

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8174 OF 2006

The Bharat Sanchar Nigam Ltd.,
Through the Telecom District Manager,
Osmanabad

.. Petitioner

Versus

1] The State of Maharashtra,
Through the Revenue & Forest Department,
Mantralaya, Mumbai 400 032

2] The Collector,
Osmanabad

3] Purushottam S/o Martandrao Deshmukh,
Through G.P.A.,
Santosh S/o Purushottam Deshmukh,
Age : 32 years, Occu.: Agril.,
R/o : Bhoom, Near Telephone Exchange,
Tq. Bhoom, District - Osmanabad

.. Respondents

...

Mr. Ajay S. Deshpande, Advocate h/f. Mrs. Manjusha Deshpande,
Advocate for petitioner

Ms. S.S. Raut, AGP for respondents no. 1 and 2

Mr. Dhananjay Mane, Advocate h/f Mr. G.S. Patil, Advocate for
respondent no.3

...

CORAM : SUNIL P. DESHMUKH &
P. R. BORA, JJ.

DATE : 31-01-2018

ORAL JUDGMENT (PER - SUNIL P. DESHMUKH, J.) :

1. Heard learned counsel for the appearing parties finally,
by consent.

2. The Petition purports to question the legality, propriety and validity of order dated 04-10-2006 passed by respondent no. 2 - Collector, Osmanabad, requiring the petitioner to pay rental compensation as awarded under the order.

3. It appears to be the case of the petitioner in the first place, that the rental compensation is not due and payable to respondent no. 3 and alternatively, the amount of rental compensation shall be borne by respondent no.1.

4. Briefly stated, learned counsel for petitioner Mr. Deshpande submits that had the acquisition proceedings been initiated in right earnest immediately upon understanding having been reached amongst the parties *viz.* the land owner, the petitioner and the local authority and had the acquisition made by the respondent immediately, the duration of occupation of land without acquisition, about which rental compensation has been awarded, would have been considerably reduced and the liability of paying rental compensation would not have arisen. Secondly, it appears that since the award amount determines the value of rent, according to him, it may take within its fold the amount of rental compensation till the date of award.

5. On the other hand, learned AGP contends that the Petition is not tenable and deserves to be thrown at the threshold for omission to refer to earlier proceedings under which also similar challenge had been posed to payment of rental compensation and further referring to the affidavit, she submitted that since the procedural requirement of payment of 2/3rd awarded amount was not being complied with, the land acquisition proceedings had lingered on.

6. Present Petition purports to challenge the rental compensation as awarded under order dated 04-10-2006 referred to above and alternatively, it has also been prayed, as had been prayed in that case in respect of award amount that amount of rental compensation be borne by the State.

7. The Division Bench of this Court deciding Writ Petition no. 96 of 2007 vide order dated 14-07-2006 had taken stock of the situation, observing in paragraphs no. 2, 3 and 4 as under;

" 2. Mr. Deshpande, learned counsel submits that after taking consent of the claimants in the year 1993, itself the proposal was submitted by the petitioner to the SLAO for acquisition. No steps were taken by the SLAO. However, as per the say of the SLAO, fresh proposal was submitted in 2000. The petitioner can not be put to loss on account of inaction on the part of the Respondent-authority. According to the learned counsel, the petitioner can only be liable to pay compensation considering the valuation of

the year 1997 and not of the year 2001. The learned counsel further submits that the award passed by the SLAO deserves to be quashed or in alternative the Respondent Nos.1 to 3 be directed to make refund of the payment to the petitioner after calculating the difference of market value prevailing in the year 1997 and 2002 and further the petitioner can not be held liable to pay rental compensation for the delay caused by Respondent Nos.1 to 3.

3. *We have heard learned A.G.P. also.*

4. In the year 1993, the land in question was meant for staff quarters of Municipal Council and was not reserved for the petitioner. Upon the proposal being received from the petitioner, the Respondents communicated with the Town Planner. The Town Planner did not consent as the said site was meant for staff quarter. Subsequently, in the year 2000, the reservation on the said land was changed and was meant for the petitioner. In the year 2000, fresh proposal was submitted by the petitioner. Pursuant thereto, notification U/s 4 of the Land Acquisition Act, was issued in the year 2001. The claimant is not responsible for this process. The claimant is entitled for compensation as per the market value on the date of notification U/s 4 of the Land Acquisition Act. The possession has been taken much prior to the issuance of notification U/s 4 of the Land Acquisition Act. The claimant is entitled for rental compensation."

8. Along with aforesaid, what would be relevant to consider is the resolution dated 01-12-1972 passed by Government of Maharashtra as annexed to Writ Petition from page no. 53 and onwards under which, it appears that yearly rental compensation is to be worked out as referred to in paragraph no. 5 thereof. The liability to pay rental compensation thus gets incurred for occupation of land without acquisition. It does not appear to be the case of the petitioner that the rental compensation awarded under the impugned award is not in consonance with the requirements under the Government resolution of 1972 *supra*. Save submission, the

petitioner has not been able to substantiate its case about the award amount comprising rental compensation to date of its declaration, by any credible material.

9. Learned AGP during the course of her submissions, has referred to the decision of Supreme Court in the case of *Ramjas Foundation and anr. Vs. Union of India and Ors.* reported in *2010 AIR SCW 7091*, pointing out particularly observations under paragraphs no. 14 and 15 thereof, since similar alternative prayer had been made in Writ Petition no. 96 of 2007 with regard to rental compensation and that the same having been not referred to in the present Writ Petition.

10. It appears that the petitioner had moved Writ Petition bearing no. 96 of 2007 with focus on the land acquisition award passed on 20-03-2004, alongside referring to that it had received orders passed by High Court in Writ Petition no. 4745 of 2006 dated 06-07-2006 directing Special Land Acquisition Officer to consider the representation of the land owner for rental compensation and decide the same on its own merits by affording opportunity of hearing to the acquiring body, craving for liberty to produce the same at a later stage, if required. With such averment, it appears that incidentally it had been prayed that the liability of payment of rental compensation be fastened on to respondents no. 1 and 3 in said Writ

Petition who were the State of Maharashtra and the Sub-Divisional Officer & Land Acquisition Officer, Bhoom.

11. While the basic thrust in Writ Petition no. 96 of 2007 had been against the award passed, incidentally observations and the prayer appears to have been made. Non reference to the same in the present Writ Petition which is almost contemporaneous and it does not appear that there is any deliberation in omission to make reference to the alternative prayer made incidentally in Writ Petition no. 96 of 2007 which resembles the alternative prayer made in the present Writ Petition. The purpose in present Petition is to dis-own the liability to pay the rental compensation, thrusting it upon respondents. As such, it may not be such a case that omission to refer to Writ Petition no. 96 of 2007 will seize the decision in present Writ Petition on that count.

12. Arguments as have been advanced in the present Writ Petition are on the same lines, as were advanced in Writ Petition no. 96 of 2007 while challenging the award amount and incurring liability of payment of the same. The reasons appearing in decision of Writ Petition no. 96 of 2007 referred to above would hold good in all fours in present matter as well as on the background. Petitioner does not impute any *malafides* in the proceedings so undertaken and

the only contention appears to be, had the decision been taken quickly, outgo of rental compensation would have been considerably reduced, however, the circumstances are not disputed. In the present case, one may additionally have regard to that it is not in dispute that the petitioner has been in possession of the land in question since 1994 continuously without any interruption and that even before land acquisition proceedings were initiated with notification, certain developments at its instance had taken place. This is one more circumstance which weighs with us while declining the request made under the Writ Petition.

13. For all aforesaid reasons, we do not consider that the Writ Petition calls for any interference with the impugned order passed.

14. Writ Petition is, therefore, dismissed.

15. Rule stands discharged.

[P. R. BORA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/