
(2012) 12 BOM CK 0159
In the Bombay High Court
Case No : Writ Petition No. 9789 of 2010

Vijay and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2013) 3 MhLj 566

Hon'ble Judges : U.D. Salvi, J; R.M. Borde, J

Bench : Division Bench

Advocate : M.K. Deshpande, for the Appellant; S.D. Shelke, A.G.P., for the Respondent

Judgement

U.D. Salvi, J.—Heard. Perused Rule. Rule made returnable forthwith. Heard finally by mutual consent of the parties. Quashing of the land acquisition award bearing LAQ/SR/01/2001, dated 27-2-2012, passed by the Sub-Divisional Officer, Jalgaon Division, Jalgaon-the respondent No. 2 herein, u/s 11 of the Land Acquisition Act in respect of landed property-Gat No. 19, situate at Kathora, Taluka and District Jalgaon, admeasuring 69 Ares is sought in the present petition.

2. The petitioners, who claim to be the farmers cultivating the said land, state that they had submitted objections to the acquisition of the said landed property before the respondent No. 2 in response to the issuance of a notification u/s 4 of the Land Acquisition Act, dated 24-12-2009, by the respondent No. 1/State on 27-1-2010, and prayed for dropping of the acquisition vide objections dated 27-1-2010 (Exhibit B). The petitioners further state that a representation was made to the respondent No. 2 on 22-6-2010 to consider their objections and give hearing to them as contemplated u/s 5-A of the said Act and yet the respondent No. 2, regardless of this representation, caused a notification u/s 6 of the said Act to be issued on 25-6-2010. The petitioners submit that no opportunity of hearing as required u/s 5-A of the Act was given to them.

3. On apprehending passing of award upon issuance of the notice u/s 9(3)(iv) of the Act on 31-8-2010. The petitioners preferred this petition initially for quashing the declaration u/s 6 of the Act, dated 25-6-2010. In September, 2012, the petitioners incorporated challenge to the award dated 27-2-2012 passed by the respondent No. 2 on the ground that they had not received the notices u/s 12(2) of the Act and they had continued to cultivate the land for the reason of the actual physical possession remaining in their hands.

4. The respondent Nos. 2 to 4 replied the petition vide reply dated 30-10-2012 and refuted the allegations of arbitrariness, and submitted that the objections to the acquisition were duly considered. However, they remained reticent regarding the service of notices u/s 12(2) of the Act in respect of the award u/s 11, passed under the said Act on 27-2-2012.

5. On this backdrop, learned Advocate Mr. Deshpande for the petitioners submitted that for land acquisition proceedings initiated u/s 4 of the said Act, to duly culminate into an award u/s 11 of the Act, it was incumbent upon the authority-the Collector to have given immediate notice of the said award to the petitioners, being such of the persons interested as are not present personally or by their representatives when the award was made. He submitted with reference to the judgment of the Hon"ble Apex Court reported in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, ., that the award of Collector, in law is an offer or tender of the compensation determined by the Collector to the owner or person interested in the property under acquisition and as such, its communication to the owner or the person interested in such property is an essential requirement of fair play and natural justice and as such mandate of law. He submitted that any award of which the notice is not given by the Collector as contemplated u/s 12(2) of the Act would not come into force, and as such it would amount to no award being made as per law and, therefore, the land acquisition proceedings in the instant case should be deemed to have been lapsed.

6. Learned A.G.P. appearing for the State conceded that there has been no notice issued of the award as contemplated u/s 12(2) of the Act and as such the legal consequences must follow.

7. As regards the finality of the award of Collector u/s 11 of the Act, section 12 as amended by the Maharashtra Act No. 38 of 1964 speaks thus:

12. Award of Collector when to be final:-- (1) Such award shall be filed in the Collector's office and shall, subject to the provisions of section 15-A and except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award or the amendment thereof made u/s 12-A to such of the persons interested as are not present

personally or by their representatives when the award or amendment is made.

8. The Hon''ble Apex Court, in Raja Harish Chandra Raj Singh's case (supra), elaborated legal character of the award made by the Collector at para 5 of the said judgment in following words:

5. In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector u/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, section 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.

... .. 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.

9. The Hon''ble Apex Court, at para 6 of the said judgment emphasised the need of communication of such award to the party affected by such award for such award to come in force in the following words:

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 section

18 in a literal or mechanical way.

10. In the instant case, there has been no communication of the award u/s 11 within a period of two years from the date of the publication of the declaration u/s 6 of the said Act to the petitioners and as such, no award can be said to have been made by the Collector as envisaged u/s 11-A of the said Act. In the result, the entire proceedings for the acquisition of the land stand lapsed. Rule is, therefore, made absolute in terms of prayer clause (CC) with no order as to costs.