
(2013) 07 BOM CK 0025

In the Bombay High Court

Case No : Civil Revision Application No. 17 of 2011

State of Goa and Another

APPELLANT

Vs

Domingos M.L. Merglhao (since deceased) through legal heirs

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) 5 ABR 915 : (2014) 4 ALLMR 221 : (2013) 6 BomCR 803

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : Priyanka Kamat, Addl. Government Advocate, for the Appellant; D. Pangam, for the Respondent

Judgement

F.M. Reis, J.—Heard Ms. Kamat, learned Addl. Government Advocate appearing for the Petitioners and Shri Pangam, learned Counsel appearing for the Respondents. The short point for consideration in the above revision is as to whether a deposit of the compensation awarded by the petitioners to obtain a stay of the execution of the Award passed by the Reference Court whilst disposing a reference u/s 18 of the Land Acquisition Act, would cease the payment of further interest in terms of Section 28 of the Land Acquisition Act?

2. Ms. Kamat, learned Addl. Government Advocate, pointed out that the original Award passed by the Reference Court was challenged by the Petitioners before this Court in First Appeal No. 91 of 1992. The award impugned therein was stayed by this Court subject to depositing the amount awarded by the impugned Award which was accordingly deposited by the Petitioners. Learned Addl. Government Advocate pointed out that the Appeal came to be disposed of by Judgment dated 03.08.1996 whereby the Appeal preferred by the Petitioners was partly allowed and the compensation fixed by the Reference Court was reduced. Accordingly, an application was filed by the Petitioners for withdrawal of the excess amount deposited in this Court. This Court disposed of the application by an Order dated 21.11.1997 directing that the Petitioners be paid a sum of Rs. 2,87,146/- and the Respondent be paid a sum of Rs. 1,26,000/-. It was also

recorded therein that if at all any interest accrued therein, the said amounts be also refunded. Thereafter, the Respondents filed an Execution Application, inter alia, contending that the amount which was paid, was in deficit as no interest in terms of Section 28 of the said Act was paid to the Petitioner. The learned Judge after hearing the parties, by the impugned Order, directed that the Respondents be paid a sum of Rs. 2,80,777.52/- as on 16.04.2008. The learned Addl. Government Advocate pointed out that in view of the said payments directed by this Court, the question of any further payments to the Respondents would not arise. Learned Counsel further submits that once the said amount was deposited in this Court by itself exonerates the Petitioners of payment of any amounts to the Respondents.

3. Shri Pangam, learned Counsel appearing for the Respondents, disputes the contention of the learned Addl. Government Advocate appearing for the Petitioners. Learned counsel points out that admittedly the payments were not certified by the Reference Court nor the right of the Respondents to claim the amounts in terms of the Award was withdrawn by this Court whilst directing the payment of the amount to the respective parties. Learned Counsel further pointed out that in any event, the Respondents cannot be estopped from claiming the amount which they are otherwise entitled in terms of the Award passed in favour of the Respondents. Learned Counsel has further taken me through the impugned Order and pointed out that no interference is called for in the impugned Order.

4. Upon hearing the learned Counsel, the first point for consideration is whether a deposit in this Court to obtain a stay of the award impugned would result in a deposit for payment in terms of the provisions of the Land Acquisition Act. This aspect is res integra in view of the judgment of the Division Bench of this Court dated 05.02.2007 passed in Miscellaneous Civil Application No. 593 of 2006 in First Appeal No. 240 of 2003. The learned Division Bench whilst considering a similar aspect, has observed at para 13 thus:

13. The applicant was certainly free to apply to the Court to receive the enhanced compensation along with interest but under no circumstances the applicant would have been allowed to withdraw the same without further conditions being imposed upon him by way of security or otherwise. In other words, the applicant was not free to receive the amount deposited by the applicant of enhanced compensation along with interest, in terms of Order 41, Rule 5, C.P.C. In our view, interest on enhanced compensation would have ceased to run only in case the respondents had deposited the amount with a view of paying the same to the applicant in the Reference Court. In other words, the expression Court in Section 28 of the Act or for that matter in judgment of Prem Nath Kapur and another v. National Fertilizers Corpn. of India Ltd. and others (supra) could only be the Court as defined in Section 3(d) of the Act i.e. Reference Court. In case the applicant was ultimately not entitled to the same on account of the Respondents succeeding in the appeal filed by them then the

respondents would certainly have been entitled for restitution. In our view, the liability to pay interest on enhanced compensation would cease only in case the respondents had deposited the amount of the award-decree in satisfaction of the decree and with a view to enable the decree-holder to withdraw the same. In the case at hand, the respondents deposited the amount of the award-decree as a condition for staying the execution of the decree. There can be no dispute that the applicant would have been at liberty to apply for withdrawal of the same but the same would not have been released in his favour unless he gave necessary security. By the instant deposit and its subsequent investment all that the decree-holder has been able to obtain is 5.5% interest on the enhanced amount of compensation depriving the applicant of the balance of 9.5% since the law mandates that interest is payable on enhanced compensation at the rate of 15% after the expiry of the period of one year. In this context, reliance could be placed on a three Judge decision of the Apex Court in the case of P.S.L. Ramanathan Chettiar and Others Vs. O. Rm. P. Rm. Ramanathan Chettiar, wherein the Apex Court has stated that the fact of a judgment-debtor's depositing a sum in Court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the Order; but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the Court allows him to do so and on his losing the appeal putting the decretal amount in Court in terms of Order 21, Rule 1, C.P.C. in satisfaction of the decree. The Apex Court has stated that the real effect of deposit of money in Court as was done in that case was to put the money beyond the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor. It was also contended before the Apex Court that at any rate the decree-holder cannot claim any amount by way of interest after the deposit of the money in Court and the said contention was rejected because the deposit in that case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of the Order. The deposit was not in terms of Order 21, Rule 1 C.P.C. and as such, there was no question of the stoppage of interest after the deposit.

5. The ratio laid down by the learned Division Bench is that such payment is not towards the satisfaction of a award which is otherwise impugned before this Court as it is not a deposit in terms of Order 21, Rule 1 of Civil Procedure Code. As such, the direction in the impugned Order is in accordance with the said well settled principles as laid down by the Division Bench of this Court. The contention of learned Addl. Government Advocate appearing for the Petitioners that the

withdrawal of the amount would result in an estoppel against the Respondents from claiming the said amount cannot be accepted. It is well settled that there can be no estoppel against law. In any event, any misapprehension of the legal position or the legal right of the parties cannot be estopped. In that view of the matter, I find that no case is made out for any interference by this Court in the impugned Order. There is no jurisdiction error committed by the learned Judge whilst passing the impugned Order. In view of the above, the Revision stands rejected.