

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2018 OF 2014

Anant Narayan Kulkarni.] ... Petitioner

Versus

The State of Maharashtra,]
Through Ministry of Revenue & Ors.] ... Respondents

Mr. Amit Borkar for Petitioner.
Mr. P. G. Sawant, AGP for State.

CORAM :- DR. MANJULA CHELLUR, C.J., &
G. S. KULKARNI, J.
DATE :- 15 MARCH 2017

P. C. :-

1. The petitioner initially approached this Court challenging rejection of application under Section 48 (1) of the Land Acquisition Act 1894 (for short, '1894 Act') by an order dated 31/01/2014 passed by respondent no.4. Subsequently in 2017, he was allowed to amend the Writ Petition by which amendment he takes contention of lapsing of acquisition proceedings itself for not publishing an award under Section 11 of the 1894 Act within two years and from the date of publication of notification under Section 6 of the 1894 Act.

2. According to the petitioner, there was a partition in the family after notification under Section 11 of the Maharashtra Project

Affected Persons Rehabilitation Act, 1986. According to him, in the year 2002, precisely on 30/03/2002, there was a partition in the family of the petitioner and therefore the slab fixed as per the notification dated 31/07/2000 issued under Section 11 is incorrect and further by the time notification dated 03/08/2002 came to be issued under Section 13 of the above Act, there was reduction in the slab and therefore the said benefit has to be extended to the petitioner.

3. Second contention of the petitioner is by virtue of enquiry under Section 5A in terms of report of Agricultural Officer, uncultivable land was measuring 0.97 Ares. However, there is total ignorance of this material fact while passing the award since the award considered only 0.80 Ares of land and therefore there is no application of mind while passing the award. According to the petitioner, the notification under Section 6 of the Act was dated 24/01/2011 and the date of award is 21/01/2013. His contention is that this date 24/01/2011 is the last notification published under Section 6 of the 1894 Act. Though it could be one of the modes of publication of notification, without the record being placed before the Court substantiating the same, the said date cannot be accepted. Therefore, it has to be presumed that the last date of notification under Section 6 would be the date of gazette notification from which date. If the date on which the award was taken is 21/01/2013, definitely it is beyond the period of two years. Therefore, the entire proceeding of acquisition lapses.

4. Apparently, the partition was on 30/03/2002 i.e. two years after the first publication of notice under Section 11 of Maharashtra Project Affected Persons Rehabilitation Act, 1986 i.e. on 31/07/2000. As per the prevailing slab on 31/07/2000, the extent of land notified is very much within the procedure and one cannot recognize the rights of the parties said to have been derived from the so called 'partition' dated 30/03/2002. However, the mutation changes as per the 7/12 extract are much later. Therefore, one cannot rely upon the partition deed documents now projected. Learned Counsel for petitioner fairly submits that he will not insist upon placing reliance on the so called partition.

5. Then coming to the extent of uncultivable land, though as per Exh.C at page 17, the petitioner objected to 0.98.5 Ares, the officer, while considering the objection during the enquiry under Section 5A, there is a statement by District Resettlement Officer which is endorsed by the Special Land Acquisition Officer that 0.40 Ares of land is uncultivable land. However in the award, they opined that the uncultivable land is only 0.80 Ares as per the award made on 21/01/2013. Apparently, there was no challenge to the said fact contending non-application of mind so far as measurement of uncultivable land.

6. On the other hand, the present Writ Petition mainly refers to Section 48 of the 1894 Act seeking deletion of the land from

acquisition altogether on different ground. Even if there is such mentioning in the course of enquiry under Section 5A, one cannot take it for granted the said statement of Resettlement Officer as genuine and correct since in the normal course of business, 7/12 extract is meant to be maintained under the revenue code of the State indicating all the details pertaining to the land like who is in possession of the land, who is cultivating the land, to what extent crops are cultivated and so also how much land is cultivated and how much extent is not cultivated. Till date, no such 7/12 extract has been placed on record indicating that so far as 0.40 Ares of land which was uncultivable land.

7. Then coming to the last argument with regard to lapse of acquisition proceedings as contemplated under Section 11A of the Act, no doubt, the respondent authorities are claiming that on last date of notification under Section 6 of the 1894 Act was on 24/01/2011. Therefore, the award dated 21/01/2013 is within two years. Hence there is no lapse of proceedings. If this is the case of the petitioner, the moment award is published, he ought to have approached this Court seeking intervention of the Court contending that entire acquisition is lapsed so far as his land is concerned. That is not the case even in the application filed under Section 48. At no point of time, petitioner approached either this Court or any other authority raising such contention. Only in the year 2017 by way of an amendment, such contention is brought on record. It is not his case that there is no publication of notification in the Chawadi of the

village, one of the modes of publishing notification under Section 6, either before the concerned authority at the time of presenting Section 48 application or presenting the Writ Petition before this Court. According to us, all official acts are presumed to have been done in the normal course of business as mandated in the procedure unless until some rebuttal evidence is brought before the Court. In such a situation, one expects the petitioner not to waste time to raise such objection immediately after publication of award on 21/01/2013. As stated above, only in the year 2017, such idea was entertained by the petitioner, that too without any material on record. Therefore, the insistence of the learned Counsel for petitioner now to call upon the respondent authorities to produce the details pertaining to the publication of notification under Section 6 in the Chawadi after these many years, cannot be entertained. We have gone through the Judgment in the case of ***Ramrao s/o Pralhadrao Deshmukh (dead) through LRs Vs. State of Maharashtra and others***¹. Learned Counsel for petitioner referred to the observations made in para 17 of the said Judgment to contend that Section 11 is beneficial to owners of the land. There is no doubt so far as beneficial legislation by way of amendment being introduced into the Act by Section 11A. It is not in dispute that one of the modes of publication of Section 6 notification is by publication in the village Chawadi. According to the respondent, this was done on 21/04/2011. For the reasons set out above, we do not agree with the said contention of petitioner. In the referred case, there was a glaring material not to act on the last date of publication

¹ 2008 (2) Mh.L.J. 534

of notification under Section 6 because under Section 9 (1) notice, the petitioner was directed to appear before the Land Acquisition Officer on 15/05/1991 and whereas it was observed that the declaration under Section 6 was made on 12/11/1990. It was published in the government gazette on 01/08/1991 and published in the local newspapers on 06/01/1991 and 23/06/1991 respectively and the last of the modes of publication of declaration under Section 6 sub-Section (2) at the conspicuous place in the village was stated to be 28/11/1991. In view of these clear facts, Their Lordships have made such observations in para 17 of the Judgment.

8. In the present facts and circumstances, we have no doubt in reading of sub-Section (2) of Section 6 read with Section 11 in terms of sub-Section (1) of Section 11A of the 1894 Act so far as computation of two years from the last date of publication under Section 6 to the date of making an award under Section 11 of the Act, it is very much within time as contemplated under the Act.

9. For the reasons and discussion mentioned above, we reject the petition.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)