

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5521 OF 2015

The Union of India]
Through the Deputy Salt]
Commissioner, 4th Floor,]
Exchange Building, Sprott]
Road/Sir Shivsagar Ramgulam]
Marg, Ballard Estate, Mumbai -]..... Petitioner/
400 001.] (Orgl. Opponent No.2)

versus

1]	Gulam Hussain Muhammad Munir Nalkhande	]
2]	Muhammad Akbar Muhammad Munir Nalkhande	]
3]	Muhammad Saleh Muhammad Munir Nalkhande	]
	66, Kazi Street, 3 rd floor, Mumbai 400 003. For self and Constituted Attorney of Respondent No.1, 2, 4 and 5 pursuant to POA dated 27-10-2007, 18-11-2007 13-3-2008.	]
4]	Muhammad Ibrahim Md. Munir Nalkhande	]
5]	Mariyam Muhammad Husian Bakhshi	]
6]	Special Land Acquisition Officer Metro (II), Uran, District Raigad	]

**Mr. S R Rajguru a/w Ms. Jyotsna N Pandhi for the Petitioner
Mr. Chirag Balsara with Ms. Ketaki Mishra i/by Diamondwala and Co. for
the Respondent Nos.1 to 5.**

**CORAM : R. M. SAVANT, J.
DATE : 01st October 2015**

ORAL JUDGMENT

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 28/10/2014 passed by the Reference Court i.e. the learned Civil Judge, Senior Division, Panvel by which order the following issue was framed :-

“Whether the Opponent No.2 prove that the land in question belongs to the Government?”

3 The reference proceedings in question is LAR No.15 of 1996 which is pending in the said Court. The said reference proceedings have arisen out of the Award dated 30/07/1994 passed by the Special Land Acquisition Officer, Metro Centre No.(II), Uran wherein the SLAO has concluded that the Claimants are not entitled to claim any compensation. It is required to be noted that the land in question i.e. Survey No.199/0 admeasuring 25 Hec. -35 Ares – 1 point was notified for acquisition for the public purpose of the New Town of Navi Mumbai vide Section 4 of the Land Acquisition Act, 1984 issued

on 07/09/1991. In the context of the present Petition, it would be relevant to note that the subject matter of acquisition was mentioned as *“all lease-hold and other outstanding interest of the persons in the lands specified in the schedule hereto are likely to be needed for the said public purposes”*.

Section 4 of the said Notification was followed by Section 6 issued on 21/09/1992 in which it was stated that Additional Commissioner, Konkan Division is satisfied that “the right, title and interest in the said lands are needed to be acquired at the expenses of the State Government for the said purpose”. It is after following the gamut of process mentioned in the Land Acquisition Act, 1894 (for brevity sake hereinafter referred to as “the said Act”), that the Award came to be declared on 30/07/1994, and as indicated above, the claimants' claim for compensation was rejected.

4 In so far as the claimants i.e. the Respondent Nos.1 to 5 herein are concerned, it appears that they had filed certain documents like “Jamin Kharda”, Kabuliyat, Conveyance before the Special Land Acquisition Officer. The Special Land Acquisition Officer, having regard to the fact that in the 7x12 extract wherein the land is recorded as “Mithagar” (Salt Pan) held that the Respondent Nos.1 to 5 herein i.e. the Claimants were mere licensees and were manufacturing salt only on the basis of licence granted to them, and held them not entitled for any compensation.

5 After the Award was passed, the Respondent Nos.1 to 5 herein i.e. the Claimants applied to the Collector for the Reference to be made under Section 18 of the said Act to the Reference Court by their Application dated 26/10/1994. In the said application it was stated that they have filed the application for seeking just compensation and for the matter being referred to the Reference Court under Section 18 of the said Act and for awarding just compensation for the rights of the Claimants as notified under Section 4 of the said Act, and also for determining the proprietary rights of the Claimants so far as the salt works and the land underneath the said salt works which have been acquired by declaring the Award.

6 The said application of the Claimants was considered by the Collector and accordingly a Reference was made to the Reference Court which has been numbered as Land Acquisition Reference No.15 of 1996. The said Reference proceedings proceeded to trial, issues were framed, and it seems that during the cross examination of the witness of the Claimants that the order dated 28/10/2014 was passed and the additional issue which has been adverted to herein above was framed. It is against framing of the said issue, that the Petitioner herein i.e. the Union of India has invoked the writ jurisdiction of this Court under Article 227 of the Constitution of India.

7 The principal contention of the learned counsel Shri S.R.Rajguru

appearing for the Petitioner i.e. the Union of India is that the issue of title cannot be gone into in the proceedings under Section 18 of the Land Acquisition Act. The learned counsel would contend that what was sought to be acquired of the Respondent Nos.1 to 5 i.e. the Claimants is, all lease-hold and other outstanding interest of the persons in the lands which were notified for acquisition. The learned counsel would contend that since there is no question of acquisition of any ownership rights of the Respondent Nos.1 to 5 i.e. the Claimants, the Reference Court has erred in framing the issue which has been framed by the impugned order which is taken exception to by way of the above Petition. The learned counsel sought to place reliance on the judgment of the Division Bench of this Court reported in 2007(6) Bom. C.R. 156 in the matter of Union of India & ors. v/s. Mohammed Masud Mohammed and ors. Relying upon the said judgment the learned counsel would contend that unless the ownership rights are to be acquired, the issue of title cannot be tried by the Reference Court.

8 Per contra, the learned counsel appearing for the Respondent Nos.1 to 4 i.e. the Claimants Shri Chirag Balsara, by relying upon the notifications under Section 4 and 6 of the said Act, would contend that all lease-hold and other outstanding interest of the persons in the lands were sought to be acquired which according to him include the ownership rights. The learned counsel would contend that the Claimants have filed number of

documents before the Reference Court to substantiate their case that they have ownership rights in the acquired property and are therefore to be compensated for the same. The learned counsel for the Claimants, by placing reliance on the said judgment of the Division Bench in *Mohammed Masud Mohammed's* case (supra), would contend that the Division Bench laid down the circumstances in which the issue of title can be gone into by the Reference Court viz. where issue of ownership was urged before the Special Land Acquisition Officer. The learned counsel would contend that since the Respondent Nos.1 to 5 herein i.e. the Claimants are seeking enhancement of compensation, they are entitled to produce such material before the Reference Court so as to buttress their case for enhanced compensation.

9 Having heard the learned counsel for the parties, I have considered the rival contentions. The question that is posed in the instant Petition is, whether the Reference Court was right in framing the issue that it has framed. At the cost of repetition the said issue is reproduced herein under :-

“Whether the Opponent No.2 prove that the land in question belongs to the Government?”

As indicated above the said issue was framed during the course of the cross-examination of the Claimants' witness, and a reading of the said issue discloses that the burden is put on the Government of India to prove its title.

10 In the context of the challenge raised in the above petition it would be apposite to revisit the notification under Section 4 of the said Act and what is sought to be acquired from the Claimants. Section 4 of the said Act, as indicated above, contemplates acquisition of “ all lease-hold and other outstanding interest” of the persons in the lands. Hence the subject matter of the acquisition was not the ownership rights. The notification under Section 6 of the said Act which follows the notification under Section 4 though included the word “title”, the said word cannot be considered de hors the notification Section 4 and would have to be interpreted in the context of the notification No.4 viz. “all lease-hold and other outstanding interest of the persons in the lands” . Hence the subject matter of the acquisition was not the ownership rights of the Claimants but all lease-hold and other outstanding interest that the persons may have in respect of the notified lands.

11 It is in the backdrop of the said factual position that the judgment of the Division Bench in *Mohammed Masud Mohammed's* case (supra) would have to be applied. In so far as the judgment of the Division Bench in *Mohammed Masud Mohammed's* case (supra) is concerned, the acquisition in the said case also concerned with the same public purpose i.e. the Navi Mumbai Project, and the notifications under Sections 4 and 6 of the said Act can be said to be identical as the notifications in the instant case. Though all

lease-hold and other outstanding interest of the persons in the lands were sought to be acquired, the Reference Court in the said case had gone into the issue of title and held that the claimants had title to the lands which were acquired and had accordingly granted compensation at the rate of Rs.15,000/- per acre and as also solatium at the rate of Rs.5,000/- per acre. The said Award was questioned by the Union of India by filing First Appeal in this Court. In the First Appeal, the question that was raised by the Union of India was, whether the issue of title could have been gone into by the Reference Court under Section 18 of the said Act, judgments were cited on either sides in support and against the said proposition. The Division Bench, after crystallizing the said issue as to whether an issue of title can be an issue in a Reference under Section 18 of the said Act concluded by holding that the subject matter of the Reference would depend upon the subject matter of acquisition. The Division Bench further held that if the acquisition is related to the limited rights in the land without any reference to the ownership right in the property, certainly the question of dealing with the ownership issue to ascertain compensation on that count would not arise in the reference proceedings under Section 18 of the said Act. The conclusion of the Division Bench is in paragraph 27 of the said judgment, which for the sake of ready reference is reproduced herein under :-

“Evidently, therefore, the scope of inquiry in the reference proceedings under Section 18 of the said Act would depend upon the subject matter of acquisition. If the acquisition is related to the limited rights in the

land without any reference to the ownership right in the property, certainly the question of dealing with the ownership issue to ascertain compensation on that count would not arise in the reference proceedings under Section 18 of the said Act. The reference under Section 18 of the said Act is essentially on account of dissatisfaction of the claimants about the award given by the Land Acquisition Officer. If the award does not relate to the subject of ownership of the land on the ground that the same has not been the subject matter of acquisition, the question of Reference Court going into the issue of title would not arise. It may be a different case where the subject matter of acquisition also includes ownership of land and the Land Acquisition Officer on account of lack of evidence on the part of the claimants to establish their right of ownership refuses to award any compensation on such claim. In such a case certainly the issue of ownership could be subject matter of reference. In a case where the notification under section 4 and the declaration under section 6 of the said Act do not include the subject matter of ownership of land, the question of Reference Court going into the said issue would not arise”

(emphasis supplied)

In the fact situation of the said case, which can be said to be identical to the fact situation in the present case in so far as the notification under section 4 and the declaration under section 6 of the said Act are concerned, The Division Bench held that where the notification under section 4 and the declaration under section 6 do not include the subject matter of ownership of land, the question of Reference Court going into the said issue would not arise. In the said judgment the Division Bench was also referred to the judgment reported in AIR 1921 Oudh 31 in the matter of Mohammad Wajeeh Mirza vs.

Secretary of State for India in Council wherein it has been held that the question of title arising between the Government and other claimants cannot be settled by a Judge in a Reference under section 18 of the said Act. The Division Bench has also referred to the judgment of the Apex Court reported in AIR 1955 SC 298 in the matter of Collector of Bombay v/s. Nusserwanji Rattanji Mistri & ors. wherein the Apex Court had summed up the law on the point as under :-

“To sum up, the State is not a “person interested” as defined in section 3(b) of the Act. It is not a party to the proceedings before the Collector in the sense, which the expression “parties to the litigation” carries. The Collector holds the proceedings and makes an award as a representative of the State Government. Land or an interest in land pre-owned by the State cannot be the subject-matter of acquisition by the State. The question of deciding the ownership of the State or holding of any interest by the State Government in proceedings before the Collector cannot arise in the proceedings before the Collector (as defined in section 3(c) of the Act. If it was Government land there was no question of initiating the proceedings for acquisition at all. The Government would not acquire the land, which already vests in it. A dispute as to the pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the Civil Court for determination either under section 18 or section 30 of the Act.”

Hence in so far as the position in law is concerned, in view of the authoritative pronouncement of the Division Bench in *Mohammed Masud Mohammed's* case (supra), the issue of ownership of land cannot be gone into in a Reference under Section 18 of the said Act unless the subject matter of the acquisition

were the ownership rights and which was an issue before the Special Land Acquisition Officer.

12 In the instant case, as indicated above, the ownership rights are not the subject matter of acquisition and hence there is no question of framing of an issue relating to the ownership of land in the instant Reference. As indicated above, it is during the course of cross-examination of the Claimants' witness that the issue which is the subject matter of challenge in the above Petition came to be framed. The matter is further compounded by the Reference Court by putting the burden on the Central Government to prove its title. How that could be done by the Reference Court is therefore a question which begs an answer. Be that as it may, the issue as framed is unsustainable in view of the facts and law as cited above.

13 The learned counsel for the Respondent Nos.1 to 5 i.e. the Claimants Shri Chirag Balsara was at pains to point out that the Claimants have relied upon various documents in support of their claim for enhanced compensation. The learned counsel for the Claimants sought to draw this Court's attention to the said documents. In my view, it is not necessary for this Court to carry out the said exercise of considering the documents. It is for the Claimants i.e. the Respondent Nos.1 to 5, who are seeking enhancement of compensation to produce such documents which they deem appropriate in

furtherance of their claim for enhancement of compensation.

14 Having regard to the facts and judgments as afore-stated, the impugned order dated 28/10/2014 would have to be quashed and set aside and is accordingly quashed and set aside. The issue framed by the Trial Court by the impugned order dated 28/10/2014 would resultantly stand deleted. The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the present Petition.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed Judgment.