
(2003) 06 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 483 of 2003

Tukaram Kurhade

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 02-06-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 19, 20, 21

Citation : (2004) 2 BomCR 866 : (2004) 106 BOMLR 802

Hon'ble Judges : S.T. Kharche, J;R.J. Kochar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.T. Kharche, J.—Heard the learned Counsel for the petitioner and for the respondents.

2. Rule. By consent of the parties, the Rule is made returnable forthwith and heard.

3. The brief facts are as under :

The Petitioner is the owner and occupant of the land bearing Survey No. 26/4, admeasuring 1H and 90R area. The aforesaid land has been acquired by the Government of Maharashtra for public purpose under L.A.C. No. 28/LAQ-70-77/I/LAQ/79-80 of village Pandhurna. The respondents are the acquiring bodies and the compensation was granted by passing an Award dated 20th March, 1981, passed by Respondent No. 2. The land of other villagers was also acquired and by virtue of the common Award, compensation was granted. A person viz. Isnaji Piraji Dhabale, being aggrieved by the said Award, filed a Reference u/s 18 before the learned Civil Judge, Senior Division, Yavatmal, for claiming enhancement in the compensation amount. The learned Civil Judge, Senior Judge, Yavatmal, passed the common Judgment and Award on 27.10.1989 and granted compensation at the enhanced rate of Rs. 12,500/-per hector to the said claimant. The petitioner acquired knowledge of the said Award on 18.1.1991 and

immediately applied for the certified copy of the said Award which was received by him on 16.2.1991.

4. On the basis of the said Award passed by the Court of Civil Judge, Senior Division, Yavatmal, the petitioner had made an application on 22.2.1991 u/s 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") for claiming re-determination of the compensation for his acquired land. The respondents rejected the said application on 30.10.1998. It is this order that has been challenged in this petition.

5. The learned Counsel for the petitioner contended that the impugned order, passed by the learned Land Acquisition Officer rejecting the application u/s 28-A, is bad in law. He contended that the Land Acquisition Officer called upon the petitioner to file an affidavit in support of his application filed u/s 28-A of the Act. It is contended that the Land Acquisition Officer has committed an error in directing the petitioner to swear an affidavit in respect of the said application and consequently the order of rejection of the application has resulted into miscarriage of justice and, therefore, the matter deserves to be remanded to the Land Acquisition Officer for fresh decision in accordance with law.

6. The learned A.G.P., for respondents contended that the petitioner has not given exact dimension of the land acquired. The dimension of the land given by the petitioner was incorrect. The correct dimension of the land is 1.02 H. He further contended that the Notice u/s 11 of the Act was issued and the petitioner awarded the compensation @ Rs. 7,000/- per hector taking into consideration the rates prevailing then in that area and the sale instances. He further contended that though the petitioner had filed an application u/s 28-A of the Act for enhancement of the compensation and he was asked to remain present for further inquiry, he had chosen to remain absent. He further submitted that respondent No. 2, in spite of the receipt of the notice, did not file any affidavit regarding his contention and, therefore, respondent No. 2 has rejected the said application on 30.10.1998. He submitted that the impugned order passed by respondent No. 2 is sustainable in law.

7. We have carefully considered the contentions canvassed by the learned Counsel for both the parties. It is not disputed that one Isnaji Piraji Dhabale, being aggrieved by the Award, had preferred a reference u/s 18 before the Civil Judge, Senior Division, Yavatmal, and the Court by its common Judgment and Award dated 27.10.1989 granted enhanced compensation @ Rs. 12,500/- per hectare to the said claimant. The petitioner after acquiring knowledge of the said Award passed by the Civil Judge, Senior Division, Yavatmal, had filed an application for enhancement of compensation under the provisions of the Section 28-A of the Act.

Section 28-A contemplates as under :

28A. 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 sub-section 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. We may usefully refer the Constitution Bench decision of the Apex Court in the case of Union of India (UOI) and Another Vs. Hansoli Devi and Others, wherein it is observed thus :

Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of statute. The rule stated by Tindal, C.J. in *Sussex Peerage case*. (1844) 11 Cl and F35, still holds the field. The aforesaid rule is to the effect :

If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law giver.

It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In *Kirkness v. John Hudson and Co. Ltd.* 1955 (2) All.E.R. 345. Lord Reid pointed out as to what is the meaning of "ambiguous" and held that "a provision is not ambiguous merely because it contains a word which in different context is capable of different meanings and it would be hard to find anywhere a sentence of any length which does not contain

such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning." It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the Court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J. in the case of Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Quebec Railway Light Heat and Power Co. u. Vranday* AIR 1920 P.C. 181, it had been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the Legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the Legislature is found to be clear but the unskillfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the Court to reject the surplus words, so as to make the statute effective. Bearing in mind the aforesaid principle, let us now examine the provisions of Section 28-A of the Act to answer the questions referred to us by the Bench of two learned Judges. It is no doubt true that the object of Section 28-A of the Act to confer a right of making a reference, who might have not made a reference earlier u/s 18 and, therefore, ordinarily when a person makes a reference u/s 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But the Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an application to the Collector u/s 18" in Section 28-A of the Act. The aforesaid expression would mean that if the land owner has made an application for reference u/s 18 and that reference is entertained and answered. In other words, it may not be permissible for a land owner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact in *Pradeep Kumari's* case the three learned Judges; while enumerating the conditions to be satisfied, whereafter an application u/s 28-A can be moved, had categorically stated "the person moving the application did not make an application to the Collector u/s 18". The expression "did not make an application", as observed by this Court would mean, did not make an effective application which had been entertained

by making the reference and the reference was answered. When an application u/s 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application u/s 28-A cannot be denied. We accordingly answer question No. 1(a) by holding that the dismissal of an application seeking reference u/s 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894.

9. In the present case, the Award has been passed by the Court on 27.10.1989 upon a reference u/s 18 of the Act and thereafter the petitioner had filed an application for redetermination of the compensation on 16.2.1991. In view of the ratio laid down by the Supreme Court, the delay, in presentation of the application, has to be condoned in view of the fact that the petitioner acquired knowledge of the Award on 18.1.1991.

10. In the case of Union of India and another Vs. Pradeep Kumari and others, it has been held, inter alia, that a person would be able to seek redetermination of the compensation payable to him provided the following conditions are satisfied :

(i) An award has been made by the Court under Part III after coming into force of Section 28-A;

(ii) By the said award the amount of compensation in excess of the amount awarded by the Collector u/s 11 has been allowed to the applicant in that reference;

(iii) The person moving the application u/s 28-A is interested in other land covered by the same notification u/s 4(1) to which the said award relates;

(iv) The person moving the application did not make an application to the Collector u/s 18;

(v) The application is moved within three months from the date of the award on the basis of which the redetermination of amount of compensation is sought; and

(vi) Only one application can be moved u/s 28-A for redetermination of compensation by an applicant.

11. We have taken into consideration the ratio laid down by the Supreme Court in the aforesaid decision and we find that all the conditions have been fulfilled by the applicant. Respondent No. 2 has obviously committed an error in rejecting the said application on a technical ground that the petitioner had chosen to remain absent. In such a situation, we are of the considered view that the impugned order passed by the respondent No. 2 is not sustainable in law and deserves to be set aside. Therefore, we set aside the impugned Order dated 30.10.1998 passed by the respondent No. 2 and remit the matter to him who shall decide the same afresh according to law expeditiously, after giving

opportunity of hearing to both the sides, preferably within the period of three months. The petition is allowed in the aforesaid terms. Rule is made absolute.