

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3277 OF 2015

UTTAM MAROTI WADALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH
FIRST APPEAL NO. 3278 OF 2015

SMT. GANGABAI W/O YADAVRAO WADALE (DIED) THROUGH L.RS.
VENKATRAO S/O YADAVRAO WADALE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants : Mr. Subhash S. Chillarge
AGP for Respondents: Mr. S.P. Sonpawale
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CORAM : V. K. JADHAV, J.
DATED : 15th FEBRUARY, 2017

PER COURT:-

1. Being aggrieved by the common judgment and award passed by the learned Joint Civil Judge, Senior Division, Udgir, dated 11.8.2015, in L.A.R. No. 147 of 2013 and L.A.R. No. 148 of 2012, the original claimants preferred these two separate first appeals.

2. Brief facts, giving rise to the present appeals are as follows:-

a) The appellants claimants are owners and in possession of land survey Nos. 76/2 and 75/1, situated at village Kodali, Tq. Udgir, District Latur and the same have been acquired by the State for the

purpose of extension of Gaothan of village Kodali. On 20.9.1990, a notification under Section 4(1) of the Land Acquisition Act was published and by award dated 16.3.1993, the S.L.A.O. awarded compensation for the acquired land, at the rate of Rs.16,800/- and Rs.19,500/- per hectare. Aggrieved by the inadequate amount of compensation, the appellants claimants have preferred aforesaid Land Acquisition References before the Reference court.

b) It has contended in the said Reference petitions that the State has acquired the aforesaid lands for non agriculture purpose and the acquired lands are fit and suitable for the use of non agriculture purpose. The S.L.A.O. has failed to consider the fertility of the acquired lands and awarded meager and inadequate amount of compensation. The appellants have therefore, claimed compensation of the acquired lands at the rate of Rs.50,000/- per acre.

c) The respondent State has strongly resisted those Reference petitions on various grounds. It has contended that the S.L.A.O., after making due enquiry and by considering all aspects of the matter, determined the value and accordingly awarded just and reasonable compensation. It has also contended that the Reference-petitions are not filed within prescribed period of limitation. The appellants claimants have adduced oral and documentary evidence

in support of their contentions. The respondent State has not adduced any evidence. The learned Joint C.J.S.D. Udgir, by common judgment and award dated 11.8.2015, dismissed both the Reference petitions, mainly on the ground that the Reference petitions are not filed within prescribed period of limitation.

3. Learned counsel for the appellants original claimants submits that the appellants themselves filed certified copy of the notice issued to the claimants under Section 12(2) of the Act Exh.37 and C.C. Form Exh.38. The S.L.A.O. has issued notice under Section 12(2) of the Act (Exh.37) on 17.3.1993 with direction to the appellants to remain present on 29.3.1993 for withdrawal of amount of compensation, as awarded. As per C.C. Form Exh.38, on 29.3.1993, the petitioners have withdrawn the amount of compensation. It is specific pleading in the petitions of the appellants that on 29.3.1993 they have got knowledge of the award. After petition is drafted by their counsel, Reference petitions were filed in the office of the respondent on 29.4.1993. Even the date of service of notice under Section 12(2) of the Act (Exh.37) is considered and even if the date of knowledge of the award, as pleaded in the Reference petitions, is considered, the Reference petitions filed on 29.4.1993 are within limitation. If the date of service of notice under Section 12(2) of the Act is considered, then also Reference petitions came to be filed

within six weeks and even if the date of knowledge is considered, the Reference petitions came to be filed within six months.

4. Learned counsel for the appellants further submits that the Reference court has not considered the same and erroneously held that the Reference petitions are not filed within prescribed period of limitation. It is Constitutional obligation upon the State to pay the compensation at the rate not less than the market value of the land as prescribed under Article 31(A) proviso 2 of the Constitution. It is therefore, for the State to decide its stand that all steps have been followed and claimants had failed to approach the Court within time prescribed under Section 18 of the Act. The initial burden is upon the State or the Collector to make out a case by necessary pleadings and proof of leading evidence to show that the claim is barred by limitation. Learned counsel in order to substantiate his contentions, placed reliance on the following judgments:-

- i. Maharashtra State Power Generation Co. Ltd. Urjanagar vs. Dr. Sheshrao Baliram Ingole and another, reported in 2016 (3) Mh.L.J. 786;
- ii. Bhagwan Das and others vs. State of U.P. and others, reported in 2010 LAC 672 (SC).

5. Learned counsel for the appellants original claimants submits

that the Reference court has correctly determined the market value of the acquired land by relying upon the sale instance at Exh.29, however, dismissed the Reference petitions mainly on the ground that the Reference petitions are not filed within prescribed period of limitation.

6. Learned A.G.P. for the respondent State submits that the appellants claimants themselves produced before the Reference Court the certified copy of notice issued under Section 12(2) of the Act (Exh.37) and C.C. Form (Exh.38). The State has discharged initial burden on the basis of those documents Exh.37 and Exh.38 respectively, that the appellants claimants, who have served with notice under Section 12(2) of the Act in between 17.3.1993 to 29.3.1993. As per the endorsement of office on Reference petitions, the appellants claimants filed said reference petitions on 13.01.1994. Though the appellants have contended that they have preferred reference petitions on 29.4.1993, however, there is specific endorsement on the Reference petitions that those Reference petitions were received by the respondent on 13.01.1994. Thus, the burden shifts on the appellants claimants to prove that reference petitions were, in fact, filed on 29.4.1993 and not on 13.01.1994. The Reference Court has discussed the same elaborately in para 13 of the judgment and thus rightly concluded that the reference

petitions are not filed within prescribed period of limitation

7. Learned A.G.P. submits that though notification under Section 4 was published on 20.09.1990, the Reference court has considered the sale instance Exh.29, which is came to be executed on 26.12.1994. Furthermore, on perusal of said sale instance at Exh.29, it appears that towards southern side of the said purchased land, there is original land of the purchaser. Thus, the sale instance Exh.29 does not reflect the correct market value of the land in the said vicinity. There is no substance in the appeals and thus the appeals are liable to be dismissed.

8. On careful perusal of documents Exh. 37 and 38, it appears that on 29.3.1993, the appellants claimants have withdrawn the amount of compensation under award. It has also specifically pleaded by the appellants claimants that on the date of withdrawal of compensation i.e. on 29.3.1993, they have got knowledge of the award. Ignoring the notice under Section 12(2) of the Act, issued and served on the claimants, in between 17.3.1993 to 29.3.1993, even the date 29.3.1993 is taken as it is, as a date of knowledge of award, as per the official endorsement on Reference Petitions Exh.1, it appears that the office has received said reference on 13.01.1994.

There is similar endorsement of the office on Vakalatnama Exh.43, filed in the office alongwith those References and the said Vakalatnama is also bears the date below the endorsement, as 13.01.1994. It thus appears that as per the endorsement made by the office on the reference petitions, the reference petitions were not filed within a period of six months from the date of award, as pleaded by the appellants-claimants.

9. Learned counsel for the appellants vehemently submitted that the claim petitions were filed on 29.4.1993 and not on 13.01.1994, learned counsel however has admitted that except the date mentioned at the end of Reference petitions as 29.04.1993, there is no other document available to substantiate his contention that in fact the Reference petitions were filed on 29.04.1993 and not on 13.01.1994.

10. In the case of ***Maharashtra State Power Generation Co. Ltd. vs. Dr. Sheshrao Baliram Ingole and Anr (supra)*** in para 51, 52 and 53 of the judgment, the Supreme Court has made the following observations:-

“51. Coming to the second question of law regarding burden of proof, no doubt the normal principle is that the burden to prove that the claim is within limitation is upon the person or party, who comes before the Court, to establish it and it is only upon leading

evidence that the onus shall shift upon the respondent or the other side. The Apex Court in the cases of Laxman Lal and K.P. Plantation Private Limited, has held, as has been pointed out in the initial paras, that it is the constitutional obligation upon the State to pay the compensation at a rate which is not less than the market value of the land, as prescribed under the second proviso to clause (1) of Article 31-A of the Constitution of India. It is, therefore, for the State to justify its stand that all the steps, as are required to be taken under sub-section (2) of Section 12 read with Section 18 of the said Act, have been followed, and that the claimant has failed to approach the Court within the time prescribed under clause (a) and (b) below proviso to sub-section (2) of Section 18 of the Land Acquisition Act. If the Collector or the State wanted to prevent the claimant from seeking enforcement of constitutional obligation or fundamental right, then the initial burden is upon it to make out a case by necessary pleadings and proof by leading evidence to show that the claim is barred by the law of limitation, as prescribed under clauses (a) and (b) below sub-section (2) of Section 18 of the said Act, which shall be subject to evidence in rebuttal.

52. Even the language of the clauses (a) and (b) below sub-section (2) of Section 18 of the said Act requires the Collector to establish the fact that the claimant, as contemplated by clause (a), was present or represented before him at the time when the award was made, and in other cases covered by clause (b), that the claimant had actual or constructive knowledge of the essential contents of the award and that the reference was not preferred within a period of six weeks or six months, as the case may be, from the date of such knowledge. The Collector being in custody of the entire record, it is for him to plead and prove that the reference preferred under Section 18 of the said Act was barred by the law of limitation. It is, therefore, for the State, acting through the

Collector, to discharge its burden if it wanted to deny a fundamental right to the claimant to get the market value of the land acquired determined by the Court, by seeking reference under Section 18 of the said Act.

53. It is not expected from the claimant to plead and prove the negative facts that he was not present or was not represented before the Collector when the award was made, as contemplated by clause (a) below sub-section (2) of Section 18 of the Land Acquisition Act, or any other cases covered by clause (b) therein, that he was not having the actual or constructed knowledge of the essential contents of the award so as to prefer a reference under Section 18 of the said Act either within a period of six weeks or within a period of six months, as the case may be. No doubt, that it would be advisable for the claimant to make such pleading in the reference petition under Section 18 of the said Act, but absence of such pleading would not be enough to deprive the claimant of a right to seek a reference for compensation at a market value of the land under acquisition. The question No.(ii) is answered accordingly.”

11. In the case of ***Bhagwan Das and others vs. State of U.P. and others (supra)***, Supreme Court in para 13 of the judgment has made the following observations:-

“13. When a person interested makes an application for reference seeking the benefit of six months period from the date of knowledge, the initial onus is on him to prove that he (or his representative) was not present when the award was made, that he did not receive any notice under Section 12(2) of the Act, and that

he did not have the knowledge of the contents of the award during a period of six months prior to the filing application for reference. This onus is discharged by asserting these facts on oath. He is not expected to prove the negative. Once the initial onus is discharged by the claimant/person interested, it is for the Land Acquisition Collector to establish that the person interested was present either in person or through his representative when the award was made, or that he had received a notice under Section 12(2) of the Act, or that he had knowledge of the contents of the award. Actual or constructive knowledge of the contents of the award can be established by the Collector by proving that the person interested had received or drawn the compensation amount for the acquired land, or had attested the Mahazar/ Panchnama/proceedings delivering possession of the acquired land in pursuance of the acquisition, or had filed a case challenging the award or had acknowledged the making of the award in any document or in statement on oath or evidence. The person interested, not being in possession of the acquired land and the name of the State or its transferee being entered in the revenue municipal records coupled with delay, can also lead to an inference of constructive knowledge. In the absence of any such evidence by the Collector, the claim of the person interested that he did not have knowledge earlier will be accepted, unless there are compelling circumstances to not to do so."

12. In both the above cited cases, it has been held that initial burden is upon the State or the Collector to make out a case by necessary pleading and to prove by leading evidence to show that the claimants had actual or constructive knowledge of contents of the award and reference was not preferred within the time prescribed

under the Act and thus, the claim is barred by limitation. In the instant case, on the basis of certified copy of documents Exh.37 and C.C. Form Exh.38, respectively, filed by the appellants claimants themselves, the State has discharged initial burden to the effect that the appellants claimants had actual or constructive knowledge of the contents of award on a particular date i.e. on 29.03.1993. Furthermore, the State has also discharged initial burden by pointing out official endorsement on the reference petitions as well as on the Vakalatnama filed alongwith the reference petitions in the office of the S.L.A.O. that reference petitions were received on 13.1.1994 and accordingly the said endorsement has been made on it. The appellants claimants if at all dispute the said date, mentioned under the official endorsement and take out ground that in fact, the claim petitions were filed on 29.04.1993 and not on 13.01.1994, the burden shifts on the appellants-claimants to prove the same. Though, the date 29.04.1993 is mentioned on the reference petitions as well as on Vakalatnama filed before the authority, on both these documents there are official endorsements about receipt of Reference petitions and Vakalatnama as on 13.01.1994. The Reference court has therefore, rightly concluded that the petitions are not filed within prescribed period of limitation.

13. So far as the sale instance Exh.29 is concerned, the same is of

posterior date of notification under Section 4 of the Act. Section 4 notification was published on 29.09.1990, whereas the sale instance is dated 26.09.1994. Furthermore, the purchaser in the said sale instance had purchased the said land situated adjacent to his own land. In view of this also, I do not think that the Reference Court has correctly come to the conclusion about the market value of the acquired land in the said vicinity.

14. In view of above discussion, I do not find any substance in the first appeals. Both the first appeals are hereby dismissed. No costs. The appeals are accordingly disposed of.

(V. K. JADHAV, J.)

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