

(2005) 09 BOM CK 0091
In the Bombay High Court
Case No : F.A. No"s. 710 and 1063 of 1989

State of Maharashtra

APPELLANT

Vs

Govind Goma Govari and Others

RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 107, 53, 57
Evidence Act, 1872 — Section 114
Land Acquisition Act, 1894 — Section 18, 25, 25(2), 4, 6

Citation : (2006) 2 MhLj 55

Hon'ble Judges : V.M. Kanade, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : R.V. Pai with S.M. Kamble, for the Appellant; A.R. Patil, AGP, for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Both these appeals arise from the judgment passed by the Reference Court in Land Acquisition Reference No. 75 of 1987 on 31st August, 1988. The Appeal No. 710 of 1989 has been filed by the State of Maharashtra whereas the Appeal No. 1063 of 1989 has been filed by the claimants.

2. The land in question bearing Survey Nos. 283, 286, 280, 322, 277, 278, 220 and 334 totalling to an area of 27610 sq. metres situated in the village Kamothe was sought to be acquired for New Bombay Project by issuance of Notification u/s 4 of the Land Acquisition Act, 1894, hereinafter called as "the said Act", on 3rd February, 1970, which was published in the Government Gazette on 24th December, 1971. After issuance of declaration u/s 6, a notice u/s 9(3) of the said Act came to be issued on 22nd September, 1975 and the same was served on the claimants on the very day. In response to the said notice, the claimants did not put forth any claim regarding the compensation for the land to be acquired. The Land Acquisition Officer by its award dated 31st December, 1985 offered the

total compensation of Rs. 1,36,244.50ps. which was at the rate of Rs. 1/- and Rs. 2/- p.s.m. for different areas of land.

3. Being dissatisfied, the claimants preferred an application u/s 18 of the said Act claiming enhancement of compensation at the rate of Rs. 20/-p.s.m. After recording the testimony of the Power of Attorney Holder of the claimants and the valuer, the Reference Court by the impugned award enhanced the compensation to Rs. 4,02,890/- besides granting other statutory benefits. The enhancement has been done at the rate of Rs. 15/- per sq. metre for the area of 18190 sq. metres and at the rate of Rs. 12/- for the area of 9420 sq. metres. Hence, the present appeals.

4. Upon hearing the learned AGP for the State as well as the learned Advocates for the claimants and on perusal of the records, it is not necessary to take into consideration all the grounds of challenge, and suffice to refer to only one ground which goes to the root of the matter and discloses exercise of powers by the Reference Court under Part-III of the said Act totally ignoring the statutory fetters imposed upon it u/s 25 as it stood on the statute book prior to 24th September, 1984 and which was applicable to the facts of the case. Apparently, the reference Court has exercised the jurisdiction which was not vested in it under the said Act.

5. The notice u/s 9(3) of the said Act was issued on 22nd September, 1975. The award was passed by the Land Acquisition Officer on 31st December, 1985. Undisputedly, the claimants did not file any reply to the notice u/s 9(3) of the said Act nor in answer thereto disclosed any quantification of the market value of the property which was subjected to the acquisition.

6. It is well settled law that in relation to the land acquisition proceedings which had commenced prior to 24th September, 1984 by issuance of the notice u/s 4 of the said Act, the unamended provision of Section 25(2) of the said Act would apply, and therefore, in terms of the said unamended section 25(2), when the claimant had either refused to make any claim or had omitted to make any claim in answer to section 9 notice without sufficient reason to the satisfaction of the reference court, the amount which could be awarded by the reference Court cannot exceed the amount awarded by the Land Acquisition Officer. The law on this aspect has been discussed in detail in the unreported decision of this Court in *State of Maharashtra v. Dhanaji Kamalu Joshi*, delivered in First Appeal No. 430 of 1993 on 25th August, 2005 and 1st September, 2005. We are also fortified in that view by the decision of the Apex Court in *Gobardhan Mahto Vs. State of Bihar*, .

7. In the circumstances, the points which arise for our consideration are that whether the Reference Court could have proceeded to adjudicate the claim for enhancement without ascertaining as to whether there was any sufficient reason for the claimants not to make claim in answer to the notice u/s 9(3) of the said Act and that whether such adjudication of the claim for enhancement of compensation by the Reference Court can be sustained in view of the statutory

fetters imposed upon the Reference Court in dealing with such matters in terms of the unamended Section 25(2) of the said Act?

8. The learned Advocate appearing for the claimants drawing attention to the paragraph 11 of the application which was filed u/s 18 of the said Act submitted that the claimants had disclosed their claim for compensation at the rate of Rs. 20/- p.s.m. to the concerned officer when they had contacted the officer on the date fixed for reply to the notice u/s 9(3) of the said Act. However, the officer did not record the same and for that reason, the claimants should not be blamed nor the claimants' rights to claim appropriate and just compensation for the land acquired should be denied to them.

9. Section 9(1) of the said Act clearly provides that the collector shall cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him. Sub-section (2) thereof provides that such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections, if any, to the measurements made u/s 8 and the Collector may in any case require such statement to be made in writing and signed by the party or his agent, Sub-section (3) thereof requires the Collector to serve notice to the same effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, within the revenue district in which the land is situated.

10. Undoubtedly, under Sub-section (2) of Section 9, oral intimation can be given by an interested person about his claim of compensation. But, once a notice under Sub-section (3) thereof is issued, it becomes necessary for the interested person to file the reply in writing disclosing his claim regarding the compensation. Failure in that regard would require the person concerned to comply with his obligation to satisfy the reference Court about reason for such failure.

11. Undisputedly, the paragraph 11 of the said application u/s 18 of the said Act does disclose a statement to the effect that the claimants had received the notice dated 22nd September, 1975 issued u/s 9 of the said Act and the same required the claimants to inform about their claim either in writing or oral to the concerned officer on due date i.e. 23rd October, 1975. It also discloses the statement to the effect that on 23rd October, 1975, the claimants had appeared before the Land Acquisition Officer and had informed the Land Acquisition Officer about their claim for compensation at the rate of Rs. 20/- p.s.m.

12. Perusal of the award passed by the Land Acquisition Officer evidently discloses that the individual notices u/s 9(3) were issued to the claimants on

22nd September, 1975 inviting the claimants to disclose their claim regarding purchase price and in addition to the said notices, another notices of the same date were issued to the claimants to substantiate their claim with necessary evidence, if any, on 23rd October, 1975 before the Land Acquisition Officer. Obviously, the requirement of appearance of the claimants before the Land Acquisition Officer on 23rd October, 1975 was not to reveal the quantification of the claim but to substantiate the claim with necessary evidence.

13. The materials on record apparently disclose clear admission on the part of the claimants about service of the notices u/s 9(3) of the said Act. In the circumstances, they having not filed any written claim for compensation in reply to the said notices, and their contentions being that they made such oral submissions in that regard on 23rd October, 1975 to the Land Acquisition Officer but the same were not recorded by him, it was necessary for the claimants to establish the said claim by adducing necessary evidence in that regard. In the absence thereof, the reference Court could not have proceeded with the matter to adjudicate the claim for enhancement of compensation, as, unamended Section 25(2) clearly required satisfaction of the Reference Court about sufficiency of the reason for omission or refusal on the part of the claimants to make such claim in answer to the notice u/s 9(3), before proceeding with the adjudication of the claim for enhancement of the compensation, The burden in that regard was squarely upon the claimants to establish the fact that in spite of the claim having been required to be made in writing on or before 23rd October, 1975 to the Land Acquisition Officer, the said claim was made orally by the claimants to the Land Acquisition Officer, but later had, in spite of being under obligation to do so, failed to record the same. Apart from the claimants' pleadings in paragraph 11 of the application u/s 18 to the effect that the claimants had made such oral claim before the Land Acquisition Officer on 23rd October, 1975, the claimants did not produce any evidence in support of such claim for necessary adjudication in that regard to the satisfaction of the Reference Court about sufficiency of the reason for omission on the part of the claimants to put forth such claim in writing in order to enable them to seek enhancement of the compensation over and above the amount awarded by the Land Reference Officer. Obviously, therefore, the Reference Court had no jurisdiction to proceed with the matter.

14. It is to be noted that the fact of service of notice u/s 9 has been clearly admitted. It is also to the knowledge of the claimants that the said notice was required to be replied in writing on or before 23rd October, 1975. It is also the case of the claimants that they had put forth their claim before the Land Acquisition Officer on the said day but orally. There is neither any statutory provision nor any practice duly recognised or followed by legal sanction to the effect that the claim in answer to Section 9(3) notice can be made orally. Beside, bearing in mind the provisions of law comprised u/s 114 of the Evidence Act, it would be for the claimants to establish the basic fact, the existence of which is absolutely necessary for the reference court to exercise its jurisdiction to

enhance the compensation over and above the amount awarded by the Land Acquisition Officer.

15. Exercise of right to claim compensation by the claimants was absolutely necessary in answer to notice u/s 9(3) of the said Act in order to enable the claimants to claim and for the Court to adjudicate such claim for enhancement of compensation, and only upon satisfactory explanation for such failure or omission on the part of the claimants, the Court could have proceeded to adjudicate the said claim for enhancement. In the absence of exercise of such right and satisfactory explanation in the reference application, duly established by evidence in support thereto, the reference court had no jurisdiction to entertain the reference for enhancement of compensation.

16. The Apex Court in no uncertain term has ruled that the provisions of law comprised u/s 25 are not procedural but are substantive in nature and the said point has been elaborately discussed in the unreported decision delivered by this Court on 25th August, 2005 and 1st September, 2005 in First Appeal No. 430 of 1993 (supra).

17. Being so, the Reference Court in the absence of satisfaction about the sufficiency of the reason to omit or make claim in answer to the notice u/s 9(3) of the said Act, the matter being related to the period prior to 24th September, 1984, could not have entertained the reference proceedings for enhancement of compensation u/s 18 of the said Act. The Reference Court having totally ignored this aspect and having proceeded to adjudicate the claim for enhancement of compensation, has clearly acted arbitrarily and illegally in total defiance of the mandate of unamended section 25(2) of the said Act rendering its judgment to be bad in law and unsustainable and is, therefore, required to be quashed and set aside in these appeals.

18. Before parting with the matter, it is to be noted that though the claimants have not raised any objection for taking up such issue in the course of hearing of the appeals on the ground that the State has not raised the said point in the Memo of Appeal nor has sought amendment to the Memo of Appeal to raise such point, this point is also well settled by the decision delivered by this Court in First Appeal No. 430 of 1993 in *State of Maharashtra v. Dhanaji Kamalu Joshi* (supra) on 25th August, 2005 and 1st September, 2005. In any case, it is to be noted that the point which goes to the root of the matter and pertains to the jurisdiction of the authority or the Court to deal with the matter, the same can be raised and decided at any stage of the proceedings. Mere failure on the part of the State to raise such point in the Memo of Appeal would not debar this Court from dealing with the said issue, more particularly bearing in mind the provisions of law u/s 107 read with Order XLI, Rule 33 of the Code of Civil Procedure, 1908 and the provisions of Sections 53 and 54 of the said Act.

19. In the result, therefore, the First Appeal filed by the State succeeds. The impugned judgment passed by the Reference Court enhancing the compensation

over and above the amount awarded by the Land Acquisition Officer in spite of the fact that the claimants had not made any claim for compensation in answer to the notice u/s 9(3) of the said Act and had not disclosed sufficient reason for such failure or omission and in spite of the fact that the matter related to the period prior to 24th September, 1984, cannot be sustained and is, therefore, hereby quashed and set aside while allowing the said Appeal. In view of what is stated above, therefore, the First Appeal filed by the claimants is bound to be dismissed and accordingly is hereby dismissed.

20. The amount which is stated to have been deposited during the pendency of the Appeals shall be refunded to the State along with interest, if any, accrued thereon. Order accordingly.