

(2012) 04 BOM CK 0130
In the Bombay High Court
Case No : Writ Petition No. 30 of 2012

Shriram Shinde, died, through the Legal Representative
Kantabai Shinde

APPELLANT

Vs

The State of Maharashtra and The Special Land Acquisition
Officer, Minor Irrigation Works, Osmanabad

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 18(2), 19, 20

Citation : (2012) 04 BOM CK 0130

Hon'ble Judges : Sunil P. Deshmukh, J;A.S. Oka, J

Bench : Division Bench

Advocate : Laxmikant C. Patil, in Writ Petition Nos. 30, 31, 32, 1135 and 1136 of 2012 and Mr. Ganesh S. Patil, for Writ Petition Nos. 3470 and 3471 of 2012, for the Appellant; N.B. Patil, A.G.P. in Writ Petition No. 30 of 2012, Shri V.D. Godbharle, A.G.P. in Writ Petition No. 31 of 2012, Smt. A.V. Gondhalekar, AGP in Writ Petn No. 32 of 2012, Shri D.R. Kale, AGP in Writ Petition No. 1135 of 2012, Shri V.D. Godbharle, A.G.P. in Writ Petition No. 1136 of 2012, Shri S.B. Pulkundwar, AGP Nos. and 2 in W.P. No. 3470 of 2012, Shri S.G. Sangle, Advocate No. 3 in W. P. No. 3470 of 2012 and Shri S.B. Pulkundwar, AGP in W.P. No. 3471 of 2012, for the Respondent

Judgement

Oka, J.—Rule. Rule made returnable forthwith. The learned Assistant Government Pleaders appearing in the respective matters waive service on behalf of the State of Maharashtra, Collector and the Special Land Acquisition Officers in all the Petitions, and Shri S.G. Sangle, learned Counsel waives service of notice on Respondent No. 3 in Writ Petition No. 3470 of 2012. Taken up for final disposal. The grievance in this batch of writ petitions is that though the petitioners have made applications u/s 28A (1) of the Land Acquisition Act (hereinafter referred to as "the said Act") for determination of compensation on the basis of an Award made u/s 18 of the said Act in respect of another land acquired under the same notification, the same have not been decided as yet. Reliance has been placed on the Government Resolution dated 16th February

2010 which enjoins the concerned officer to decide the applications u/s 28A(1) of the said Act within a period of three months.

2. We have heard the learned Counsel appearing for the Petitioner and the respective learned Asstt. Government Pleaders appearing in these petitions.

3. It will be necessary to advert to Section 28A of the said Act, which reads thus:

28A.Re-determination of the amount of compensation on the basis of the award of the Court.

(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all the other land covered by the same notification u/s 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector u/s 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court.

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of section 18 to 28 shall, so far as may be, apply to such reference as they apply to reference u/s 18.

4. Thus, it is clear that sub-section (1) of Section 28A of the said Act contemplates that a re-determination of the compensation payable to the claimant should be made on the basis of an award of the Court in a reference u/s 18 of the said Act in respect of another land which is acquired under the said preliminary notification. Sub-section (2) of the said Act contemplates an award to be made by the Collector on an enquiry being held after giving notice to all persons interested and giving them reasonable opportunity of being heard. It is obvious that requirement of making an award under sub-section (2) arises only when an application for re-determination is in conformity with sub-section (1) of Section 28A in all respects.

5. Sub-section (2) of Section 28A provides that the re-determination shall be

made after notice to all the persons interested. In case of a reference u/s 18 of the said Act, Section 20 enjoins the court to give notice to all persons interested in objection. In view of sub-section (2) of Section 28A of the said Act, it is obvious that before re-determination is made, a notice is required to be given to local authority or company to which section 50 of the said Act is applicable. Thus, sub-section (2) of Section 28A of the said Act clearly contemplates that before inquiry is made on applications under sub-section (1), a notice is required to be given to the acquiring body.

6. The Government Circular dated 16th February 2010 provides that if the applications received u/s 28A of the said Act are not decided within three months, the concerned officer will be held responsible and an enquiry will have to be initiated against him for dereliction of his duties. Sub-section (2) of Section 28A of the said Act contemplates an enquiry to be held after service of notice. The enquiry is for re-determination of compensation payable in respect of a land on the basis of judgment of the reference court. The inquiry involves the issue of comparability of the acquired land with the land subject matter of the award u/s 18 of the said Act on the basis of which re-determination is sought.

7. Therefore, it is unreasonable to expect that the enquiry will be concluded within a period of three months. The State Government, therefore, will have to reconsider the period provided under the Circular dated 16th February 2010. Nevertheless, considering the object of Section 28A and also the fact that financial implications are involved, an endeavour has to be made to decide such applications as expeditiously as possible. However, we find that the applications are kept pending for months, and at times, for years. In many cases, the applications are not decided unless the parties approach the High Court and seek a writ of mandamus. Therefore, the State will have to consider of amending the circular dated 16th February 2010 and laying down a reasonable outer time limit for consideration of the applications. We find that in normal course, it may be reasonably possible to conclude the enquiry and pass an award within a period of six months from the date of making an application.

8. Now, coming back to the facts of the present cases, we find that in some cases, applications have been kept pending for inordinately long time. Considering what is stated above, we propose to direct that the applications should be disposed of within six months from today. Needless to state here that if the concerned officer finds it difficult to decide the applications within the time bound schedule, he will have to approach this court and seek extension of time so as to avoid the claimants approaching this court, making a grievance of non compliance with the orders of this Court. We, however, make it clear that we have not made any adjudication on the question whether the applications made by the petitioners comply with the requirements of sub-section (1) of Section 28A. The question of passing an award under sub-section (2) will arise, provided the applications are otherwise maintainable and are filed within limitation.

9. Hence, we dispose of all the petitions, by passing following order.

(A) If the applications made by the petitioners u/s 28A(1) are still pending, the same shall be decided by the concerned officer as expeditiously as possible and in any case, within a period of six months from today.

(B) In the event it is found that the petitioners are entitled to additional compensation, the same shall be paid to them within a period of three months from the date of award under sub-section (2) of Section 28A of the said Act.

(C) We direct all concerned officers to ensure that compliance is made with the requirement of sub-section (2) of Section 28A of the said Act, by issuing notices to all concerned parties, including the acquiring body, before an inquiry is held.

(D) The office of the Government Pleader is directed to forward a copy of this judgment to the Secretary of the concerned Department of the State Government for considering necessary modification to the Circular dated 16th February 2010, regarding time stipulation for disposal of the applications, in the light of observations made in this judgment. The State Government may consider of issuing directions to all the Land Acquisition Officers in terms of this judgment.

10. We make it clear that we have not made any adjudication on the entitlement of the petitioners to receive additional compensation. Rule is made partly absolute in above terms. The petitions stand disposed of, accordingly.