

(2004) 06 BOM CK 0049
In the Bombay High Court
Case No : First Appeal No. 941 of 1988

State of Maharashtra

APPELLANT

Vs

Laxman Ramchandra Parandwal since deceased by his heirs
Baban Laxman Parandwal and Others

RESPONDENT

Date of Decision : 11-06-2004

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 23(1A)
Land Acquisition Act, 1894 — Section 11, 18, 25, 25(1), 9(3)

Citation : (2004) 4 ALLMR 283 : (2005) 2 BomCR 439 : (2005) 1 MhLj 534

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : G.P. Mulekar, A.G.P, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

V.C. Daga, J.—This appeal is directed against the judgment and order dated 31st March, 1987 passed by the Civil Judge, Senior Division, Raigad; Alibag passed in Land Acquisition Reference No. 88 of 1981, on two grounds, firstly, that no reference could have been entertained by the Reference Court as the claimants did not raise any objection in reply to the notice issued u/s 9(3)(4) of the Land Acquisition Act, 1894 ("Act" for short). Secondly, that additional component of compensation " 12% in the sum of Rs. 48,722.40 could not have been granted in favour of the landowner as the Award was made by the Collector prior to 30th April, 1982. In support of first submission, reliance was placed on the Apex Court judgment in the case of Land Acquisition Officer-cum-DSWO v. B. V. Reddy and Sons, (2003) 3 SCC 463, whereas in support of second contention reliance was placed on the judgment of the Apex Court in the case of Kashiben Bhikabai and Others Vs. Special Land Acquisition Officer and Another, .

The respondents, though filed their appearance through their counsel but none of them were present to oppose this appeal when it was called out for final nearing.

2. Heard learned A.G.P. for the appellant. Perused record and proceedings.

Before embarking upon an inquiry as to the correctness of the contentions raised, it would be appropriate to notice the provision of Section 25 of the Act as it stood prior to its amendment in contrast to the amended provision of Section 25 of Act.

Section 25, prior to its amendment by Act 68 of 1984.

"25. Rules as to amount of compensation.- (1) When the applicant has made a claim to compensation, pursuant to any notice given u/s 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector u/s 11,

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector."

Section 25 after the amendment.

"25. Amount of compensation 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."

3. As per the scheme of the Act, after publication of preliminary notification u/s 4 of the Act and issuance of public notice of the substance of such notification by the Collector, objections are entertained and heard, as provided u/s 5-A of the Act. The appropriate Government if becomes satisfied that the land is needed for public purpose, a declaration to that effect is required to be made u/s 6 of the Act. Such declaration is the conclusive evidence that the land is needed for a public purpose. The appropriate Government or the officer authorised by the appropriate Government directs the Collector to make order for the acquisition of the land, as provided u/s 7 and the Collector then causes the land to be marked and measured and also he is supposed to make a plan of the same. The Collector thereafter causes public notice to be given at convenient places on or near the land, 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, as provided u/s 9. The notice u/s 9(1) has to give necessary particulars, as provided under sub-section (2) of the said section and the Collector then serves the notice on the occupier of the land as well as on all such persons known or believed to be interested therein or would be entitled to act for persons so interested, or agents authorised to receive service on their behalf within the revenue district in which the land is situated. Section 11 confers power on the Collector to hold an inquiry with regard to the measurements made as well as inquiry as to the valuation of the land on the date of notification u/s 4(1) and thereafter he has to

make an award under his hand. Such award of the Collector is required to be filed in the Collector's office and under law is held to be final and conclusive evidence, as between the Collector and the persons interested on the question of true area and value of the land and apportionment of the compensation among the persons interested.

On the above canvas of the scheme, now it is necessary to turn to Sections 18 and 25 of the Act. Section 18 entitles the person interested, who has not accepted the award, to make a written application to the Collector, requiring that the matter of determination of compensation be referred to a competent Court. Section 25, however, as it stood prior to its amendment, required the claimant to claim compensation, pursuant to any notice given u/s 9. In the event of reference u/s 18 the amount awarded to him by the Reference Court cannot exceed the amount so claimed and cannot be less than the amount awarded by the collector u/s 11.

The aforesaid provision contained in sub-section (1) of Section 25, thus, limits the power of the Reference Court on a reference being made u/s 18 to the quantum of compensation which could be awarded. The said Section 25 now stands amended. In view of the amendment to Section 25, it is clarified that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector u/s 11, meaning thereby the limits under the unamended section put on the powers of the Reference Court on a reference being made u/s 18 to the higher quantum of compensation have been done away. However, the said amendment to Section 25 has been held to be prospective in operation by the Apex Court and is made to apply only to the acquisitions made subsequent to 24th September, 1984. In the present case, the reference being of 1981, it would be within the sweep of unamended Section 25 of the Act. Turning to the facts of the case in hand, it is not in dispute that in the present case no reply to the notice issued u/s 9(3)(4) was given by the claimants. They did not make any claim for compensation. In that view of the matter, it was not open for the respondents to invoke jurisdiction of the Reference Court u/s 18 of the Act. A reference, in that view of the matter, was not maintainable in view of the Apex Court judgment in the case of *B. V. Reddy and Sons* (supra).

4. So far as second challenge to the award is concerned, it is now well settled that Section 23(1-A) of the Act came to be amended by Act 68 of 1984. An additional compensation at the rate of 12% as provided u/s 23(1-A) became effective only from 30th April, 1982. The said additional compensation was not to be made available to the owner of the land where the acquisition commenced and the award was made by the Collector prior to 30th April, 1982. In the present case, it is not in dispute that the date of award is 30th March, 1981. In that view of the matter, additional compensation at the rate of 12% in the sum of Rs. 48,722.40 could not have been granted by the Reference Court: considering the law laid down by the Apex Court in the case of *Kashiben Bhikabai* (supra).

5. In view of the aforesaid discussion, it is clear that the impugned judgment and order cannot stand to the scrutiny of law and the same is liable to be quashed and set aside.

In the result, impugned judgment and order dated 31st March, 1987 is quashed and set aside. Appeal is allowed and disposed of with no order as to costs.