

(2008) 03 BOM CK 0025

In the Bombay High Court

Case No : Civil Application No. 3914 of 2001 in Cross Objection ST. No. 33356 of 2001 in First Appeal No. 700 of 1989

Sitaram Balu Bhopi

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Bombay Court Fees Act, 1959 — Section 7(1)
Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1A, Order 6 Rule 17, 151
Land Acquisition (Amendment) Act, 1984 — Section 25
Land Acquisition Act, 1894 — Section 11, 18, 18(2), 28A, 4
Motor Vehicles Act, 1988 — Section 158(6), 166(4)

Citation : (2008) 4 MhLj 9

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : S.M. Kamble, for the Appellant; A.A. Kumbhakoni, Associate A.G. and G.P. Mulekar, A.G.P., for the Respondent

Judgement

A.S. Oka, J.—I have heard the submissions of Shri S.M. Kamble the learned Advocate appearing for the applicants in support of this application. I have also heard the submissions of Shri A.A. Kumbhakoni, learned Associate Advocate General for the respondent-State of Maharashtra.

2. The respondent-State of Maharashtra has preferred the aforesaid First Appeal for challenging the Judgment and Award dated 22nd September, 1988 passed by the learned Civil Judge (Senior Division), Raigad at Alibag in a reference u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred as "the said Act"). The reference was made at the instance of the applicant (the respondent in the First Appeal) in this application. The subject matter of the Appeal is a plot of land at village Kamothe, Taluka Panvel, District Raigad which was notified for acquisition by virtue of a notification dated 3rd February 1970 issued u/s 4 of the said Act. The Award u/s 11 of the said Act was made on 16th September, 1986 by which the Special Land Acquisition Officer offered the market value at the rate of Re.

1/- per sq. metre. In a reference u/s 18 of the said Act, the claimant i.e. the applicant in this Application prayed for grant of market value calculated at the rate of Rs. 18/- per sq. metre. The reference Court by the impugned Judgment and Award came to the conclusion that the market value of the acquired land was Rs. 12/- per sq. metre. The Appeal preferred by the respondent-State of Maharashtra is directed against the said Judgment and Award.

3. The original applicant in this Application filed a cross objection claiming the market value at the rate of Rs. 45/- per sq. metre. In this application, the first prayer is for permitting the claimants to produce additional evidence. The second prayer is for seeking amendment to the Memorandum of cross objection for claiming enhanced compensation at the rate of Rs. 60/- per sq. metre.

4. When the First Appeal along with the cross objection was placed before this Court for final hearing, it was brought to the notice of this Court that by order dated 16th March, 2006, this application was ordered to be heard along with the cross objection. An objection was raised by the learned Assistant Government Pleader appearing for the respondent-State of Maharashtra that in the cross objection the applicant could not have claimed the market value at the rate which is more than the market value claimed in the reference application u/s 18 of the said Act. The second objection was that even assuming that the applicant-claimant is entitled to claim the market value at the rate exceeding the rate claimed in the reference application u/s 18 of the said Act, the claimant cannot be permitted to amend the reference application as well as the Appeal or the cross objection. It is contended that after the expiry of the period provided u/s 18 of the said Act for filing a reference application, an amendment to the reference application and consequently to the Appeal or to the cross-objection cannot be permitted inasmuch as there is no power vesting in any authority to extend the period of limitation provided u/s 18 of the said Act for filing a reference application. The learned Counsel for the applicant submitted that as the various issues relating to prayer (b) of this application go to the root of the matter, before taking up the Appeal and cross objection for final hearing, prayer (b) of the application may be decided. Accordingly, I have taken up the Civil Application for hearing.

5. The learned Advocate for the legal representatives of the applicant/ claimant has made detailed submissions. His first submission is that there is no requirement of Section 18 of the said Act that a specific amount has to be claimed in reference Application by way of enhancement. His submission is that by filing a reference application, the claimant has to raise objection to the market value/compensation offered by the Special Land Acquisition Officer and that is the reason why the law requires that it is not necessary to pay the Court fees on application for reference at the time of filing the said application before the Collector. His submission is that the claimant whose land has been compulsorily acquired is entitled to just compensation. He invited my attention to the amendment made in the year 1984 to Section 25 of the said Act. He submitted

that in view of the amendment, even in a case where the claimant has made no claim in response to the notice u/s 9 of the said Act can claim enhancement by filing a reference application and therefore, now there is no embargo on the right of the claimant to claim enhanced compensation at any stage in a reference u/s 18 of the said Act and in an Appeal arising out of the reference. He submitted that as there is no requirement incorporated in Section 18 of the said Act for making a specific monetary claim in the reference application, what is required by law is only raising an objection to the compensation offered under an Award u/s 11 of the said Act, the reference Court can always permit a specific claim in a specific amount to be made by a claimant at any stage of the proceedings. He submitted that as there is no requirement of law to claim a specific amount in a reference application, it cannot be contended that any enhanced claim made by way of amendment during the pendency of the reference is barred by limitation. He submitted that in the case in hand, in view of this decision of this Court relating to similarly situated lands notified under the same notification u/s 4 of the said Act, the claimants will be entitled to claim compensation at the rate which is much more than what is claimed in the reference or in the Cross-Objection. He submitted that even assuming that there is no amendment carried out to the reference application during the pendency of the Appeal, this Court can always permit the claim in the Cross objection or Appeal to be enhanced and there is no statutory prohibition. He has placed reliance on several decisions to which a reference is made in the later part of the Judgment.

6. The learned Associate Advocate General submitted that in the present case, the claimants have not sought relief of permitting amendment to the claim made in the reference application and the prayer is only for an amendment to the Memorandum of Cross Objection. He submitted that in view of the law laid down by the Apex Court in case of Union of India (UOI) Vs. Pramod Gupta (D) by L.Rs. and Others, , the claimant cannot claim additional amount of compensation over and above the one claimed in the original reference application u/s 18 of the said Act. He submitted that the Apex Court has considered the amended Section 25 of the said Act in the said decision.

7. He submitted that in view of the decision of the Apex Court in the case of Buta Singh v. Union of India, (1995) 5 SCC 283 , it is obvious that there is a requirement in the statute to claim a specific amount by way of market value in the reference application. He submitted that it is well settled law that the limitation prescribed by Section 18 of the said Act for filing an application for reference cannot be extended under any circumstances as the provisions of the Limitation Act, 1963 are not applicable to the said application. He, therefore, submitted that the claim which is not made by a claimant within the stipulated period of limitation cannot be permitted to be made after expiry of period of limitation provided u/s 18 of the said Act. He submitted that only in a case where the claimant has failed to make an application for reference u/s 18 of the said Act, he can take recourse to Section 28A of the said Act. His submission is that when the claimant makes a claim application u/s 18 of the said Act seeking

compensation in a particular amount, he is precluded from making any claim u/s 28A of the said Act. He, therefore, submitted that prayer (b) of the application can never be granted. He submitted that as the claimant is not entitled to amend the application after the expiry of period of limitation provided u/s 18 of the said Act, by no stretch of imagination he can be permitted to amend the Memorandum of Cross-Objection at this stage.

8. I have carefully considered the submissions made by the learned Counsel for the parties. It must be stated here that in the present case the Award u/s 11 of the said Act has been made on 16th September, 1986 and hence the amended Section 25 of the said Act will apply to the case. Therefore, I am dealing with the legal position after the amendment to Section 25 came into force.

9. The learned Advocate for the claimant has placed reliance on the decision of the Apex Court in case of Ghaziabad Development Authority Vs. Anoop Singh and Another, . In the said decision, the question which arose for consideration of the Apex Court was "Whether the respondent land holders could claim and get compensation under the said Act over and above what they claimed in the application seeking amendment to the reference to the Civil Court?" In the case before the Apex Court, the land holders/claimants claimed compensation at the rate of Rs. 20/- per sq. yard in a reference u/s 18 of the said Act. After the reference was made to the Civil Court, an application was made by the landholders/claimants for amendment of the application for reference for seeking market value at the rate of Rs. 100/- per sq. yard. The said application was allowed by the reference Court. The reference Court ultimately granted the compensation at the rate of Rs. 40/- per sq. yard. The claimants preferred an appeal for grant of further enhancement. High Court granted further enhancement to Rs. 85/- per sq. yard. It will be necessary to refer to paragraph 7 of the decision of the Apex Court which answers the question. The relevant part of the said paragraph reads thus:

7...It is to be noted that by virtue of Section 53 of the Land Acquisition Act, the provisions of the CPC shall apply to all proceedings before the Court unless they are inconsistent with anything contained in the Act. In the light of this provision, the High Court rightly held that there is no bar under the Land Acquisition Act to file a petition for amendment of the claim application in regard to the quantum of compensation claimed as there is no provision in the Land Acquisition Act which is inconsistent with the power to allow amendment. The effect of allowing the amendment is to substitute the figure of Rs. 20/- by Rs. 100/- per square yard. When once this amendment is recognized and taken note of it is obvious that the bar u/s 25 does not get attracted. Whether this amendment could have been permitted in the face of the unamended Section 25 has not been put in issue before the High Court in specific terms. Even in the SLP we found, in vain, any ground questioning the order allowing the amendment. No doubt, a party has right to challenge a non-appealable order in an appeal against the decree as laid down in Rule 1-A, Order 43. But, the fact that the legality or propriety of the

order permitting amendment was neither specifically challenged before the High Court nor a specific ground taken that it was contrary to Section 25. At this stage, the appellant cannot be permitted to assail the correctness of the order permitting amendment. If that be so, the first contention based on the pre-existing Section 25 has to be necessarily rejected.

(Emphasis added)

10. Thus, what has been held by the Apex Court is that there is no bar under the said Act to file a petition for amendment of the claim application u/s 18 for seeking amendment of the quantum of compensation claimed. However, the Apex Court observed that the order of the trial Court permitting amendment was not specifically challenged before the High Court by the State. The Apex Court held that by virtue of Section 53 of the said Act, the provisions of Code of Civil Procedure, 1908 shall apply to the reference u/s 18 of the said Act and that is why there was no bar against filing an application for amendment of the claim application before the reference Court. Thus, the said decision of the Apex Court lays down that there is a power vesting in the reference Court to entertain an application for amendment seeking enhancement in the claim.

11. Reliance has been placed by the Advocate for the claimant on the decision of Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, . In paragraph 3 of the said decision, the Apex Court held that when the appellants in the Appeal challenging an Award u/s 18 of the said Act had made out a case for grant of enhancement, the High Court ought to have allowed the claimants/appellants to claim enhanced amount in the Appeal by paying deficit Court fee. This decision does not decide the issues which arise before this Court. It must also be stated that the said decision of the Apex Court has been later on overruled on the another issue decided by the said Judgment.

12. In case of Buta Singh (Dead) by L. Rs. Vs. Union of India, , a reference was made by the Apex Court to a Larger Bench in view of another decision of the Apex Court in case of Chand Kaur and others v. Union of India, (1994) 4 SCC 663 . The Larger Bench of the Apex Court while deciding the reference held that the law laid down in the case of The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others, is correct. In the case before the Apex Court in the said decision of Scheduled Caste Co-op Land Owning Society Ltd. (supra) the claimants/appellants had restricted their claim in the Appeal in the High Court to Rs. 4,00,000/-. The Appeal was disposed of by a Single Judge of the High Court. Only after the decision of the Apex Court in the case of Buta Singh (supra), an application was made by the appellants/claimants seeking permission to pay deficit Court fees on a claim for higher amount. The Apex Court held that permitting the payment of deficit Court fee for recovering enhanced compensation after lapse of about six years after the decision of the Appeal would encourage the practice of not paying the Court fee in the hope that as and when the valuation is determined in Appeal, jurisdiction of the Court can

be invoked u/s 151 of the said Code and the benefit of enhanced compensation can be reaped by paying deficit Court fee. This decision is not helpful in deciding the issue involved in this Application.

13. Reliance was placed by the Advocate for the applicant on case of Nagappa Vs. Gurudayal Singh and Others, . The said case arose out of the claim made under the Motor Vehicles Act, 1988 for compensation. The Apex Court held in paragraph 21 of the said Judgment which reads thus:

21. For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award "just", compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under Sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under Sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the Court may permit amendment to the claim petition.

By no stretch of imagination the ratio of the said decision will apply to the reference u/s 18 of the said Act. The scheme of the Motor Vehicles Act is totally different.

14. Reliance has been placed by the learned Advocate for the respondent on the decision of Patna High Court in case of J. Roy v. State of Bihar by which the Patna High Court held that it is not necessary for the claimants to state in his application u/s 18 of the said Act of the specific amount he claims as compensation. It will be necessary to refer to another decision of the Apex Court in case of Union of India (UOI) Vs. Pramod Gupta (D) by L.Rs. and Others, . The Apex Court dealt with the power of the reference Court to permit amendment. The Apex Court observed that the pleadings before the trial Court are the basis for adducing evidence. The Apex Court held that by amending the Memorandum of Appeal, the original pleadings cannot be amended. The argument before the Apex Court was that once the Memorandum of Appeal in an Appeal u/s 54 of the said Act is allowed to be amended, same would amount to the amendment of the reference application itself. The said argument has been dealt with by the Apex Court in paragraph 134 which reads thus:

134. We do not agree. The pleadings before the trial Court are the basis for adduction of evidence either before the trial Court or before the appellate Court. By amending the memo of appeal the original pleadings cannot be amended. The respondents claimants made their claim before the Reference Court claiming compensation for the lands acquired under two different references at a certain rate. They are bound by the said pleadings. Section 53 merely provides for applicability of the provisions of the CPC including the one containing Order 6,

Rule 17 thereof. Order 6, Rule 17 of the CPC postulates amendment of pleadings at any stage of the proceedings. Before an amendment can be carried out in terms of Order 6, Rule 17 of the CPC the Court is required to apply its mind on several factors including viz. whether by reason of such amendment the claimant intends to resile from an express admission made by him. In such an event the application for amendment may not be allowed.

(Emphasis added)

15. It will be necessary to refer to Section 18 of the Land Acquisition Act, 1894 which reads thus:

18. Reference to Court - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken

Provided that every such application shall be made:

(a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) In other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2) or within six months from the date of the Collector's award, whichever period shall first expire.

16. If the claimant whose land is acquired has not accepted the compensation offered under an award made u/s 11 of the said Act, he can apply for a reference u/s 18 of the said Act to the Court for determination of his objection to the compensation. The submission of the learned Advocate for the claimant was that it is not necessary to specify the claim for enhancement in market value while filing an application u/s 18 of the said Act. It is true that there is no such requirement incorporated in Section 18. However, u/s 7(1) of the Bombay Court Fees Act, 1959, ad-valorem Court fee is payable on the claim for enhancement in market value made in a reference u/s 18 of the said Act. For calculating the Court fees payable, the claim for enhancement in market value has to be specified in the Application u/s 18 of the said Act. Therefore, while filing an application u/s 18 of the said Act for reference, the claimant has to specify the exact amount of the enhancement he is seeking for the purposes of calculating Court fees.

17. The Section 53 of the said Act provides that the provisions of the Code of Civil Procedure, 1908 shall apply to all the proceedings before the Court insofar

as the same are applicable. As held by the Apex Court in case of Ghaziabad Development Authority (supra) there is no prohibition against filing a petition for amendment of the claim application u/s 18 of the said Act with regard to the quantum of compensation claimed as there is nothing in the said Act which is inconsistent with the power to allow the amendment.

18. Prior to the amendment to Section 25 of the said Act, which was brought into force by the Act No. 68 of 1984, the Court was not empowered to grant compensation in a reference u/s 18 of the said Act at an amount exceeding the amount claimed by the claimant in response to the notice u/s 9 of the said Act. After the amendment to the said Act made by the said Act No. 68 of 1984, Section 25 reads thus:

25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector:

The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector u/s 11.

19. A submission was made by the learned Associate Advocate General that the claimant in a reference u/s 18 cannot be allowed to enhance the claim by amendment after expiry of a period of limitation provided under Sub-section (2) of Section 18 of the said Act. The said submission cannot be accepted for more than one reason. The Apex Court has already held in case of Gaziabad Development Authority (supra) that there is no bar under the said Act to file a petition for amendment of the claim application in regard to quantum of compensation. Section 18 does not contemplate that the quantum of enhanced compensation claimed should be precisely stated in the reference application. However, as held earlier, only for the purpose of calculating the Court fees, enhancement claimed is to be specified in the Application. After the amendment of Section 25 of the said Act, now there is no embargo on the power of the Court to grant compensation which is exceeding the amount claimed by the claimant in response to the notice u/s 9 of the said Act. The period of limitation provided under Sub-section (2) of Section 18 is only for filing an application praying for a reference to the Court for determination of an objection to compensation offered by an Award u/s 11 of the said Act. After reference application is filed within limitation, the claimant can always apply for amendment of the claim for enhancing the claim for compensation. As held by the Apex Court in the case of Pramod Gupta v. Union of India (supra), such application for amendment will have to be considered on merits after taking into account several factors. One of the important aspect to be considered is whether the claimant intends to resile from an express admission made by him. Merely because the market value is claimed at a particular rate in the reference application by itself will not amount to an admission on the part of a claimant that the market value of the acquired property is equivalent to the claim made. Where in a claim application the claim is restricted on account of inability to pay higher Court fees and later on an application is made for amendment of the claim, the same cannot be rejected on

the ground that it is an attempt to resile from admission. However, an amendment of Memorandum of Appeal or cross objection by claiming higher amount will not amount to amendment of the reference application.

20. However, an Appeal u/s 54 of the said Act preferred by the claimant or cross objection preferred by the claimant is a continuation of the reference. Therefore, an application can be filed for amendment of the claim petition pending an Appeal. However, the claimant will have to naturally explain the delay in making the said application and therefore, the application can be allowed by the Court only if there is sufficient explanation for belatedly making the application.

21. An application for amendment of the claim made either in reference application or in Appeal/cross objection will be naturally governed by the constraints imposed by Rule 17 of Order VI of the Code of Civil Procedure,

22. The claimant cannot claim more compensation than what he has prayed for in the reference application u/s 18 of the said Act as he is bound by the claim made by him. Therefore, without amending the claim petition, he cannot make an application for amendment of the Memorandum of Appeal or cross objection for seeking an amount exceeding the claim made in the reference application. Therefore, the claim in the appeal or cross objection preferred by the claimant cannot exceed the claim made in the reference.

23. Hence, the issues raised are answered in terms of the following order:

i) There is a power vesting in the reference Court to allow the application for amendment of the claim for market value made in the reference application u/s 18 of the said Act. The power of the Court to allow the amendment is not affected by the limitation provided under Sub-section (2) of Section 18 of the said Act. However, the Court will have to consider several factors before allowing the amendment. By an amendment the claimant cannot be allowed to resile from admission.

ii) The claim made by the claimant in Appeal u/s 54 of the said Act or in a cross objection cannot exceed the claim made in the reference application. Hence, by amending the Memorandum of Appeal or Cross-objection, the claimant cannot make a claim in excess of what is claimed in reference.

iii) The claimant can apply for amendment of the claim made in the reference u/s 18 of the said Act even in the Appeal or in the cross objection pending in this Court. However, the claimant will have to explain the delay in filing the application. He will have to satisfy the Appellate Court that there were sufficient reasons for not filing of the application for amendment during the pendency of reference u/s 18 of the said Act. Such application will be governed by the constraints of Rule 17 of Order VI of the Code of Civil Procedure, 1908. iv) Hence, prayer clause (b) of the Civil Application No. 3914 of 2008 is rejected.

v) Prayer (a) will be considered at the stage of final hearing of the Appeal.