
(1994) 04 BOM CK 0032
In the Bombay High Court
Case No : First Appeal No. 123 of 1983

Satyabhamabai Sitaram Deshmukh and Another	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 06-04-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 31(2)

Citation : (1994) 4 BomCR 438 : (1994) 96 BOMLR 384

Hon'ble Judges : A.D. Mane, J

Bench : Single Bench

Advocate : V.G. Sakolkar, for the Appellant; A.S. Rasal, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

A.D. Mane, J.

1-This First Appeal arises out of an order passed by the Court below dismissing the reference made by the appellants u/s 18 of the Land Acquisition Act, 1894 (for short, the Act).

2. The lands owned by the appellants bearing Survey Nos. 192 and 195/1 admeasuring 30 Hectares 76 Acre situated at Osmanabad were acquired for the purpose of M.I.D.C. The Special Land Acquisition Officer, passed his award on 15-2-1978. He valued the acquired land at the rate of Rs. 1875 per acre. The claimants were served with the notice u/s 12(2) of the Act on 2-1-1979. It appears that immediately thereafter, the appellants raised objection to the valuation of the acquired land, by their application on 1-3-1979. On their request, reference u/s 18 of the Act was made to the Court for determination of the compensation, as according to the claimants, the valuation made by the Land Acquisition Officer was inadequate and was not acceptable to them.

3. It may be stated that the reference of the present appellants, being Land Acquisition Reference No. 25 of 1980 has been decided alongwith companion

Land Acquisition Reference No. 24 of 1980 preferred by the neighbouring land owners of land Survey No. 195/2. The evidence led in Land Acquisition Reference No. 24 of 1980 was also read as evidence for purpose of disposal of land reference of the present appellants. The learned Judge of the Court below by his common judgment, dismissed both the land references. In case of Land Acquisition Reference No. 25 of 1980, the learned Judge of the Court below passed the following order.

"Their reference is dismissed on law point..."

4. On behalf of the respondent-State an objection was raised to the maintainability of the Land Reference u/s 18 of the Act. It was stated that the claimants received the amount of compensation without protest and, therefore, they were disentitled to claim enhanced compensation. The learned Judge of the Court below has not specifically raised the issue on the basis of preliminary objection raised on behalf of the respondent-State but has rejected the present reference on the ground that the claimants were disentitled to make an application u/s 18 of the Act, because they have not accepted the compensation under protest, as required u/s 31(2) of the Act.

5. It may be stated that in view of that finding, recorded by the learned Judge of the Court below on the point of non-tenability of the reference to Civil Court, the learned Judge of the Court below has also cursorily dealt with the evidence adduced by the claimants in regard to their claim for enhanced compensation. The learned Judge of the Court below, therefore, incidently answered other material issues against the claimants, even though it was held that the claimants have proved that compensation awarded by the Special Land Acquisition Officer was inadequate. It may further be stated that the Special Land Acquisition Officer in his award did not grant the amount of solatium nor the interest on the amount of compensation. The claimants have specifically claimed enhanced compensation in addition to the amount of solatium and interest. The learned Judge of the Court below, however, in answer to issues, "what order about interest" and "what order about solatium" recorded his findings in negative.

6. The question arises, whether the decision of the Court below is sustainable in law. Coming to proviso first to sub-section (2) of section 31 of the Act, it may be stated that when the claimant is dissatisfied with the Collector's award, it is but natural that he should take the earliest opportunity to signify his dissent from the same. He may refuse to receive the compensation or may receive it under protest as to the sufficiency of the amount and apply to the Collector for a reference u/s 18 of the Act. It is true that under this proviso, a party who receives payment "otherwise than under protest" cannot object to "the sufficiency of the amount" and will not be entitled to make any reference u/s 18 of the Act. In that case the law presumes consent in the absence of any protests and in the event of a claimant receiving the compensation without recording his protest against it, he is precluded for ever from praying for a reference u/s 18 of the Act. Therefore, a person who has taken payment without protest must be

deemed to have waived his objections to the award, if any, cannot claim a reference thereafter.

7. Let us consider whether the objection raised on behalf of the respondent for untenability of the reference u/s 18 of the Act on that ground is sustainable. At the out set it may be stated that beyond raising such an objection, the respondent led no material evidence to show that the claimants received the compensation otherwise than under protest. Nevertheless, the evidence on record is that the amount was received by the claimants under protest. Witness Sitaram Deshmukh, in his deposition at Exhibit 9 has stated, ".....I have accepted the compensation under protest..." Further in his cross-examination, his evidence is, "...I have already submitted an application indicating protest before accepting the compensation before Land Acquisition Officer...." There is no dispute that after the award was passed on 15-2-1978, notice u/s 12(2) of the Act was served on the claimants on 2-1-1979. There is, further no dispute that on 1-3-1979, the claimants filed application raising objection to the award indicating protest and that too before accepting the compensation. It is well settled that where the claimant seeks payment by a formal application in which he records his willingness to receive payment under protest, the mere omission to repeat the word of protest in the receipt would not disentitle him to prosecute the application for enhancement. That is what exactly the present case is. The learned Judge of the Court below is of the view that the protest against the quantum of compensation contemplated by second proviso to section 31(2) of the Act is required to be in writing. This view is, however, incorrect. The protest against the quantum of compensation contemplated by the second proviso to section 31(2) is not required to be in writing. The protest is usually signified by an endorsement such as "under protest" on the counter foil of the cheque or the receipt taken by the Collector for payment, or in the statement recorded by the Collector in the file on this point. The protest can be made firstly in the application for receiving disputed amount of compensation, if any such application has to be at all made and must be recorded in the receipt granted showing that the disputed amount of compensation money was accepted under protest. The evidence of witness for the claimants undoubtedly shows that the claimants filed an application clearly expressing their intention to receive the amount of compensation under protest. It was after having filed that application, the claimants received the compensation. It was, therefore, not necessary to repeat the protest in the receipt given by the claimants. It may be stated that neither the receipt, nor the counter foil of the cheque or noting on the filing has been produced in the evidence on behalf of the respondent. Significantly, application of the claimants before receiving the amount of the compensation has also not been produced in the evidence on behalf of the respondent-State. Consequently, the reference ought to have been held quite competent and maintainable before the Civil Court. The finding recorded by the learned Judge of the Court below is, therefore, ex facie erroneous. That finding is required to be reversed as the reference was competent u/s 18 of the Act.

8. I have already pointed out that the learned Judge of the Court below dismissed the reference only on the law point as herein above discussed and, therefore, his findings on other issues are not only faulty but perverse. The learned Judge of the Court below have no reason whatsoever to decline to grant solatium and also interest on the amount of compensation. It may be stated that "the importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court "in every case" leaves no discretion with the Court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the Court to award and supply the omission at any stage where the Court gets occasion to amend or rectify. This is the spirit of the provision, wherever made. *Narain Das Jain (Since Deceased) by Lrs. Vs. Agra Nagar Mahapalika, Agra, .* Similarly, "the interest to be paid u/s 34 and also u/s 28 is of different character than the compensation amount u/s 23(1) of the Act. Whereas the interest, if payable under the Act, can be claimed at any stage of the proceedings under the Act, the amount of compensation u/s 23(1) which is in award-decree u/s 26, is subject to the rules of procedure and limitation. The rules of procedure are hand-maiden of justice. The procedural hassle cannot come in the way of substantive rights of citizens under the Act. *Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat, .* The learned Judge of the Court below has, therefore, committed further gross error of law in not considering the claim of the claimants for solatium and interest under the Act.

9. In my view, here is the case wherein reference u/s 18 of the Act has been disposed of by the Court below on a preliminary point and that too wrongly. The judgment delivered in the case is also wholly intelligible and incomprehensible in the matter of fixation of market price for purpose of granting enhanced compensation of the land acquired. In such circumstances, the only recourse is to remand the case to the Court below for afresh disposal in accordance with law.

10. In the result the appeal is allowed. The impugned judgment and order passed by the Court below is hereby quashed and set aside and the Land Reference Case is remanded to the Court below for disposal afresh in accordance with law. Liberty to parties to lead further evidence on Issue Nos. 2, 3 and 4, if they so desire. The Court below shall dispose of the reference as expeditiously as possible, preferably within a period of six months from the date of receipt of the record.

There shall, however, be no order as to costs.