

(2003) 02 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 4337 of 1989

Shri Hari Fakira Kale, Narayan Dhanaji Kale, Shri Ashok Dhanaji Kale, Shri Satish Dhanaji Kale, Parvatabai Gangaram Kale, Hirabai Govind Donde, Smt. Tarabai Kashinath Katare and Smt. Sindhubai Gangadhar Ahire through their General Power of Attorney Laxman Ravala Kale

APPELLANT

Vs

The State of Maharashtra, The Special Land Acquisition Officer No. 2 of Nasik, The Collector of Nasik, The Revenue Commissioner of Nasik Division, The Municipal Corporation of Nasik and Shri Pundalik Chimji Vidhate

RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 16, 17, 18(1), 5A
Maharashtra Regional and Town Planning Act, 1966 — Section 126(2), 126(4), 127, 28, 31

Citation : (2003) 2 ALLMR 439 : (2003) 4 BomCR 538 : (2003) 2 MhLj 593

Hon'ble Judges : R.M. Lodha, J;Nishita Mhatre, J

Bench : Division Bench

Advocate : Rajiv L. Patil, for the Appellant; Ulhas T. Naik, for V.A. Gangal, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—In this writ petition we are concerned with the acquisition of land bearing survey No. 809/2 situated within the limits of Nasik Municipal Corporation. This land along with other adjacent lands was designated in the Development Plan of Nasik in the year 1980 for "Housing for Dishoused" and "Stable and 100 feet Road". The land being survey No.809/2 admeasures 7 Hectors 10 acres .The petitioners claim to be owners of the said land. On 13.08.1982 the acquisition of the land in question was proposed by the Administrator, Nasik Municipal Council to the Collector, Nasik, Nasik Municipal Corporation having into existence on 8.11.1982 again asked the Collector of Nasik to acquire the land in question vide letter dated 16.12.1982. The

agreement was entered into between the Municipal Corporation of Nasik and the State of Maharashtra on 4.10.1984 concerning the acquisition of land in question and other adjacent lands. It is not in dispute that notification u/s 126 (2) of Maharashtra Regional and Town Planning Act, 1966 read with Section 6 of the Land Acquisition Act declaring the acquisition of the land in question along with the other lands for the public purpose stated therein was issued on 14.07.1987. The said notification was published in local newspaper "Rambhumi" on 18.07.1987 and another local newspaper "Bhramar" on 20.07.1987. The notification was published in the gazette on 6.08.1987 and was published at village Chawadi on 25.09.1987. u/s 9(1)(2) of Land Acquisition Act notice was issued on 28.09.1987 and published on the notice board of (i) Talathi, Nasik and (ii) The Special Land Acquisition Officer No.2, Nasik. Individual notices u/s 9(3) (4) were also issued to the persons interested. It is not in dispute that on 22.09.1989 the award determining the compensation of land in question was passed. Thereafter on 21.10.1989 possession in respect of survey No. 809/2 admeasuring 3 hecters 26 area was taken by Special Land Acquisition Officer as the tenant occupying the said land handed over the same to the Special Land Acquisition Officer. The said land was handed over by the Special Land Acquisition Officer to Nasik Municipal Corporation on that day itself. By the present writ petition, as noted above, the acquisition of the aforesaid land is impugned.

2. Mr. Rajiv Patil, learned counsel for the petitioners made twofold submission: (i) that the award having been declared and published beyond two years of declaration made u/s 126(4) of Maharashtra Regional and Town Planning Act read with Section 6 of Land Acquisition Act is honest and bad in law and (ii) that the petitioners were not accorded hearing u/s 126(2) of Maharashtra Regional Town Planning Act prior to issuance of notification u/s 126(4) of Maharashtra Regional and Town Planning Act read with Section 6 of Land Acquisition Act.

3. Neither of the contentions has any merit. Coming to the first contention first, the narration of dates given by us already would clearly indicate that the award was passed within two years of the publication of the declaration u/s 6 of the Land Acquisition Act. However, before we deal with the facts, we intend to refer to Section 11A of the Land Acquisition Act, 1894 based on which first argument was advanced before us by the learned counsel for the petitioners. Section 11A reads thus:

"11A. Period within which an award shall be made.-- The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement."

4. What is provided by Section 11A is that an award shall be made by the concerned authority within a period of two years from the date of publication of the declaration and if no award is made during that period, the acquisition proceedings shall lapse. Declaration is made u/s 6 of the Land Acquisition Act and the mode of publication is also provided therein. According to which the declaration shall be published in official gazette and in two daily newspapers circulated in the locality in which the land is situated of which at least one shall be in the regional language and the collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality and the last dates of such publication and giving of such public notice shall be the date of publication of declaration. Turning back to the dates of events, it would be seen that the notification u/s 126(4) of Maharashtra Regional and Town Planning Act read with Section 6 of Land Acquisition Act was published in local newspapers on 18.07.1987 and 20.07.1987 respectively. The said declaration was published in official gazette on 6.08.1987 and it was on 25.09.1987 that the declaration was published at village Chawadi, that is the office of Talathi. That is the convenient place in the village. The date of publication of the declaration, therefore, in the facts and circumstances of the present case is 25.09.1987. The award was passed on 22.09.1989 which is surely and definitely within two years of the publication of declaration u/s 6 of the Land Acquisition Act. The Land acquisition proceedings, therefore, cannot be said to have lapsed as was contended by the learned counsel for the petitioners. The compliance of making of an award within two years from the date of publication of declaration is factually satisfied. The first contention of the learned counsel for the petitioners is thus overruled.

5. The second contention of the leaned counsel for the petitioners is only noted to be rejected. The reliance placed by the learned counsel for the petitioners on Sub-section (2) of Section 126 claiming the right of notice before issuance of the declaration u/s 6 of Land Acquisition Act or under Sub-section (4) of Section 126 is wholly misconceived. Once the development plan has been sanctioned in accordance with law, Section 126 provides for acquisition of the land required for public purpose specified in plans. The procedure contemplated u/s 5A is not applicable in such situation because the affected persons had already an opportunity of hearing before finalisation of development plan. Once the development plan is sanctioned after following the procedure, the acquisition of the land required for public purpose specified in the plan can be had by issuance of notification u/s 126(4) of Maharashtra Regional & Town Planning Act read with Section 6 of the Land Acquisition Act. The contention that the petitioners ought to have given hearing before issuance of notification u/s 126(4) of Maharashtra Regional & Two Planning Act read with Section 6 of the Land Acquisition Act is wholly misconceived.

6. Incidentally we may notice that this Writ petition was to be heard with Writ Petition No. 4023/1989 along with two other mattes. Writ Petition No. 4023/1989 was disposed of by this Court on 14.10.1994 whereby this Court quashed the

award. The matter was carried to the Supreme Court and the Supreme Court by its judgment dated 9.12.1996 set aside the order of this Court, allowed the appeal and held that the award had not become invalid in law nor was it bad in law. The relevant portion of the judgment of the Apex Court reads thus:

"These appeals by special leave arise from the judgment of the Division Bench of the Bombay High Court dated October 14, 1994, made in" W.P. Nos. 4023/89. Proceedings were initiated under the Maharashtra Regional & Town Planning Act, 1966 (for short, the Act), for framing a scheme and for acquisition of the land in that behalf. The Final Development Plan was made on November 29, 1980. Notification u/s 126(4) of the Act was published on August 6, 1987. It was published in the local newspaper on July 18, 1987 and in the village chavadi on September 25, 1987. It would appear that subsequently, after Section 4(1) notification and declaration u/s 6 of the (Land Acquisition Act 1/1894) were published, notice was issued u/s 9 of the said Act on September 16, 1989. Award came to be passed on September 22, 1989. The respondents filed writ petitions on September 25, 1989. The award was published on September 27, 1989. It would appear that the Draft Plan was issued for reservation of certain lands for the public purpose and no objections were filed. In the meanwhile, by proceedings dated December 26, 1990, the same came to be deleted by publication of the notification on June 28, 1993 and Final Plan was published on September 30, 1993. On a representation made by the Corporation, the Government had issued a corrigendum on August 19, 1994 restoring the status quo ante with a slight modification. The High Court in the impugned order, while upholding the validity of the notification u/s 4(1) and declaration u/s 6 of the Land Acquisition Act, held that the award was not valid in law since there was a corrigendum issued by the Government. Consequently, the procedure provided under the Act was to be followed by operation of Section 37 of the Act. Thus these appeals by special leave.

Mr. U.R. Lalit, learned senior counsel appearing for the respondents, contends that once the reservation has been deleted, status quo ante stands restored. As a consequence, the entire process required u/s 28 and Section 31 read with Section 37 requires to be followed. In this case, that was not done. The High Court was right in quashing the award. We find no force in the contention.

It is true that if any scheme is modified and the Plan has become final, the procedure contemplated under Sections 28 and 31 read with Section 37 of the Act is required to be adopted. But in this case, it is seen that as per the corrigendum what has been modified is that the entire site is now reserved for informal housing and stable. Originally, the entire area was reserved for stables and 100 wide road. The reservation was deleted earlier, as stated above, and western part was included in commercial zone and eastern part was included in the residential zone on the plan. In view of the fact that status quo ante of the final plan was restored, though a part of it is now said to be used for residential purpose, the question is: whether the entire process of the issuance of the notice

u/s 28 involving consideration of the objections and passing of the final plan after consideration is required to be gone through? It is seen that by operation of Section 127 of the Act where any land is included in any of scheme as being reserved, allotted or designated for any purpose specified therein or for the purpose of Planning Authority or Development Authority or Appropriate Authority and the State Government is satisfied that the same land is need for a public purpose different from any such public purpose or purpose of the Planning Authority, Development Authority or Appropriate Authority, the State Government may notwithstanding anything contained in this Act, acquire such land under the provisions of the Land Acquisition Act, 1894. Sub-section (3) envisages that on the land vesting in the State Government u/s 16 or 17 of the Land Acquisition Act, 1894, as the case may be, the relevant plan or scheme shall be deemed to be suitably varied by reason of acquisition of the said land. Thus it could be seen that once a notification u/s 4(1) was published and the declaration u/s 6 of the Land Acquisition Act came to be published, the public purpose becomes conclusive and for any variation without substantial formalities, it is not necessary that the entire process of re-publication of the notification u/s 28, finding having been recorded under both Section 31 read with Section 37, requires to be followed. The view of the High Court, therefore, was not correct.

It is then contended by Mr. U.R. Lalit, that the respondent had not been given the information of the notification u/s 9 of the Land Acquisition Act. Therefore, the award is bad in law. We find no force in the contention. In the absence of notice of failure to serve notice, the award does not become invalid."

The award having already been held to be valid by the Supreme Court, in the matter arising out of Writ Petition No. 4023/1989, in the present writ petition involving the same award, the award has to be held to be valid and that is what we have held.

7. Mr. Patil, learned counsel for the petitioners, at this stage invited our attention to the following observations made by the Apex Court in its Judgment dated 9.12.1996:

"Due to the fact that immediately after the award and before the publication of the award, the writ petition came to be filed on September 25, 1980, we direct the appellants to make an application within six weeks u/s 18(1) of the Land Acquisition Act seeking reference. The Land Acquisition Officer is directed to refer the matter to the competent civil Court for disposal within two months according to law."

8. The learned counsel for the petitioners, thus, submitted that liberty may be granted to the petitioners to make an application u/s 18(1) of the Land Acquisition Act seeking reference to the Civil Court.

9. Mr. Gangal, learned counsel for the respondent No.5 is not averse to the prayer made by the learned counsel for the petitioners in that regard.

10. Consequently, we dispose of the writ petition by following order:

(i) writ petition is dismissed in so far as the challenge to the acquisition of land in question is concerned.

(ii) The petitioners are at liberty to make an application u/s 18(1) of the Land Acquisition Act seeking reference to the Civil Court. We observe that if such application is made within six weeks from today, the concerned Land Acquisition Officer shall consider the same in the light of directions given by the Supreme Court on in the Order dated 9.12.1996 and pass appropriate order accordingly within three months from the date such applications is filed.

11. No costs.

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