

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8644 OF 2012

The Executive Engineer,
Upper Penganga Project Division no.4,
Akhada Balapur, Nanded
Under G.M.I.D.C. Aurangabad.

...Petitioner.

Versus

1. The State of Maharashtra.
2. The Deputy Collector,
And Special Land Acquisition Officer,
P.T. & M.I.W. No. 1, Nanded.
3. Gyanba S/o. Kishanrao Deshmukh,
Age. 48 yrs., Occ. Agri.,
R/o. Aamgavan, Tq. Hadgaon,
Dist. Nanded.
4. Gangaram S/o. Shyamrao Deshmukh,
Age. 72 yrs., Occ. & R/o. As above.
5. Uttamrao S/o. Dondbarao Deshmukh,
Age. 67 yrs., Occ. & R/o. As above.
6. Shankar S/o. Kandu Sonule,
Age. 52 yrs., Occ. & R/o. As above.
7. Digamber S/o. Deovrao Deshmukh,
Age. 60 yrs., Occ. & R/o. As above.
8. Gajanan S/o. Madhavrao Deshmukh,
Age. 35 yrs., Occ. & R/o. As above.
9. Uttamrao S/o. Abarao Deshmukh,
Age. 53 yrs., Occ. & R/o. As above.
10. Raosaheb S/o. Preshram Deshmukh,
Age. 57 yrs., Occ. & R/o. As above.
11. Ganeshrao S/o. Dattarao Deshmukh,
Age. 67 yrs., Occ. & R/o. As above.

12. Shantabai W/o. Purbhaji Deshmukh,
Age. 69 yrs., Occ. & R/o. As above. ...Respondents.

Advocate for Petitioner : Shri B.R. Surwase.

AGP for Respondent Nos. 1 & 2 : Shri S.K. Tambe.

Advocate for Respondent Nos. 3 to 12 : Shri S.K. Adkine.

CORAM : RAVINDRA V. GHUGE, J.

Dated : 13th December, 2017

ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. By this petition, the petitioner has put forth prayer clauses (B) and (C) (*in verbatim*) as under:-

“B. This Hon’ble be pleased to issue writ of certiorari or order or direction like the nature that the award U/sec. 28-A passed by the Deputy Collector (L.Acq.) No.1 (P.T. & M.I.W.) in CR No.40 dated 17/8/2012 in favour of the respondents/claimants of Rs. 17,27,534/- be quashed and set aside.

C. Pending hearing and final disposal of this writ petition, the award passed by the Deputy Collector (L.Acq.) No.1 (P.T.

& M.I.W.) in CR No.40 dated 17/8/2012 in favour of the respondents/claimants of Rs. 17,27,534/- be stayed.”

5. This Court had stayed the impugned award, while issuing notice on 15.10.2012 and while admitting the petition on 25.2.2013, the interim relief was continued.

6. On 27.2.2015, this Court has passed the following order:-

“1. Learned Advocate for the petitioner has placed reliance upon the judgment of the Division Bench of this Court (Coram :- **S.A. Bobde & F.M. Reis, JJ**), in the matter of *Ashok Ganaba N. Gaonkar Vs. State of Goa & Anr.*, reported at 2011 (5) ALL MR 596 and the judgment of the Division Bench of this Court (Coram :- **S.C. Dharmadhikari & Ravindra V. Ghuge, JJ**) in the matter of *Datta Rao S/o. Kerbarao Deshmukh & Ors. Vs. The State of Maharashtra and ors.*, reported at 1014 (3) ALL MR 385.

2. Contention is that the issue involved in this petition is squarely covered by the view taken by the Division Bench of this Court in the above referred two cases. He, therefore, submits that this petition can be disposed off in terms of the ratio laid down in the said judgments.

3. Shri Adkine, learned Advocate appearing for respondent Nos. 3 to 12 submits that the judgment delivered in *Dattarao s/o. Kerbrao Deshmukh & Ors.* (supra) has been challenged before Hon’ble Supreme Court of India and notices have been issued in the said matter. He prays for

three weeks time to make a statement on the next date.

4. In the light of the above, stand over to 23-03-2015.”

7. The dates and sequence of events in this matter are crucial and which are as under:-

(i) On 16.3.1981, the land was acquired pursuant to the notification under Section 4 of the Land Acquisition Act, 1894 ("LA Act") dated 16.12.1976 and Section 6 notification dated 13/03/1980.

(ii) After the land for Isapur Right Bank Canal was acquired, the SLAO delivered an award granting compensation on 2.3.1981.

(iii) On 30.9.1987, the Reference Court delivered its award in LAR No. 32 of 1985 under Section 18.

(iv) Only one of the claimants, namely, Sambharao Tukaram Deshmukh had preferred LAR No.32 of 1985.

(v) Sambharao approached this Court in First Appeal No. 1530 of 2010, seeking further enhancement. The First Appeal was allowed on 23.9.2010.

(vi) On 21.12.2010, respondent Nos.3 to 12, who were the claimants in the same acquisition proceedings, moved an application before the competent Court under Section 28-A for further enhancement. By order dated 17.8.2012, the competent authority granted enhancement to these respondents.

(vii) There is no dispute that Section 28-A provides for 3 months' limitation to seek enhancement in compensation after the award granting compensation is delivered.

8. Respondents 3 to 12 / Claimants have contended that since this Court has allowed the First Appeal of Sambharao on 23.9.2010, 3 months limitation are to be computed from 24.9.2010 and hence the proceedings initiated by these claimants are perfectly maintainable and are within limitation. It is, therefore, canvassed that the impugned order is perfectly sustainable and cannot be termed as being perverse or erroneous.

9. The learned Division Bench of this Court has considered a similar situation in the matter of Ashok Vs. State of Goa [2011(5) All MR 596], and has ruled that the limitation of 3 months for preferring an application under Section 28-A, is to be computed

from the date of the judgment delivered by the Reference Court. The date of the judgment delivered by the High Court or by the Apex Court in an appeal preferred by one of the claimants is not relevant.

10. The learned Division Bench of this Court (to which I was a Member) had considered a similar situation vide judgment dated 24.2.2014 in Writ Petition No.7540 of 2011 in the matter of Datta Rao S/o. Kerbarao Deshmukh and Others Versus State of Maharashtra and others. An identical fact situation was before the said Court and it was concluded that even if one of the claimants were to approach the High Court and he succeeds in further enhancement, the other claimants, who were fence sitters and did not move an application for similar reliefs within the limitation period, cannot take advantage of the subsequent judgment, so as to contend that the limitation would apply from the said date.

11. The claimants have relied upon the judgment of the learned Division Bench of this Court in the matter of Rajaram Gajanan Gangal and Others Versus Special Land Acquisition Officer and another [2001 (2) Mh.L.J. 279]. Learned advocate contends that as the LA Act is a beneficial legislation, the moment any of the claimants succeeds in the higher Court, notwithstanding whether other claimants have moved an application under Section 28-A or

not, it is the duty of the Collector to grant identical enhanced compensation to all the claimants. I do not find that the submissions of the learned Advocate can be sustained keeping in view that in the Rajaram's case (supra), placing reliance upon the judgment of the Hon'ble Apex Court in the matter of A. Vishwanatha Pillai Versus Tahsildar [AIR 1991 SC 1966], it has been concluded that any person interested in the land in question is entitled to make an application under Section 28-A of the LA Act.

12. In Vishwanatha Pillai's Case (Supra), the issue of Section 28-A of the Land Acquisition Act was not involved while determining the dispute between the parties. Though, Section 28-A has been amended by the Act 69 of 1984, with effect from 24/09/1984, the issue of determination was not before the Hon'ble Apex Court in the case of Vishwanatha Pillai (Supra).

13. The learned Division Bench in Rajaram's case (Supra), has concluded in paragraph No. 7 that the only restriction placed under Section 28-A is that the aggrieved person shall make an application within three months from the date of the award of the Court in respect of the neighbouring land under the same notification on the basis of which redetermination of market valuation of the land in question is sought. The purpose of giving notice to all

interested persons by the Collector, who is obliged to conduct an enquiry after receiving an application for redetermination, is to enable such person an opportunity of being heard. The learned bench, therefore, held that all aggrieved persons who had a right of being heard before redetermination is done by the Collector in response to the notice of hearing issued by the Collector under Sub-Section (2) of Section 28-A, will have to be treated equally with other interested persons who happened to be applicants.

14. The Hon'ble Apex Court in the case of Tota Ram Versus State of U.P. And Others [(1997) 6 SCC 280], was specifically considering the limitation period of three month in filing an application for re-determination of compensation under Section 28-A. It was concluded that the limitation would start from the date of the award and not from the date of the knowledge of the award. Time taken for obtaining certified copy of the award and the decree was to be excluded.

15. In the matter of Datta Rao (Supra), who happened to be a co-claimants along with respondent Nos. 3 to 12 herein, this Court has considered the contention that since Sambharao Tukaram Deshmukh succeeded before this Court in First Appeal, by which, he acquired enhanced compensation, and concluded that Datta Rao

and others cannot claim the same relief when the First Appeal was decided by this Court as they had not approached this Court and had not applied u/s. 28-A within 3 months.

16. It is informed by the learned advocate for the claimants herein that from 1987 till 2010 they did not move any application under Section 28-A. After 23 years, they have moved the said application since Sambharao succeeded in the First Appeal by judgment dated 23/09/2010. The Division Bench of this Court in the case of Surendrakumar Madhusudan Mor Versus State of Maharashtra, [2012 (5) Mh.L.J 607], considering the restriction imposed on an application seeking redetermination of the compensation under Section 28-A, concluded that an application for such re-determination has to be made within the limitation prescribed, notwithstanding whether one amongst them has preferred a First Appeal for seeking enhancement.

17. Therefore, to be more specific, it would be apposite to reproduce the conclusions in Rajaram's case (Supra) in paragraph 7 and 8 here under :

“7. ...In our view, as the said provision obligates the Collector to give notice to all the interested persons before redetermination of the compensation; and once a person cannot be deprived of the benefit of redetermination of the

amount. Moreover, the redetermination of the amount is done in respect of market value of the land in terms of the award passed in respect of the neighbouring land falling under the same Notification under section 4, but not with regard to the share of the person who makes the application under the said provisions. Once redetermination is made, it is irrelevant as to at whose instance the same has been done, but the respondents/authorities are under an obligation to give benefit of the said redetermination to all the interested persons irrespective of whether they had preferred any application or not. Only this approach would fulfil the letter and spirit of section 28A of the Act. On this interpretation, the only possible and permissible view is that, all persons who are interested in the land in question would be entitled to share the benefit arising on account of the redetermination award on pro-rata basis as per their respective entitlement and none of the interested person whether co-owner or a tenant can be deprived of the benefit merely on the ground that he had not preferred any application under section 28(1) of the Act. The view which we have taken is consistent with the view taken by the Apex Court as noticed by this Court in the decision dated 21-1-1999 in writ petition No. 255 of 1998 which is extracted in para 4 above.

8. If the above view is applied to the facts on hand, the impugned order passed by the Special Land Acquisition Officer dated 3-1-2000 cannot stand the given of judicial scrutiny. Besides that what appears to us is that no notice was given to the petitioners by the Collector in terms of sub-section (2) of the Act before redetermination of the amount of compensation pursuant to the application made by the

tenant Shri Bhagat in respect of the suit land. At least no record was brought to our notice to rebut this position. In the circumstances it is wholly inappropriate on the part of the respondents to resist the petitioner's claim, whereas the impugned order is illegal."

18. In the instant case, be it Sambharao or be it Datta Rao or any of the claimants in this petition, each has a separate piece of land and each has been granted compensation after recording of oral and documentary evidence by the SLAO depending upon the quality of the land and other attending factors. In Rajaram's case (Supra), the land lord as well as the tenant were concerned with only one piece of land whose redetermination for compensation was carried out and out of the said compensation, 60% was paid to the tenant. The land-lord, therefore, was aggrieved as he was not paid his share. The observations of the learned Division Bench in Rajaram's case (Supra), reproduced above, pertain to a single piece of land whose redetermination was done and the land-lord was deprived of the redetermination portion of compensation, only because he had not approached the Collector under Section 28-A. No further determination was required with regard to the said land and it was only a matter of apportionment of the share of the land-lord on the basis of redetermination of a single piece of land which was already done at the behest of the tenant.

19. In the instant case, each of the claimants before this Court, as like in the case of Datta Rao (Supra), wherein the claim has been rejected by the learned Division Bench by judgment dated 24/02/2014, did not apply u/s. 28-A and redetermination of the compensation with respect to their independent piece of land, owned by the claimants, was never carried out. Datta Rao and two others, as well as the ten claimants in this petition, without any redetermination of their individually owned lands, seek to claim parity in compensation with reference to the land of Sambharao. It is in the backdrop of this factual matrix that the view taken in Rajaram's case (Supra) would be distinct and different and would not be applicable to the case of claimants here in.

20. The learned counsel for the petitioner has tendered, across the bar, the judgment delivered by the Hon'ble Apex Court on 12/12/2017, which is yesterday, in the matter of Bharatsing Gulabsing Jakhad and Others Versus State of Maharashtra and Others in Civil Appeal No. 21792/2017. Some of the claimants had moved applications under Section 28-A for the second time as another claimant had succeeded in the First Appeal before the High Court in getting enhancement in compensation. Since, their first applications under Section 28-A, filed by the appellants, namely, Bharatsing and others, though in time/within limitation and were

rejected, the Hon'ble Apex Court concluded that the first applications should have been kept pending by the Collector when the First Appeals of some of the claimants were pending adjudication before the High Court at Bombay, Bench at Aurangabad. The appellants before the High Court succeeded and before the judgment in the First Appeal could be delivered, the applications under Section 28-A filed by Bharatsing and others were rejected. It is in this backdrop that the Hon'ble Apex Court has directed the Collector to reconsider the first applications filed within limitations, afresh.

21. It was also concluded in paragraph No. 12 in Bharatsing's case (Supra) as under :

“12. Subsequently, in Jose Antonio Cruz Dos R. Rodriguese and another v. Land Acquisition Collector, a three-Judge Bench of this Court explained the scheme of the Act and noted that Section 28A was under Part III of the Act. Further, Section 2 (d) of the Act defines ‘court’ to mean principal Civil Court of original jurisdiction unless a special judicial officer is appointed. Therefore, this Court was of the opinion that in Section 28A the ‘award’ means an award under Part III and ‘court’ can only mean the court to which reference is made by the Collector under Section 18. It was held that “the plain language of Section 28-A, therefore, prescribes the three months period of limitation to be reckoned from the date of award by the Court disposing of

the reference under Section 18, and not the appellate court dealing with the appeal against the award of the Reference Court.”

22. Considering the above, the applications filed by respondent Nos. 3 to 12 under 28-A after 23 years could not have been entertained by the Deputy Collector, Land Acquisition.

23. As such, this petition is allowed in terms of prayer clause ‘B’. The impugned order dated 17/08/2012 is quashed and set aside and the applications under Section 28-A filed by respondent Nos. 3 to 12 stand rejected for being barred as they have been filed after 23 years from the date of the order.

(RAVINDRA V. GHUGE, J.)