
(2012) 07 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition No. 2267 of 2012

Surendrakumar Madhusudan Mor

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 300A
Land Acquisition Act, 1894 — Section 11, 18, 18, 19, 20

Citation : (2012) 5 ALLMR 855

Hon'ble Judges : S.C. Dharmadhikari, J; M.T. Joshi, J

Bench : Division Bench

Advocate : S.C. Mehadia, for the Appellant; N.W. Sambre, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J.—Rule Respondents waive service. By consent Rule made returnable forthwith. By this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of section 28-A of the Land Acquisition Act, 1894 in so far as it provides for limitation of three months for filing of an application thereunder on the ground that it deprives the land holders from getting rightful amount of compensation. The petitioner has also prayed that a communication dated 9th May 2011 from the Collector, Yavatmal, be set aside.

2. The petitioner submits that he owns the land bearing Gat No. 128 admeasuring 5.27 hectares situated at mouza Pimpri (Hatgaon), Taluka and District Yavatmal. The respondent No. 1 by the Notification dated 18th January, 2003 issued u/s 4 of the Land Acquisition Act, 1894 (for short "the Act"), proposed to acquire 33.95 hectares land of mouza Pimpri for minor irrigation project, including 2.27 hectares land of the land of the petitioner from the above Gat. The petitioner further states that the Notification u/s 6 was issued on 24th March, 2003. The award was passed by the Special Land Acquisition Officer on

30th July 2003 and in respect of the land of the petitioner, compensation was assessed at Rs. 36,000/- per hectare to the petitioner. The assessment of compensation was made on the basis of rates prescribed by the State Government for the purposes of stamp duty. The amount of compensation was received by the authorised representative of the petitioner on 26th August, 2003. The petitioner submits that he had not filed an Application u/s 18 of the Act for making Reference to the Civil Court.

3. It is further submitted by the petitioner that lately in the beginning of 2011, he came to know that some of the land owners had moved an application for Reference u/s 18 of the Act. The petitioner states that in one of the cases, viz., L.A.C. No. 73 of 2004, the learned Adhoc District Judge-I, by the judgment dated 3rd March, 2007 had awarded the compensation at the rate of Rs. 1,50,000/- per hectare in respect of Gat No. 111. He further states that as he was not having the knowledge of the said judgment, the application u/s 28-A of the Act was also not filed by him.

4. The petitioner submits that after getting the knowledge of the above mentioned judgment, he had written a letter through his father, inquiring about the enhancement of compensation. The respondent No. 2 by the letter dated 9th May, 2011 informed the petitioner that ten land owners had filed applications for reference and eight land owners have received the enhanced compensation amount. The petitioner was further informed that as he had not filed the application u/s 18 or section 28-A of the Act, the amount is not payable to him.

5. It is further stated by the petitioner that having failed to move an application u/s 18 of the Act, he could have got the benefit u/s 28-A, provided the information thereof had been given by the respondents to the petitioner. The provisions of section 28-A are beneficiary in nature and it compels the respondents to reconsider the award passed by them. The object of incorporating section 28-A is to give an opportunity to the land owners who have lost their lands and failed to move an application u/s 18 to get the same value of their lands as awarded in the reference proceedings by moving an application u/s 28-A. However, the said object gets frustrated by imposition of limitation of three months for filing of such application.

6. Mr. Mehadia, the Learned Counsel appearing for the petitioner submits that an application u/s 18 of the Act for reference may not be filed by a person who has lost his land for various reasons. Sometimes such persons are residing in far off and remote villages and they may not know of the acquisition proceedings and the awards. They are not in contact with the local inhabitants. In such circumstances, the limitation of three months deprives the land holders from exercising their right to get equal compensation. He then submits that power of acquisition is a sovereign one. Once the said power is exercised, which is compulsory, all that is contemplated is payment of compensation. If that is also deprived unreasonably and unfairly to a person who has failed to move the Civil Court, that would be violative of the constitutional mandate under Article 14 and

Article 300-A of the Constitution of India. For all these reasons, he submits that the provision to the above extent be declared as unconstitutional and ultra vires to Article 14 and Article 300-A of the Constitution of India. Mr. Mehadia submits that such restriction also defeats the object and purpose of the Land Acquisition Act, 1894 which is an act providing for acquisition of land for public purpose and for determining the amount of compensation to be made on account of such acquisition. Hence, the writ petition be allowed and the reliefs as prayed be granted.

7. It is not possible to accept the above contentions of Mr. Mehadia. Section 28-A of the Land Acquisition Act, 1894 reads as under:

28-A. Re-determination of the amount of compensation on the basis of the award of the Court.- (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all the other land covered by the same notification u/s 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector u/s 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this subsection, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference u/s 18.

8. This provision was inserted by Act 68 of 1984 with effect from 24th September, 1984. The object and purpose for introduction of the said provision is to enable the persons interested in all the other land covered by the same Notification u/s 4(1) and who are also aggrieved by the award of the Collector to seek re-determination of the compensation. It is provided in the statement of objects and reasons that considering that the right of reference to the Civil Court u/s 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by comparatively affluent land owners and that this causes considerable inequality in the payment of compensation for the

same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties to seek re-determination of compensation in terms of this section.

9. Thus, the requirement is that there should be an award made under Part III of the Act and in which the Court allows to the applicant, any amount of compensation in excess of the amount awarded by the Collector u/s 11 of the Act. Secondly, persons interested in all other land covered by the same Notification u/s 4(1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court. Thirdly, the Collector would be required, if such an application is made, to re-determine the amount of compensation payable to the aforementioned categories of persons. How the period of three months has to be computed, is then provided by the proviso. Sub-sections (2) and (3) set down the procedural aspects. Sub-section (3) is equally important and it gives a remedy to the person who does not accept the award u/s 28A(2) to make written application to the Collector requiring him to refer the matter for determination of the Court and thereafter sections 18 to 28 shall, so far as may be, applied to a reference.

10. Thus, this is not a case where the legislature intended that the dispute on the quantum of compensation for the acquired land should continue endlessly. The legislature intended that there should be finality and conclusion to the proceedings for acquisition or else that would be not in public interest. It is a common ground that public funds are utilised for acquiring lands for public purpose. There need not be strain on such funds, which strain could be enormous, beyond a specified period of time. It is clear from reading of the provisions that the amount of compensation carries interest and therefore if disputes with regard to compensation are allowed to drag on for an unspecified period and duration, that equally would defeat the object and purpose of the Act. Therefore, it is not possible to agree that with Mr. Mehadia that any restriction of the nature imposed would mean that the beneficiaries will not be in a position to obtain the benefit under this section.

11. When one considers such restrictions and particularly the power of the legislature to provide for a period of limitation, one cannot forget that the conditions merely regulate the exercise of the right so that the same is not abused by a party. In the case of *Anant Mills Vs. The State of Gujarat* reported in AIR 1975 Supreme Court 1234, the Hon'ble the Supreme Court in this context observed thus:

... It is open to the legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfillment of that condition in case the party concerned seeks to avail of the said right is a

valid piece of legislation, and we can discern no contravention of Article 14 in it. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classes offensive to Article 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission.

12. In the case of State of Andhra Pradesh and Another Vs. Marri Venkaiah and Others, , while computing the period of limitation u/s 28-A of the Land Acquisition Act, 1894, what the Supreme Court held would aptly sum up the challenge raised before us. The Supreme Court held as under:

7. Plain language of the aforesaid section would only mean that the period of limitation is three months from the date of the award of the court. It is also provided that in computing the period of three months, the day on which the award was pronounced and the time requisite for obtaining the copy of the award is to be excluded. Therefore, the aforesaid provision crystallizes that application u/s 28-A is to be filed within three months from the date of the award by the court by only excluding the time requisite for obtaining the copy. Hence, it is difficult to infer further exclusion of time on the ground of acquisition of knowledge by the applicant.

8. Further, the judgment rendered by the High Court is contrary to the decision rendered by this Court in Tota Ram v. State of U.P. wherein this Court held that limitation begins to run from the date of the award and as per the proviso the time taken for obtaining the certified copy of the award and the decree is to be executed in computing the period of three months. The Court held that in view of the express language the question of knowledge does not arise and therefore, the plea of the petitioner that limitation of three months begins to start from the date of the knowledge is clearly unsustainable and cannot be accepted. Same view is expressed by this Court in Union of India v. Mangatu Ram and Jose Antonio Cruz Dos R. Rodriguese v. Land Acquisition Collector.

9. However, the Learned Counsel for the respondents submitted that Section 28-A is a beneficial provision and that applicants being non-parties to the reference proceedings initiated by some other landowners, they would not have any knowledge of the date of the award or its contents, therefore, the interpretation given by the High Court to the provisions of Section 28-A of the Act does not call for any interference and in any case, the question involved be referred to a larger Bench.

10. In our view, with regard to the first contention that Section 28A is a beneficial provision, there cannot be any dispute. However, the advantage of the benefit which is conferred is required to be taken within the stipulated time. A landowner may be poor or illiterate and because of that he might not have filed reference application but that would not mean that he could be negligent in not finding out whether other landowners have filed such applications. Whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to

take appropriate action within the prescribed time. He must at least be vigilant in making efforts to find out whether the other landowner has filed any reference application and if so, what is the result. If that is not done then the law cannot help him. Admittedly, in the present case, award enhancing the compensation was pronounced by the civil court by order dated 29-11-1984 and applications were filed on 27-11-1989 i.e. after a lapse of 5 years. In such case, as the applicant was having an opportunity of knowing the award and/or he was required to make efforts of knowing about such proceedings, he must be presumed to have had knowledge of the award. If the contention of the Learned Counsel for the respondents is accepted, it will create total vagueness and uncertainty as the landowners can claim that they have come to know of the award after a long lapse of time and therefore, the application even though beyond time may be entertained. If such applications are entertained, there may not be any finality to the award and payment of compensation. Result may be that such proceedings may adversely affect where land is acquired by the Government for a project which is to be carried out by local bodies.

13. It is well settled that statutes of limitation are intended to put an end to stale and belated claims. Rule of limitation is one of repose and public peace. It only elaborates the settled principle that no one should be vexed and be troubled with old and stale claims and recoveries. That being the intent and purpose sought to be achieved, it is not possible to agree with Mr. Mehadia that the restriction of the nature imposed and the rule of limitation prescribed, is any way arbitrary, discriminatory, unreasonable and unfair. Hence, it cannot be struck down as violative of Article 14 and 300-A of the Constitution of India. There is no question of violation of the constitutional mandate enshrined by Article 14 on the right conferred by a statute of the present nature as the restriction is in public interest and subject to section 28-A(3) gives finality to the Award and the quantum of compensation. If the law enacts a beneficent provision and provides for the manner of exercise of the right but places a restriction thereon, then, it cannot be said that it falls foul of Article 300-A of the Constitution of India. Plainly, a person is not being deprived of his land without authority of law.

14. In these circumstances, we do not see how the provision can be struck down as prayed.

15. The facts in this case are not in dispute as the Special Land Acquisition Officer communicated to the petitioner that on 30th April, 2003 an award was made in respect of the petitioner's land and the compensation of Rs. 1,07,712/- has been paid, which has been received on behalf of Mr. Surendrakumar Mor, the petitioner before us. There are about ten persons whose lands were acquired under the subject Notification out of whom eight made applications u/s 18 and obtained compensation in terms of the award of the reference Court. One land holder invoked section 28-A of the Act and was granted compensation in terms thereof. The petitioner neither sought a reference u/s 18 nor made an application u/s 28-A within the specified time limit. In these circumstances, it can safely be

concluded that the petitioner was not vigilant and has allowed the time to pass by. Once the petitioner himself is to be blamed for these state of affairs, then, he cannot seek intervention of a writ Court. The jurisdiction under Article 226 of the Constitution of India is equitable and discretionary and cannot be utilised to assist a litigant like the petitioner. The petitioner has slept over his rights and therefore cannot make any complaint. Really speaking, at his instance, it was not necessary to examine the constitutional challenge but having found that persons similarly placed like the petitioner often make such grievances, that the legal position was required to be brought to their notice.

16. The reliance placed on the case of Babua Ram and others vs. State of Uttar Pradesh and another reported in (1995) 2 Supreme Court Cases 689, cannot be of any assistance because there a distinct challenge was raised and in any event the observations made and relied upon are with regard to computation of the period of limitation. Even these observations have not been completely approved. That apart, what has been held in para 20 of the decision would go contrary to the submissions canvassed before us. The Supreme Court has clarified that the law of limitation limits the time after which suit or other proceedings cannot be entertained in the Court of justice or before appropriate authority, though it does not affect the substantive rights of the parties. Once the limitation begins to run, it runs in its full course. Therefore, far from assisting the petitioner, these observations and findings would run counter to his case. For all the above reasons, we find no merit in this writ petition. It is accordingly dismissed. Rule is discharged. There will be no order as to costs.