

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

904 FIRST APPEAL NO.450 OF 2005

WITH

FIRST APPEAL NO.720 OF 2005

...

Syed Miya s/o Syed Buran
Age: 40 years, Occu.: Agri.,
R/o.Ranjangaon, Tq.Gangapur,
Dist.Aurangabad.

..Appellant

VERSUS

The State of Maharashtra,
through the Surplus Land Acquisition
Officer, Aurangabad.

..Respondent

...

Advocate for Appellant : Mr.N.K.Kakade and
Mr.A.N.Kakade
AGP for Respondent/State : Mr.B.V.Virde

...

CORAM : M.S.SONAK, J.

DATE : 8th FEBRUARY, 2018

ORAL JUDGMENT:-

1) Heard the learned counsel for the parties. Taking into consideration the commonalities of the facts in the two matters, both these appeals can be disposed of by common Judgment and order.

2) The challenge in both these appeals is to the Judgment and award made by the Reference Court on 20.8.1993 rejecting the References made by the appellant on the ground that such References were not at all maintainable, since, the appellant was allegedly paid compensation in terms of the agreement arrived at between him and the State Government.

3) Mr.N.K.Kakade the learned counsel for the appellant submits that in this case, it was incumbent upon the State Government to produce the so called agreement on record, if indeed there was any such agreement executed between the appellant and the State Government. He submits that in this case, the appellant led evidence to show that he had not executed any agreement with the State Government and therefore, relying solely upon the unilateral statement made by the Land Acquisition Officer/Collector, it could not have been held that there

was some agreement between the appellant and the State Government in the matter of payment of compensation for the acquired land. Mr.Kakade points out that on behalf of the respondent, no evidence was led to rebut the evidence of the appellant. Mr.Kakade submits that the Reference Court, has erred in placing reliance upon the xerox copy of the so called alleged agreement, which was merely handed over to the Reference Court. He submits that in this case, no responsible officer on behalf of the respondent chose to step into the witness box and to produce either original agreement or even a xerox copy of the alleged original agreement as and by way of secondary evidence. The xerox copy is simply handing in alongwith an application and the Reference Court by making cursory comparison of the signatures, has erroneously held that this was the agreement entered into between the appellant and the State Government and on such basis dismissed the reference. Mr.Kakade submits that this is the procedure unknown to law and therefore, the impugned awards are

liable to be set aside and the References are liable to be allowed.

4) Mr.B.V.Virde the learned AGP for the respondent submits that in this case, the award of the Land Acquisition Officer/Collector makes specific reference to the agreement between the parties. Further, xerox copy of the agreement which contains signature of the appellant as well as representatives of the State Government was produced on record. He submits that there is presumption that all acts of the Government are deemed to be validly undertaken and he submits that in the present case such presumption has not been rebutted by the appellant. He submits that compensation amount has also been accepted by the appellant. Taking into consideration all these aspects, Mr.B.V.Virde submits that there is no error in the impugned awards and therefore, these appeals may be dismissed. Mr.B.V.Virde further submits that the References warranted rejection

on account of non-impleadment of Maharashtra Industrial Development Corporation (MIDC), which is acquiring body, as a party respondent. He submits that in the absence of such a necessary party, the Reference is required to be dismissed and has rightly been dismissed.

5) Rival contentions now fall for determination.

6) In the present case, there is no dispute that acquisition was for the benefit of the MIDC. This is the reason why the acquisition proceeding was also undertaken under the Maharashtra Industrial Development Act, 1961 (MID Act). Chapter VI of the MID Act deals with the provisions related to acquisition of the land.

7) Section 33(1) of the MID Act provides that where any land is acquired by the State Government under this Chapter, the State Government shall pay for such acquisition, compensation, the amount of which shall be

determined in accordance with the provisions of this Section. Section 33(2) provides that where the amount of compensation has been determined by agreement between the state Government and the person to be compensated, it shall be determined in accordance with such agreement. Section 33(3) provides that where no such agreement can be reached, the State Government shall refer the case to Collector for determination of the amount of compensation to be paid for such acquisition as also the person or persons to whom such compensation shall be paid. There is proviso to this Sub-Section for which we are not presently concerned in this matter. Sub-Section 3(A) of Section 33 which was inserted in MID Act provides that Notwithstanding anything contained in sub-section (3), if after the case is referred to the Collector under that sub-section but before he has finally determined the amount for compensation, such amount is determined by agreement between the State Government and the person to be compensated, the compensation shall be determined by

the Collector in accordance with such agreement. Section 33(4) provides that before finally determining the amount of compensation, the Collector shall give an opportunity to every person to be compensated to state his case as to the amount of compensation.

8) Section 34 of the MID Act provides that (1) any person aggrieved by the decision of the Collector determining the amount of compensation may, within sixty days from the date of such decision, in so far as it affects him, by written application to the Collector require that the matter be referred by him for determination of the Court as defined in the Land Acquisition Act, 1894, in its application to the State of Maharashtra, and when any such application is made the provisions of Part III of the said Act shall *mutatis mutandis* apply to further proceedings in respect thereof.

(2) The decision of the Court and subject only to such decision, the decision of the Collector determining the

amount of the compensation, shall be final.

9) Section 36(1) of the MID Act provides that where the amount of compensation is determined by agreement, the State Government shall pay such amount to the person or persons entitled thereto. Section 36(2) provides that where the amount of compensation is determined by the Collector under provisions of Section 33, the State Government shall tender payment of the compensation determined to the persons entitled thereto according to such determination and shall pay to them unless prevented by some one or more of the contingencies mentioned in sub-section (3). Section 36(3) provides that if the person entitled to compensation according to the decision of the Collector do not consent to receive it, or if there be no person competent to alienate the land or if there be any disputes as to the title to receive the compensation, the State Government shall deposit the amount of the compensation so determined in the Court.

The proviso permits any person admitted to be interested to receive such amount under protest as to the sufficiency of the amount of compensation.

10) From the scheme of the MID Act as aforesaid, it prima-facie appears that if there is an agreement between a person to be compensated and the State Government, then the State Government is required to pay compensation in terms of such agreement. In such a case, ordinarily, there is no necessity of even making any reference to the Land Acquisition Officer/Collector. This is because Section 33(3) of the MIDC Act provides that where no such agreement can be reached, the State Government shall refer the case to the Collector for determination of the amount of compensation to be paid for such acquisition as also the person or persons to whom such compensation shall be paid.

11) However, Section 33(3)(A) which begin with *non-*

obstante clause makes provision for an agreement reached between a person, who is entitled to be compensated and the State Government even after a reference is made before the Land Acquisition Officer/Collector, before the Land Acquisition Officer/Collector finally determine the amount of compensation, if such agreement indeed arrived at between the person to be compensated and the State Government, in such matter, the Land Acquisition Officer/Collector is required to determine the compensation payable in accordance with such agreement. Therefore, it is possible that an agreement can be reached even after the reference is made to the Land Acquisition Officer/Collector, but before the Land Acquisition Officer/Collector has finally determined the amount of compensation. In such eventuality, the Collector/Land Acquisition Officer is again required to determine the compensation in accordance with such agreement itself.

12) The aforesaid relates to the stage at which agreement may be arrived at between the person, who is entitled to be compensated and the State Government. However, there do not appear any specific provision in the Act as to the manner in which such agreement has to be executed. Obviously, despite the lack of provision, it will have to be held that such an agreement will have to be in writing and will have to be signed or otherwise executed in the manner known to the law by person who is entitled to be compensated and the appropriate authority of the State Government. On the basis of such agreement, compensation can then be paid in terms of Section 33(2) if such agreement is arrived at and executed before any reference is made to the Land Acquisition Officer/Collector or where such agreement is arrived at and executed after the Reference is made to the Land Acquisition Officer/Collector under Section 33(3)(A) but before the Collector/Land Acquisition Officer has finally determined the amount of compensation.

13) In the present case, the appellant has contended that there was no agreement arrived at between him and the State Government, and that he has not signed or executed any such agreement. In this case, although it is not quite clear, it appears that the Land Acquisition Officer/Collector has invoked the provisions of Section 33(3)(A) of the MID Act because the Land Acquisition Officer/Collector, in his award has made a reference to the compensation payable to the appellant in accordance with the agreement arrived at between the appellant and the State Government. If the agreements were to have been arrived at between the appellants and the State Government even prior to the Reference to the Land Acquisition Officer/ Collector under Section 33(3), then possibly, there was no necessity of any reference to the Collector/Land Acquisition Officer. Section 33(3) of the MIDC Act provides that where no such agreement can be reached, the State Government shall refer the case to the

Collector for determination of the amount of compensation.

14) The appellant examined himself and in the course of his evidence asserted that there was no agreement which was reached between him and the State Government and he has not signed or executed any such agreement. He stated that this is the reason why he was aggrieved by the award of the Land Acquisition Officer/ Collector and has sought for a reference under Section 34 of the MID Act.

15) The respondent did not examine themselves or any of their Officers before the Reference Court. Instead, they filed an application Exh.37 alongwith which they produced a xerox copy of the agreement which was allegedly entered into between the appellant and the State Government in the matter of determination of the compensation.

16) The Reference Court in the impugned Judgment and

award, has virtually accepted the said xerox copy as legal evidence. The Reference Court then proceeded to compare the signatures on the xerox copy with the admitted signatures of the appellant and on this basis concluded that there was indeed an agreement reached between the appellant and the State Government in the matter of determination of the compensation. On the basis of such reasoning the Reference Court has rejected the Reference as not maintainable.

17) There is merit in the contention of Mr.Kakade that the Reference Court has adopted a procedure which is unknown to law. There was no question of the Reference Court accepting the xerox copy of the alleged agreement which was appended to Exh.37 and thereafter, treating the same as legal evidence. In the absence of any authorized Officer of the State Government/respondent even stepping into the witness box and seeking to produce the said documents by way of primary or secondary evidence. It is

only when some authorized Officer of the respondent steps into the witness box and tenders the document and proves the document, can be treated as evidence. If, the original of the alleged agreement is not available, then there are several provisions under the Evidence Act itself which entitle a party to produce secondary evidence again in the manner prescribed. However, the Reference Court was not at all justified in relying upon the xerox copy of the alleged agreement and on the said basis concluding that the agreement had indeed been reached into or that the said agreement had indeed been executed by the appellants.

18) Taking into consideration the circumstance that atleast some xerox copy was produced on record, though not in the manner prescribed under the law, this is a fit case where yet another opportunity can be granted to the respondent or for that matter to both the parties to produce evidence on record in support of their respective

versions. In the interest of justice, and further in order to obviate any technical challenge, it will also be appropriate that the MIDC, which is acquired body is also impleaded as party respondent to the reference, so that, the MIDC can also lead evidence or otherwise assist the Reference Court in the matter of effective disposal of the references.

19) In any case, even if this Court were to conclude with that there was no agreement between the appellant and the State Government, the matter would have to be remanded to the Reference Court for determination of amount of compensation. Taking into consideration the circumstance that a xerox copy of the agreement has been produced and upon comparison of the signatures, Reference Court had expressed opinion, it is only appropriate that the parties are granted yet another opportunity to prove their respective versions, however, it is clarified that the opinion expressed by the Reference Court as regards

the signatures of the appellant, is now erased, since, the impugned awards are going to be set aside. At this stage, it is not for this Court to express opinion one way or other and it is only appropriate that the matter is left to the Reference Court for decision afresh in accordance with law and on the basis of the evidence which the parties will produce before it.

20) Accordingly, the impugned Judgments and awards are hereby set aside. The References are restored to the files of the Reference court.

21) The Reference Court is directed to dispose of the References as expeditiously as possible and in any case within six months from the date of receipt of authenticated copy of this Judgment and order.

22) The Reference Court to dispose of the References in accordance with law and on their own merits by affording

both the parties, as well as the MIDC, which is now ordered to be impleaded as a respondent in the References, to lead evidence both documentary as well as oral.

23) It is expressly made clear that even the appellant will be entitled to lead afresh evidence in the matter, since, the learned counsel for the appellant is desirous of such an opportunity.

24) The appeals are partly allowed in the aforesaid terms.

25) There shall be no order as to costs.

26) Parties to appear before the Reference Court on 5.3.2018 at 10:30 a.m. On this date, the appellants to carry out necessary amendments in the References so as to include the MIDC and the Reference Court to issue notice

to the MIDC to appear in the matter. Once again, it is made clear that all contentions of all parties are left open for determination by the Reference Court afresh and in accordance with law.

27) The Record and Proceedings be transmitted to the Reference Court at the earliest and in any case within two weeks from today.

[M.S.SONAK, J.]