
(2008) 09 BOM CK 0147
In the Bombay High Court
Case No : First Appeal No. 641 of 1994

State of Maharashtra

APPELLANT

Vs

Madan Vithalrao Naiknaware and Another

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18, 18(2), 30

Citation : (2009) 1 BomCR 70

Hon'ble Judges : Borkar P.R., J

Bench : Single Bench

Advocate : D.V. Tele, A.G.P, for the Appellant; S.G. Chapalgaonkar, for the Respondent

Final Decision : Allowed

Judgement

Borkar P.R., J.—This is an appeal preferred by the State Government being aggrieved by the judgment and award passed by the learned II Additional District Judge, Beed in L.A.R. No. 75 of 1995 decided on 29.10.1993. A.G.P. Shri D.V. Tele has argued that the reference was barred by limitation and in spite of that it was entertained and as such this appeal should be allowed the judgment and award passed by the learned II Additional District Judge, Beed should be set aside.

2. The facts regarding which there is no more dispute are that the award was passed by the S.L.A.O. on 16.8.1985. Thereafter, reference was made u/s 30 of the Land Acquisition Act, bearing L.A.R. No. 94 of 1985. Admittedly, present claimants who are respondents were parties to the said proceedings. Said L.A.R. No. 94 of 1984 was decided on 4.9.1991. The amount was paid to the claimants as per the award u/s 30 of the Land Acquisition Act on 5.9.1991. Thereafter, application was filed u/s 18 of the Land Acquisition Act.

3. The learned advocate Shri S.G. Chapalgaonkar argued that since he has filed reference u/s 18 of the Land Acquisition Act within 42 days from the decision of

L.A.R. No. 94 of 1985 u/s 30 of the Land Acquisition Act, there is no bar of limitation and in support of this he has relied upon judgment of Single Bench of this Court in Civil Revision Application No. 838 of 1993 decided on 8th November, 1994, copy of which is taken on record and marked "X" for reference.

4. It is true that from paras 3 and 4 of the judgment cited it appears that after the award was passed there was dispute in respect of shares between the petitioners and other members of the family and therefore reference u/s 30 of the Land Acquisition Act was made to the District Court. The same was decided on 8.10.1991 and thereafter application u/s 18 of the Land Acquisition Act for enhancement was filed on 06.01.1992 and the Court has directed the Collector to send reference to the District Court. However, it does not appear that Section 18(2) of the Land Acquisition Act was considered. The Court did not give any finding whether the reference u/s 18 of the Land Acquisition Act was within limitation. 5. The Division Bench of this Court in the case of The State of Maharashtra Vs. Sadashiv Ganpat Avhad (since deceased by his L.Rs. Deoram Sadashiv Avhad and Others), has observed as follows:

It is settled principle of law which in fact was not even disputed before us that the Collector and for that matter any other Court has no power to condone the delay in filing an application u/s 18 of the Acquisition Act. That being the settled position of law, again it will be futile for this Court to accept the contentions raised on behalf of the claimants for remanding the matter to the Court of the learned Joint District Judge. In the case of Mahadeo Bajirao Patil Vs. State of Maharashtra and Others, , the Hon"ble Supreme Court has clearly enunciated the principle that power to condone the delay beyond the prescribed period of six weeks is not vested with the Collector or the Court.

Further in para 21 same position is reiterated and it is laid down as follows:

We have already discussed this issue at some length that the applications filed u/s 18 of the Act which were barred by time could not have been entertained by the Collector and consequently reference could not have been answered in favour of the claimants. Once the very initiation of the proceedings u/s 18 of the Act was barred in law, no subsequent proceedings could entail to the benefit of either parties. Both the Collector and the Court have no power to condone the delay in filing an application u/s 18 of the Act.

Section 18(1) and (2) of the Land Acquisition Act are as follows:

18(1) Any person interested who has not accepted the award or the amendment thereof may by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award or

the amendment is taken:

Provided that every such application shall be made:

(a) if the person making it was present or represented before the Collector at the time when he made his award or the amendment within six weeks from the date of the Collector's award or the amendment.

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector's award or the amendment, whichever period shall first expire.

6. It is clear that the law contemplates only three eventualities. In case interested person is present or is represented by the Collector at the time of award then within six weeks from the date of award and in second event six weeks from the receipt of notice u/s 12(2); and thirdly within six months from the date of Collector's award whichever period shall first expire. There is no other possibility contemplated by the law. There is no power of condoning delay either by the Court or the Collector.

7. In this view of the matter since there is nothing to show that anything prevented the claimants from filing reference u/s 18 simultaneously with Section 30 of the Land Acquisition Act and since the reference is clearly time barred, the appeal deserves to be allowed.

8. In the result, the first appeal is allowed. The judgment and award of the II Additional District Judge, Beed is hereby set aside. The parties to bear their own costs.