

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7070 OF 2013

Bhaskar Gana Bhoir and Another .. Petitioners
Vs
City and Industrial Development
Corporation of Maharashtra and Others. .. Respondents

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Shri Rahul Thakur for the Petitioners.
Shri Gopalkrishna S. Hegde for the Respondent Nos.1 and 1(a).
Shri V.S. Gokhale, AGP for the Respondent Nos.2 to 6.

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CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ
DATED : 17TH JULY 2015

ORAL JUDGMENT (PER A.S. OKA, J)

1. By an order dated 18th November 2014, the parties were put to notice that an endeavour shall be made to decide the Petition finally at the stage of admission. This litigation has a chequered history. The issue concerns the land bearing City Survey No.311/3 (Part) at Village Koparkhairane, Taluka, District – Thane, held by the Petitioners.

2. The case of the Petitioner is that the area admeasuring 10 Ares out of Survey No.318/3 (for short “the said land”) was taken over by the First Respondent- the City & Industrial Development Corporation of Maharashtra Limited (for short “CIDCO”). The CIDCO was entrusted with the responsibilities of development of a satellite City of Navi

Mumbai. In the year 2007, Writ Petition No.2369 of 2007 was filed by the Petitioners complaining about their illegal dispossession. It was pointed out in the said Writ Petition that the CIDCO has handed over the possession of the said land to a Company which was the Eighth Respondent in the said Writ Petition. It will be necessary to reproduce the order dated 14th June 2007 by which the said Writ Petition was disposed of.

“Rule. Heard forthwith.

The Petitioner by the present Petition claims as owner of Part of the land admeasuring 10 Ars of the property identified under Survey No.311/3 Part of village Kopar Khairane, District Thane. It is the grievance of the Petitioner that though the land was not acquired, the Respondent No.1 has handed over the possession of the land to Respondent No.8. On behalf of the Respondent No.2, an affidavit has been filed by Mr. Bhagwat, the Chief Land and Survey Officer, CIDCO.

We have heard the counsel for the parties. On the query to counsel for Respondent No.1, the learned counsel fairly concedes that in so far as the declaration under Section 6 of the Land acquisition Act, the land of 10 Ars of land identified under Survey No.311/3 Part has not been acquired. The learned counsel further makes a statement on the basis of the instructions obtained from the officer who is present in the court that the Respondent No.1 will take steps to commence the proceedings to acquire the said area of land of 10 Ars. We accept the statement made on behalf of the Respondent No.1 through their learned counsel. We direct the Respondent No.1 to forward the proposal to Respondent No.2 within two weeks from today and Respondent No.2 to complete the entire process not later than six months from Respondent No.1 forwarding the proposal. Rule made absolute accordingly. No order as to costs.”

(underlines supplied)

3. On the basis of the said order, the acquisition proceedings were initiated. A Notification under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (for short “the said Act”) was issued on 15th November 2007. The award under Section 11 of the said Act was made on 26th May 2008. In the award, apart from granting the market value of the acquired land and the statutory benefits under the said Act, in the Clause (c) of the operative part of the award, a direction was issued by the Special Land Acquisition Officer to the CIDCO to pay rental compensation at the rate of 8% per annum of the market value fixed to the Petitioner as the possession of the acquired land was taken over much prior to the initiation of the acquisition proceedings. On 20th October 2008, the First Respondent CIDCO made an Application to the Special Land Acquisition Officer. In the said Application, the First Respondent CIDCO pointed out that the said Clause (c) in the operative part of the award will have to be deleted. In fact, in the said letter, the First Respondent CIDCO requested the Special Land Acquisition Officer to hand over possession of the acquired land to it after taking over the same from the holder of the said land. Thereafter, an order purporting to be an order under Section 13A of the said Act was passed by the Special Land Acquisition Officer on 23rd October 2008. In the said order, the Special Land Acquisition Officer observed that it is not the jurisdiction of the Special Land Acquisition Officer to decide whether the possession of the acquired land was taken over by the Acquiring

Body prior to the date of Section 4(1) Notification. A Writ Petition was filed by the Petitioners being Writ Petition No.6652 of 2010 in this Court. The said Writ Petition was disposed of by an order dated 12th December 2012 by directing the Special Land Acquisition Officer to consider and decide the proposal submitted by the First Respondent CIDCO for deletion of Clause (c) of the operative part of the award. He was directed to proceed as if Clause (c) of the Award was intact.

4. The order dated 11th March 2013 was passed by the Deputy Collector (Land Acquisition) Metro Centre No.3, Thane. The Deputy Collector held that there was no provision under the said Act to pay rental compensation in case the possession of the acquired land is taken over prior to the date of Section 4(1) Notification. Therefore, the Deputy Collector came to the conclusion that the order dated 23rd October 2008 passed by the Special Land Acquisition Officer was legal and proper.

5. The present Petition has been filed for setting aside the award dated 11th March 2013 and for directing the Respondents to pay rental compensation as prayed for in the prayer clause (b) towards the illegal occupation and possession of the said land.

6. The learned counsel appearing for the Petitioners has relied upon various decisions of the Apex Court and this Court based on the State Government Resolution dated 1st December 1972 as modified by the subsequent Government Resolution dated 2nd April 1979. Under the said Government Resolutions, a provision was made for making payment of interim as well as final rental compensation to the persons who are deprived of the possession of the acquired land even prior to the date on which the Notification under Sub-section (1) of Section 4 of the said Act is issued. He urged that the State Government cannot deny rental compensation to the Petitioner.

7. The learned counsel appearing for the First Respondent CIDCO pointed out that even according to the case of the Petitioners, they were dispossessed in the year 1985. He urged that the Petitioners slept over the matter for years together and therefore, the Petition suffers from gross delay and laches. He urged that after a long lapse of time from the year 1985, no relief can be granted to the Petitioner. He submits that the First Respondent CIDCO is disputing that the Petitioners were dispossessed in the year 1985.

8. The learned AGP appearing for the State Government submitted that the case of the Petitioners can be considered provided it is governed by the relevant Government Resolutions. He

submitted that the action of deleting Clause (c) from the operative part of the award cannot be faulted with in view of the settled law.

9. We have given careful consideration to the submissions. We have already quoted the order dated 14th June 2007 in Writ Petition No.2369 of 2007. The said order shows that the learned counsel for the First Respondent CIDCO conceded before this Court that the said land has not been acquired and therefore, he made a statement that the First Respondent CIDCO will take steps to acquire the said land by submitting a proposal to the District Collector, Thane. Thus, in the year 2007, without raising any objection before the Court regarding the delay, the First Respondent CIDCO made a statement that the acquisition proceedings would be commenced. We must also note here that the learned counsel appearing for the Petitioners has relied upon the Written Statement of the First Respondent CIDCO filed in the Land Acquisition Reference No.2 of 2010 which was made at the instance of the Petitioners. Inviting our attention to Paragraph 6 of the Written Statement, his submission is that admittedly the possession of the said land was taken over by the First Respondent CIDCO in the year 1985.

10. On the basis of the order dated 14th June 2007, the Notification under Section 4 of the said Act was issued on 15th November 2007. The award under Section 11 of the said Act was made

on 26th May 2008. The award shows that the First Respondent CIDCO participated in the said proceedings before the Special Land Acquisition Officer. In Paragraph 3 of the award, the contention of the Petitioners is noted that by taking over of the possession of the said land, the CIDCO transferred the same to the Reliance Company. Clause (c) of the operative part of the award notes that the possession of the acquired land was taken over by the First Respondent CIDCO and was transferred to a Company. We must note here that the First Respondent did not challenge the said award, however, made an Application on 20th October 2008. In the said Application, surprisingly, a request was made by the First Respondent CIDCO to the Special Land Acquisition Officer to take over the possession of the acquired land and to place the First Respondent CIDCO in possession thereof. It was pointed out in the said letter that the Petitioners have filed a Contempt Petition. Infact, the said letter records that in terms of the award, the compensation has been deposited by the CIDCO.

11. From the order dated 14th June 2007 in Writ Petition No.2369 of 2007, it becomes clear that the First Respondent CIDCO accepted the grievance of the Petitioners that the possession of the acquired land was taken over before the acquisition and therefore, the First Respondent agreed to acquire the said land.

12. The cause of action for filing the earlier Petition arose when the Special Land Acquisition Officer passed the order dated 23rd October 2008. The said order was subjected to a challenge by the Petitioners by filing the Writ Petition No.6652 of 2010. After hearing the First Respondent CIDCO, this Court directed that the proposal for deletion of the said Clause (c) of the operative part of the award shall be decided afresh within a period of three months. Thereafter, the impugned order dated 11th March 2013 has been passed by the Deputy Collector, Thane. Therefore, the objection regarding delay raised by the First Respondent is not at all tenable.

13. Even the State Government has never objected to the said action of CIDCO of taking over possession of the said land before the acquisition and in fact, on the basis of the proposal submitted by the First Respondent CIDCO, the State Government initiated acquisition proceedings. Therefore, even the State Government accepted that the possession of the said land was taken over by the First Respondent CIDCO before commencement of the acquisition proceedings by issuing a Notification under Sub-section (1) of Section 4 of the said Act.

14. As far as the law regarding the payment of rental compensation is concerned, the same has been laid down by the Apex

Court in the case of *R.L. Jain, since deceased by Lrs. v. DDA and Others*¹. Paragraph 18 of the said decision reads thus:-

“In a case where the land owner is dispossessed prior to the issuance of preliminary notification under Section 4 (1) of the Act, the Government merely takes possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is, therefore, only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.”

(Underline supplied)

15. The law laid down by the Apex Court as well as the effect of the Government Resolution dated 1st December 1972 as modified by another Government Resolution dated 2nd April 1979 has been considered by the Division Bench of this Court in the case of *Ashok Chandrabhan Aagle and Others vs. State of Maharashtra and Others*². This Court held that even if the Application for grant of rental compensation is not made by the affected person, it is the duty and obligation of the State Government to ensure that the compensation is

1 (2004)4 SCC 79

2 2012(5) Bom.C.R. 107

paid in terms of the aforesaid Government Resolutions. In fact, general directions were issued to the State Government to take up the case of such persons for consideration. This Court held that in view of the law laid down by the Apex Court in the case of *R.L. Jain*, a duty has been cast on the Collector to award rental compensation or damages. This Court also held that primary responsibility to pay rental compensation is always of the State Government. From the events which have quoted above, it can be said that the possession of the said land was taken over by the CIDCO with tacit approval of the State Government and that is the reason why the State Government accepted the proposal of the First Respondent CIDCO to acquire the said land.

16. It is true that no exact date or month in which the possession of the said land was taken over by the First Respondent CIDCO is on record. However, it is undisputed that the possession of the acquired land was taken over by the First Respondent CIDCO before the Notification dated 15th November 2007 was issued under Sub-section (1) of Section 4 of the said Act. It is for the Collector to determine the date on which the Petitioners were dispossessed and the rental compensation will have to be paid from the said date.

17. Thus, the Petitioners were deprived of their said land without initiation of the acquisition proceedings. The acquisition

proceedings were belatedly commenced by the First Respondent and that too only after the aforesaid Petition was filed by the Petitioners in the year 2007. In fact, the rental compensation ought to have been paid by the First Respondent CIDCO to the Petitioners long back.

18. Though the rental compensation will have to be initially paid by the State Government, it will be open for the State Government to recover the same from the CIDCO in accordance with law.

19. Considering the action of the CIDCO and the stand taken before this Court, the First Respondent will have to be saddled with costs quantified at Rs.25,000/-.

20. Hence, we dispose of the Petition by passing the following order:-

ORDER :

- (a) We direct the Petitioners or their authorised representative to appear before the District Collector of the District Thane on 10th August 2015 at 11.00 a.m.;
- (b) The Petitioners shall produce an authenticated copy of this judgment and order before the Collector, Thane;

- (c) The Collector, Thane, shall consider the case of the Petitioners for payment of rental compensation in terms of the Government Resolution dated 1st December 1972 as modified by the subsequent Government Resolution dated 2nd April 1979;
- (d) The Collector, Thane shall also determine the date on which the possession of the said land was taken over by the First Respondent CIDCO. Hence, the Collector shall issue notice of inquiry to the First Respondent CIDCO;
- (e) As the award under Section 11 of the Land Acquisition Act, 1894 has been already made, the Collector shall determine final rental compensation payable to the Petitioners as expeditiously as possible and in any event within a period of four months from 10th August 2015;
- (f) The Petitioners and the First Respondent CIDCO will be entitled to produce necessary documents for determination of the rental compensation from the date on which the Petitioners were dispossessed;

- (g) On determination of the rental compensation by the Collector, the same shall be paid to the Petitioners by the State Government within a period of one month from the date on which the rental compensation is determined;
- (h) It will be open for the State Government to recover the said amount from the First Respondent CIDCO in accordance with law;
- (i) All the contentions of the parties on merits on this aspect are kept open;
- (j) We direct the First Respondent CIDCO to pay costs of this Petition quantified at Rs.25,000/- to the Petitioners within a period of two months from today;
- (k) The Rule is made absolute on above terms.