

(2024) 01 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 8115 Of 2014

Vilas Damu Shinde

APPELLANT

Vs

Special Land Acquisition Officer And Others

RESPONDENT

Date of Decision : 02-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 226, 300A
Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 6, 9, 11, 12(2), 16, 31(2), 34, 48
Indian Partnership Act, 1932 — Section 18
Limited Liability Partnership Act, 2008 — Section 26

Citation : (2024) 01 BOM CK 0001

Hon'ble Judges : B. P. Colabawalla, J; Somasekhar Sundaresan, J

Bench : Division Bench

Advocate : Anil Anturkar, Akshay Pawar, Atharva Date, A.I. Patel, D.R. Shinde, S.N. Biradar

Final Decision : Disposed Of

Judgement

Somasekhar Sundaresan, J

1. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. The core issue that falls for consideration in the captioned Writ Petition is whether the Petitioners had been given due notice under the Land Acquisition Act, 1894 ("1894 Act") in respect of a piece of land co-owned by them when it was acquired in 1989 in connection with the Kasarsai Irrigation Project.

3. The land in question is situated at Survey No. 19/2 [admeasuring 2 Hectares and 63 Are] at Village Nere, Taluka Maval, District Pune, out of which, land admeasuring 1 Hectare and 60 Are was the subject matter of acquisition under the 1894 Act [for short the "19/2 Land"]. The Petitioners were also owners of other parcels of land being Gat No. 26A, Gat No. 26B and Gat No. 26C [admeasuring 3 Hectares and 20 Are] [collectively, referred to as the "26ABC

Land”]. The acquisition in question, right from the Section 4 notification to the Award passed in the matter, covered both, the 19/2 Land and the 26ABC Land.

4. According to the Petitioners, they had no notice of the proposed acquisition in terms of Section 4(1). As a result, they would contend, they had no opportunity of raising objections under Section 5A, being unaware that their land was being acquired. Consequently, they contend, the acquisition is vitiated because due process under law is not complied with. For the reasons articulated below, and after giving our anxious consideration to the material on record, we are unable to agree with the Petitioners.

ARRAY OF PARTIES

5. The Petitioners, namely, Mr. Vilas Damu Shinde-Petitioner No.1, Mr. Dattu Bhau Shinde-Petitioner No. 2 and Mr. Maruti Vitthal Shinde-Petitioner No. 3 are all residents of Village Nere. The Petitioners had purchased the 19/2 Land from Respondent No. 5 viz. Mr. Damu Babu Jadhav vide a registered deed dated July 26, 1979.

6. Respondent No. 1 is the Special Land Acquisition Officer; Respondent No. 2 is the District Resettlement Officer, Pune; Respondent No. 3 is the Divisional Commissioner, Revenue, Pune; and Respondent No. 4 is the State of Maharashtra.

7. In the course of the proceedings, Respondent No 5 passed away and has since been replaced by his heirs and legal representatives.

8. Respondent No.6 viz. Mr. Soma Jaywant Yewale is a project affected person to whom the 19/2 Land is said to have been allotted. Since Respondent No 6 had passed away at the time of filing of the above Writ Petition [in 2014], his heirs and legal representatives were also made Respondent Nos.6A to 6E [collectively, “Respondent No 6”].

9. Meanwhile, the land in question (19/2 Land) is purported to have been sold by the various legal representatives of Mr. Yewale to Respondents No. 7 to 9 vide a registered sale deed dated July 5, 2013. These Respondents, in turn, purport to have developed the land so acquired, and purport to have sold sub-plots to multiple other parties between 2013 and 2016, with consequential mutation entries being made.

FACTUAL MATRIX

10. On February 6, 1981, the Kasarsai Irrigation Project was declared a public purpose project for which land was to be acquired. By this date, the Petitioners’ names had not been entered as the owners in the State’s land and revenue records. Therefore, on December 1, 1986, the Petitioners applied to the Collector, Pune and to Respondent No. 2, viz. the District Resettlement Officer, Pune to record the sale deed dated July 26, 1979, looking to the fact that the sale deed had been executed well prior to February 6, 1981. The Petitioners were directed by these authorities to approach the village Talathi, which led to an application

being made on December 2, 1986, who on the same date, by Mutation Entry No. 1602, recorded the names of the Petitioners as the owners of the 19/2 Land.

11. Thereafter, in relation to the 19/2 Land as well as the 26ABC Land, a notification under Section 4 was published on October 12, 1989. A declaration that the said lands were required for a public purpose was also issued under Section 6 on October 27, 1990. The last of the publications of the declaration under Section 6 was made on December 12, 1990. After this, a public notice under Section 9 was issued on December 13, 1990 while the Award under Section 11 was made on October 31, 1992. It is common ground among the parties that the notice of the Award under Section 12(2) was issued on November 16, 1992 and possession of the land, in exercise of powers under Section 16, was taken on December 4, 1992.

CONTENTIONS OF THE PARTIES

12. At the outset, Mr. Anil Anturkar, the learned Senior Counsel representing the Petitioners, submitted that the Petitioners are not seeking to unscramble the egg and disrupt the interests of the project affected persons who were allotted the 19/2 Land or any other person who has acquired any interest therein. He submitted that if he is correct in his submission that the State failed to follow due process stipulated in the 1894 Act, and with particular regard to Section 4, then the Petitioners were only seeking compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [for short the "2013 Act"]. Mr. Anturkar submitted that while notices under Section 9 also had not been served on or received by the Petitioners, he was not pressing that point since it is now well settled that failure to issue notices under Section 9 was not fatal to the acquisition. However, he would assert that failure to comply of serving individual notices on the Petitioners under Section 4(1), was indeed fatal to the acquisition of the 19/2 Land.

13. The crux of the argument canvassed by Mr. Anturkar is that no individual notices under Section 4(1) were served on the Petitioners despite their names having been recorded by Mutation Entry No. 1602 on December 2, 1986 evidencing that the 19/2 Land had been purchased by the Petitioners from Respondent No. 5 way back in 1979. While the Award was passed on October 31, 1992, the records would show that no compensation had been paid to the Petitioners, as the same was refused. Mr. Anturkar would submit that although the Petitioners had, in fact, filed an application under Section 48, since the facts of the case would not fall within the ambit of that provision, such application can at worst be treated as misconceived or wrongly advised, and in any case, would have no bearing on the merits of the case.

14. Mr. Anturkar laid emphasis on a letter dated February 13, 2007 from Respondent No. 2 to Respondent No. 1 to argue that the Petitioners had been consistently following up the matter with the authorities. Therefore, they could not be said to have been indolent for the assertion of their rights in this petition

to be vitiated by delays and laches.

15. Mr. Anturkar pointed to the affidavits of Respondent No 1, which have annexed a copy of the notice issued under Section 4(1) and also a copy of the register that recorded the persons to whom such notices had been issued. He would contend from Entry No. 7 in the said register that although notices were purported to have been issued to Petitioner No 1, Petitioner No 2 and Petitioner No.3 in respect of the 19/2 Land, the acknowledgment of service of the said notices is only signed by Petitioner No. 2 viz. Mr. Dattu Bhau Shinde, who appears to have signed on behalf of all the Petitioners. Since there is nothing to show that either Petitioner No. 1 or Petitioner No. 3 had authorized Petitioner No. 2 to accept notice on their behalf, he would contend that even on a demurrer, Respondent No 1 would only be able to claim that individual notice had been issued to Petitioner No. 2 alone, who had no authority to accept notice on behalf of Petitioner No. 1 and Petitioner No. 3. On this premise, Mr. Anturkar would submit that insofar as the 19/2 Land is concerned, there is an evident failure of issuance of notice under Section 4(1), which would make the entire acquisition process bad in law.

16. Referring to the principles under the law governing partnerships, Mr. Anturkar for the Petitioners would draw upon Section 18 of the Indian Partnership Act, 1932 and Section 26 of the Limited Liability Partnership Act, 2008. The former explicitly stipulates that a partner of a partnership firm is the agent of the firm for purposes of the business of the firm. The latter provides that every partner of a Limited Liability Partnership is an agent of the partnership but not of the other partners. Invoking these principles, the submission made was that neither was any such stipulation contained in the 1894 Act nor could it be said that Petitioner No. 2, as a co-owner, could be regarded in the eyes of law, as an agent of Petitioner No. 1 or Petitioner No. 3 for purposes of accepting notice under Section 4(1).

17. In support of the above proposition, Mr. Anturkar sought to rely upon a decision of the Hon'ble Supreme Court in the case of Champaran Cane Concern (Dissolved) (In all the Appeals) vs. State of Bihar and Another (In all the Appeals) – AIR 1963 SC 1737 ("Champaran") to submit that while in a partnership each partner acts for all, in a co-ownership, one co-owner is not the agent, real or implied, of the others. Thereafter, reliance was also placed on Sardar Ajitsingh Santoksingh vs. State of Maharashtra – AIR 1972 Bom 177 ("Sardar Ajitsingh") to submit that issuance of individual notices under Section 4(1) is a must in cases where the power to take over urgent possession under Section 17 is not invoked, for the statutory right to raise objections under Section 5A to be meaningfully available.

18. Addressing the objections to the Writ Petition on the premise that it was vitiated by delay and laches, Mr. Anturkar relied on the Hon'ble Supreme Court's judgment in Tukaram Kana Joshi vs. MIDC – (2013) 1 SCC 353 ("Tukaram") to submit that the constitutional right to property of illiterate farmers could not be

defeated on technical grounds citing delay, particularly when citizens in rural areas have a greater degree of implicit faith and trust in government agencies being just and fair. He would also rely on a more recent judgement of the Hon'ble Supreme Court in Sukh Dutt Ratna and Another vs. State of Himachal Pradesh and Others – (2022) 7 SCC 508 ("Sukh Dutt") to buttress the point that the State cannot, merely on the ground of delay and laches, evade its responsibility towards those from whom private property has been expropriated. In both these cases (they involved a gap of decades between the initial acquisition notification and the resort to a Writ Petition), the principle laid down is that the right to property, although not a fundamental right is a constitutional right under Article 300-A and Mr. Anturkar submitted that on mere technical grounds of delay, the rights of land-owners must not be permitted to be trampled upon. For all the aforesaid reasons, Mr. Anturkar submitted that the reliefs in the above Writ Petition be moulded and the State be directed to calculate the compensation payable to the Petitioners [for the 19/2 Land] as per the provisions of the 2013 Act.

19. On the other hand, Mr. A.I. Patel, the Learned Addl. GP representing Respondent Nos. 1 to 4 pointed out that the land acquisition in question covered both, the 19/2 Land and the 26ABC Land. All these parcels of land were co-owned by the Petitioners by their own showing and the register of issuance of individual notices under Section 4(1) shows that in respect of all the lands in question, it was Petitioner No. 2 who had accepted notice on behalf of all the Petitioners. The Petitioners have, without any grievance, participated in the very same land acquisition process and have accepted the compensation in respect of the 26ABC Land. However, only in relation to the 19/2 Land they now seek to contend that Petitioner No. 2 had no authority to accept notice on behalf of Petitioner No. 1 and Petitioner No. 3.

20. The Learned Addl. GP would submit that the Petitioners are banking on the potential inability of the State to come up with acute precision, on the basis of records to be pulled out after over three decades, to argue that an infirmity in the first notice would vitiate the entire acquisition process in relation to the 19/2 Land, and thereby claim compensation under the 2013 Act.

21. The Learned Addl. GP would also submit that the provisions of Section 24(2) of the 2013 Act are not at all attracted for the acquisition to be considered to have lapsed. Admittedly the 19/2 Land is now in possession of various other parties after the State took possession of it under the Award. Indeed, compensation was not paid to the Petitioners, but only because the Petitioners refused to accept the compensation. The panchnama and the possession receipt for the 19/2 Land (also covering the 26ABC Land) are part of the record, which the Ld. Additional GP relied upon to show that it would not lie in the mouth of the Petitioners to claim absence of notice or knowledge that the 19/2 Land was being acquired.

22. The Learned Addl. GP would argue that by their conduct, the Petitioners have

also forfeited the equities in favour of grant of interest to them since it is their conduct that led to the delay in receipt of compensation. His argument was that the Petitioners could not seek to benefit from their own wrong. Asserting that the petition is woefully delayed, reliance was placed on a decision of a five-judge bench of the Hon'ble Supreme Court disposing of a bunch of 31 Civil Appeals filed by the State of Madhya Pradesh and reported in AIR 1964 SC 1006 ("MP Appeals") to argue that while there is no stipulation of limitation period for pursuit of enforcement of rights under Article 226 of the Constitution of India, the period of limitation under the general law of limitation would be a reasonable standard to adopt.

23. In rejoinder, Mr. Akshay Pawar, the learned Counsel for the Petitioners, would submit that the Award on the record is only a draft award and not a finally signed one. He also argued that there is material to show that the notice under Section 4(1) appears to have been intended for issuance to Respondent No. 5 and not to the Petitioners. As an alternative to the reliefs sought, he would submit that if compensation is not to be computed and paid under the 2013 Act, the Petitioners may be provided with land commensurate with the 19/2 Land in the vicinity instead of the compensation amount.

24. Mr. D.R. Shinde, the Learned Counsel appearing on behalf of Respondents 7 to 9 reiterated the contents of his clients' affidavit and underlined that he makes no submissions on merits since the Petitioners have given up any claim to reclaiming the land that had been acquired by the State, and which has been dealt with subsequently by his clients.

CONSIDERATION OF THE RECORD

25. We note that this Writ Petition has had a chequered history. However, in view of the specific, structured, and moulded pursuit of the Petitioners' rights, the scope of the controversy now falls within a narrow compass, rendering it unnecessary to go into the history of the matter.

26. At the heart of the matter is a determination as to whether notice under Section 4(1) was validly served on the Petitioners and whether non-service of the said notice would lead us to the conclusion that the acquisition of the 19/2 Land was contrary to law.

27. We have given our anxious consideration to the rival contentions and have also perused the record. We have also called for and examined the original register of service of individual notices under Section 4(1) and the possession certificate. After carefully going through the record, we are unable to persuade ourselves to believe that the Petitioners had no notice whatsoever under Section 4(1) about the proposed acquisition of the 19/2 Land. We say this because:-

a. Firstly, the proposed acquisition of 19/2 Land was the subject matter of every notice, notification, publication and declaration throughout the journey of the wider area of land involved in the acquisition and which also included the 26ABC

Land that belonged to the Petitioners. The Petitioners were admittedly valid recipients of notice with full knowledge of the acquisition process through these very notices, notifications, publications and declarations in respect of the 26ABC Land. These instruments also contained explicit references to the 19/2 Land. Therefore, the foundational premise that the Petitioners had no knowledge and no notice of the acquisition does not inspire confidence.

b. Secondly, the Petitioners have themselves set out in the List of Dates [appended to the Synopsis in the Petition] that Village Nere, having been declared on February 6, 1981 as land that would be involved in the acquisition for the Kasarsai Irrigation Project, they applied on December 1, 1986, to the Collector, Pune and the District Resettlement Officer seeking mutation of the land records in relation to the 19/2 Land. They secured the Mutation Entry No. 1602 as a consequence of their vigilance of their ownership interest in the 19/2 Land and that too in the context of the proposed land acquisition, which eventually commenced in 1989. Having been vigilant to ensure that their name was entered in the land records [as their purchase of the 19/2 Land had preceded the notification of the Kasarsai Irrigation Project], and having participated in the land acquisition process in respect of the 26ABC Land, it would stand to reason that the Petitioners were fully aware that the 19/2 Land was an integral part of the acquisition that had been initiated and was underway since 1989.

c. Thirdly, the Petitioners claim that they had no opportunity to raise objections under Section 5A due to non-receipt of notice under Section 4(1), but they evidently had notice of the opportunity to raise objections to the land acquisition process in 1989-90, during which period they were well aware of what they owned (both the 26ABC Land and the 19/2 Land).

d. Fourthly, it is not the case of the Petitioners that one of them i.e. Petitioner No. 2 had not received the notice. The Petitioners acknowledge that Petitioner No. 2 appears to have received the notice, but their claim is that he had no authority, real or implied, to receive notices on behalf of Petitioner No. 1 and Petitioner No. 3. Yet, all three of them, including Petitioner No. 2, have jointly filed the Writ Petition impugning the acquisition process, on the premise that they had no notice. It is upon the production of the register of service of notice that they have moved on to arguing about the legal authority of one Petitioner to receive notices on behalf of the other Petitioners. Conscious of this facet, Mr. Anturkar, fairly stated that the conduct of Petitioner No. 2 may be regarded as unreasonable but that such conduct of Petitioner No. 2 cannot infect the interests of the other Petitioners who are entitled to individual notices.

e. Fifthly, in a related facet, the notice relating to the 26ABC Land is also accepted by Petitioner No. 2 on behalf of all Petitioners and the compensation computed has been accepted by all Petitioners, without raising any argument of any absence of authority, real or implied. Both the 26ABC Land and the 19/2 Land being the subject matter of the same acquisition process, it is difficult for us to digest that Petitioner No. 2 had authority to receive notices in respect of

the 26ABC Land but no authority to do so in respect of the 19/2 Land.

28. As mentioned earlier, faced with all this material, the Learned Counsel for the Petitioners, in rejoinder, sought to contend that the notice under Section 4(1) may have been intended to be issued to Respondent No. 5 and not to the Petitioners. However, assuming that such notice had indeed been addressed to Respondent No. 5 in relation to the 19/2 Land, it would still remain uncontroverted that such notice was even received by Petitioner No. 2. As a joint owner of the very same parcel of land for which mutation had been consciously effected (and that too triggered by the Kasarsai Irrigation Project having been envisaged), it would stand to reason that receipt of such notice would have alerted the Petitioners (demonstrably vigilant in asserting their rights), to demand that the Section 4(1) notice ought to be issued to them and not to Respondent No. 5.

29. It is in this context that the distance of time in the Petitioners raising a narrow technical contention about the infirmity in issuance of a notice under Section 4(1) has some bearing even on merits. The Hon'ble Supreme Court in Sukh Dutt, has ruled that the State cannot shield itself behind the ground of delay and laches and that there can be no "limitation" to doing justice. In this context, Sukh Dutt endorses the opinion expressed in Maharashtra SRTC vs. Balwant Regulator Motor Service – AIR 1969 SC 329 quite aptly by stating that the validity of the defence must be tried upon principles substantially equitable. Specifically:-

"Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

[Emphasis Supplied]

30. In the instant case, (i) the evident acceptance of notices in respect of the 26ABC Land by Petitioner No. 2 on behalf of all Petitioners; and (ii) the acceptance of the acquisition process and the consequent compensation being accepted in respect of the 26ABC Land, does not inspire confidence in the Petitioners' case that in respect of the 19/2 Land, Petitioner No. 2 had no authority to accept notice under Section 4(1) on behalf of Petitioner No. 1 and Petitioner No. 3. At the risk of repetition, we say this because the acquisition of the 26ABC Land and of the 19/2 Land was the subject matter of the same Section 4 notification.

31. On a review of the facts and documents on record, we are unable to be persuaded that the Petitioners have made out a case for holding that there is an infirmity in the issuance of the individual notice under Section 4(1). It is the Petitioners' case that commends itself to being regarded as so technical that it tips the balance of justice in favour of adopting the course of dismissing the petition.

32. In view of the forgoing discussion, we are not required to examine the argument of the Learned Addl. GP that there is an inordinate delay in filing the Writ Petition and that such delay is fatal to the challenge mounted by the Petitioners. Ultimately, in our opinion, it is the standard of "preponderance of probability" that must inform a finding in civil matters of this nature, and not the standard of "beyond reasonable doubt" that would apply to criminal matters. To accept the Petitioners' arguments in relation to having no notice under Section 4(1) for the 19/2 Land, and thereby being handicapped in enjoying the right to raise objections under Section 5A, would inexorably require adopting the latter standard. The test to be applied is what a reasonable mind acting reasonably, is most likely to endorse as to the events that transpired.

33. Therefore, the rulings in Champaran, Sardar Ajitsingh, Tukaram and Sukh Dutt, each an unexceptionable and binding declaration of the law, are of no assistance to the Petitioners' case that they received no notice of the acquisition of the 19/2 Land in compliance with Section 4(1). We are inclined to accept that the Petitioners, who have acted jointly in respect of the 26ABC Land in the very same acquisition proceedings, also had notice of the acquisition of the 19/2 Land for purposes of Section 4(1). It would be difficult to accept that they had no notice and therefore were handicapped by such purported lack of knowledge that they could not avail of their rights under Section 5A.

34. The principles of partnership law, in our opinion, have no relevance to the facts of the case. Admittedly, the Petitioners are co-owners and not partners. It is not the State's case that they were partners to suggest any implied authority. The State has also not relied on any statutorily implied authority for Petitioner No. 2 to accept notice on behalf of Petitioner No. 1 and Petitioner No. 3. What is evident is that the pattern of conduct by the three Petitioners in respect of another three pieces of land (the 26ABC Land) in the very same area under acquisition, would suggest at least on preponderance of probabilities, that Petitioner No. 2 had the authority to receive notices under Section 4(1) on behalf of Petitioner No. 1 and Petitioner No. 3 also in respect of the 19/2 Land.

35. While we have been persuaded to accept the version canvassed by the Ld. Additional GP on the merits of the issuance of notice under Section 4(1), we are unable to accept his submission that the Petitioners are not entitled to interest, and that too on the premise that they are to blame for the delay. Simply as a matter of equity, such an argument does not lend itself to acceptance, since the State has not only acquired and taken possession of the 19/2 Land but has also continued to enjoy the funds equivalent to the compensation for the same without parting with it for over three decades.

36. The 1894 Act inherently envisages a scheme of an obligation to pay interest on compensation payable for acquisition. Section 31 requires payment of compensation upon making of the Award. Section 34 stipulates the outer time limit for payment of compensation – it has to be paid at the time of, or prior to, taking possession of the land. In the instant case, admittedly, possession was

taken on December 4, 1992. The State has neither paid over the compensation nor deposited it in the Court where a reference would lie under Section 18. Even on a demurrer, even if it were the Petitioners who refused to accept payment, that situation is clearly envisaged under Section 31(2). One of the contingencies upon which compensation is envisaged as being incapable of being paid (leading to the obligation to make a reference to the competent court and deposit the compensation) is the refusal of consent to receive the compensation. In such a situation, the only alternative available to the State in the law is to deposit the same in court. Admittedly, no such deposit has been made. The compensation amount has been enjoyed by the State even while the land stood acquired and got deployed towards the State's irrigation project. Section 34 explicitly stipulates that interest shall be paid at the rate of 9% per annum for the first year from the date of taking possession and at the rate of 15% per annum for the period thereafter. We therefore direct the State to ensure that interest on the compensation applicable to the 19/2 Land in the Award must be calculated in compliance with Section 34, and be paid over to the Petitioners within a period of four weeks from the date of this judgment.

37. Rule is made absolute in the aforesaid terms and the Writ Petition is disposed of in terms thereof. There shall be no order as to costs. Though we have disposed of the Writ Petition, we place it on Board for reporting compliance on 6th February, 2024.

38. This judgment will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this judgment.