
(2016) 01 BOM CK 0176
In the Bombay High Court
Case No : First Appeal No. 153 of 2004

Vijaykumar Santokchand Zambad

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 8(1)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 33
Constitution of India, 1950 — Article 142, Article 226

Citation : (2016) 3 BCR 374 : (2016) 4 MhLJ 92

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : K.S. Narwade, Counsel, for the Appellant; D.M. Kale, AGP, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Deshpande, J.—1. A notification under sub-section (4) of Section 126 of the Maharashtra Regional Town Planning Act, 1966, read with Section 6 of the Land Acquisition Act, 1984, issued by the Collector, Buldana, on 09.03.1989, was published in the Government Gazette on 11.05.1989, acquiring 0.81 R of land, out of Survey No. 12/1 at Village Ahmadpur (Nandura) for construction of bus depot, quarters of staff and other allied establishment of Maharashtra State Road Transport Corporation. Initially, the acquisition itself was the subject matter of challenge by filing a writ petition, which was dismissed by this Court on 27.03.1992, and the Special Leave Petition was also dismissed by the Apex Court on 05.01.1996.

2. An award under Section 11 of the Land Acquisition Act (in short "the said Act") was passed in the present matter on 09.05.1991. Notice of award as required by sub-section (2) of Section 12 of the said Act was received by the claimant on 13.04.1992. The claimants filed reference under Section 18 of the said Act on 16.02.1996, which was forwarded by the Collector on 29.08.1996 to the Civil

Court, which was registered as Land Acquisition Case No. 03 of 1996, for determination of compensation. The Land Acquisition Officer determined the compensation at the rate of Rs. 57,510/- per hectare, as against the claim at the rate of Rs. 50/- per sq.ft. The Reference Court enhanced it to Rs. 1,72,839/- per hectare by its judgment and order dated 02.09.2003 and the total compensation payable to the claimant was Rs. 1,40,000/- for acquisition of 0.81 R of land. The claimant has preferred this appeal for further enhancement of compensation at the rate of Rs. 50 per sq.ft.

3. Shri Kale, the learned AGP, invited my attention to the averments made in Para 16 of the application under Section 18 of the said Act, in which it is stated that the claimant has received notice under sub-section (2) of Section 12, of the said Act on 13.04.1992. He, therefore, submits that the reference sought on 16.02.1996, was beyond the period of six weeks as is stipulated in clauses (a) and (b) in the proviso below sub-section (2) of Section 18 of the said Act. According to him, the Reference Court ought to have dismissed the reference as barred by time.

4. Shri Narwade, the learned counsel has invited my attention to the finding recorded by the Reference Court in para 11 of its judgment, wherein it is held that in terms of the decision of the Apex Court, on 05.01.1996, in SLP No. 10057 of 1992, the Reference Court has considered that the reference sought on 16.02.1996 was within a period of limitation from the date of order of the Apex Court. He has further urged that the State Government has neither preferred any appeal, nor has filed the cross objection to challenge the finding on the question of limitation recorded by the Reference Court and therefore, this Court cannot now consider the question of limitation, in an appeal preferred by the claimant.

5. The points for determination are as under -

"[i] Whether the reference sought under Section 18 of the said Act for enhancement of compensation was barred by time?

[ii] In the absence of any cross objection as required by Order 41, Rule 22 of C.P.C, whether the appellate Court can reverse the finding on the question of limitation by the trial Court, to dismiss the appeal?

[iii] Whether the claimant is entitle to further enhancement of compensation?"

6. Section 18 of the Land Acquisition Act dealing with limitation being relevant is reproduced below;

"18. Reference to court--(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2); or, within six months from the date of the Collector's award, whichever period shall first expire.

The case of the claimant is covered by clause (b) of sub-section (2) of Section 18 above, and hence, the reference was required to be preferred within a period of six weeks of receipt of notice under sub-section (2) of Section 18 of the said Act. In the present case, the claimant received a notice under sub-section (2) of Section 12 of the said Act on 13.04.1992 and the reference under Section 18 was sought on 16.02.1996. Obviously, the reference sought was after about a period of five years from the date of receipt of notice under sub-section (2) of Section 12. It was, therefore, clearly barred by the Law of Limitation.

7. In the decision of the Apex Court in case of Mahadeo Bajirao Patil vrs. State of Maharashtra and others reported in , 2006 (1) Mh.L.J. 28, relied upon by Shri Kale, the learned AGP, it has been held in paragraph 14 as under;

"We are here not concerned with the correctness of the decision, but the fact remains that having considered the claim of the appellant for compensation, the Special Land Acquisition Officer rejected the claim. This does amount to the making of an award, commonly described as "nil award". If the appellant was aggrieved by such an award, it was open to him to seek reference under Section 18 of the Act which the appellant actually did. We, therefore, cannot hold that no award as envisaged by Section 11 of the Act was declared on August 29, 1994, since the claim of the appellant was considered and was totally rejected. There was, therefore, no question of giving any calculation of the manner in which the compensation was computed. Since, the application under Section 18 was not filed within six weeks of the receipt of notice under Section 12(2) of the Act, the High Court did not commit any error in holding that the application was barred by limitation. It was not disputed before us that the Land Acquisition Officer making a reference, or the Court considering a reference under Section 18 of the Act has no power of condonation of delay in making an application under the aforesaid Section."

(Emphasis supplied)

The position of law is very clear from the aforesaid decision that the Court considering the reference under Section 18 of the said Act has no power to condone the delay caused in making an application for reference under Section 18 of the said Act. The reference was, therefore, clearly barred by time and was

required to be dismissed on that sole ground. Point No. [i] is answered accordingly.

8. The contention of Shri Narwade, the learned counsel for the appellant-claimant is that, the Reference Court has answered the issue of limitation in favour of the claimant and in the absence of there being any appeal under Section 54 of the said Act or the cross objection under Order 41, Rule 22 of C.P.C., this Court cannot go into the question of correctness of such finding recorded by the Reference Court in an appeal filed by the claimant seeking further enhancement of compensation.

9. In the decision of the Division Bench of this Court in case of State of Maharashtra vrs. Sadashiv Ganpat Avhad thr. L.Rs, reported in , 2008 (5) Mh.L.J. 363, it has been held that the question of limitation is a question of law, which can always be permitted to be taken up even at the appellate stage and it will have to be examined in each case whether the application under Section 18 of the said Act was filed within the limitation or not and what would be its effect. In the present case, Shri Narwade for claimant does not dispute that the facts proved on record clearly creates a bar of limitation. In view of this, the contention that such a plea cannot be raised in an appeal under Section 54 of the said Act is, therefore, rejected.

10. The question is, whether in the absence of any cross objection as required by Order 41, Rule 22 of C.P.C., this Court can set aside the finding recorded by the Reference Court on the question of limitation in an appeal filed by the claimant seeking enhancement of compensation. The decision of the Apex Court rendered by a five Judges Bench in case of Panna Lal vrs. State of Bombay and others, reported in , AIR 1963 SC 1516, relied upon by Shri Narwade, has considered the provisions of Order 41, Rule 22 and 33 of C.P.C. It was a case where three similar suits were filed for recovery of the amount spent by the appellant/original plaintiff for construction of Hospital Building at Gondia and Tumsar in the district of Bhandara, then in the State of Madhya Pradesh. The Provincial Government of the Central Provinces and Berar was the first defendant, the Deputy Commissioner of Bhandra District was the second defendant and the Gondia Municipal Committee was the third defendant in one suit; and in other suits, the Disciplinary Fund Committee was impleaded as third defendant, apart from the members of the said Committee who were impleaded by name. The suits were decreed only against the State Government and none of the other defendants was held liable and the suits against them were dismissed. In appeal, the High Court set aside the decision of the trial Court against the Government and allowed the appeals with costs.

11. The question considered by the Apex Court in the aforesaid decision was whether the High Court in exercise of its power under Order 41, Rule 33 of C.P.C., could have considered passing of a decree against the other defendants without there being any cross objection by the appellant as required by Order 41, Rule 22 of C.P.C. The Apex Court has held that the provision of Order 41, Rule 22

can be invoked only in exceptional cases, such as, where the relief is sought against the appellant in such an objection. The Apex Court held that the High Court was not correct in refusing to exercise its jurisdiction under Order 41, Rule 33 of C.P.C. to consider the question of passing a decree against the other defendants, since there was no cross objection filed under Order 41, Rule 22 of C.P.C.

12. In another decision of the Apex Court in case of Choudhary Sahu vrs. State of Bihar, reported in , (1982) 1 SCC 232, relied upon by Shri Narwade, the provisions of Order 41, Rule 22 and 33 have been considered. It was a case where the appellant - a land holder, filed his return under Section 8(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, for allotment of 15 units of land. The Collector considered and allotted 12 units to the appellant. The appellant sought enhancement of allotment by filing an appeal before the Commissioner of the Division. The State of Bihar submitted to the order and did not go up in appeal. The Commissioner set aside the findings of the Collector even as regards to the units allotted to the appellant in spite of the fact that no appeal had been filed by the State of Bihar. The appellant filed a writ petition under Article 226 of the Constitution of India, which was dismissed by the High Court relying upon Order 41, Rule 22 of C.P.C.

13. The question involved in the aforesaid decision was whether in the absence of any appeal or cross objection filed by the State of Bihar, the Commissioner was justified in reversing the findings in favour of the appellant, namely the finding on the question of allotment of units or regarding classification of land. The Apex Court has held that first part of sub-rule (1) of Rule 22 under Order 41 authorises the respondent only to support the decree, not only on the grounds decided in his favour but also on any of the grounds decided against him in the court below. It does not authorise him to challenge the decree. If he wants to challenge the decree, he has to take recourse to the second part, that is, he has to file a cross objection if he has not already filed an appeal against the decree. While considering the provision of Order 41, Rule 33 of C.P.C, the Apex Court has held that the court has power to make a proper decree notwithstanding that the appeal is as to part only of the decree and such power may be exercised in favour of all or any of the parties even though they may have not filed an appeal or objection. The object of Rule is to avoid contradictory and inconsistent decisions on the same question in the same suit. The Court ultimately held that in the absence of any appeal by the State of Bihar, there was no justification for the Commissioner to have interfered with that finding in favour of the appellants. The facts and circumstances of the cases were not such in which it would be appropriate to exercise the power under Order 41, Rule 33 of C.P.C. The Apex Court set aside the order of the High Court as well as that of the Commissioner and restored the order passed by the Additional Collector.

14. The law laid down by the Apex Court in the aforesaid decisions can be summarized as under;

"[I] Order 41, Rule 22 terms as a general rule, the respondent to prefer a petition directed only against the appellant in such cases where the relief is sought against the appellant. The first part authorises the respondent only to support the decree. It does not authorise him to challenge the decree. If the respondent wants to challenge the decree, he has to take recourse to the second part, that is, he has to file a cross objection if he has not already filed appeal against the decree.

[II] Order 41, Rule 33 is sufficient to convince any one with the wide wording so intended to empower the appellate Court to make whatever order it thinks fit, not only as between the appellant and the respondent, but also as between the respondent and respondent. It empowers the appellate Court not only to grant or refuse the relief to the appellant by allowing or dismissing the appeal, but also to give such relief to any of the respondents, as the case may require."

15. In the present case, it is apparent that the reference under Section 18 was clearly barred by the Law of Limitation and the Reference Court suffered lack of inherent jurisdiction to condone the delay caused in filing reference. The objection regarding bar of limitation was available to be raised even at the appellate stage by the respondent, which could be considered under Order 41, Rule 33 of C.P.C even in the absence of an appeal or cross objection as required by Order 41, Rule 22 of C.P.C., and the appellate Court had jurisdiction to decide such objection on its own merits. Even if, in appeal, the finding on the question of limitation recorded by the reference Court is reversed, holding that there was a bar of limitation in entertaining or deciding the application under Section 18 of the said Act, in the absence of there being any appeal or cross objection as required by Order 41, Rule 22 of C.P.C by the respondent, the appellate Court is not empowered to set aside a decree passed by the Reference Court granting enhancement of compensation. This Court can, therefore, take into consideration the question of bar of limitation to dismiss the appeal preferred by the claimant for further enhancement of compensation and dismiss the appeal without touching the decree passed by the Reference Court. Point No. [ii] is answered accordingly.

16. In the decision of the Apex Court in the case of H.M. Kelogirao and others vrs. Govt. of A.P. and others, reported in , (1997) 7 SCC 722, the Apex Court considered the fact that the challenge to the proceedings for acquisition of land were ultimately dismissed by the Apex Court in the year 1997 and by that time, the period of limitation as prescribed under Section 18 of the said Act had expired. The Apex Court has held in the said judgment as under-

"... They have not taken recourse to the proceedings under Section 19 of the Act either. The only relief which, therefore, appears appropriate to us in this case is to grant time to the appellants to seek a reference under Section 18 of the Act, if so advise, as that course, in our opinion, would be both equitable and in the interest of justice. We, therefore, while dismissing the appeals grant six weeks" time to the appellants from the date of this order to take proceedings under

Section 18 of the Act, if so advise. In case the appellants file an application under Section 18 of the Act, no objection with regard to the period of limitation in moving the same shall be raised against them. The Reference Court shall decide the application in accordance with law on its own merits expeditiously and nothing said hereinabove shall be construed as any expression of opinion on the merits as regards the quantum of compensation. Appeals are dismissed. There shall be no order as to costs".

(Emphasis supplied)

The aforesaid exercise by the Apex Court was obviously one referable to Article 142 of the Constitution of India and the Apex Court was very emphatic in saying that "in case the appellants file an application under Section 18 of the said Act, no objection with regard to period of limitation in moving the same shall be raised against them". It is not the law laid down by the Apex Court that in case of challenge to the acquisition of land, the limitation for filing an application under Section 18 of the said Act shall start running from the date of ultimate decision rejecting such challenge.

17. In the present case, the challenge to the acquisition has failed ultimately before the Apex Court on 05.01.1996. The Apex Court has observed in the said judgment as under;

".....The appeal is disposed of with above observation. It is however, made clear that it will be open to the aggrieved party to seek enhancement of the compensation in accordance with law against the quantum as fixed under the award passed under Section 126 (4) of the Act".

(Emphasis supplied)

There is a difference in the direction issued by the Apex Court in the present case and one which was issued by the Apex Court in the decision cited supra. It is not the direction by the Apex Court in the present case that in case the appellants file an application under Section 18 of the Act, no objection with regard to the period of limitation in moving the same shall be raised against them. The Apex Court was very clear in stating that reference under Section 18 if filed shall be decided in accordance with law, which means that the question as to whether the reference was barred by the Law of Limitation has to be decided on its own merits.

18. In view of what has been held above, it is not necessary for this Court to consider the challenge in the appeal on merits and the claimant is not entitled to enhancement of compensation. Point No. [iii] is answered accordingly. This appeal is, therefore, dismissed as such. No costs.