
(2004) 06 BOM CK 0086
In the Bombay High Court
Case No : First Appeal No. 127 of 1989

State of Maharashtra

APPELLANT

Vs

Shridhar Mokasdar

RESPONDENT

Date of Decision : 22-06-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2005) 1 ALLMR 51 : (2005) 1 MhLj 958

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : T.A. Mirza, A.G.P, for the Appellant; Sameer Sohani, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—This appeal has been preferred by the State of Maharashtra and thereby, challenged the judgment dated 1st June, 1988, passed by Civil Judge, S.D. Wardha in Land Acquisition Case No. 80 of 1986, which arose out of the Land Acquisition Case No. 19/LAQ-47/79/80 of village Pilapur, District Wardha.

2. The respondent herein, original applicant, u/s 18 of the Land Acquisition Act (for short Act) prayed for enhancement of compensation, by its application dated 20th February, 1984. After considering the material and evidence on the record, by the impugned judgment, the said application was allowed and the applicant herein, State of Maharashtra, directed to pay additional compensation of Rs. 61,616/- and solatium of 30% and interest at the rate of 12% p.a. from 7th August, 1980, till realisation.

3. The learned Advocate Mr. Mirza, A.G.P. appearing for the appellant basically submitted that such reference application itself was not maintainable as amount of compensation was not accepted under protest as contemplated u/s 18 of the Act. Therefore, for want of such protest, there was no question of additional

compensation as awarded. He further contended that the learned Judge was wrong in shifting the burden on the State of Maharashtra, appellant, to disprove the contention of the appellant that respondent had accepted the compensation under protest. The another argument and submission was that in view of State of Haryana Vs. Gurcharan Singh and another etc., , the respondents were not entitled for separate amount for the orange trees at above rate and or such enhancement. The respondent had already received a compensation for the irrigated lands in question. Therefore, there was no question of awarding additional compensation separately for the orange trees. In view of this the impugned order is incorrect. The learned advocate for the appellant has relied on Sharda Devi Vs. State of Bihar and Another, , also.

4. The learned Counsel Mr. Sohoni, appearing for the respondent has resisted the contention raised by the appellant's Counsel and insisted to maintain impugned order dated 1st June, 1998. He referred and relied on the following cases. Union of India and Another Vs. Hansoli Devi and Others etc., , District Collector and Others Vs. P. Nagabhushana Rao and Others, , Ajit Singh and Others Vs. State of Punjab and Others, 1995 (1) Mh.L.J. 930 , Babua Ram and Ors. v. State of U.P. and Anr., M. Linga Murthy Vs. District Social Welfare Officer, Cuddapah, . He also relied and referred Rule 259 of the Manual of Land Acquisition of State of Maharashtra (for short Manual).

5. There is nothing pointed out on record to show any prescribed form, manner or mode is provided or prescribed under the Act or under the Manual. It is also recorded and observed accordingly, in the various cases specially the case cited by the learned Advocate appearing for the respondent. The relevant paras 6, 25, 26 and 27 of the District Collector's case (supra) which to based on the Apex Courts decision in Ajit Singh and Union of India v. Hansoli Devi (Supra) substantially covered this issue.

It is relevant to reproduce the extract of Rule 259 of Manual which is as under:

"If payment is made to any interested person who has consented to receive it under protest as to the sufficiency of the amount, he should be asked to acknowledge the receipt for such payment by endorsing the remarks "Received under Protest" above his signature in the receipt column of the form of receipt prescribed under the above rules."

Apex Court in Babua Ram's case (supra) after considering the basic provisions and scheme of Land Acquisition Act observed as under in para 38:-

"However, with a view to avoiding uncertainty and fluctuation, it would be appropriate that, the Collector, while paying compensation u/s 31, should explain in vernacular language of the claimant, informing all persons interested in the compensation that they have a right to protest against the compensation determined u/s 11 before receiving the same, has right to seek reference in writing u/s 18 to the Civil Court and that the application should be made expressing the specific objections in writing within the limitation prescribed u/s

18. In case of his failure to avail of the same, he would not be entitled to further right and remedy to seek higher compensation. In case the claimant be illiterate, it should be properly explained to him in his mother tongue. The statement made in this behalf by the Collector should be in the mother tongue of the claimant. The Collector should append a certificate that it was truly, correctly and properly explained and obtain the signature or thumb impression in token thereof and this should be kept as part of the record of the award proceedings. He should also maintain a regular register in his office in the seriatim duly signed by him and sealed and be kept in the personal custody of the Collector. This would not only obviate the hardship to the interested person but also prevent corrupt practices in fabricating the applications for reference after the bar of limitation in this behalf, it is also necessary that the Collector/L.A.O. should also maintain another register for receipt of the applications u/s 28A indicating the date of its receipt, seal of the office and personal signature of the Collector/L.A.O. concerned and the receipt thereof duly communicated to the Government or the authorised officer in proviso to Section 11 of the Act."

6. In view of the above decision and extract, I am also of the view that the concerned authorities should follow such basic procedure while obtaining the acknowledgment of the payment towards the compensation in the land acquisition cases. It is necessary for them to inform the basic procedure of filing an application of reference u/s 18 of the Act and consequences if any party failed to receive the said compensation without any protest or under protest. As observed above, the rule itself provides that the Collector should ask such claimant to acknowledge the receipt of the payment by endorsing the words "received under protest" in writing. One fact which also play dominant role in such land acquisition matters is that the villagers or illiterate person's lands are acquired by the authorities by following prescribed procedure under the Act. Such persons or villagers or person interested may not be aware of the consequences of not putting a endorsement "received under protest" at the time of the receipt of such amount or compensation. The concerned authorities therefore, should take care of this aspect while taking receipt of the payment of such compensation from such landowner or person interested.

7. The Apex Court's decision in Union of India v. Hansoli Devi and Ors. (supra) while interpreting the provisions of Land Acquisition Act specially elaborated the basic principle and object of Section 28A of the Act. The relevant para 6 is reproduced as under:

"Coming to the second question for reference the receipt of compensation with or without protest pursuant to the award of the Land Acquisition Collector is of no consequence for the purpose of making a fresh application u/s 28-A. If a person has not filed an application u/s 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collector with or without protest, he would be person aggrieved within the meaning of Section 28-A and would be entitled to make an application for

reference is answered by the reference Court. It is apparent on the plain language of the provisions of Section 28-A of the Act. Otherwise, it would amount to adding one more condition, not contemplated or stipulated by the Legislature itself to deny the benefit of substantial right conferred upon the owner."

8. It may be noted that this Judgment has been considered by the Full Bench of the Andhra Pradesh, as referred above, in District Collector, Kakinada and others (supra). There is no dispute that the Land Acquisition Act is a social welfare legislation and the scheme of Act, itself, as interpreted from time to time, has intention to pay reasonable compensation to all interested person on the basis of the true market value of the land, by following the due procedure of law and or by following the principles of paying reasonable compensation in the facts and circumstances of the case. In this background, it is necessary to see whether in each and every case, such protest must be in writing or it can be implied or oral protest. The above referred judgments specially the District Collector (supra) and Ajit Singh (supra), if have accepted and permitted the principle of implied protest. The amount, if accepted, and later on whatever may be mode protest either in writing or orally. If raised by the parties, those facts and circumstances always plays dominant role, while considering an application of reference u/s 18 of the Act. Looking to the scheme of the Act, it cannot be said that implied protest is impermissible.

9. In the present case as referred in para 14 of the impugned judgment, an application was filed by the respondent to produce the payment voucher Exh.18, as the respondent deposed that he had received an amount of compensation under protest and it was accordingly, recorded on the said payment voucher. In the present case, whatever may be the reason the said document could not be produced on the record by the appellant's officer. There was no reply received from the concerned Land Acquisition Officer. The request of the Land Acquisition Officer for adjournment was rejected and no further time was granted to the authorities. The learned Judge further observed that as per provisions of Section 106 of Indian Evidence Act, the burden lies on the State to disprove the contention of the applicant that he had accepted the amount under protest.

10. Without going to these controversy one additional factor which need to be considered at this stage is that the applicant in his evidence made positive averments that he had received the compensation under protest and accordingly alleged to have made endorsement on the voucher in question. However, as referred above, the said voucher could not be placed on the record. Exh.18 the said payment voucher was definitely in the possession of the authorities of the appellant. There was no serious challenge to these averments and or to the evidence led by the respondents, original claimants. Furthermore, in view of the observations made and as reproduced above, the authorities should have lead rebuttal evidence on the record, to disprove the statement or such positive averments. The said voucher Exh.18, should have been in the possession officer

of the applicant. This aspect also justify the contention as raised by the respondent's advocate that they had received the amount under protest as contemplated u/s 18 of the Act. They have basically discharge their burden, however, at the same stroke, the appellant failed to discharge its burden or disprove the applicant's contention. In view of this and as observed by the various authorities as referred above, I am also of the view that there can be implied protest. In the present facts and circumstances of the case, there is sufficient evidence and material to demonstrate the foundation of implied protest. The principle of implied protest, in land acquisition matter, based on the same provisions is also accepted by the Apex Court, in a judgment reported in *Ajit Singh and Others Vs. State of Punjab and Others*, . It is held further that claimant is not disentitled for enhanced compensation, merely for want of "under protest" endorsement. In the case in hand, there is a positive case of the respondent that he had received the amount under protest.

11. Considering the principles as laid down by various Courts, therefore, I see there is no reason, to disbelieve the case of the respondent and or to accept the submission of the appellant on this issue. Furthermore, in land acquisition matters, our High Court has in *Dhondi Vellappa Patil Vs. Special Land Acquisition Officer No. 6 and Another*, . has held as under:

"3. In *Gunvanta Vaiju Patil v. State of Maharashtra*, Civil Revision Application No. 1361/01, decided on 27-11-2001, a learned Single Judge, of this Court relying upon the earlier Judgment of this Court in *Amol Rambhau Arjun Vs. State of Maharashtra and others*, , has held that the reference has to be made even when the amount of compensation is accepted by making an oral protest."

In *Amol Rambhau Arjun Vs. State of Maharashtra and others*, , it is observed as under:

"7. Proviso 2 to Section 31 bars the person who has received the amount other than under protest from making any application of reference u/s 18, the said provision does not lay down the mode and manner in which the protest is to be made while accepting the compensation. It does not say that the protest by the claimant must be necessarily in writing. The claimant may receive the amount of compensation under protest orally and the oral protest while receiving the compensation shall not disentitle the claimant from making any application for reference u/s 18. The provision covers the protest either made in writing or orally. I am fortified in my view by the judgment of the Gujarat High Court in *Rabari Mahadev Amra Vs. Prant Officer, Radhanpur*, wherein A. M. Ahmedi, J, (as he then was) in paragraph 4 of the report held thus :

"4. The short question which arises for consideration is whether the protest to be lodged under the second proviso to Section 31(2) must be in writing or can be oral one also. The proviso merely states that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18 of the Act. Even the first proviso which entitles a person admitted to be

interested to receive the amount of compensation determined under the award under protest as to its sufficiency does not provide that the protest must be reduced to writing. There is nothing in the second proviso to Section 31(2) that the person receiving the amount must receive the same under a written protest so as to be subsequently entitled to make a reference u/s 18 of the Act on the question of sufficiency of the amount awarded in respect of the acquired land.

8. The Andhra Pradesh High Court in Smt. Suram Ramakka Vs. The Dist. Collector, Karimnagar and another, , has held that for want of any particular mode of protest, oral protest is valid and the application u/s 18 for making reference is maintainable."

Strikingly when oral protest is permissible, the case in hand is on the better footing on the fact itself.

12. Another factor which has been argued, that once a reference is made the appellant's officer cannot raise such objection in appeal, based on M. Linga Murthy v. District Welfare Officer, Cuddapah (supra), whereby, it is held as under:

"It is well-settled position of law that a claimant is entitled to receive the compensation amount awarded by the Land Acquisition Officer with or without protest. In the case he receives the amount under protest, he is entitled under law to lay an application for reference u/s 18(1) to the Civil Court within the limitation prescribed under the Act. In case he receives the amount without protest and makes an application for reference, then it is open to the Land Acquisition officer either to make or refuse to make a reference. In a case where the Land Acquisition Officer refuses to make a reference, the appropriate remedy open to the claimant is to approach this Court under Article 226 of the Constitution of India and then assail the legality of the order. In case the land acquisition officer makes a reference to the civil Court, it would not be open to him subsequently to raise the plea that the reference itself is bad, provided the conditions precedent to make an application u/s 18(1) are fulfilled, i.e. (i) an application in writing; (ii) nature of the objection, and (iii) within the time, this legal position is settled by the Supreme Court in Mohammed Hasnuddin Vs. State of Maharashtra, . Therefore, the contention of Sri. Rajanna, learned Government Pleader that the reference itself is bad and that the civil Court is justified in making the "nil" award is clearly not warranted. It does not lie in the mouth of Land Acquisition Officer to take the stand that making a reference u/s 18(1) is bad. "

13. It is therefore, submitted that once the reference is made by the appropriate authority to the Civil Court, it should not be permissible for such authority to raise such objection, subsequently, that the reference itself was bad, as the conditions provided u/s 18(1) were not fulfilled. The general objection as contemplated u/s 18(1) is not the issue in the present case. The Power of Court, even after reference by the concerned authority, is very well settled. The Court, if the case is made out will consider the merit and demerit of the reference and

decide accordingly including its maintainability or its competency. However, this judgment and or submission that the Land Acquisition Officer should not be allow to raise such objection about no protest in writing or otherwise, has some force.

14. The learned advocate appearing for the appellant, however insisted and relied on Sharda Devi's case, (supra), specially para 25, whereby the principle and foundation of sections 18 and 30 of the Act, has been interpreted and explained. The relevant para is as under:

"Keeping in view the principles laid down by this Court in Dr. G. H. Grant case and analysing in depth the provisions of the Act, the difference between reference u/s 18 and the one u/s 30 can be summarised and set out as under:-

By reference to locus.

Under Section 18(1) a reference can be made by the Collector only upon an application in writing having been made by (i) any person interested, (ii) who has not accepted the award, (iii) making application in writing, to the Collector, requiring a reference by the Collector to the Court, (iv) for determination of any one of the four disputes (specified in the provisions), and (v) stating the grounds on which objection to the award is taken. For reference u/s 30 no application in writing is required. The prayer may be made orally or in writing or the reference may be made suo motu by the Collector without anyone having invited the attention of the Collector for making the reference.

By reference to the disputes referable.

Under Section 18(1) there are four types of disputes which can be referred to the Civil Court for determination. They are disputes; (i) as to the measurement of the land, (ii) as to the amount of the compensation, (iii) as to the persons to whom the compensation is payable, or (iv) as to the apportionment of the compensation among the persons interested. u/s 30 the only disputes which are referable are; (i) any dispute as to the apportionment of the amount of compensation or any part thereof, or (ii) a dispute as to the persons to whom the amount of compensation or any part thereof is payable. A dispute as to the measurement of the land or as to the quantum of compensation or a dispute of a nature not falling within Section 30, can neither be referred by the Collector u/s 30 of the Act nor would the Civil Court acquire jurisdiction to enter into and determine the same.

By reference to the nature of power.

Under Section 18 of the Act the Collector does not have power to withhold the reference. Once a written application has been made satisfying the requirements of Section 18, the Collector shall make a reference. The Collector has no discretion in the matter, whether the dispute has any merit or not is to be left for the determination of the Court. u/s 30 the Collector may refer such dispute to the decision of the Court. The Collector has discretion in the matter. Looking to the nature of the dispute raised, the person who is raising the dispute, the delay

in inviting the attention of the Court, and so on are such illustrative factors which may enter into the consideration of the Collector while exercising the discretion. If the Collector makes the reference it may be decided by the Court subject to its forming an opinion that the dispute was capable of reference and determination u/s 30 of the Act. In case the Collector refuses to make a reference u/s 30 of the Act, the person adversely affected by withholding of the reference or refusal to make the reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a writ petition or a civil suit.

15. Thus no dispute about explanation, interpretation and the purpose of Section 18 of the Act. This judgment nowhere dealt with the case of a mode and a method of submitting protest while accepting the compensation. It deals with the aspect that these conditions should be complied with, before making reference by the Collector and that includes the acceptance of the said award or non acceptance of the award. We are dealing with the case where in the facts and circumstances of the case, there was implied or oral protest. The scheme of the Land Acquisition Act is in fact elaborated in this judgment by the Apex Court. This scheme of the reference further shows that once the reference is made, referring authority is, normally bound by the same, and cannot raise such objection, about the maintainability of such reference, at least on the ground of no protest, unless it is a case of fraud, misappropriation or grave illegality.

16. One more submission as raised by the appellant's advocate based on State of Haryana Vs. Gurcharan Singh and another etc., , that such separate compensation for orange trees as awarded is contrary to the principles laid down in the said Judgment. The facts and circumstances of the case including the normal practice as based on the Land Acquisition Manual in Maharashtra for awarding such compensation for trees, or well or building on the land cannot be overlooked. The facts of that case are different and distinguishable, therefore, cannot be made applicable here. The learned Advocate appeared for the appellant could not place on the record how such multiplier theory is applicable to the matter.

17. Considering the above reasons, as well as, the Judgments referred and relied, I see there is no case made out by the appellant to interfere with the order passed by the Civil Judge, S.D. Wardha, dated 1st June, 1993. The award of enhanced compensation is fair and reasonable and within the frame work of law, as well as, of the record and therefore is maintained accordingly.

18. In view of this, the appeal is dismissed. No order as to cost.