

(2019) 01 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No. 10413 Of 2017

Subhash Vithoba Jadhav

APPELLANT

Vs

Shivaji Gulab Kokate & Ors

RESPONDENT

Date of Decision : 08-01-2019

Acts Referred:

Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 12, 12(2), 24(2)
Land Aquisition Act, 1894 — Section 4, 6, 11, 11(A), 18

Citation : (2019) 01 BOM CK 0076

Hon'ble Judges : V.L. Achliya, J;R.M. Borde, J

Bench : Division Bench

Advocate : S.S. Salunkhe, R.S. Pawar

Final Decision : Allowed

Judgement

R.M. BORDE, J.

1. Heard. Rule. With the consent of the parties the Petition is taken up for final hearing at the admission stage.

2. The Petitioner is the owner of land Gat No.422/2 situated at Vadgaon Bhande, Tal. Daund, District Pune, and out of said Gat number an area to the extent of 2H 42R came to be acquired for the Bhama Askhed project. It is not a matter of dispute that land belonging to the Petitioner is situated in benefited zone and a notification in that regard came to be issued by the State on 10.05.1994. It is the contention of the Petitioner that the area referred to above, is a matter of acquisition proceeding initiated by the State and an award in that regard has been declared on 31.10.2001. It is the contention of the Petitioner that though the award has been declared in the year 2001, neither the possession of the acquired land has been taken over nor the amount of compensation has been paid to the petitioner. It is further contended that in view of provision of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the land belonging to the Petitioner

which is subject matter of acquisition shall be deemed to have been released from acquisition and award proceeding shall be deemed to have lapsed.

3. An affidavit-in-reply has been presented by the Sub-Divisional Officer, Pune, controverting the contentions raised by the Petitioner. It is contended by the Respondents that the Petitioner's land has been acquired in observance of the procedure prescribed by law. It is further stated that the possession of the land has been taken over. It is further pointed out that after taking over the possession, the land has been distributed in the year 2016 to the beneficiaries. So far as the payment of amount of compensation is concerned, it is contended that the Petitioner has not accepted the amount of compensation. During the course of argument the learned A.G.P. appearing for the State has tendered a photostat copy of the notice allegedly issued to the Petitioner's father on 21.11.2006. It is contended that the landholder/the claimant was called upon to receive the amount of compensation determined under the award on 01.12.2006. It is thus contended that inspite of service of notice under Section 12(2) of the Act 2013, the landholder failed to receive the amount of compensation and as such the consequences provided under Section 24(2) of the Act 2013 shall not ensue and the proceedings of acquisition shall not lapse. The Petitioner contends that his father has passed away on 01.08.2003 whereas the notice within contemplation of Section 12(2) of the Act of 2013 is stated to have been issued in the name of dead person on 21.11.2006. It is the contention of the Petitioner that the Respondents cannot place reliance on the notice issued under Section 12(2) of the Act of 1894. It is contended that the amount determined under the award was not offered to the claimant since 2001, when award was declared. There is no material to substantiate that amount was offered in 2001 and claimant has refused to accept amount. Petitioner contends that since the notice is issued in the name of dead person that too in 2006, after lapse of five years from date of award, there is no question of acceptance or refusal to accept the amount of compensation. The notice has admittedly not been served upon the legal heir of the deceased.

4. Apart from the controversy as regards offer of amount determined under the award by the Respondent-State, the award declared by the Collector on 31.10.2001 cannot be construed as an award in the eyes of law. On perusal of the copy of the award, it appears that a notice within contemplation under Section 4 was published in Government Gazette and the same was published in the newspapers on 18th and 19th May 1999. The declaration under Section 6 of the Land Acquisition Act has been issued on 04.10.1999 and the local publication of the declaration at Tahsil office and Talathi Office is stated to have been made on 16.11.1999. The award is declared on 31.10.2001 within the time frame provided under Section 11(A) of the Land Acquisition Act. In para 27 of the award it is recorded that the acquiring body has not taken the advance possession of the land. It is recorded further that as and when the acquiring body would take possession of the property of the land, the amount of compensation would be paid. Though the award is declared on 31.10.2001,

admittedly the Respondents have not taken any steps for disbursing the amount of compensation until issuance of so called notice under Section 12(2) of the Act which has also been issued in the name of dead person on 21.11.2006. It is pointed out that the possession of the acquired property has been taken over on 01.12.2006 though the Land Acquisition Officer declared the award in the year 2001.. The compensation determined under the award admittedly has not been offered till 2006. It is the case of the Petitioner that till today he has not received the amount of compensation. It appears that the Land Acquisition Officer has hastily declared the award without offering the amount of compensation on 31.10.2001 in order to avoid the consequences of lapsing of Land Acquisition proceedings in view of Section 11(A) of the Land Acquisition Act 1894.. Section 11(A) of the Land Acquisition Act 1894 provides for the period within which an award shall be made. It is provided that the Collector shall make an award under Section 11 within the period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceeding for acquisition of land shall lapse.. In the instant matter, the date of local publication of declaration under Section 6 is 16.11.1999 and in view thereof it was incumbent for the Collector to declare the award up to 15.11.2001.. In the instant matter, the award has been declared on 31.10.2001 however, though the award is declared in the year 2001, the amount of compensation admittedly has not even been offered to the claimants until November 2006. It thus appeared that the Collector has made haste to declare the award in order to avoid the consequences of provisions of Section 11(A) of the Act which provides for lapsing of the proceedings. A mere declaration of award without offer of the amount determined by the Land Acquisition Officer cannot be construed as an award within the meaning of provisions of Section 11 of the Act of 1894. Mere declaration of award in the year 2001 without offering amount of compensation admittedly for the period of six years atleast cannot be said to be a valid award within contemplation of provisions of Land Acquisition Act. The award under the Land Acquisition Act is an offer which can either be accepted by the claimants and if they do not accept the same, they are entitled to claim enhanced value of the land by taking recourse to the provisions of Section 18 of the Land Acquisition Act, 1894. Publication of the award without offering the amount of compensation as determined is not an award within meaning of Section 11 of the Act.

5. The Hon'ble Apex Court in the matter of Raja Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer and Anr. reported in AIR 1961 Supreme Court page 1500 has interpreted the legal character of the award made by the Collector under Section 12 in paragraph Nos.5 to 7 of the judgment. The Hon'ble Supreme Court has observed thus :

"5 In the dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under s. 12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation

which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer, s. 18 gives him the statutory right of having the question determined by Court, and' it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance. In *Ezra v. Secretary of State*, ILR 30 Cal 36 at p. 86, it has been held that "the meaning to be attached to the word "award" under s. 11 and its nature and effect must be arrived at not from the mere use of the same expression in both instances but from the examination of the provisions of the law relating to the Collector's proceedings culminating in the award. The considerations to which we have referred satisfy us that the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and that consequently, although the Government is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded." Then the High Court has added that such tender once made is binding on the Government and the Government cannot require that the value fixed by its own officer acting on its behalf should be open to question at its own instance before the Civil Court. The said case was taken before the Privy Council in *Ezra v. Secretary of State*, ILR 32 Cal 605 (PC), and their Lordship have expressly approved of the observations made by the High Court to which we have just referred. Therefore; if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

6. There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like

all decisions which affect person, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot, consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it, it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to s. 18 in a literal or mechanical way.

7. In this connection it is material to recall the fact that under s. 12(2) it is obligatory on the Collector to give immediate notice of the award to the persons interested as are not present personally or by their representatives when the award is made. This requirement itself postulates the necessity of the communication of the award to the party concerned. The Legislature recognised that the making of the award under s. 11 followed by its filing under s. 12(1) would not meet the requirements of justice before bringing the award into force. It thought that the communication of the award to the party concerned was also necessary and so by the use of the mandatory words an obligation is placed on the Collector to communicate the award immediately to the person concerned. It is significant that the section requires the Collector to give notice of the award immediately after making it. This provision lends support to the view which we have taken about the construction of the expression "from the date of the Collector's award" in the proviso to s. 18. It is because communication of the order is regarded by the Legislature as necessary that s. 12(2) has imposed an obligation on the Collector and if the relevant clause in the proviso is read in the light of this statutory requirement it tends to show that the literal and mechanical construction of the said clause would be wholly inappropriate. It would indeed be a very curious result that the failure of the Collector to discharge his obligation under s. 12(2) should directly tend to make ineffective the right of the party to make an application under s. 18, and this result could not possibly have been intended by the legislature."

6. It, thus, appears that the Land Acquisition Officer merely prepared the award

and kept it in the office without intimating to the claimants and calling upon them to receive the amount of compensation. In the instant matter since the Respondent has failed to pass a valid award within contemplation of provision of Land Acquisition Act, the Petitioner is deprived from receiving the just amount of compensation which shall have to be determined in accordance with the provisions of the Act. Although it is stated that the possession of the property has been taken over by the State in the year 2006, even after lapse of 17 years from the date of taking over the possession, Petitioner has not been paid the amount of compensation. The market value of acquired property shall have to be determined in accordance with the ready reckoner rates prevailing on the date of publication of notification. As a result of failure of the Respondents to offer the amount of compensation for a long period even after declaration of an award in the year 2001, the Petitioners who is a small land holder has been adversely affected.

7. For the reasons as aforesaid, the Writ Petition deserves to be allowed and the same is accordingly allowed. The Award declared by the Land Acquisition Officer on 31.10.2001 so far as it relates to the Petitioner is concerned, shall stand quashed. Since the possession of the property has been taken over by the acquiring body, the amount of compensation shall have to be determined by observing the procedure prescribed under the Act of 2013. The Respondents are directed to complete acquisition proceedings in respect of determination of amount of compensation and declare award and pay compensation so determined under award within one year from today.

8. Rule is accordingly made absolute.