
(2003) 01 BOM CK 0010

In the Bombay High Court

Case No : First Appeal No's. 543 and 602 of 1989

Sow. Kamalbai Nimbalkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Constitution of India, 1950 — Article 141, 142

Land Acquisition Act, 1894 — Section 18, 18, 20, 20, 4

Citation : (2003) 105 BOMLR 778

Hon'ble Judges : P.B. Gaikwad, J;B.H. Marlapalle, J

Bench : Division Bench

Judgement

B.H. Marlapalle, J.—Both these Appeals arise from an Award dated 15.10.1988 passed by the learned Civil Judge, Senior Division, Osmanabad, in Land Acquisition Reference No. 44 of 1983 and hence, they being cross appeals are heard together and decided by this common judgment.

2. The land admeasuring 2 Hec. 48.5 areas situated in Survey No. 3 within the limits of Osmanabad Municipal Council came to be acquired pursuant to the notification issued u/s 6 of the Land Acquisition Act read with Section 126(3)(4) of the Maharashtra Regional and Town Planning Act, 1966.

3. In response to the notice issued u/s 9(3) and (4) of the Land Acquisition Act, the land owner had put forth specific claim and the Special Land Acquisition Officer passed an Award on 31.12.1982 awarding the compensation at the rate of Rs. 10,000/- per acre, the total compensation amount being Rs. 71,443.75 ps. As the claimant-owner was not satisfied with the compensation awarded by the Special Land Acquisition Officer, a reference was made u/s 18 of the Land Acquisition Act to the Court below resulting in the impugned Award wherein the compensation amount has been enhanced to Rs. 7/- per sq. ft. which works out to about Rs. 2,80,000/- per acre. The claimant had prayed for Rs. 25/- per sq. ft.

4. As the claimant as well as the State were not satisfied with the Award passed by the Court below, these cross appeals before us.

5. At the out-set, we must note that the subject land was an agriculture land located within the municipal limits as per the Development Plan made applicable to the Municipal Council, Osmanabad, some time in 1976. The Municipal Council, Osmanabad, had passed a resolution and submitted a proposal on 19.8.1981 to initiate land acquisition proceedings for the subject land for the purpose of stadium and shopping centre. When the Award was passed by the Special Land Acquisition Officer, the Municipal Council, Osmanabad, did not file any documentary evidence as noted in the said Award dated 31.12.1982.

6. The Special Land Acquisition Officer had relied upon three sale instances as reproduced hereinbelow:

7. In the impugned Award, in addition to the oral depositions of the witnesses examined on behalf of the claimant, there were two sale instances taken into consideration by the Court below i.e. Exhibits 28 and 29. In the first case, the subject land admeasured 66 x 66 ft. and in the second case, the land admeasured 150 x 60 ft. Both these lands were in the municipal limits and were declared residential properties. In the first case, the compensation amount as it appeared in the sale-deed was Rs. 50,000/- and in the second case, it was Rs. 34,000/-. In the impugned Award, the market value of the subject land came to be fixed at Rs. 7/- per sq. ft. in spite of the objections raised by the learned Government Pleader that the big patch of the agriculture land cannot be valued on the basis of sq. ft. rate for calculating the amount of compensation under the Land Acquisition Act.

8. A number of judgments have been cited by the respective parties before us in support of their respective arguments for and against the impugned Award. We need not consider all these judgments for fixing the market value of the subject land in view of the fact that the Municipal Council, Osmanabad, at whose instance and for whom the land came to be acquired was neither impleaded as a respondent nor issued any notice by the Court below. On the other hand, some employees of the Municipal Council were allowed to be examined in support of the claimant's case. Failure to implead the Municipal Council as a necessary party or issue a notice to the said body by the Court below would vitiate the Award as per the submissions of the learned Assistant Government Pleader and therefore, there is a case to quash and set aside the Award and remand the reference for fresh determination.

9. Our attention has been invited to a decision of this Court (Coram : B. B. Vagayani, J.) in First Appeal No. 172 of 2001 dated 28.8.2001 and a group of appeals connected thereto. In those cases; the State Government had acquired the land under the provisions of the Land Acquisition Act for the Maharashtra Industrial Development Corporation. The said undertaking was established under the Maharashtra Industrial Development Corporation Act, 1961. By relying on the decision of the Apex Court in the case of Ambika Prasad and Another Vs. State of (Delhi Administration, Delhi), , this Court held that, the Corporation for whom the land was acquired was not impleaded as a necessary party in the reference

decided by the Court below and it. was not given any notice in the said reference and therefore, the Award was vitiated. The reference was remanded for fresh determinations by setting aside the impugned Award.

10. Our attention has also been invited to a judgment of the Division Bench Coram : R.M. Lodha and A.B. Naik, JJ.) in the case of Municipal Council Vs. State of Maharashtra and Others, . One of the issues which fell for consideration before the Division Bench was regarding the right of the body for whom the land was acquired for being impleaded as a respondent as well as the notice to be issued by the Reference Court or the Land Acquisition Officer, as the case may be. Pursuant to the proposal initiated by the Municipal Council, the notification u/s 126 of the Maharashtra Regional and Town Planning Act came to be published on 7.4.1981. The Special Land Acquisition Officer passed the Award on 17.12.1983. Reference for higher compensation was made to the Civil Court for determination u/s 18 of the Land Acquisition Act and the Awards were passed between 29.1.1990 to 8.2.1990. As the Municipal Council was not impleaded as a party in the said references, the Award came to be challenged in Writ Petition Nos. 3629 of 1990 and 2137 of 1991 with the following prayers:

(A) By issuing the writ of mandamus or any other appropriate direct: of like nature to the Reference Court to hear and decide the reference after giving opportunity to lead evidence and opportunity of being heard to the petitioner.

(B) By issuing a writ of certiorari or any other appropriate writ or direction of like nature, the provision to Section 50 of the Land Acquisition Act be quashed being violative of the provisions of Constitution of India and be held that the acquiring body is having right to file or appeal u/s 54.

(C) By issuing an appropriate writ or order or direction if be ordered that the acquiring body has independent and distinct right of appeal u/s 54 of the Acquisition Act. being person interested against the judgment and award dated 8.2. 1990 in L.A.R. No. 1.7 of 1987 passed by the learned Civil Judge, Senior Division, Jalna.

So far as prayer Clauses (A) and (B) are concerned, this Court held that they had become infructuous as references were decided in January and February, 1990 and the Petitions were filed on 26.11.1990. It further observed that insofar as the prayer Clause (B) was concerned, same need not be considered in view of the law laid down by the Apex Court in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., . We are concerned with the findings recorded by the Division Bench regarding prayer Clause (C). In answer to the same it has been held that the issue whether the Municipal Council for whom the land is acquired is a necessary or proper party, was concluded in the case of Gyan Devi (supra) and it was not necessary to ponder any more on that aspect. So far as the issue regarding the notice to the acquiring body by the Civil Court was concerned, it would be appropriate to reproduce the observations made in paras 13 to 15 of the judgment:

13. Similarly, in *Krishi Upaj Mandi Samiti v. Ashok Singhal* there was a requirement to serve a notice on the person or body for whose benefit the acquisition was made. Such a notice was not served on the Krishi Upaj Mandi Samiti by the Reference Court which enhanced the amount of compensation awarded by the Land Acquisition Officer and the said amount was further enhanced by the High Court which also did not serve a notice on the Krishi Upaj Mandi Samiti. The said decision of the High Court was set aside by this Court in appeal and the matter was remitted to the High Court for a fresh disposal in accordance with law after affording a hearing to the Krishi Upaj Mandi Samiti. In that case, the Court did not set aside the award of the Reference Court, although no notice was served by that Court, for the reason that the Samiti had accepted and was satisfied with the award of the Reference Court.

14. In *Union of India v. Sher Singh* land was acquired for the purpose of Union of India and Union of India had moved an application before the Reference Court for being impleaded in the array of respondents. The said application was rejected by the Reference Court and the said order was affirmed by the High Court in revision. This Court reversed the said order of the High Court and allowed the applicant of Union of India for impleadment and held that it was entitled to file an appeal in the High Court against the judgment of the Reference Court.

15. In *Union of India v. Kolluni Ramaiah* acquisition was made under the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 for the purpose of Union of India and the Arbitrator has enhanced the amount of compensation that was awarded by the Competent Authority. The said amount was further enhanced in appeal by the High Court. The Union of India challenged the judgment of the High Court in this Court. After observing that "properly speaking the Union of India ought to have been made a party both before the Arbitrator and the High Court" this Court, exercising its powers under Article 142 of the Constitution, remitted the matter to the High Court with the direction that the special leave petitions filed by the Union of India in this Court must be treated as cross-objections before the High Court against the award of the Arbitrator.

If regard be had to the view so taken by the Division Bench in the case of *Municipal Council, Jalna (supra)*, the prayer made by the State Government to remand the reference for fresh determination cannot be considered.

11. The Constitution Bench decision of the Apex Court in the case of *Gyan Devi (supra)* came to be considered by the Apex Court in the case of *Agra Development Authority (supra)*. We may usefully reproduce the observations in paras 6, 7 and 8 as under:

6. It is next urged that the appellants were not given any opportunity to adduce evidence in the proceedings before the Collector for fixation of the cost of acquisition. It was fairly admitted that the appellants were aware of the proceedings. However, no notice had been issued to them and they had not been

given any opportunity to adduce evidence for purposes of determining the amount of compensation.

7. To this submission no adequate answer could be given by the respondents. All that was submitted was that the appellants were aware of the proceedings and had held meetings with the Government and the Collector. In our view, this is not sufficient. What is required by Section 50 of the Land Acquisition Act is that the body for whom the property is being acquired is given an opportunity to appear and adduce evidence for the purposes of determining the amount of compensation. Nothing could be shown to us that this had been done. On this point the matter requires to be sent back to the Special Land Acquisition Officer for refixing compensation payable.

8. Thus, the Appeal is allowed. We remit the matter back to the Special Land Acquisition Officer for refixing the compensation payable after giving a notice to the appellant to appear and adduce evidence before him. As the matter is being remitted back, we clarify that if any other party is desirous of adducing further evidence, they will also be entitled to do so. After considering the material, which is placed before him, the Special Land Acquisition Officer shall fix the compensation and redeclare or amend his award appropriately within a period of six months from today.

12. More recently in the case of Abdul Rasak and Others Vs. Kerala Water Authority and Others, , the land was acquired for the Kerala Water Authority by the State of Kerala. Though the notification u/s 4 of the Land Acquisition Act was issued on 19.7.1981, the Award came to be passed on 15.1.1986. The Kerala Water Authority came into effect from 1.4.1984 pursuant to the enactment of the Kerala Water and Sewerage Act, 1986. The claimants sought for reference to the Civil Court seeking enhancement in the amount of compensation and these references came to be decided by different awards by the Civil Court between 1989 and 1991. Admittedly, the Kerala Water Authority was neither impleaded as a necessary party nor it was issued any notice by the Reference Court. The State of Kerala and the said Authority preferred Appeals before the Kerala High Court challenging the Award passed by the Reference Court. During the pendency of these Appeals, the Constitution Bench judgment of the Apex Court in the case of Gyan Devi came to be pronounced. Relying on the said decision, a Division Bench of the Kerala High Court held that the Award given by the Civil Court stood vitiated for want of notice to the Kerala Water Authority and the appeals were accordingly allowed, by remanding the case for decision afresh by the Reference Court after affording the parties an opportunity of adducing the evidence in support of their respective contentions. Feeling aggrieved by the order of remand, the claimants approached the Apex Court. While confirming the view taken by the Division Bench of the Kerala High Court, reference was made to the earlier decision in the case of Agra Development Authority (supra) as well as the Constitution Bench decision in the case of Gyan Devi. The Apex Court held that the High Court did not commit error in taking the view which it had taken and

directed the reference cases to the Civil Court consistently with the law laid down by the Constitution Bench, as the Kerala Water Authority shall have to be impleaded as party to the proceedings before the Civil Court from very beginning a retrial becomes unavoidable.

13. These two decisions of the Apex Court i.e., Agra Development Authority and Abdul Razak (*supra*) including the view taken by the learned Single Judge of this Court in the First Appeal were not brought to the notice of the Division Bench of this Court in the Municipal Council. Jalna's ease and while deciding these Appeals we are bound by the said decisions of the Apex Court in view of the mandate of Article 141 of the Constitution. Therefore, disagreeing with the view taken in the case of Jalna Municipal Council we will have to concede to the arguments advanced before us in support of the appeal of the State Government for remand of the reference for fresh determination though Municipal Council. Osmanabad, is not a party before us.

14. There is no dispute that the amount deposited by the State Government pursuant to the award impugned before us had come from the Municipal Council, Osmanabad, and it is also a fact that the said amount had been withdrawn by the claimant. Section 20 of the Land Acquisition Act, 1894, reads thus:

20. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:-

- (a) the applicant;
- (b) all persons interested in the objection, except, such (if any) of them as have consented without protest to receive payment of the compensation. awarded; and
- (c) If the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

The words "persons interested in the objection", in our considered opinion, shall include not. only the Land Acquisition Officer but also the body for whom the land came to be acquired and in the instant case, it is the Municipal Council. Osmanabad. It cannot be said that there is no requirement for the Court to issue a notice to such a body if it had not appeared or failed to appear or was not impleaded as a necessary party. The mandate of Section 20 is clear and more so in the instant case in the Award passed by the Special Land Acquisition Officer it was specifically noted that the Chief Officer of the Municipal Council did not adduce evidence which clearly indicated that the said officer was a party before the Land Acquisition Officer. The language of Section 50(2) of the Land Acquisition Act states that in any proceedings held before the Collector or the Court in such cases the Local Authority or the Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation. This provision has been interpreted by the Apex Court in the case of Gyan Devi and it has been held that it is mandatory to implead the Local

Authority or the Company by the Collector or the Court while determining the amount of compensation of the subject land acquired for it under the Land Acquisition Act. The reference decided by the Trial Court has not reached finality as the appeals are decided by us against the same and therefore, the ratio laid down by the Apex Court interpreting the provisions of Section 50(2) of the Act is squarely applicable to the facts at hand.

15. Shri V. G. Sakolkar learned Advocate appearing for the claimant, has referred to the decision of the Supreme Court in the case of The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib, , and submitted that appreciation of 10% per year over and above the compensation towards the price of the land is required to be granted. All these issues could be raised before the Reference Court and they could be decided as per law.

16. In the result, we allow First Appeal No. 602 of 1989 filed by the State, quash & set aside the impugned Award passed by the Court below in Land Acquisition Reference No. 44 of 1983 and the reference is remitted for fresh decision by issuing a notice to the Municipal Council, Osmanabad and affording an opportunity to all the parties concerned to lead evidence or additional evidence, as the case may be. The reference on its receipt after remand, shall be heard and decided as expeditiously as possible and in any case within a period of six months from the date of receipt of this order by the District Court. The learned District Judge, Osmanabad, is directed to assign the reference within a period of one week from the date of receipt of this order for fresh decision. The Chief Officer of Osmanabad Municipal Council, who is present before us, shall take appropriate steps for representing the Council's case before the Court below.

17. Consequently, First Appeal No. 543 of 1989 filed by the claimant is dismissed. As the amount awarded by the Reference Court had been withdrawn by the claimant, we direct that the claimant shall re-deposit the same with the Court below or in the alternative, furnish security to the satisfaction of the said Court within a period of two weeks from the date of receipt of this order by the Court below, if such a security has not been already furnished by the claimant.

18. The Additional Registrar, (Judicial) is directed to forthwith circulate a copy of this judgment to all the Benches of this Court.