
(2015) 03 BOM CK 0027
In the Bombay High Court
Case No : First Appeal No. 19 of 2002

State of Maharashtra

APPELLANT

Vs

Vishwas Vijan Gedam

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 300A

Land Acquisition Act, 1894 — Section 11, 12(2), 18, 18(1), 4

Citation : (2015) 03 BOM CK 0027

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : H.D. Dubey, for the Appellant; Anjan De, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.—This appeal filed under Section 54 of the Land Acquisition Act, 1894 (for short, the said Act) challenges the judgment dated 30.09.1999 in Land Acquisition Case No. 3 of 1993 whereby the reference proceedings filed by the respondent came to be allowed by enhancing the compensation towards acquisition of this Court.

2. Land admeasuring 0.09 R. from Survey No. 651 was the subject matter of acquisition under proceedings of the said Act. Though Survey No. 651 that was jointly owned by the respondent with one Anjana Dange admeasuring 0.51 R, only portion thereof was acquired. Notification under Section 4 of the said Act was published on 17.09.1987 after which award came to be passed on 30.03.1989. The Land Acquisition Officer granted compensation of Rs. 4,108.00 to the respondent for aforesaid land. The Land Acquisition Officer thereafter issued notices to the present respondent to receive the amount of compensation. The respondent made an application for certified copy of the award on 10.11.1989 and after receiving the same on 26.06.1992, proceedings for reference came to be filed on 29.06.1992.

3. The Reference Court after considering the evidence on record was pleased to enhance the compensation and granted the same at the rate of Rs. 10/- per sq. ft. This order enhancing the compensation is under challenge in the present appeal.

4. Shri H.D. Dubey, learned Assistant Government Pleader appearing for the appellant raised twofold contentions. According to him the reference proceedings had been filed beyond the period of limitation in as much as notices had been issued to the respondent under Section 12(2) of the said Act. But the proceedings had been filed beyond the period of six weeks from receipt of such notice. It was submitted that there was no need of applying for certified copy of the award and the reference proceedings ought to have been filed within the stipulated period. In this regard the learned counsel for the appellant relied on the following judgments:

1] State of Punjab and Another Vs. Satinder Bir Singh, and

2] Shantaram Ganesh Shenoy Vs. Special Land Acquisition Officer, .

He then submitted that enhancement of compensation at the rate of Rs. 10/- per sq. ft. was without any necessary evidence on record. He submitted that grant of compensation at the rate of Rs. 10/- per sq. ft. was on higher side and there was no evidence whatsoever to support the same. He therefore prayed for setting aside the impugned order.

5. Per contra Shri De, learned counsel appearing for the respondent supported the impugned order. According to him the notices issued by the Land Acquisition Officer calling upon him to receive the amount of compensation could not be constituted as notices under Section 12(2) of the said Act. He submitted that the respondent was not present before the Land Acquisition Officer when the award was passed. It was therefore necessary to serve the respondent with a proper notice under Section 12(2) of the said Act. Relying upon the judgment of the Supreme Court in Premji Nathu Vs. State of Gujarat and Another, , it was submitted that along with notice issued under Section 12(2) of the said Act the copy of the award was also required to be supplied. As the same was not done, the respondent was required to apply for a certified copy of the award and hence the proceedings as filed were within limitation. On the aspect of enhancement of compensation it was submitted that said enhancement was granted by relying upon orders passed in earlier reference proceedings bearing No. 40 of 1990 wherein land situated in front of the acquired land was granted compensation at the rate of Rs. 10 per sq. ft.

6. The following points arise for determination:

1] Whether the reference proceedings were filed within the prescribed period of limitation?

2] Whether the enhancement of compensation is based on the evidence on record?

7. I have carefully considered aforesaid submissions and I have also gone through the records of the case. It is not in dispute that the award came to be passed on 30.03.1989. The respondent claimant examined himself vide Ex. 22 and in his deposition stated that he had received a notice from the Special Land Acquisition Officer calling upon him to remain present on 24.04.1989. He had accordingly remained present on said date. He further stated that he was not informed about the contents of the award. He thereafter received another notice dated 28.07.1989 (Ex. 25) and also on 25.10.1989 (Ex. 26). He thereafter applied for certified copy of the award on 10.11.1989 and got the same on 26.06.1992.

8. The evidence on record indicates that the respondent was called upon to receive the amount of compensation firstly on 24.04.1989, thereafter on 28.07.1989 and 25.10.1989. According to respondent he was not present when the award was passed and he was also not aware about the contents of said award. He therefore applied for its certified copy and after receiving the same filed the reference proceedings.

Though the initial onus regarding lack of knowledge of contents of the award is on the claimant, the same would shift on the Land Acquisition Officer in view of the claimant having examined himself on oath. In *Bhagwan Das and Others Vs. State of UP and Others*, , the Supreme Court in para 13 observed thus:

"When a person interested makes an application for reference seeking the benefit of six months period from the date of knowledge, the initial onus is on him to prove that he (or his representative) was not present when the award was made, that he did not receive any notice under Section 12(2) of the Act, and that he did not have the knowledge of the contents of the award during a period of six months prior to the filing the application for reference. This onus is discharged by asserting these facts on oath. He is not expected to prove the negative. Once the initial onus is discharged by the claimant/person interested, it is for the land Acquisition Collector to establish that the person interested was present either in person or through his representative when the award was made, or that he has received a notice under Section 12(2) of the Act, or that he had knowledge of the contents of the award. Actual or constructive knowledge of the contents of the award can be established by the Collector by proving that the person interested had received or drawn the compensation amount for the acquired land, or had attested the Mahazar/ Panchnama/proceedings delivering possession of the acquired land in pursuance of the acquisition, or had filed a case challenging the award or had acknowledged the making of the award in any document or in statement on oath or evidence. The person interested, not being in possession of the acquired land and the name of the state or its transferee being entered in the revenue municipal records coupled with delay, can also lead to an inference of constructive knowledge. In the absence of any such evidence by the Collector, the claim of the person interested that he did not have knowledge earlier will be accepted, unless there are compelling circumstances not to do so." It is to be

noted that the Land Acquisition Officer did not lead any evidence. Hence, in view of aforesaid observations the claim of the respondent that he did not have knowledge earlier stands accepted.

9. The question therefore is whether the notices issued on 28.07.1989 and 25.10.1989 could be said to be notices under Section 12(2) of the said Act. A similar question was considered by the Supreme Court in Premji Nathu (supra) and in para 11 thereof it was observed thus:

"The reason for providing six months from the date of the award for making an application seeking reference, where the applicant did not receive a notice under Section 12(2) of the Act, while providing only six weeks from the date of receipt of notice under Section 12(2) of the Act for making an application for reference where the applicant has received a notice under Section 12(2) of the Act is obvious. When a notice under Section 12(2) of the Act is received, the landowner or person interested is made aware of all relevant particulars of the award which enables him to decide whether he should seek reference or not. On the other hand, if he only comes to know that an award has been made, he would require further time to make enquiries or secure copies so that he can ascertain the relevant particulars of the award. What needs to be emphasised is that along with the notice issued under Section 12(2) of the Act, the land owner who is not present or is not represented before the Collector at the time of making of award should be supplied with a copy thereof so that he may effectively exercise his right under Section 18(1) to seek reference to the Court."

(emphasis supplied by me).

In said case it was found that notice under Section 12(2) had been issued on 22.02.1985 and after applying for its certified copy the reference came to be made after receiving said certified copy.

10. According to the learned counsel for the appellant as the notices at Exs. 25 and 26 had been issued to the respondent the period of limitation would have commenced from said date. In State of Punjab and another (supra) which was relied upon by the learned counsel for the appellant it was held that the notice under Section 12(2) of the said Act was merely an intimation of making of the award and hence the period of limitation would commence from the moment such notice was received by the claimant. In Shantaram Ganesh (supra) it was held that after receiving notice under Section 12(2) of the said Act the limitation would start running from the date of service of the notice and the time spent for obtaining the certified copy of the award could not be excluded while computing the period of limitation. Hence, the service of appropriate notice under Section 12(2) of the said Act has been held to be relevant while calculating the period of limitation. In view of the observations made in paragraph 11 of the judgment in Premji Nathu (supra), as the respondent was neither present nor represented before the Collector while the award was made, the period of limitation would commence after supply of copy of the award. In the present case the certified

copy of the award was received on 26.06.1992 and hence the proceedings filed immediately thereafter on 14.07.1992 were therefore within the prescribed period of limitation.

11. Another aspect which is required to be noted is that though the award is dated 30.03.1989 and application for certified copy was made after period of six months from the award, in view of the decisions of the Supreme Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, and *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, , same would not have any effect whatsoever, as held in aforesaid cases. The Supreme Court in *Bhagwan Das and others (supra)* after considering aforesaid decisions held in para 11 as under:

"When a land is acquired and an award is made under Section 11 of the Act, the Collector becomes entitled to take possession of the acquired land. The award being only an offer on behalf of the Government, there is always a tendency on the part of the Collector to be conservative in making the award, which results in less than the market value being offered. Invariably the land loser is required to make an application under Section 18 of the Act to get the market value as compensation. The land loser does not get a right to seek reference to the Civil Court unless the award is made. This means that he can make an application seeking reference only when he knows that an award has been made. If the words six months from the "date of the Collector's award" should be literally interpreted as referring to the date of the award and not the date of knowledge of the award, it will lead to unjust and absurd results. For example, the Collector may choose to make an award but not to issue any notice under Section 12(2) of the Act, either due to negligence or oversight or due to any ulterior reasons. Or he may send a notice but may not bother to ensure that it is served on the landowner as required under Section 45 of the Act. If the words "date of the Collector's award" are literally interpreted, the effect would be that on the expiry of six months from the date of award, even though the claimant had no notice of the award, he would lose the right to seek a reference. That will lead to arbitrary and unreasonable discrimination between those who are notified of the award and those who are not notified of the award. Unless the procedure under the Act is fair, reasonable and non discriminatory, it will run the risk of being branded as being violative of Article 14 as also Article 300A of the Constitution of India. To avoid such consequences, the words "date of the Collector's award" occurring in proviso (b) to Section 18 is required to be read as referring to the date of knowledge of the essential contents of the award, and not the actual date of the Collector's award. " In the present case, as the certified copy was received after period of six months, the limitation would commence from knowledge of actual contents of the award.

Hence point no. 1 is answered by holding that the reference proceedings were filed within the prescribed period of limitation.

12. The next aspect that is required to be considered is in respect of amount of

compensation awarded at the rate of Rs. 10/- per sq. ft. For said purpose the Reference Court relied upon the judgment dated 28.09.1994 passed in Land Acquisition Reference No. 14 of 1990. In said proceedings 0.09 R land was acquired for extension of road. Considering the evidence in those proceedings compensation at the rate of Rs. 10/- per sq. ft. came to be awarded. This judgment dated 28.09.1994 was not subjected to any further challenge by either of the parties. It is also to be noted that in the present case the Reference Court adjudicated the claim of present respondent vide judgment dated 30.09.1999. Thus rate of compensation that was awarded for an adjacent piece of land of similar area about five years ago was awarded by the Reference Court in the present proceedings. In these facts therefore it cannot be said that the compensation awarded was on a higher side. In fact, in respect of land for which compensation was determined in the year 1994 similar rate of compensation has been awarded in the present proceedings in the year 1999.

13. As noted above, no evidence was led on behalf of the present appellant either to substantiate the stand regarding service of copy of the award on the respondent or in respect of compensation being awarded at a higher rate. Hence, from the material available on record point no.2 is answered by holding that there is no reason to interfere with the impugned judgment.

14. In view of the findings recorded herein above there is no reason to interfere with the impugned judgment. The same therefore stands confirmed and First Appeal is dismissed with no order as to costs.