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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.5452 OF 2008

Govind Tukaram Shete & Ors. ...Petitioners
vs.
Special Land Acquisition Officer
No.2, Pune and others ...Respondents

Mr.Kunal Bhange i/b Mr.R.S.Shekhawat for the
Petitioners
Mr.V.S.Gokhale, AGP for the respondent Nos.1 to 3.

CORAM : A.S.OKA, &
V.L.ACHLIYA, JJ.
DATE : OCTOBER 9, 2015

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

1 The submissions were heard on the earlier date. By this petition under Article 226 of the Constitution of India, the challenge is to the acquisition proceedings under the Land Acquisition Act,1894 (for short 'the said Act'). The Award under section 11 of the said Act was made on 24th January 2008. The petitioners have contended that the acquisition has lapsed as the Award was not made within the time stipulated under section 11-A of the said Act. The property subject matter of this petition is the land bearing survey No.72/6 admeasuring 11 Ares situated at Bhore, Taluka Bhore, District Pune. A notification under sub-section (1) of section 4 of the said Act was issued on 29th April 2005. A declaration dated 23rd December 2005 under sub-section (1) of section 6 of the said Act was

published in the Government Gazette on 5th January 2006.

2 The contention raised in this petition is that from the date of the declaration under section 6 of the said Act, the impugned Award under section 11 of the said Act has not been made within the stipulated period of two years and therefore, the acquisition proceeding has lapsed.

3 There is an affidavit in reply filed by Smt. Sunanda Gaikwad, the Special Land Acquisition Officer No.2, Pune. It is contended therein that as the last date of the publication of declaration under section 6 of the said Act is 24th January 2006, the Award could have been validly made on or before 24th January 2008. It is pointed out that the declaration under sub-section (1) of section 6 was published on the "Gav(village) Chavdi" in the village on 24th January 2006. The Award was made on 24th January 2008. Reliance is placed on the statements to that effect made in the impugned Award.

4 The learned counsel for the petitioners invited our attention to the contents of the Award. He pointed out that even according to the Award, a public notice under sub-sections (1) and (2) of section 9 of the said Act was issued on 12th January 2006. He pointed out that after issuing a public notice under sub-sections (1) and (2) of section 9, there could not have been a publication of the

declaration under section 6. He pointed out that though it is contended that notice was affixed on Gav (village) Chavadi on 24th January 2006, there are no documents annexed to the affidavit in reply to show that there was such a publication. He urged that the said statement has been made in the Award only to ensure that the bar under section 11-A is not attracted. He urged that considering the provisions of sections 6 to 9 of the said Act, after the stage of section 9, there could not have been a publication of declaration under section 6.

5 The learned AGP invited our attention to sub-section (2) of section 6. He urged that apart from the publication of the declaration under sub-section (1) of section 6 in official Gazette and in two Daily Newspapers, the substance of such declaration is required to be published at convenient places in the locality where the acquired lands are situated. He urged that the date of the last of such publications will be the date of the declaration under section 6. He submitted that there is no legal bar to publish the declaration under section 6 after publication of a notice under sub-sections (1) and (2) of section 9. He urged that merely because such a declaration is published after issuing notices under sub-sections (1) and (2) of section 9 of the said Act, the same does not become bad in law. He urged that time provided under the provisions of section 11-A is of two years from the date of publication of the declaration. The last date of publication in accordance with sub-section

(2) of section 6 is the date of publication of the declaration under sub-section (1) of section 6. He would, therefore, urge that the Award and the acquisition proceedings are not vitiated.

6 We have carefully considered the submissions. Going by what is stated in the Award under section 11, the declaration dated 23rd December 2005 under sub-section (1) of section 6 was published in Government Gazette dated 5th January 2006. It was published in Daily newspapers Punyanagari and Kesari on 12th and 13th January 2006 respectively. It was published in the Tahsildar's Office at Bhore on 15th January 2006. It is alleged that it was published at Gav (village) Chavadi on 24th January 2006. If the date of publication at Gav Chavdi is 24th January 2006 is treated as the last date of publication, the Award made on 24th January 2008 will be within the time specified by section 11-A of the said Act.

7 Going by the affidavit in reply and the contents of the Award, public notices under sub-sections (1) and (2) of section 9 were issued on 12th January 2006 informing that the enquiry was fixed under sub-section (1) of section 11 on 31st January 2008. Exhibit-6 to the affidavit-in-reply is the letter dated 25th January 2006 addressed by the Gav Kamgar Talathi, Bhore to the Special Land Acquisition Officer No.2, Pune which records that notices under sub-sections 3 and 4 of section 9 as well as a copy of the official Gazette dated 5th January 2006 containing declaration under section 6

of the said Act was published on Gav Chavdi on 24th January 2006. It will be necessary to make a reference to the relevant provisions of the said Act. Sections 6 to 9 are relevant which read thus:

"6. Declaration that land is required for a public purpose.—(1) Subject to the provisions of' Part VII of this Act, [when the [appropriate Government] is satisfied, after considering the report, if any, made under Section 5-A, sub-section (2)], that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders[, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A, sub-section (2)]:

[Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1),—

(i) published after the commencement of the Land Acquisition (Amendment and Validation)

Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement** of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification]:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

1[*Explanation 1.*—In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.—Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.]

(2) [Every declaration] shall be published in the Official Gazette, 17[and in two daily

newspapers circulating in the locality in which the land is situate of which at least one, shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the [appropriate Government may acquire the land in a manner hereinafter appearing.

7. After declaration Collector to take order for acquisition.—Whenever any land shall have been so declared to be needed for a public purpose or for a Company, the [appropriate Government], or some officer authorised by the appropriate Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

8. Land to be marked out, measured and planned.— The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and if no plan has been made thereof, a plan to be made of the same.

9. Notice to persons interested.—(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under Section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of

such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and [registered under Sections 28 and 29 of the Indian Post Office Act, 1898]."

Even section 11-A of the said Act is relevant which reads thus:

"11-A. Period within which an award shall be made.—

(1) The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.—In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a

Court shall be excluded."

Under sub-section (1) of section 11-A, the period of two years from the date of publication of declaration under section 6 is provided for making an Award under section 11. The question is what is the date of publication of the declaration under section 6. The said question is answered by sub-section 2 of section 6. It provides that the last of the dates of publication effected in terms of sub-section (2) of section 6 and the giving of a public notice of the substance of such declaration at convenient places in locality shall be the date of publication of the declaration. That is how the stand of the State Government is that the date of publication is 24th January 2006 being the date of the publication of such declaration on village Chavdi.

8 At this juncture, we must note that the Apex Court has repeatedly held that the said Act is a complete Code by itself. Further step to be taken after declaration under section 6 are provided in section 7. Section 7 provides for the Appropriate Government or some Officer appointed by the appropriate Government directing the Collector to take order of acquisition of the land. The step contemplated under section 7 is an important step. Unless the said order is made, the acquisition cannot proceed further. The Appropriate Government or the Officer appointed by the Appropriate Government can issue directions to the Collector to

take order for acquisition only after the publication of a declaration in accordance with section 6. The question of invoking section 7 will arise only after the publication is made in accordance with sub-section (2) of section 6. If without making a publication in accordance with sub-section (2) of section 6, a direction is issued under section 7, the said direction will be per se illegal in as much as the condition precedent for issuing the direction is the publication of the declaration as contemplated by section 6. It is only after such a direction is issued under section 7 and the order of the Collector that the stage of marking out and measuring the notified lands in accordance with section 8 reaches. Only thereafter comes the step of the Collector issuing a public notice in terms of sub-section (1) of section 9 and the personal notice under sub-section (3) of section 9 which is followed by an inquiry contemplated by sub-section (1) of section 11 read with section.

9 If the submission made by the State Government that the publication of a declaration under section 6 can be made even after a notice is issued under sub-sections (1) and (2) of the section 9 is accepted, by that logic, the last publication of the declaration can be made just before an Award under section 11 is made.

10 There is one more aspect which needs serious consideration. Section 11-A is incorporated by the Amendment Act No.68 of 1984. Primarily, it is for

the protection of the owner or the person having interest in the acquired land. Section 11-A was incorporated to ensure that the acquisition is completed in a time bound manner. If the argument of the learned AGP is accepted that the last publication of the declaration under sub-section (1) of section 6 in terms of sub-section (2) of section 6 can be made even after the stage of section 9 is over, it will completely defeat the very object of enacting section 11-A and it will make the section redundant. If such submission is accepted, after completing enquiry contemplated under sub-section (1) of section 11, the State Government will be able to make publication of the declaration under section 6 by one of the modes provided under sub-section (2) of section 6 only with the object of bringing the Award within the time provided under section 11-A. In such a case it is quite possible there will be a gap of even few years between the date of the declaration under section 6 and its last publication which will completely defeat the very object of enacting section 11A

11 All the steps contemplated by section 6 are required to be taken in accordance with the scheme of the said Act. Every action taken under the said Act has to be in accordance with the provisions of the said Act and not otherwise. In the present case, as stated earlier, after the notice under sub-section (1) of section 9 was issued on 12th January 2006, the publication at Tahsildar's Office and at

the village chavdi is allegedly shown to have been made on 15th January 2006 and 24th January 2006 respectively. The Award is made on 24th January 2008 and that is how significantly, the date of the last publication appears to have been shown as 24th January 2006. Such publication is not at all valid.

12 However, even if we proceed on the footing that the publication made in the Tahsildar's Office on 15th January 2006 is valid, the Award will be contrary to section 11-A. The acquired land is situated at Bhor. A copy of the declaration under section 6 was affixed on the office of Tahsildar at Bhor. Prior to that it was published in the Government Gazette and in two newspapers. Thus, the publication of the the declaration by all the prescribed modes under sub section (2) of section 6 was completed on 15th January 2006 by publication in the office of the Tahsildar situated at Bhor which a convenient place in the locality. Thus, the last date of publication was 15th January 2006 which will be the date of the declaration within the meaning of sub-section (2) of section 6. Therefore, alleged subsequent publication will have to be ignored for the purpose of computing the period provided in section 11-A. After publishing the declaration under section 6 by all the modes provided by sub-section (2) thereof, only with a view to bring the Award within the stipulated period, successive publications cannot be made and even if made, the same will have to be ignored for the purpose of computing the period provided in section 11-A.

Thus, in the case in hand, the date of publication of the declaration under sub-section (1) of section 6 within the meaning of sub-section (2) of section 6 for the purpose of computing period provided in section 11-A will be 15th January 2006. That is how, the Award dated 24th January 2008 is made after the expiry of the stipulated period of two years. In view of provisions of section 11-A of the said Act, the proceedings for acquisition of the land in question shall stand lapsed.

13 Hence, the petition must succeed only to the extent of land bearing Survey No.72/6 admeasuring 11Ares.

14 Accordingly, we pass the following order:

- (I) Impugned Award dated 24th January 2008 and the acquisition proceedings stand vitiated only to the extent of land bearing Survey No.72/6 admeasuring 11 Ares at Bhor, Taluka Bhor, District Pune;
- (II) We make it clear that the acquisition in relation to the other lands covered by the said Award dated 24th January 2008 will continue to be valid;
- (III) We also clarify that the acquisition is not set aside on merits and therefore, this Judgment and Order will not prevent the State Government from taking steps from initiating the fresh proceedings for the acquisition of the said land;

- (IV) Rule is made absolute on above terms;
- (V) Civil applications do not survive and the same are disposed of.

(V.L.ACHLIYA, J.)

(A.S.OKA, J.)