

(2001) 10 BOM CK 0086

In the Bombay High Court

Case No : Writ Petition No. 2902 of 1989

Suresh Ranganath Bhaybhang (Dr.)

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Land Acquisition Act, 1894 — Section 5

Citation : (2002) 2 ALLMR 485 : (2002) 3 BomCR 197

Hon'ble Judges : N.V. Dabholkar, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : R.B. Raghuwanshi, for the Appellant; P.B. Patil, A.G.P. for Respondent No. 1, C.V. Korhalkar, Respondent No. 2 and S.D. Pokharkar, for the Respondent

Judgement

B.H. Marlapalle, J.—In this petition under Article 226 of the Constitution of India, the petitioner is seeking writ of mandamus against the respondents Nos. 1 and 2 for payment of compensation at the present market rate in respect of land admeasuring 545.50 sq. metres (approximately six gunthas) from plot No. 3 of Survey No. 1097/A/1-A.

2. The petitioner contends that he owned land admeasuring about 22 areas in plot No. 3 of Survey No. 109/A/1-A on the Dharangaon road of Kopargaon town and out of the said land about 545.50 sq. metres land was acquired by the respondent No. 1 sometimes in the year 1972-73 for extension of Kopargaon-Takli Road, to be undertaken under the scarcity relief works. He alleges that possession of the land was forcibly taken from him, that the land acquisition proceedings were not initiated at any time and, that he was not paid the compensation. He had, therefore, lodged an objection on 8-5-1973 before the Godavari Canal Sub-Division Officer at Kopargaon. Thereafter, he submitted a representation to the Tahsildar, Kopargaon on 16-2-1983 and asked for compensation. He issued a legal notice on 15-12-1984 to the Administrator, Municipal Council, Kopargaon (respondent No. 2) and approached the Divisional

Commissioner, Nasik (respondent No. 4) vide his representation dated 22-5-1985. The Divisional Commissioner had acted upon the said representation and by communication dated 21-8-1985, addressed to the Collector, called upon the Municipal Council to pay the compensation on the basis of the assessment done at the rate of Rs. 35/- per sq metre. The Commissioner had also issued letter sometime in May 1987 to the Municipal Council to pay the compensation to the petitioner for the land he had lost in the extension or widening of the road. No steps were taken, either by the Collector or the Municipal Council and therefore, the petitioner approached this Court in the instant petition, which was filed before us on 11-10-1989. The petition was admitted by the order dated 6-2-1990 and by the order dated 4-9-1998 the State Government was directed to deposit an amount of Rs. 5,00,000/-. We are informed by the learned Counsel for the Municipal Council that the amount was not deposited by the State Government and in fact, it has been deposited by the Municipal Council under coercion.

3. The only question that we are required to consider is whether the petitioner succeeds in seeking mandamus from us for payment of compensation in respect of the subject land. The petitioner's claim is based on the communication issued by the Divisional Commissioner, Nasik dated 21-8-1985 addressed to the Collector Ahmednagar, as well as the judgment of this Court in Writ Petition No. 255 of 1987. Our attention has also been invited to the Writ Petition No. 3356 of 1993, in which at Exhibit "D", there is a communication dated 11-3-1988 issued by the Deputy Director of Municipal Administration, Mantralaya, Mumbai, wherein it has been stated that the present petitioner ought to be given a compensation in respect of 545.50 sq. metres of land, at the rate of Rs. 35/- per sq. metre. This communication was addressed to the respondent No. 2 Municipal Council. Writ Petition No. 3356 of 1993 came to be dismissed by the Division Bench of this Court by order dated 15-4-1988. The operative part of the said order reads thus :-

"In view of the decision of the Supreme Court reported in State of Maharashtra Vs. Digambar, , the petition deserves to be dismissed on the point of laches. Dismissed."

4. Shri Raghuwanshi, learned Counsel appearing for the petitioner, urged before us that the law laid down by the Apex Court in the case of State of Maharashtra Vs. Digambar, is not applicable, as the petition, at any rate, does not suffer from laches or inordinate delays and more so when the petitioner has been vigilant and has been pursuing his remedy right from 1973. Shri Raghuwanshi also submitted that the subject land was not taken over for construction of road under the scarcity relief works and it was plain and simple extension of the road by the Zilla Parishad. In this regard, he places reliance on the communication dated 22-5-1985 addressed by the Divisional Commissioner to the Collector. We are not happy with the observations made by the Divisional Commissioner that the subject land was not taken over for providing the scarcity relief works and

this observations was based solely on the ground that in the record that was placed before the Divisional Commissioner, there was nothing to show to that effect. However, along with the reply filed by the Municipal Council the copy of the order dated 12-7-1973 issued by the Collector has been brought on record (Exhibit R. 3) and it is clear that the Kopargaon Takli Road construction work was undertaken as scarcity relief work and the expenditure was required to be debited to the budget head 64-A-Famine-B-Relief during the financial year 1973-74. Even in the para No. 2 of the petition, the petitioner has candidly admitted that the subject land was taken over for undertaking the scarcity relief work.

5. We shall now proceed to decide whether the petition suffers from delays or laches. The petitioner contends that he lodged a protest in writing on 8-5-1973, before the Sub-Divisional Officer, Godavari Canal Sub-Division. However, a copy of the same is not on record. The petitioner also admits that for about ten years thereafter, he did nothing and for the first time on 16-2-1983 he approached the Tahsildar, Kopargaon with a representation demanding the compensation. The legal notice was issued against the Municipal Council on 15-12-1984 and the petitioner approached the Divisional Commissioner by his representation dated 22-5-1985. The communication addressed by the Deputy Director, Municipal Administration to the Municipal Council, which is submitted in Writ Petition No. 3356 of 1993 is dated 18-3-1988. It is seen from these averments made by the petitioner himself that from the year 1972-73 he raised his claim for compensation for the first time before the Tahsildar, Kopargaon on 16-2-1983 i.e. after the period of about 10 years. In view of this conduct of the petitioner, it would not be possible for this Court to examine whether the petitioner handed over the subject land on his own or it was forcibly taken over by the respondent No. 1 or the land was taken over by consent without claiming compensation, for undertaking scarcity relief work. We must refer, in this regard, to the Government Resolution dated 1-11-1972 issued by the State Government clarifying the Government orders regarding taking over possession of the lands meant for providing scarcity relief works and the Government had directed not to undertake any land acquisition proceedings in respect of such lands and not to pay the compensation. It was further clarified that in case any suit was decreed for such compensation, the payment shall be made in compliance with the said decree. The policy of the State Government was thus known to the persons concerned and this was one of the factors which the Apex Court considered in the case of *State of Maharashtra v. Digambar (supra)*.

6. The petitioner has one more impediment in his claim. When the subject land was taken over by the respondent No. 1 in the year 1972-73, the concerned area was not under the municipal limits. The road was constructed by the respondent No. 3 and the Sub-Divisional Officer handed over the road to the Zilla Parishad in 1974. The Government of Maharashtra issued the orders dated 13-8-1976 and extended the municipal of Kopargaon Municipal Council, as a result of which, the subject land came in municipal limits only thereafter. The Zilla Parishad decided

subsequently to transfer the Kopargaon-Takli road to the Municipal Council and accordingly in 1984, the Municipal Council passed a resolution and took over the road. From 1972-73 till 1984 the road was not handed over to the Municipal Council and in any case, the road was not built at the instance of the Municipal Council. The road was, on the other hand, built for providing scarcity relief work by the Zilla Parishad. In such circumstances, it would be difficult for us to decide as to whether the compensation as prayed by the petitioner should be paid, either by the State Government namely, the Collector or the Zilla Parishad or the Municipal Council. Even if we hold that the petition does not suffer from delays or laches. The learned Counsel for the petitioner relies upon the affidavit filed by the Zilla Parishad and the Collector, Ahmednagar, both of whom say that the compensation is required to be paid by the Municipal Council. We do not wish to adjudicate upon this issue and it will be for the appropriate authority to go into this.

7. In Writ Petition No. 3356 of 1993, the petitioner had claimed compensation on the same grounds as are set out in the instant petition and the petitioner therein was the owner of land in Survey No. 109/1-A i.e. adjacent land to the petitioner's in this case. The petition was dismissed by this Court by relying upon the judgment of the Supreme Court in the case of *State of Maharashtra v. Digambar* (supra). The learned Counsel for the petitioner submits that this order passed in Writ Petition No. 3346 of 1993 would not come in his way more so because that petitioner had approached this Court only in 1993 i.e. almost after about 20 years, whereas the present petitioner has approached this Court in 1989 and in fact, there were some orders passed in his favour or directions issued for payment of compensation to him, either by the Divisional Commissioner or the Deputy Director of Municipal Administration.

8. We are of the considered view that the issues as to whether the petitioner had handed over the subject land or it was forcibly taken over or it was the transaction by consent and without compensation so as to provide scarcity relief work, need to be gone into by the concerned authority and if the petitioner is able to prove that the subject land was not handed over voluntarily, he may be entitled for compensation. Similar issue was considered by the Apex Court in the case of *State of A.P. v. Tuljaram Balaji*, J.T. 1999 (10) S.C. wherein after referring to the earlier judgment in the case of *State of Maharashtra v Digambar* (supra), the Supreme Court held that it was necessary for the claimant to prove that the land was not given voluntarily and the possession of the land was taken forcibly by the State Government, in which case, the State of Maharashtra may consider giving compensation to the claimants. The circumstances in this case also warrant the same relief and in addition the competent authority also have to decide the agency liable to pay the compensation, in case it is held that the petitioner is entitled for any such amount.

9. We, therefore, direct the Collector, Ahmednagar to hear the petitioner, Zilla Parishad Ahmednagar and the Municipal Council Ahmednagar and decide whether

the petitioner is entitled for the compensation in respect of the subject land on the basis of law laid down by the Apex Court in the case of State of Maharashtra Vs. Digambar, and if yes, then name the agency responsible for payment of compensation. This shall be done within the period of three months from today.

10. The writ petition is disposed of in terms of above order. Rule discharged. No order as to costs.

11. The Collector, Ahmednagar shall note that the amount deposited with the Registry of this Court is already invested in the fixed deposit and this deposit shall be subject to the order that may be passed by him.

12. Respective parties may appear before the Collector on 22-10-2001.

13. Writ to go forthwith.