

(2011) 06 BOM CK 0011

In the Bombay High Court

Case No : First Appeal No. 1323 of 2002 Alongwith Civil Application No. 2432 of 2011 and Cross Objection ST. No. 16210 of 2011

State of Maharashtra

APPELLANT

Vs

Kalu Ladku Mhatre

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22, Order 41 Rule 22(1)
Land Acquisition Act, 1894 — Section 11, 18, 23, 23(2), 23A(1)
Limitation Act, 1963 — Section 5

Citation : (2012) 1 BomCR 193 : (2011) 3 CivCC 796 : (2011) 8 RCR(Civil) 309

Hon'ble Judges : Oka A.S, J

Bench : Single Bench

Advocate : A.R Patil, A.G.P., Appellant - State, for the Appellant; S.M. Kamble, for the Respondent

Final Decision : Dismissed

Judgement

Oka A.S., J.—Heard the learned A.G.P. appearing for the appellant - State and the learned Counsel appearing for the respondent. The appellant-State of Maharashtra has impugned judgment and Award dated 30th November, 1995 passed by the Land Acquisition Officer in a Reference u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). The acquisition relates to lands situated at Village Pendhar, Taluka Panvel, District Raigad which were notified for acquisition u/s 4(1) of the said Act on 3rd February, 1970. The purpose of acquisition was setting up satellite city of New Bombay. The Award made u/s 18 of the said Act was not accepted by the respondent-claimant and therefore, at his instance the Reference was made. The Reference Court by the impugned judgment and Award has fixed the market value of the acquired land of Rs. 14/- per square meter and has granted statutory benefits under sections 23(1-A), 23(2) and 28 of the said Act. There is a cross-objection filed by the respondent-claimant seeking enhancement in the market value. The said cross-objection was filed by the respondent-claimant on 22nd June, 2011 alongwith an

application for condonation of delay.

2. The submission of the learned A.G.P. appearing for the appellant - State is that the respondent-claimant has not discharged the burden on him by adducing evidence to prove that the market value offered by an Award u/s 11 of the said Act is not adequate. He submitted that the impugned Award is not based on any legal evidence. The learned Counsel appearing for the respondent relied on the decision of this Court in the First Appeal No. 875 of 1985 (Abdul Aziz Husenmiya Patel Vs. Special Land Acquisition Officer)¹, dt. 16-3-2000 and other connected appeals. He submitted that the land subject-matter of this appeal is similar to the lands subject-matter of First Appeal Nos. 312 of 1999 and 315 of 1995. He submitted that this Court has fixed the market value at the rate of Rs. 17.10 per square meter while deciding the said First Appeals on 15th April, 2011.

3. The learned Counsel appearing for the respondent submitted that the appellant has properly explained the delay in filing the cross-objection in the application for condonation of delay and therefore, the said delay deserves to be condoned. The learned A.G.P. appearing for the appellant submitted that in this appeal of the year 2002, cross-objection has been filed after appeal was ready for final hearing. He pointed out that under Rule 22 of Order XXI of the Code of Civil Procedure, 1908, the cross-objection ought to have been filed within one month from the date of service of notice of the appeal. He submitted that, there is no explanation for such a long delay in filing the cross-objection which was filed in June 2011 and therefore, no case is made out for condonation of delay.

4. I have given careful consideration to the submissions. The first issue is regarding the condonation of delay in filing the cross-objection. A Reference will have to be made to sub rule (1) of Rule 22 of Order XLI of the said Code which reads thus:

Any respondent, though he may not have appealed from any part of the decree, may not only support the decree (but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection) to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

5. Thus, under sub-rule (1) of Rule 22 of Order XLI of the said Code, a power has been conferred upon the Appellate Court to extend the time to file cross-objection. The Appellate Court can grant such further time as it may see fit to allow. The sub-rule (1) of Rule 22 does not lay down that sufficient cause is required to be shown by the respondent. As the said Code vests the power to extend the time to file cross-objection in the Appellate Court, it is not at all necessary for the respondent in appeal to invoke section 5 of the Limitation Act, 1963. Section 5 of the Limitation Act reads thus:

Extension of prescribed period of certain cases - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfied the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

6. The last part of sub-rule (1) of Rule 22 of Order XLI deals with the grant of extension of time for filing of cross-objection and section 5 of the Limitation Act deals with the extension of time to prefer an appeal. Section 5 of the Limitation Act incorporates a condition precedent of the appellant satisfying the Appellate Court that he had sufficient cause for not preferring the appeal within the prescribed period of limitation. Sub-Rule (1) of Rule 22 of Order XLI does not incorporate the stringent requirement of establishing a sufficient cause. Thus, a wide power to extend the time to file cross-objection has been vested in the Appellate Court. Though there is no requirement of establishing sufficient cause within the meaning of section 5 of the Limitation Act, in the application for seeking extension of time to file cross-objection, brief reasons for delay will have to be set out. A wider discretion has been conferred on the Appellate Court under the sub-rule (1) of Rule 22 than what is conferred by section 5 of the Limitation Act. The power to extend time under sub-rule (1) of Rule 22 of Order XLI of the Code has to be liberally exercised in case where a cross-objection is sought to be filed before the appeal is heard for final hearing.

7. In the present case, the acquisition is in respect of a land at Village Pendhar, Taluka Panvel District Raigad which was notified for the public purpose of setting up of satellite city of New Bombay. The Apex Court has taken a judicial notice of the fact that the lands in 96 villages in Raigad and Thane Districts were notified in between the year 1967 to 1970 for the same public purpose of setting up of satellite city of New Bombay. The Apex Court has taken a judicial notice of the said fact in the case of Avinash Dhavaji Naik Vs. State of Maharashtra, . It is a matter of fact that hundreds of appeals came up before this Court against the Awards made in References u/s 18 of the said Act in relation to the lands in District Raigad which were notified for the same public purpose on 3rd February, 1970. For various villages, the market value as on 3rd February, 1970 has been fixed by this Court. In almost all cases, the State Government has accepted the decisions of this Court.

8. In the present case, appeal of the year 2002 was listed on the board of final hearing for the first time in June 2011. As far as village Pendhar is concerned, the Division Bench in the case of Abdul Aziz Husenmiya Patel Vs. Special Land Acquisition Officer (supra) has laid down the principles for determination of market value as on 3rd February, 1970. This Court following the decision of the Division Bench has fixed the market value at enhanced rate in several cases. In the application for condonation of delay, it is set out that the respondent had instructed his Advocate to file a cross-objection. However, he was informed that the Court fee is required to be paid and for various reasons, Court fee could not

be arranged by him.

9. It must be noted here that as far as fixation of market value is concerned, the case will be governed by the aforesaid decision of this Court. Hence, this is a fit case where time to file cross-objection deserves to be extended. Accordingly, the Civil Application No. 2432 of 2011 deserves to be allowed. Now coming back to the facts of the case, perusal of the evidence and material on record shows that the acquired land was at a distance of 1200 meters from Bombay Pune National Highway and a distance of about 4800 meters from Panvel Sion Highway. Hence, this is a case which will be governed by the decision of this Court dated 15th April, 2011 in First Appeal Nos. 312 and 315 of 1999 reported in State of Maharashtra Vs. Kalu Ladkku Mhatre, In this case, this Court dealt with the market value of the adjacent lands of the respondent acquired under the same notification. Hence, the market value in the present case will have to be fixed at the rate of Rs. 17.10 per square meters. Therefore, I pass the following order:

ORDER

- i. First Appeal No. 1323 of 2002 is dismissed with no order as to costs.
- ii. Civil Application No. 2432 of 2011 is allowed and the time to file cross-objection is extended.
- iii. Cross-objection Stamp No. 16210 of 2011 is partly allowed and the market value of the acquired lands is fixed at the rate of Rs. 17.10 per square meter. In addition to the market value, the respondent-claimant will be entitled to statutory benefits under sections 23(1-A), 23 and 28 of the Land Acquisition Act, 1894. The respondent-claimant will be entitled to proportionate costs of the Reference as well as cross-objection.
- iv. The exercise of determining the compensation payable in accordance with the modified Award shall be completed by the Reference Court within a period of three months from the date on which the writ of this judgment is received by the said Court.
- v. The additional compensation amount shall be deposited by the State Government with the trial Court within a period of three months from the date on which the amount is determined.