
(2022) 10 BOM CK 0122
In the Bombay High Court
Case No : Writ Petition No. 6028 Of 2019

Sanjay And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 21-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Land Acquisition Act, 1894 — Section 4(1), 11, 28A, 28A(1), 28A(2), 28A(3)

Citation : (2022) 10 BOM CK 0122

Hon'ble Judges : A.S. Chandurkar, J;Urmila Joshi-Phalke, J

Bench : Division Bench

Advocate : A.S. Mehadia, T.H. Khan, M.A. Kadu

Judgement

A.S. Chandurkar, J

1. By this Writ Petition filed under Articles 226 and 227 of the Constitution of India, the petitioners seek enhancement in the amount of compensation as awarded in Land Acquisition Case No. 11/2005 which is higher than what has been awarded to them in proceedings under Section 28A of the Land Acquisition Act, 1894 (for short "the Act of 1894").

2. The lands of the petitioners are located at Village – Waigaul, Taluka – Manora, District – Washim. Notification under Section 4(1) of the Act of 1894 was published in the Government Gazette on 30/4/1998.

The Special Land Acquisition Officer, Washim passed an award under Section 11 of the Act of 1894 on 16/12/2000. The lands acquired were categorized in Group – A and Group – B. For the lands from Group – A, Rs.23,000/- per hectare was granted as compensation while an amount of Rs.26,000/- per hectare was granted for the lands from Group – B. It is the case of the petitioners that in LAC No. 26/2006 which pertains to acquisition of lands under the same notification, the Reference Court had awarded compensation @ Rs.1,50,000/- per hectare. The said award was passed on 2/11/2011. On that basis, the present petitioners

filed an application under Section 28A(1) of the Act of 1894 seeking re-determination of the amount of compensation in the light of adjudication of LAC No. 26/2006. The said proceedings were filed on 23/1/2012. The Special Land Acquisition Officer considered the application and on 13/2/2013 passed an award under Section 28A(2) of the Act of 1894. He proceeded to enhance the amount of compensation to Rs.60,000/- per acre based on the adjudication in LAC No. 26/2006. In effect, the compensation granted was @ Rs.1,50,000/- per hectare. According to the petitioners, the compensation ought to have been awarded @ Rs.89,500/- per acre as granted in LAC No. 140/2004. Similarly, no compensation was granted for trees standing on the acquired lands. Interest as payable under the Act of 1894 was also not paid. The petitioners therefore contend that on making various representations, some amount of interest was released in their favour vide communication dated 13/8/2015. The petitioners on 14/8/2016 claim to have made a representation to the Additional Collector seeking enhanced compensation @ Rs.89,500/- per acre. Since there was no response to the said representation, the present Writ Petition has been filed.

3. Shri A.S. Mehadia, learned Counsel for the petitioners submitted that the Special Land Acquisition Officer while passing the award on 13/2/2013 failed to take into consideration the fact that in LAC No. 140/2004, compensation @ Rs. 89,500/- per acre had been granted. Ignoring that adjudication, compensation @ Rs.60,000/- per acre came to be awarded. It was his submission that the order passed in LAC No. 26/2006 was challenged by the acquiring body by preferring First Appeal No. 675/2014. One of the land owners filed Cross-Objection No. 7/2022 wherein prayer for enhancing the amount of compensation was made. The said proceedings were decided on 14/1/2022. While the Appeal preferred by the acquiring body was dismissed, the cross-objection was partly allowed and compensation @ Rs.89,500/- per acre came to be granted. In view of the provisions of Section 28A(1) of the Act of 1894, the petitioners were entitled to similar amount of enhanced compensation. Despite making representation to that effect, no cognizance of the same was taken. It was urged by relying upon the decision in Babua Ram And Others Vs. State of U.P. And Another [(1995) 2 SCC 689] that there could not be any disparity in the amount of compensation payable for the lands acquired under the same notification. It was then submitted that though the Special Land Acquisition Officer noted that no Appeal was preferred against the award passed in LAC No. 26/2006, it was a fact that such appeal being First Appeal No. 675/2014 came to be filed and the same was decided by enhancing the amount of compensation. The petitioners were therefore entitled to enhanced compensation. The learned Counsel also referred to the decisions in State of Maharashtra Vs. Manakchand Pyarmal And Others [(1996) 1 SCC 297] and in Bharatsing s/o Gulabsingh Jakhad And Others Vs. State of Maharashtra And Others [(2018) 11 SCC 92] to urge that as challenge to the award passed in LAC No. 26/2006 was pending, the proceedings under Section 28A(1) of the Act of 1894 ought not to have been finally decided. It was thus prayed that the petitioners be granted enhanced compensation. In the

alternate, the representation made on 14/8/2016 be directed to be decided.

4. Shri M.A. Kadu, learned Counsel appearing for respondent No.3 – acquiring body opposed the Writ Petition. At the outset, he submitted that if the petitioners were aggrieved by the order passed under Section 28A(2) of the Act of 1894, recourse could be had to the remedy provided under Section 28A(3) of the Act of 1894. The same was not done by the petitioners. He invited attention to the prayers made in the application filed under Section 28A of the Act of 1894 and submitted that as compensation was awarded in terms of LAC No. 26/2006 as prayed for, no interference was called for with the impugned order. The petitioners were seeking relief that was not prayed for in the application under Section 28A of the Act of 1894. To substantiate his submissions, the learned Counsel placed reliance on the decisions in *Balwant s/o Narayan Kannav (Dead) thr. LRs Vs. The State of Maharashtra* and another [2020(3) Mh.L.J. 427] and in *Shantabai Sudam Rathod Vs. State of Maharashtra and others* [Writ Petition No. 2853/2020 decided on 23/6/2021]. He also invited attention to the affidavit filed on behalf of respondent No.2 wherein it was stated that the Special Land Acquisition Officer did not receive the application dated 14/8/2016 that was alleged to be submitted by the petitioners by way of representation. It was thus submitted that the Writ Petition was liable to be dismissed.

5. We have heard the learned Counsel for the parties and we have perused the documents on record. It is seen that pursuant to the award passed by the Special Land Acquisition Officer on 16/12/2000, LAC No. 26/2006 came to be filed seeking enhancement in the amount of compensation. The said proceedings came to be decided on 2/11/2011 wherein compensation @ Rs.60,000/- per acre/ Rs.1,50,000/- per hectare came to be granted. Though it has been stated by the Additional Collector in the impugned order dated 13/2/2013 that permission had been refused to file any appeal against the adjudication in LAC No. 26/2006, it can be seen that the said proceedings were challenged by the acquiring body by filing First Appeal No. 675/2014. On perusal of the record of the said First Appeal, it is seen that the same was filed on 25/7/2013. The land owner therein had preferred cross-objection seeking enhancement in the amount of compensation from what was awarded in LAC No. 26/2006. The proceedings were decided on 14/1/2022. The learned Single Judge noted that with regard to Gat No. 121 from the same notification, this Court in First Appeal No. 1178/2013 had enhanced the amount of compensation to Rs.89,500/- per acre. On that premise, the amount of compensation was enhanced to Rs.89,500/- per acre. It can also be seen that in LAC No. 11/2005 decided on 1/4/2011, similar compensation has been awarded. It is thus evident from the record that though an Appeal challenging the amount of compensation in LAC No. 26/2006 was filed and was thereafter decided on 14/1/2022, the Additional Collector proceeded on the premise that there was no such Appeal preferred against LAC No. 26/2006. It however cannot be lost sight of that the award passed by the Additional Collector under Section 28A(2) of the Act of 1894 is dated 13/2/2013 while First Appeal No. 675/2014 came to be filed thereafter on 25/7/2013. The situation thus

arising is that while some of the land owners whose lands were acquired under the same notification were granted compensation @ Rs.89,500/-per acre, the present petitioners who are similarly situated have been awarded compensation @ Rs.60,000/- per acre. This aspect would be contrary to the spirit of Section 28A of the Act of 1894.

6. The Hon'ble Supreme Court in *Manakchand Pyarmal & Ors. (supra)* as well as in *Bharatsing s/o Gulabsingh Jakhad & Ors. (supra)* has held that when an application seeking enhancement of compensation is under consideration, if any appeal against such award is pending, the consideration of the application filed under Section 28A(1) of the Act of 1894 has to be deferred till such appeal is decided. As noted above, the Appeal preferred against LAC No. 26/2006 came to be filed after passing of the award under Section 28A(2) of the Act of 1894 on 13/2/2013. The Additional Collector, when he decided the said proceedings, was guided by the communication dated 13/1/2012 issued to the State Government by its Law and Judicial Department that it was decided not to file an Appeal against the adjudication in LAC No. 26/2006. Despite that, such Appeal was preferred subsequently vide First Appeal No. 675/2014.

7. In this factual backdrop, we find that the interests of justice would be served by directing the Additional Collector to re-consider the petitioners' application filed under Section 28A(1) of the Act of 1894 and take into consideration the compensation awarded in the subsequent adjudication arising from LAC No. 26/2006. We note that such course was also followed in *Bharatsing s/o Gulabsingh Jakhad & Ors. (supra)*.

8. Hence for the aforesaid reasons, the following order is passed :

- i. The award dated 13/2/2013 passed in LAC No. 3/28-A/2010-11 (7/47/95-96) is set aside to enable re-consideration of the application under Section 28A(1) of the Act of 1894.
- ii. While re-determining the amount of compensation under Section 28A(2) of the Act of 1894, the amounts already received by the petitioners shall be taken into consideration. Similarly, the amount of interest received by the petitioners from time to time shall also be taken into consideration.
- iii. To enable re-consideration of the application under Section 28A(1) of the Act of 1894, the petitioners shall appear before the Additional Collector on 15/11/2022. The Additional Collector after granting due opportunity to all the parties shall decide the said proceedings within a period of four months from that date. Necessary decision be taken in accordance with law.
- iv. Rule is made absolute in the aforesaid terms with no order as to costs.