IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.635 OF 1994

The State of Maharashtra	]	
[Through the Special Land Acquisition	]	
Officer, Nashik]	] ….	Appellant
Versus		
Shridhar Yeshwant Kasbe	]	Respondent /
	] ….	[Org. Claimant]

Mr. Ameet Palkar, A.G.P., for the Appellant-State.

None for the Respondent-Claimant.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 9TH MAY 2017.

ORAL JUDGMENT :

1. The challenge in this Appeal is to the Judgment and Order dated 18th February 1992 passed by the Reference Court of Joint District Judge at Nashik, thereby correcting its Award dated 17th December 1983, in Land Reference No.279 of 1981 and directing the State to pay the interest @ 15% p.a. from 1st February 1992 until the entire compensation amount is paid to the Respondent-Claimant or it is deposited in the Court.

2. Facts leading to this Appeal may be stated, in brief, as follows :-

. The Appellant - the State of Maharashtra has acquired the land, bearing Gat No.282, admeasuring 5-85 pk. 0-13, situate at Village Wadgaon in Nashik, and belonging to the Respondent-Claimant, as per the Notification published on 17th July 1980, under Section 4 of the Land Acquisition Act, 1894. The Special Land Acquisition Officer made the Award. Against the Award passed by the Special Land Acquisition Officer, the Respondent-Claimant made a Reference under Section 18 of the LA Act. The Reference came to be decided by the Joint District Judge, Nashik, and the Award was passed by him on 18th February 1992, thereby enhancing the market value of the land acquired from the Respondent-Claimant.

3. Pending this Reference before the Joint District Judge, Nashik, the Land Acquisition Act, 1894 came to be amended by the Amending Act No.68 of 1984 with effect from 24th September 1984. By the said Amending Act, certain additional benefits were given. By addition of sub-section (1-A) to Section 23, additional component at the rate of 12% p.a. of the market value was provided for the first time. Similarly, by way of amendment in sub-section (2) of Section 23, the amount of solatium was increased from 15% to 30%. By making amendment in Section 34, the

rate of interest was also increased from 6% to 9% for the first year after taking possession of the land, and 15% beyond the period of one year after taking possession till the payment of compensation amount.

4. In view of this Amendment Act, the Respondent-Claimant filed Review Application No.107 of 1986, seeking these additional benefits, which were not awarded in the Judgment and Award dated 17th December 1983.

5. This Review Application was opposed on behalf of the Appellant-State. However, after hearing learned counsels for both the parties, the Trial Court was pleased to pass the impugned order dated 18th February 1992, granting additional benefits to the Respondent-Claimant, as per the amended provisions of the Land Acquisition Act, 1894.

6. This order has been challenged in the present Appeal by the State of Maharashtra. The first and foremost submission advanced by learned A.G.P. is that, as the Reference was already decided, when the Award was passed by the Trial Court on 17th December 1983 itself, the Trial Court had no jurisdiction to entertain the Review Application filed by the Respondent-Claimant for grant of additional benefits. Secondly, it is

submitted that the order passed by the Trial Court awarding enhanced rate of interest on whole of the compensation amount, i.e. total market value *plus* additional component *plus* solatium, cannot be called as legal and valid, as the enhanced rate of interest can be awarded only on the amount of compensation granted by the Court, which was in excess of the compensation awarded and paid by the Collector.

7. By placing reliance on the Judgment of the Single Bench of this Court, that of *State of Maharashtra Vs. Shyamkant Dattatraya Patil, 2006 (5) Bom.C.R. 739*, it is submitted that the Trial Court has committed an error in interpreting the provisions of the Amending Act and thereby granting enhanced rate of interest on the total amount of compensation. According to learned A.G.P., therefore, the impugned order of the learned Trial Court needs to be quashed and set aside.

8. Though the notice of this Appeal was duly served on the Respondent-Claimant, he has preferred to remain absent. As a result, this Appeal is proceeded ex-parte.

9. The first issue involved in this matter pertains to the power of the Trial Court to review its own order so as to increase the rate of interest

and the solatium. The next legal issue pertains to the interpretation of the amended provisions of the Land Acquisition Act.

10. As regards the first issue, the submission advanced by learned A.G.P. is that, once the Award was passed by the Trial Court on 17th December 1983, in Land Reference No.279 of 1981, the Trial Court has become functus officio and it has no jurisdiction or power to review the same, except for some clerical or minor errors. According to learned A.G.P., the Trial Court has no power either to review or amend its own Award substantially by increasing the amount of interest, as the Award was converted into Decree under Section 26(2) of the Land Acquisition Act. Here in the case, it is submitted by A.G.P. that the Trial Court has substantially modified its own Award by enhancing the rate of interest and thus the Trial Court has exceeded its jurisdiction in passing the impugned Judgment and Award on the Review Application of the Respondent-Claimant.

11. However, in my considered opinion, this submission of learned A.G.P. cannot be accepted for the simple reason that the Review Application was filed by the Respondent-Claimant in view of the amendments in the Land Acquisition Act. It is pertinent to note that,

though the Award was passed by the Trial Court on 17th December 1983, immediately thereafter Amended Act came into force on 29th April 1984. In the Amended Act, some additional benefits were given to the Claimants and by way of introducing transitional provisions, these additional benefits were extended even to those Claimants to whom compensation amount was not paid before 30th April 1982. Therefore, in fact, it was necessary for the Trial Court to take a note of these amended provisions and act suo-motu to give benefit of those provisions to the Respondent-Claimant. Respondent-Claimant has, by filing the Review Application, brought those facts to the notice of the Trial Court. By passing the impugned order, the Trial Court has only corrected its Award to bring it in tune with amended legal provisions. Hence, it cannot be said that the Trial Court has acted beyond its jurisdiction or exceeded its authority in passing the impugned order.

12. As a matter of fact, as held by the Hon'ble Apex Court in the case of *Shree Vijay Cotton & Oil Mills Ltd. Vs. State of Gujarat, (1991) 1 SCC 262*, the interest can be claimed by the Claimants at any stage of the proceedings under the Land Acquisition Act. Award of interest being obligatory and consequential to the application of Section 34 of the Land Acquisition Act, such interest can be claimed even in the Appeal filed by

the State and it is not necessary to file separate Appeal or Cross-Objection. According to the Hon'ble Apex Court, substantive right, under the Land Acquisition Act, to get the interest cannot be affected by the procedural rules, as procedural rules are, after all, hand-maiden of justice. The procedural rules cannot come in the way of substantive right subsisting under the Land Acquisition Act.

13. Here in the case, therefore, when the Trial Court has awarded the interest to bring it in tune with the amended provisions of the Land Acquisition Act, which the Trial Court should or could have done on its own motion suo-motu also, no fault can be found with the impugned order, which the Trial Court has passed on the Review Application moved by the Respondent-Claimant. In my considered opinion, therefore, it cannot be said that the Trial Court has exceeded its jurisdiction or acted after having seized to have the jurisdiction.

14. The next issue necessarily pertains to the interpretation of amended provisions of the Land Acquisition Act. While passing the impugned order, the learned Trial Court has awarded the enhanced rate of interest on the whole of the amount of compensation i.e. total market value plus additional component plus solatium. Whereas, according to the learned

A.G.P., enhanced rate of interest could be payable only on the amount of compensation awarded by the Court in excess of the compensation awarded and paid by the Collector, as per the Award passed by the Special Land Acquisition Officer.

15. For deciding the legal issue, the provisions of Section 23(1-A), as added by the Amending Act, are, therefore, relevant. Section 23(1-A), as added by the Amending Act, reads as follows :-

> *"(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value of the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1) in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier."*

16. By this provision, thus, in addition to the market value of the lands, as determined under Section 23(1), the Court is directed in every case to award additional component @ 12% p.a. on the market value from the date of publication of the notification under Section 4, or, the date of taking possession of the land, whichever is earlier. This benefit was not available prior to the amendment. Needless to state, that such amendment is

generally prospective. However, Amendment Bill was introduced in the Parliament on 30th April 1982 and it is clear that, in its own wisdom, Legislature has thought it fit to give this additional benefit to those proceedings also, which were pending before the Collector on 30th April 1982, i.e. the date of introduction of the Amendment Bill, in which no Award was passed before that date. Therefore, Section 30 sub-section (1) of the Amendment Act provides as follows :-

> *"**30. Transitional Provisions -***
>
> *(1) The provisions of sub-section (1-A) of Section 23 of the principal Act, as inserted by Clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to, -*
>
> *(a) every proceeding for the acquisition of any land under the Principal Act pending on the 30th day of April 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People, in which no award has been made by the Collector before that date;*
>
> *(b) every proceeding for the acquisition of any land under the Principal Act commenced after that date, whether or not an award has been made by the Collector before the commencement of this Act."*

17. The effect of Section 30(1) of the Amending Act r/w. sub-section (1-

A) of Section 23, added by the Amending Act, was considered by the Hon'ble Supreme Court in *Union of India & Ors. Vs. Filip Tiago De Gama, AIR 1990 SC 981*, and it was held as follows :-

> *"20. Entitlement of additional amount provided under section 23(1-A) depends upon pendency of acquisition proceedings as on 30th April 1982 or commencement of acquisition proceedings after that date. Section 30, sub-section (1)(a) provides that additional amount provided under Section 23(1-A) shall be applicable to acquisition proceedings pending before the Collector as on 30th April 1982, in which he has not made the award before that date. If the Collector has made the Award before that date, then, that additional amount cannot be awarded. Section 30 sub-section (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after 30th April 1982, irrespective of the fact whether the Collector has made an award or not before 24th September 1984. The final point to note is that Section 30 sub-section (1) does not refer to Court award and the Court award is used only in Section 30, sub-section (2)."*

18. This view has been reaffirmed in another decision by the Hon'ble Supreme Court in the case of *K.S. Paripoornan Vs. State of Kerala & Ors., AIR 1995 SC 1012*.

19. Thus, in view of this legal position, there remains no doubt that the

benefit of additional component under sub-section (1-A) of Section 23 is to be given if the proceedings for acquisition were pending and Award was not passed by the Collector. It has no reference to the Award to be passed by the Court on reference under Section 18 of the Act. As such, the Claimants, in whose case the Award was already passed by the Collector prior to 30th April 1982, could not be entitled to the benefit of additional component under Section 23(1-A); whereas, in respect of the Claimants, in whose case the Award was passed after 30th April 1982, which is the cut-off date when the Bill was introduced in the Parliament, such benefit could be granted.

20. The learned Trial Court has directed that the total amount of compensation shall carry interest @ 9% p.a. from the date of notification under Section 4, or, the date of taking possession, whichever is earlier, till expiry of one year and awarded interest @ 15% p.a. for the period beyond expiry of one year. Learned Trial Court has done so in view of the amended provisions of Section 34, which read as follows :-

> *"34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of (nine per centum) from the time of so taking possession until it shall have been so paid or deposited.*

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof, which has not been paid or deposited before the date of such expiry."

21. Thus, it can be found that, in the original Section 34, the rate of interest was 6%; however, by way of amendment, it was increased to 9%. In view of this, prior to the amendment, when the amount of compensation was not paid or deposited, the Collector was to pay compensation amount with interest thereon @ 6% from the date of taking possession till the amount of Award was paid or deposited. However, by way of amendment, not only the rate of interest was increased from 6% to 9%, but it is also made clear that if the amount is not paid within a period of one year after taking possession, the rate of interest would be 15% p.a. for the period beyond one year.

22. This amended provision was also given some retrospective effect by Section 30 sub-section (3) of the Amending Act of 68/1984, which reads as follows :-

"(3) The provisions of section 34 of the Principal Act, as amended by section 20 of this Act, shall apply, and shall be

deemed to have applied, also to, and in relation to,

(a) every case in which possession of any land acquired under the Principal Act has been taken before the 30th date of April 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People) and the amount of compensation for such acquisition had not been paid or deposited under Section 31 of the principal Act until such date, with effect on and from that date; and

(b) every case in which such possession had been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said Section 31, with effect on and from the date of taking such possession."

23. The perusal of this provision makes it clear that, if the possession was taken prior to 30th April 1982 and the compensation amount was not paid or deposited till 30th April 1982, then, only the amended provisions would be applicable with effect from 30th April 1982. However, if the payment is already made or deposited prior to 30th April 1982, as per the Award passed by the Collector, the increased rate of interest would not be applicable.

24. In the present case, admittedly, as can be revealed from the

impugned order of the Trial Court, the amount of compensation was deposited and it was also received by the Respondent-Claimant on 31st July 1984 i.e. much after the cut-off date of 30th April 1982. It is pertinent to note that, even the impugned Judgment and Award was passed by the Trial Court on 17th December 1983, i.e. again after the cut-off date of 30th April 1982. As a result, the amount of compensation was not paid or deposited till 30th April 1982. Hence, the amended provisions will definitely have application to the instant case. Therefore, the impugned Judgment and Order of the Trial Court, granting such benefit of the amended provisions to the Respondent-Claimant in respect of the enhanced rate of interest, has to be held as legal, correct and valid.

25. The facts of the case, on which learned A.G.P. has relied upon, that of *Shyamkant Dattatraya Patil (Supra),* needs to be distinguished, as, in the said case, the payment of compensation amount was already made on 17th March 1982 and the Award was also passed on 3rd March 1982. Hence, as the compensation amount was paid before 30th April 1982, it was held that the amended provisions of Section 34, enhancing the rate of interest, could not have been made applicable to the facts of the said case. As a result, the order passed by the Civil Judge, Senior Division, giving directions for payment of enhanced rate of interest on whole of compensation amount, was held to be not correct and legal. It was held

that such direction for enhanced rate of interest could be given only in respect of the amount of compensation awarded by the Reference Court, in excess of the compensation awarded by the Collector.

26. As against it, in the present case, as stated above, the amount of compensation as awarded by the Special Land Acquisition Officer, being deposited on 31st July 1984, that is after the cut-off date of 30th April 1982, and the Award itself is passed by the Reference Court on 17th December 1983, the Respondent-Claimant becomes entitled to get enhanced rate of interest on the whole of the compensation amount. In consequence, the Appeal challenging the said order holds no merit; hence, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]