied upon. It was on the point of nature of notification under Section 4 of the old Act. Finally, the award was set aside and liberty was granted to initiate fresh acquisition proceedings.

SHEETALKUMAR ZAMBARE'S JUDGMENT

16. Whereas, in case of Sheetalkumar Zambare, Section 4 notification and filing of objections took place earlier to 1st of January, 2014. Whereas, Section 6 declaration was published after 1st January, 2014 i.e. on 8th of May, 2014. Thereafter, award was declared. The Division Bench was pleased to set aside the award for the reason that after the new Act, award cannot be declared as per the provisions of the old Act particularly when acquisition proceedings have not been initiated on 1st January, 2014.

OUR FINDINGS

17. We have gone through all the above referred judgments very carefully. It is

true that except in the case of Nilima Bhole and in the case of Sheetalkumar Zambare, in none of the other judgments, there was occasion to interpret the provisions of Section 4 and Section 6 of the old Act vis-a-vis the provisions of Section 24 of the new Act. It is also true that the observations by the Hon'ble Supreme Court in case of Babu Barkya relating to interpretation of Section 4 of the old Act were relied upon in the case of Nilima Bhole. In fact, it is a foundation for coming to the conclusion that issuance of notification under Section 4 of the old Act does not amount to initiation of the proceedings under the old Act.

18. Now, what is the ratio of that judgment is an issue. Those observations can be a ratio of that judgments, which are made on the basis of particular set of facts and then interpreting the relevant provisions of the Act. It is true that in the case of Babu Barkya, the Hon'ble Supreme Court laid down the purpose of notification under Section 4 as a preliminary investigation. There cannot be any dispute about this interpretation. The issue before the Hon'ble Supreme Court was about absence of word 'company' in notification issued in that case under Section 4 of the old Act. It will be also material to note that under different set of facts, it has been observed in some of the above referred judgments (relied upon by the respondents) that notification under Section 4 of the old act amounts to beginning of the proceedings. It has also been held that acquisition proceedings begin with the process of issuance of notification also under the old Act. We are conscious of the background in which these observations were made. We have noted it down in earlier paragraphs of this judgment.

19. It is very well true that when Coordinate Bench at Aurangabad decided the case of Nilima Bhole, the interpretation of the provisions of Section 4 of the old Act made in above referred judgment (relied upon by the respondents) except in the case of Pune Municipal Case was not brought to their notice.

20. With all humility, we would like to say that the observations on the point of interpretation of Section 4 of the old Act in Babu Barkya cannot be made a foundation while interpreting the word "initiated" in Section 24 of the new Act. There was an occasion for us to read the judgment in the case of Mussoorie Deharadun Development Authority vs. Rajesh Goel & others, reported in AIR 2015 Uttarakhand 8.

AIR 2015 UTTARAKHAND 8

21. The Division Bench of the Hon'ble Uttarakhand High Court dealt with the correctness of the orders passed by the Single Judge. Notification was issued under Section 4 of the old Act earlier to 1st of January, 2014. The requirement of hearing was dispensed with by invoking the power under Section 17(4) of the old Act. The legality of the notification was challenged. Section 6 notification was not issued. Admittedly, all events took place earlier to 1st January, 2014. There was an argument that said provisions of Section 24(1)(a) of the old Act will not be applicable, but the provisions of Section 24(2) of the new Act were applicable. It was turned down. The word 'initiated' is interpreted in paragraph 49, which is

reproduced below :

The dictionary meaning of "initiated" is "first step" or setting the "ball in motion". This is done by publication of notification under Section 4 of the old Act. It marks the beginning of the process of land acquisition. It is the sine qua non of land acquisition under the old Act. Admittedly this notification was published under Section 4 of the old Act on 11.10.2013, therefore, the proceedings under the old Act stood "initiated".

22. With respect we disagree with the observations made in the case of Nilima Bhole (supra). The foundation of those observations find place in observations made in Babu Barkya's case. It was decided on the background of challenge to notification under Section 4 of the old Act, when land is proposed to be acquired for construction of factory building. There was a grievance that requirement for factory building is absent and it does not fall within the notification of public purpose. While upholding the notification under Section 4 of the old act, the Hon'ble Supreme Court commented on the nature of that notification. The Hon'ble Supreme Court commented that requirement for the purpose of company finds place in Section 6 of the said Act so the absence of word "company" in Section 4 notification cannot be said to a lacuna. Because such notification is only a preliminary step.

23. We are more impressed by the observations about the nature of Section 4 notification in cases of Pimpri Chinchwad New Township Development Authority, Narendrajeet Singh and R.L. Jain. We do agree that background for those observations is different. We have got our own reasons to disagree with the observations in case of Nilima Bhole.

REASONS FOR DISAGREEMENT

24. We have compared the provisions of Sections 4 and 6 of the old Act. We do agree that the stage of hearing of objection comes in between the stage under Section 4 on one hand and the stage under Section 6 on the other hand. It is very well true that Section 6 declaration can only be issued after report under Section 5(A) is made. It is also true that such declaration conclusively shows about a requirement of the land. It is very well true that at the stage of issuing declaration under Section 6, yet the appropriate Government has to decide finally about the requirement of the land. The appropriate Government may entirely drop the proceedings or it may drop some of the lands. In spite of this compliance, when we have perused the provisions of Section 4(2) of the old Act, we do find some powers given to the Officers. They have been noted down in sub-section 2.

25. These powers must have been given for ascertaining the condition prevailing at the site and for deciding, whether the land can suit to the requirement. If we consider these acts, it can certainly be said that the proceedings have been initiated. Ultimately, the final outcome may be the confirmation, partial modification or dropping of notification. But, unless and until notification under

Section 4 is issued, the Officers cannot perform the acts mentioned in Section 4(2) of the old Act.

26. What section 24(1) says is "land acquisition proceedings have been initiated" It refers to "land acquisition proceedings". This phrase is used in a general sense. It nowhere specifies particular stage of land acquisition proceedings. We cannot keep the acts permitted as per the provisions of Section 4(2) of the old Act outside the purview of the land acquisition proceedings. For these reasons, we are of the firm opinion that the land acquisition proceedings is said to be initiated when Section 4 notification is issued.

27. We are conscious that judgment in case of Nilima Bhole and in case of Sheetal kumar Zambare were declared by a Division Bench. Judicial discipline requires not to pronounce the judgment in this case, but to make request to the Hon'ble Chief Justice to formulate a Larger Bench for deciding certain issues. Hence, we are framing the issues as follows:-

ISSUES FOR REFERENCE

28. For the above discussion and for consideration of a Larger Bench, we are formulating the points as follows :

1. What amounts to "initiation of land acquisition proceedings for the purposes of Section 24(1) of the 2013 Act" ?
2. Whether publication of preliminary notification under Section 4 of the old Act amounts to "initiation of land acquisition proceedings" ?

OR

3. Whether publication of declaration under Section 6 of the old Act amounts to "initiation of proceedings"?

29. In these cases, the awards have already been declared on 28th January, 2016 and 27th March, 2015 and even the reference under Section 18 of the old Act has been answered. We find no dispute amongst the contesting parties about payment of compensation. There may be a dispute about handing over possession. We are not going into that issue in this petition, because it is not material for our discussions. So, even if the matter is referred to a Larger Bench, we do not find any injustice will be caused to any of the parties if this petition is kept pending till the time Larger Bench will answer the points.

30. Registrar (Judicial) to request the Hon'ble the Chief Justice to formulate a Larger Bench for deciding the points formulated by us in the earlier part of the order. Parties to do take note and do the needful.