

(2017) 03 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 6164 of 2015

Shri Shriram Gopaldas Khatod

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 31-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, Section 11A, Section 12

Citation : (2017) 3 AIRBomR 467 : (2017) 3 BCR 586

Hon'ble Judges : S.V.Gangapurwala and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : Mr. V.D. Sapkal, Advocate, for the Holding; Mr. V.B. Jagtap, Advocate, for the Petitioner; Mr. M.B. Bharaswadkar, A.G.P, for the State; Mr. V.D. Gunale, Advocate, for the Respondent No. 3

Final Decision : Dismissed

Judgement

S.V. Gangapurwala, J.—The petitioner seeks declaration that the proceedings of proposal bearing No.SR 71/2000 in respect of acquisition of petitioner's land has lapsed U/s 11A of the Land Acquisition Act, 1894 (hereinafter referred to as Act of 1894) and further declaration that the award annexed at Exh.V of the petition is not made within two years from date of Section 6 Declaration and therefore, proceeding has lapsed U/s 11A of the Act of 1894. The petitioner seeks directions against Respondent Nos.2 and 4 to initiate land acquisition proceedings under provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as Act of 2013).

2. The following facts are undisputed :

- a) The Notification U/s 4 of the Act of 1894 is issued on 21.9.2011;
- b) The declaration U/s 6 of the Act, 1894 is issued on 23.11.2012;
- c) The Draft award was prepared by SLAO on 12.6.2013;

d) The Collector under communication dated 31.7.2013 approved the draft award prepared by SLAO;

e) The petitioner was paid Rs.1,35,16,800/- (One crore thirty five lacs sixteen thousand eight hundred only) on 10.1.2013 and another Rs.32,00,000/- (Rupees thirty two lacs) on 12.9.2013;

f) The possession of the land is taken over by Municipal Council from petitioner under agreement dated 8.12.1999;

g) The final award is signed on 12.10.2013 by SLAO.

3. Mr. Sapkal, learned counsel for the petitioner in lucid manner put forth following propositions :

(i) The award U/s 11 has to be passed within two years from the date of declaration U/s 6 of the Act, 1894, failing which the award stands lapsed U/s 11A of the Act, 1894.

(ii) The award has to be passed on the day so fixed or on any adjourned date. In the present case the SLAO had not given any date for passing the award. The award has been signed by SLAO without intimating date on which the award is to be passed. There is no publication of the award.

(iii) The Award does not become final unless and until the same is communicated to the petitioner or to beneficiaries. That is the purport of Section 12(2) OF THE Act, 1894. The learned counsel to substantiate his contention relies on the judgment of the Apex Court in the case of "Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and another" reported in AIR 1961 Supreme Court 1500 (1). The learned counsel submits that the award is in Law offer. It involves communication of offer to the party whose land is sought to be acquired. The date of award used in the proviso of Section 12(2) must mean the date when the award is either communicated to the party or is known by him either actually or constructively. The learned counsel also relies on another judgment of the Apex Court in the case of "Premji Nathu v. State of Gujarat and another" reported in AIR 2012 Supreme Court 1624 and submits that the judgment in the of "Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and another" (supra) is considered in the later judgment of the Apex Court.

(iv) Passing of award does not mean merely signing of the award by SLAO and placing it in his drawer. It is required to be made known to the person in whose favour the same is passed.

(v) For the first time the petitioner got information about award being signed by SLAO on 21.2.2015 when on an application filed by the petitioner under Right to Information Act, the petitioner was given copy of alleged communication dated 20.6.2014.

(vi) The SLAO was demanding deposit of remaining amount from Municipal Council vide various communications in 2014, such as communication dated

15.2.2014, 1.7.2014, 18.2.2015. The amount was required to be deposited by Municipal Corporation for enabling SLAO to pass the award. In absence of deposit of amount, SLAO would not have passed an order.

(vii) The Government has delegated its power under proviso to Section 11 giving approval to the award to the Commissioner. In the present case approval is given by Collector. The acquisition for aforesaid reasons stand lapsed and the Respondents need to be directed to take up fresh acquisition proceedings under Act of 2013.

4. Mrs. M.A. Deshpande, learned Additional Government Pleader, during the course of her erudite arguments canvassed following submissions: i) The award has been passed within two years from the date of declaration U/s 6 of 1984 Act;

ii) The provisions of 1894 Act, do not prescribe publication of award nor mandates passing the award in presence of parties. The award already signed by SLAO becomes an award as soon as it is approved by the Government without any alteration. The learned Additional Government Pleader relies on the judgment of the Apex Court in the case of "Smt.Bailamma @ Doddabailamma (Dead) and others v. Poornaprajna House Building Co-operative Society and others" dated 31.1.2006.

iii) The factum of communication of the award and its contents would be relevant for the purpose of computing period of limitation for filing reference U/s 18 of Act 1894 and to that extent Section 12(2) would be relevant.

iv) The petitioner had the knowledge of the award. The SLAO vide his letter dated 20.6.2014 communicated to the petitioner that final award has been passed on 12.10.2013. He also made it clear to the petitioner that his demand for initiation of acquisition proceedings under Act of 2013 is erroneous and said request is rejected.

v) The Government has delegated its powers under proviso to Section 11 of approval to the award to Collector under GR dated 25.10.2011.

5. The learned counsel for Municipal Corporation adopts the arguments of learned Additional Government Pleader and further relies on the judgment of the Apex Court in the case of "Bihar State Housing Board v. State of Bihar and others" reported in (2003) 10 SCC 1.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. The spectrum of the debate between the parties is construing the effective date of the award signed by the SLAO U/s 11 of the Act 1894.

8. Section 11 A of the Act 1894 mandates an award U/s 11 to be made within two years from the date of publication of the declaration. Failure to make an award within two years from the date of publication of declaration entails consequence of acquisition proceedings being lapsed.

9. The provisions from Section 4 to 11 lay down the various steps and stages from the publication of Notification U/s 4 till passing of the award U/s 11.

10. Section 4 deals with issuance of preliminary Notification. Whenever it appears to the appropriate Government that land in any locality is needed or likely to be needed for public purpose, a notification to that effect is required to be published in official gazette and in two daily newspapers circulating in that locality of which one shall be in regional language. Interested person is entitled to raise an objection. The same is required to be decided by the authority. Thereafter, if the appropriate Government is satisfied that any particular land is needed for a public purpose then declaration shall be made as per Section 6 by publication in the official gazette and two daily newspapers, of which one shall be in regional language. The further stage is of taking order of acquisition, measurement of land, notice to interested person and lastly an award U/s 11 of the Act.

11. Section 4 mandates Notification to be published so also Section 6 requires declaration to be published. However, Section 11 or 12 does not require an award to be published in any mode or manner. The award made U/s 11 is required to be filed in the Collector Office i.e. SLAO. As per Section 12(1) award filed in Collector Office shall be final and conclusive evidence as between the Collector and the persons interested, of the true value of the area and value of the land and the apportionment of the compensation among the persons entitled irrespective of the fact whether persons interested have appeared before the Collector or not. Section 12(2) requires Notice to be given of the award to such persons who are not present when the award is made.

12. The scheme of the act as discussed above nowhere contemplates preparing and signing the award only in the presence of interested persons nor any consequence is provided of the notice of award not being given to interested persons. On the contrary, Section 12(2) suggests that award shall be filed in Collector Office and same shall be final and conclusive evidence. No doubt, Section 12(2) requires notice to be given to interested person of the award who is not present however, further consequences of not issuing immediate notice is not laid down. The notice U/s 12(2) would be relevant for construing the limitation for filing reference U/s 18 of the Act 1894.

13. In the case of "Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and another" (supra) the Apex Court has observed that the award made by the Collector is in law no more than offer made on behalf of Government to the owner of the property. The making of the award must involve communication of the offer to the party concerned. It would be appropriate to reproduce the relevant extract of the said judgment.

"5. In the dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under Section 12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed

by the Act. It is a decision, *inter alia*, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award can not be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer, Section 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance. In *Ezra v. Secretary of State* ILR 30 Cal 36 at p.86, it has been held that "the meaning to be attached to the word "award" under Section 11 and its nature and effect must be arrived at not from the mere use of the same expression in both instances but from the examination of the provisions of the law relating to the Collector's proceedings culminating in the award. The consideration to which we have referred satisfy us that the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and that consequently, although the Government is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded."

Then the High Court has added that such tender once made is binding on the Government and the Government can not require that the value fixed by its own officer acting on its behalf should be open to question at its own instance before the Civil Court. The said case was taken before the Privy Council in *Ezra v. Secretary of State*, ILR 32 Cal 605 (PC), and their Lordship have expressly approved of the observations made by the High Court to which we have just referred. Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act can not be reasonably excluded. Thus considered the date of the award can not be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

6. There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the

valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect person, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot, consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector : it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it, it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way."

14. The aforesaid judgment was followed by Apex Court in case of "Premji Nathu v. State of Gujarat and another" (supra).

15. Sections 11, 11-A and 12 of the Act 1894 further fell for consideration before the Apex Court in case of "Bailamma @ Doddabailamma (Dead) and others v. Poornaprajna House Building Cooperative Society and others" (supra). The Apex Court observed thus :

"The Collector is required to hear the persons interested and enquire into the objections, if any, raised by them on the points which he is required to determine. It is possible to conceive that he may hear the objections on several dates having regard to the number of objectors and the nature of the dispute that may arise, where-after he must make up his mind and prepare his award. It is not expected of him that he should prepare his award in presence of the persons interested, since the Collector may take some time to make up his mind on the matters he is required to incorporate in his award. Thereafter, he is required to send his award to the Government for approval. The approval of the award may take some time, and it is not known to the Collector as to when the Government will approve the award. However, after the award is approved, if there is no alteration in the award, he is required to notify the parties concerned about the award. He may do so by fixing a date on which the parties may be

required to appear for pronouncement of the award, or he may inform them by giving them written notice of the award. This is because an award is in the nature of an offer and must be communicated to the persons to whom the offer is made. There is nothing in Section 11 which expressly requires the Collector to announce his award in the presence of the persons interested, though there is nothing which prevents him from declaring the award on a date fixed by him for the purpose. However, having regard to the provisions of Section 12(2) of the Act, he must give immediate notice to such of the persons interested as are not present personally or by their representative when the award is made. Thus viewed, there can be no doubt that after the award is approved the same becomes an offer to be made to the persons interested, and this can be done by either giving notice to the persons interested of the date on which he may orally pronounce the award, or by giving written notice of the award to the persons interested. The question of limitation for filing a reference under Section 18 or Section 30 of the Act has to be determined by reference to the date on which the award was either pronounced before the parties who were present, or the date of the receipt of notice of the award by those not present. The mere fact that the Collector did not pronounce the award after notice in the presence of the parties interested will not invalidate the award, though it may have a bearing on the question of limitation in the matter of seeking a reference under Section 18 or 30 of the Act. The award which has already been signed by the Collector becomes an award as soon as it is approved by the Government without any alteration. At best the appellants can contend that it becomes an award when notice is given to the parties interested. Viewed from any angle, having regard to the fact that there is no dispute that the Government granted its approval on 16.11.1992 and notices were issued under Section 12(2) of the Act on November 20, 1992, it must be held that the award was made within the period prescribed by Section 11A of the Act. There was really no necessity for the Collector to sign the award again, nor does Section 11 require that for the purpose of pronouncing the award notice should be given by the Collector to the persons interested. Section 11 requires notice to be given for the purpose of hearing objections. After the objections are heard, the Collector has to apply his mind to all the relevant facts and circumstances and prepare an award where after he is required to send it to the Government for approval. There is nothing in Section 11 which requires him to give notice to the persons interested of the date for pronouncement of the award, though, as we have observed earlier, there is also nothing which prevents him from giving such notice. We agree with the finding of the High Court that once it is shown that the award was made and signed and approved by the Government within the period prescribed by Section 11A of the Act an award is validly made. In the instant case, we have satisfied ourselves that the award was received by the Deputy Commissioner after approval, and notice was thereafter issued under Section 12(2) of the Act on November 20, 1992."

16. In case of *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and another* (supra), the Apex Court was concerned with proviso to

Section 18 of 1894 Act, whereas in case of "Bailamma @ Doddabailamma (Dead) and others v. Poornaprajna House Building Cooperative Society and others" (supra) the matter was with regard to lapsing of acquisition U/s 11-A of 1894 Act. It is settled proposition that judgment of the Apex Court can not be read as Euclid theorem. It has to be read in the context it is delivered. In Bailamma (supra) the Apex Court has observed that after the draft award is approved by the Government, there is no necessity for the Collector to sign the award again. The facts of the present case are nearer to the case of Bailamma (supra). The same is required to be followed.

17. In the instant case the declaration U/s 6 is made on 23.11.2012. The draft award is prepared on 12.6.2013 and it is sent to Government for approval. The approval to the award was granted on 31.7.2013. As per the judgment in Bailamma's case (supra), the authority is not required to again sign the award after approval of Government. Still, in the present case the award is signed on 12.10.2013 after approval of the Government. The same is in limitation.

18. The matter can also be viewed from other angle. After the final award was signed on 12.10.2013, the petitioner had on 15.12.2012 and 26.3.2014 written letters stating that he has not received rental compensation and as per Section 24 of 2013 Act, the acquisition proceedings lapse. The SLAO under his letter dated 20.6.2014 communicated the petitioner that final award is passed on 12.10.2013 and 90% out of advance 80% compensation is already paid and further provisions of Act 2013 shall not apply. The said letter dated 20.6.2014 is received by the petitioner on 25.6.2014. The petitioner has put an endorsement on said letter that he has not received the copy of award and notice U/s 12(2), as such acquisition proceedings has lapsed. The said letter is well within two years from the declaration dated 23.11.2012 U/s 6. The petitioner as such had the constructive notice of the award. The judgment of the Apex Court in case of "Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and another" (supra) relied by the petitioner also states that the "date of award" used in proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. The Apex Court was referring to proviso of Section 18, still even if contention of petitioner is accepted that knowledge of the award being passed would be relevant date, the petitioner had constructive knowledge of the award on 20.6.2014 i.e. when the SLAO communicated him that award is passed on 12.10.2013 and that acquisition does not lapse. The said letter is received by the petitioner on 25.6.2014. The same is within the period of two years from declaration dated 23.11.2012.

19. Viewing the case either way as contended the award does not lapse.

20. The other objection of the petitioner that the award was required to be approved by the Divisional Commissioner does not require further deliberation. The Government under its order dated 25.10.2011 has delegated its power of approval to the award upto four crore to the Collector.

21. In view of the aforesaid, the Writ Petition as such is dismissed. However, there shall be no order as to costs.