
(2014) 12 BOM CK 0255
In the Bombay High Court
Case No : Writ Petition No. 4415 of 2014

Tukaram

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Citation : (2015) MCR 362

Hon'ble Judges : B.P. Dharmadhikari and A.M. Badar, JJ.

Bench : Division Bench

Advocate : Mr. D.R. Jayabhar, Advocate, for the Petitioner; Mrs. M.A. Deshpande, Assistant Government Pleader, for the Respondent Nos. 1 to 3; Mr. R.T. Nagargoje, Advocate, for the Respondent No. 4

Final Decision : Partly Allowed

Judgement

B.P. Dharmadhikari, J.(Oral)—Heard respective Counsel for the parties, finally, by issuing Rule and making it returnable forthwith.

2. Section 4 notification was published on 30-11-2000 and Section 11 award has been made on 5-3-2002. The petitioner - land owner thereafter filed proceedings under Section 18 of the Land Acquisition Act, 1894 [For short, "1894 Act"] for enhancement. The reference court on 26- 9-2006, declined petitioner, benefit of Section 34 of 1894 Act. However, benefit of Section 23(1A) of 1894 Act has been given for the period from Section 4 notification till making of award.

3. In this situation, Adv. Jayabhar for the petitioner contends that the petitioner must be given benefit of Government policy and rental compensation from the date on which possession was lost, till date of Section 4 notification, must be paid to the petitioner. The petitioner lost possession on 13-2-1999 i.e. prior to Section 4 notification.

4. After hearing respective Counsel, we find that as possession was lost before date of Section 4 notification, reference court rightly declined to extend benefit of Section 34 of 1894 Act, to the petitioner. For very same reason, benefit of

Section 23(1A) also should have been declined. Land Acquisition Officer v. Ramkrishna Reddy [(2011) 11 SCC 648] and Dinkar Sandipan Gholve & others v. State of Maharashtra [2009 (3) BCR 891] clinch this aspect. However, reference court has granted petitioner, 12 % per annum, for the period of about 16 months i.e. from 30-11-2000 till 5-3-2002. Thus, this benefit has been given to the petitioner though he was not entitled to it. The question is, whether on the basis of this grant, while determining market value, further interest in terms of Section 28 has been worked out. The petitioner is not in a position to disclose correct facts, at this stage, about grant of interest under Section 28 of 1894 Act.

5. The rental compensation under Section 4 is awarded at 8 % of the market value determined in Section 11 award. Section 11 award determines market value of property as on date of Section 4 notification. Thus, the petitioner gets market value of his property on 30-11-2000, as if he has sold the property on that date. For time taken to work out compensation i.e. for delayed payment of said consideration, the petitioner gets interest under Section 28 at 9 % and 15 %. Thus, the petitioner ceases to be owner from date of Section 4 notification itself. As such, there is no question of paying rental compensation for the period subsequent to Section 4 notification.

6. The petitioner may have been entitled to rental compensation to be paid for the period prior to Section 4 notification. Here, that period is from 13-2-1999 to 30-11-2000. However, in the present facts, the reference court has extended to the petitioner, benefit of additional component under Section 23(1A) of 1894 Act. That benefit is required to be calculated at 12 % per annum. Thus, when rental compensation is to be worked out at 8 % per annum, the petitioner has been paid erroneously, under Section 23(1A) of 1894 Act, at 12 % per annum. The petitioner may, therefore, end up in finding that he has received excess amount even after adjusting his claim towards rental compensation.

7. In this situation, we direct respondent no.3 - Special Land Acquisition Officer, to find out the entitlement of the petitioner, to any additional amount, in the present facts, on account of loss of possession on 13-2-1999. The entitlement shall be strictly in accordance with the observations made above, for the period up to 30-11-2000. After adjusting the amount already paid to him towards amount so worked out, if any additional amount is found payable to the petitioner, respondent no.4 - acquiring authority shall arrange to pay it, to the petitioner, within a period of three months of such adjudication.

8. However, if respondent no.3 finds that amount in excess is received by him and is to be recovered back, it shall initiate steps to recover it from the petitioner and hand it over to respondent no.4, within similar period.

9. The Writ Petition is, thus, partly allowed and Rule made absolute accordingly. No costs.