

Sequeira

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

WRIT PETITION NO. 6180 OF 2002

The Municipal Corporation of
City of Thane, Through
the Commissioner, Thane

... Petitioner.

V/s.

1. Special Land Acquisition Officer
Special unit, Thane .
2. State of Maharashtra.
3. M/s.Mundra Salt and Chemical
Industries, S/at: Station Road,
Jambli Naka

Through its partners :

- 3.1-A Shri Jugalkishor Hanumanbax
Mundra.
- 3.2-B Shri Balkrishna Hanumanbax
Mundra.
- 3.3 Shri Purnamal Lalchand Mundra
- 3.4 Shri Dhirajlal Gulabchand Mundra
- 3.5 Shri Keshavlal Chunilal Doshi
- 3.6 Shri Mangilal Javanmal Parmar
- 3.7 Shri Kanraj Jagrupchand ... Respondents.

Mr.R.S.Apte-Senior Advocate a/w Mr.Mandar Limaye, for the Petitioner.

Ms.M.P.Thakur, Asstt. Govt. Pleader, for the Respondent – State.

Mr.Rajesh Datar, for Respondent No.3.

*CORAM : DR. MANJULA CHELLUR, C.J. &
N.M. JAMDAR, J.*

RESERVED ON : AUGUST 14, 2017.

PRONOUNCED ON : SEPTEMBER 06, 2017.

JUDGMENT :-

The Petitioner – Municipal Corporation of Thane by this Writ Petition under Article 226 of the Constitution of India has challenged the award dated 8 July 2002 passed by the Special Land Acquisition Officer, Thane.

2. The Petitioner is a Municipal Corporation established under the provisions of the Maharashtra Municipal Corporation, Act 1949. Respondent No.1 is Special Land Acquisition Officer. Respondent No.2 is the State of Maharashtra. Respondent No.3 is a firm which is the owner of the land in question.

3. The subject matter of the Petition is the acquisition of part of a land bearing CTS No.1913, village Kopri, Thane. The

acquisition proceedings were initiated for the 20 metre wide road as per the sanctioned development plan for Thane City. A declaration under section 6 of the Land Acquisition Act of 1894, urgency clause of section 17(1) read with section 126(4) of the Maharashtra Regional & Town Planning Act, 1966, were published on 18 December 2000.

4. The CTS No.1913 is a large parcel of land. The present petition concerns an area admeasuring 9384.5 sq. metres. Earlier a notification was issued on 11 December 1980 for the part of the land for the purpose of acquisition for construction of a sewage pumping station. Another parcel of land admeasuring 32,506 sq. metres was also taken over for laying a pipeline. The Respondent No.3 the Owners had filed a writ petition in this Court questioning the acquisition, which was disposed of in terms of Consent terms. Proceedings also ensued in respect of title of the land since the Salt Department of Central Government had made a claim of ownership. In a suit filed by the Respondent No.3, the Respondent No.3 was declared as owner. The first appeal was filed by the Salt Department was disposed of. The proceedings further went up to the Apex Court and were finally disposed of by the Apex Court on 14 November 2000. The Respondent No.3 were held to be Owners.

5. In respect of the land in question, the acquisition proceedings were initiated on the proposal sent by the Assistant Director of Town Planning of Thane Municipal Corporation to the Collector Thane. The land under acquisition was demarcated. Pursuant to the proposal for acquisition, the land was acquired and an award was made by Respondent No.1 on 8 July 2002. The Special Land Acquisition Officer-SLAO awarded Rs.1,20,90,193/- as compensation to the Respondent No.3 for the land admeasuring 9384.5 sq. metres. The Owners relied upon a valuation report of a registered valuer estimating the market value of the land @ Rs.7000 per sq. metre. For the purpose of valuation the SLAO took the relevant date as 4 January 2001. Three sale instances were placed on record. SLAO took note of these sale instances, the previous awards and the Ready Reckoner maintained by the District Registrar and came to the conclusion that the rate of Rs.870/- per sq. metre was proper and accordingly proceeded to pass the Award on 8 July 2002 directing the Petitioner to pay Rs.1,20,90,193. The Petitioner-Corporation has challenged the Award by this petition, invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

6. Mr.Apte, learned Senior Advocate, appeared for the Petitioner Corporation. Ms.Thakur, learned Additional Government Pleader, represented the State and the SLAO. Mr.Rajesh Datar

learned Advocate appeared for the owners-Respondent No.3. Affidavit in reply is filed by the Respondent No.3 and also by the State. An additional affidavit is filed on behalf of the Respondent No.3.

7. As per the provisions of the Land Acquisition Act, 1894 when an award is made by the Collector, a reference under section 18 of the Act of 1894 can be made to the District Court. After the decision of the Court, a first appeal is provided under section 54 of the Act. Section 50 of the Act provides for compulsory acquisition of land for the benefit of a local authority such as the Petitioner. Sub-section (1) of section 50 lays down that the cost of acquiring the land for a local authority shall be defrayed from the fund controlled or managed by the local authority. The local authority is permitted to appear and adduce evidence for the purpose of determining the amount of compensation. The proviso to section 50(2) however lays down that no local authority shall be entitled to demand a reference under section 18 of the Act. Section 50 is reproduced for ready reference as under -

'50. Acquisition of land at cost of a local authority or Company. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of any incidental to such acquisition shall be defrayed from or by such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.'

Conjoint reading of section 18 and section 50 of the Act 1894 shows that it is the legislative policy to treat Claimant and local authority differently. A claimant can file a reference and a first Appeal and thus levy a full fledged challenge to the award. Such course of action is not available to a local authority.

8. The issue whether a local authority, such as the Petitioner, would have any recourse available and what will be its role in the fixation of compensation arose for consideration of the Constitution Bench in the case of *U.P.Awas Evam Vikas Parishad Vs. Gyan Devi (dead) by LRS. And others.* - ¹. The Constitution Bench, after analysing the provisions of section 3(b), 18, 50 and 54 of the Act, held that the right conferred under section 50(2) of the Act on the local authority to participate in the acquisition proceedings before the Collector and the Reference Court, includes a right to be given an adequate notice by the Collector and the

1- (1995) 2 Supreme Court Cases 326.

Reference Court. In these proceedings the local authority can defend the award and oppose enhancement of the compensation. The local authority is entitled to be impleaded as a party in the proceedings before the Reference Court. As regards the remedy available to a local authority aggrieved by the compensation awarded by the acquiring authority, the Constitution Bench held that the local authority can invoke the remedy under Article 226 of the Constitution of India to assail the award. The Constitution Bench observed that, though the embargo under the proviso to section 50(2) of the Act operates, the local authority can approach the High Court under Article 226 of the Constitution of India. The High Court will deal with such petition on the grounds on which judicial review is permissible under Article 226 of the Constitution.

9. Thus though the Constitution Bench in the case of *U.P.Awas* has held that a local authority can approach the High Court under Article 226, the enquiry of such challenge will have to be within the parameters of judicial review. It is needless to re-emphasize the distinction between a substantive first appeal and judicial review under Article 226. Thus when a local authority brings a challenge of such nature under Article 226 and a writ of *certiorari* is sought, the Court will examine the challenge within the well settled contours of the *certiorari* jurisdiction. Contours of the *certiorari* jurisdiction have been restated by the Apex Court in catena

of decisions. In the cases of present nature, the Court may not issue a writ of *certiorari* unless the award can be stated as perverse, it shakes the conscience of the Court, grave errors are committed while computing the amount, absolutely irrelevant criterias are taken into consideration, or that a important material which has a direct bearing, is completely omitted from consideration. Keeping in mind these parameters of the jurisdiction available to the Court, the argument advanced by the Petitioner will have to be examined.

10. Mr.Apte, learned Senior Advocate for the Petitioner, contended that in respect of the part of the very same property the SLAO granted much lesser rate and the High Court in appeal had awarded rate of Rs.70/- per sq. metre. He submitted that if for the very parcel of the land the rate was Rs.70/-, it could not have been Rs.870/- in the present acquisition. This simplistic submission however omits to take into consideration the time span between the two acquisitions. Upon a query from the Court Mr.Apte, informed that the relevant date for the earlier acquisition was on 1 January 1981 and the relevant date for the present acquisition is 4 January 2001. There is therefore difference of two decades between the two acquisitions. This itself can be a good enough distinction. It cannot possibly be believed that, in the span of twenty years there would be no appreciation in the value of the land whatsoever. Lands are situated at Thane, which city has witnessed large scale developments

in the residential and industrial sector in recent times. In the reply affidavit filed by Owners, to which there is no denial, it is placed on record that the land is included in the Municipal Corporation limits. After the year 1990 substantial development took place around the land. By the year 2000, several buildings were erected on the boundary of the land. School buildings had come up near the said land and it was in the midst of a populated residential locality; and on the relevant date the land had become part of the metropolitan city of Thane. The SLAO was aware of the rate of Rs.70/- granted earlier in respect of part of the same survey number, however he considered the difference of twenty years between the relevant dates and has granted ten per cent per annum compounding rise. Taking a note of the time span of two decades and consequently calculating the compensation by ten percent annual rise, cannot be termed as a perverse exercise by the SLAO. There is no grave error or gross illegality in considering the rise from Rs.70/- to Rs.210/-. The submission of the Petitioner based on the earlier acquisition proceeding, thus cannot be accepted. The SLAO thereafter has taken into consideration the Ready Reference and has increased the rate to Rs.870/- per sq.metre.

11. The next argument of Mr.Apte is that, the reliance on the Ready Reckoner by the SLAO to increase compensation to Rs.870/-, is wholly illegal and impermissible.

12. The SLAO noted the letter from Joint District Registrar dated 23 February 2001 communicating the rates of Ready Reckoner which indicated that the rate for the concerned City Survey number was Rs.2,900/- per sq. metre. Thereafter SLAO took into account that the land was '*khar*' land and development activity was not allowed without prior approval of Ministry of Environment and Forest. Considering the restrictions on the development of the land, SLAO computed 30 percent of the Ready Reckoner rate i.e. 30 percent of Rs.2,900/- amounting to Rs.870/- per sq. metre. The SLAO relied upon the G.R. No.LQN/1894/PR-446/A-2, dated 31 October 1994 issued by the State of Maharashtra which directed that the Ready Reckoner rate has to be taken into consideration while computing the compensation.

13. In view of the Government Resolution dated 31 October 1994, the SLAO took into consideration the rates from the Ready Reckoner. In a reply affidavit filed by the State, the resolution dated 31 October 1994, issued by Revenue & Forest Department, Mumbai is relied upon stating that the rates more beneficial out of sale instances method and Ready Reckoner have to be considered by the SLAO. Thus the SLAO, had to consider the Ready Reckoner in view of the policy of the State Government in resolution dated 31 October 1994. It is clear that the resolution dated 31 October 1994

states that compensation for acquired land by way of sale and purchase and the valuation as per Ready Reckoner whichever is higher is to be offered. The resolution clearly emphasizes State's intention to offer a better price which is acquired for a public purpose.

14. Mr.Apte advanced an absolute proposition that the Ready Reckoner cannot be taken into consideration at all and the reliance on the Ready Reckoner itself vitiates the award on account of impropriety and illegality. He relied upon the decision of the Apex Court in the case of *Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P and others* – ² to contend that Ready Reckoner cannot be taken into consideration. This issue is no longer res-integra. An identical argument was advanced by a local authority before the Division bench of this Court in the case of *Shalini Vaman Godbole Vs. Special Land Acquisition Officer* – ³. In this case the Division bench was considering the challenge of Solapur Municipal Corporation in the Appeal filed under section 54 of the Land Acquisition Act, to the award passed by the learned Civil Judge. An argument was advanced on behalf of the Municipal Corporation in that case, relying on the decision of the Apex Court in the case of *Jawajee Nagnatham* that the Ready Reckoner could not have been taken into consideration by the Collector. The

² - (1994) 4 Supreme Court Cases 595

³ - 2009(5) Bom.C.R. 731

Division Bench took note of the very same resolution dated 31 October 1994 and observed that the Government of Maharashtra in its wisdom has laid down a policy for offering compensation to the owners of the land. The argument of the Municipal Corporation that by adopting such fixed methodology, the Court would be abdicating its duty to determine the market value as far as the parameters of the Act, was negatived. The Division bench held that the judgment of the Apex Court in the case of *Jawajee Nagnatham* could not be read as prohibiting the government from making an offer on such terms and conditions as the government desires and the policy in the resolution dated 31 October 1994 is itself an offer. An award can be based on the policy of the government.

15. No reason is shown as to why we should take a different view from the view taken by the Division bench in the case of *Shalini Vaman*. Thus when the SLAO relied upon the policy of the State Government itself, by no stretch of imagination it can be held to be a gross illegality. The contention advanced by Mr.Apte therefore cannot be accepted.

16. The last submission advanced by Mr.Apte is that even 30 percent of the Ready Reckoner value could not have been given to the Respondent No.3, as the land had no potential whatsoever, as it was a marshy land. This submission has been opposed by Mr.Datar appearing for Owners contending that it is wholly incorrect to

suggest that the land had no potentiality whatsoever. He relied upon the affidavit filed by the Owners. He contended that the land now is included in Special Economic Zone and is put to industrial use.

17. Survey no.1301 is included in the Ready Reckoner and the valuation for the relevant period was Rs.2100/- per sq. metre. The SLAO however did not straightaway proceed to grant fully Ready Reckoner value, but only granted 30 percent thereof. It is not an admitted position that the land has no potentiality whatsoever. Though the land was marshy, with the permission of the Ministry of the Environment and Forest, it could be put to use. There was no absolute embargo. It has been brought on record that at the instance of Petitioner Corporation, the Maharashtra Maritime Board was called upon to fix the high tide line and the Board had filed a report. The Report showed that there is public road and two buildings between the land of Respondent No.3 and the High Tide line. An industrial unit was given permission in the very locality. This was the position on the relevant date. An additional affidavit has been filed by the Owners placing on record the position as on today. It is placed on record that a notification has been issued on 23 April 2008, notifying the acquired land as Special Economic Zone.

18. Considering the position as on the relevant date, it cannot be said that the acquired land had zero potentiality, as

sought to be urged by the Petitioner-Corporation. Further one cannot be oblivious of the fact after the relevant date, the acquired land has become part of the Special Economic Zone and thus has acquired a prima status. Considering this material on record, a conclusion cannot be drawn that the acquired land had no value at all and even 30 percent of the rate of the Ready Reckoner, which was applicable, could not be given to the Owners.

19. After the Rule was issued in the Writ petition, the Petitioner – Corporation had deposited the amount due under the award. The Respondent No.3 - Owners, by furnishing a bank guarantee, have withdrawn the amount.

20. In conclusion, we are of the opinion that grounds advanced by the Petitioner -Corporation to assail the award of SLAO cannot be upheld within the ambit of judicial review under Article 226 of the Constitution of India. We do not find any gross impropriety or perversity in the impugned award. The challenge of Petitioner-Corporation to the impugned award must fail.

21. Writ petition is dismissed. Rule is discharged. No order as to costs. The Respondent No.3 will keep the bank guarantee alive for a period of twelve weeks from today.

(N.M. JAMDAR, J.)

CHIEF JUSTICE