

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

C.A.F. NO. 3676/2017

IN

FIRST APPEAL NO. 49/2002

EE, CPWD, Nagpur

..VS..

Keshav S/o Pandurang Mahalle

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.G. Bhangde, Sr. Adv h/f Shri R.M. Bhangde, Adv for applicant(s)
Shri S.Zia Qazi, Advocate for the respondent nos. 1 (i to iv)
Shri G.K. Iyer, Adv h/f Shri S.S. Ghate, Adv for the respondent no. 2
Shri R.S. Sundaram, Advocate for the respondent no. 3

CORAM : Z.A.HAQ, J.

DATED : APRIL 09 2018.

The applicant-Mihan India Limited invokes the powers of this Court under Section 151 of the Code of Civil Procedure, 1908 and seeks leave to file application for recall of the judgment delivered by this Court in F.A. No. 49/2002 on 22/09/2016, and prays that the judgment delivered in First Appeal No.49/2002 be recalled.

The relevant facts are:-

About 2.77.21 hectare of land out of Field Survey No. 332/4, 332/1 (or 333/4 as stated in the civil application) and Field Survey No. 334/1, owned by the predecessor of the non-applicant nos. 1 (i to iv) was acquired. The Land Acquisition Officer determined the amount of compensation payable to the land owner and held that the acquired body (that time Executive Engineer, Nagpur, Central Division no. 2,

Central Public Works Department, Nagpur) is liable to pay the amount of Rs. 66,308.55 ps. to the land owner. Being dissatisfied with the amount of compensation, the land owner sought reference under Section 18 of the Land Acquisition Act, 1894 (for short "the Act of 1894"). The Reference Court, by the order dated 05/05/2000 held that the land owner is entitled for enhanced amount of compensation of Rs. 89,349/- alongwith solatium and interest. The order passed by the Reference Court was challenged by the non-applicant no. 3-Executive Engineer, before this Court in F.A. No. 49/2002. By the judgment dated 02/02/2015, the first appeal was dismissed recording that enhanced amount of compensation was deposited by the State Government and was withdrawn by the owner of the land. While dismissing the appeal, it was observed that as the award was not executed against the present non-applicant no. 3-Executive Engineer and as the amount awarded by the Reference Court was deposited by the State Government, the Executive Engineer was not an aggrieved party. M.C.A. No. 1288/2015 was filed by the land owner seeking review of the judgment delivered on 02/02/2015. The land owner made grievance that the amount of compensation was not paid to the land owner. By the order dated 22/01/2016, M.C.A. No. 1288/2015 was allowed. The judgment delivered in F.A. No. 49/2002 on 02/02/2015 was recalled and the first appeal was restored. The first appeal was then taken up for hearing and judgment is delivered on 22/09/2016. At the time of hearing of the first appeal, Civil Application No. 2993/2016 was filed by the present applicant-Mihan India Limited praying that it be permitted to participate in the proceedings. It was submitted on behalf of the applicant-Mihan India Limited that the acquired land was intended to be utilized for

further development of the project of Mihan India Limited. This application was opposed by the land owners on the ground that the Airport Director, Airport Authority of India, Civil Aerodrome was the respondent no. 2 in the first appeal and Civil Application No. 2993/2016 was filed on behalf of Mihan India Limited through Senior Airport Director only to protract the matter. After hearing the learned advocates for the respective parties, Civil Application No. 2993/2016 was dismissed.

At the time of hearing of the appeal, a submission was made on behalf of the land owners that they are entitled for the benefit of Section 24 (2) of the Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the Act of 2013”). After hearing the learned advocates for the respective parties, this Court formulated the points for determination as follows:-

“i) Whether the issue raised by the respondent Nos. 1(i) to 1 (iv) relying on the provisions of Section 24(2) of the Act No. 30 of 2013 can be considered in the present appeal under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure ?

ii) Whether the award passed by the reference Court is proper or is required to be interfered with ?”

Considering the provisions of Section 24 (2) of

the Act of 2013 and the proposition laid down in the judgment given in the case of *Pune Municipal Corporation and another vs. Harakchand Misirimal Solanki and others* reported in (2014) 3 SCC at page 183, the appeal was disposed in the following terms:-

“ 14. Hence the following order:

i) The impugned award passed by the reference Court is set aside and the application filed by the landowners under Section 18 of the Land Acquisition Act, 1894 stands dismissed.

ii) The award passed by the Land Acquisition Officer on 24-03-1981 in respect of the land owned by the respondent Nos. 1 (i) to 1 (iv) is also set aside.

The appeal is disposed in the above terms. In the circumstances, the parties to bear their own costs. ”

Now this civil application is filed by the applicant-Mihan India Limited praying that the above judgment be recalled.

The submission on behalf of the applicant-Mihan India Limited is that the judgment is obtained by the landowners by playing fraud on this Court, misrepresenting that the amount of compensation determined by the Land Acquisition Officer was not paid to the landowner and further that possession of the land in question is not taken and

continued with the landowners. In the civil application, it is stated that the amount of compensation determined by the Land Acquisition Officer was paid to the landowner on 24/03/1981 and to support this averment, photo copies of two receipts dated 24/03/1981 are placed on record (at page 11, Annexure No. I and at page 14 of the compilation). It is stated that in the application filed by the landowner under Section 18 of the Act of 1894 the landowner had deducted the amount of compensation received by him as per the award passed by the Land Acquisition Officer. The copy of the application which was filed by the landowner under Section 18 of the Act of 1894 is placed on record (at page 22 Annexure No. 3 of the compilation). Para no. 7 of the order passed by the Reference Court is relied upon in which it is reflected that the amount of Rs. 66,308.55ps. was already paid to the landowner.

The landowners have filed their reply opposing the claim of the applicant, denying that the judgment in first appeal is obtained by them by playing fraud on this Court. The landowners have denied that the amount of compensation determined by the Land Acquisition Officer was paid to the landowner on 24/03/1981.

At the time of hearing of the application, the roznama dated 14/04/1981 of land acquisition case before the Land Acquisition Officer is relied upon which shows that an amount of Rs.66,308.55 ps. was paid to Keshav S/o Pandurang Mahalle and his acknowledgment was obtained. It is pointed out that signature of Keshav S/o Pandurang Mahalle (landowner) is found on the roznama dated 14/04/1981.

The landowners have again denied the above fact. The learned advocate appearing for the landowners has pointed out the relevant averments from para no. 7 of the reply. These averments are to the effect that the roznama shows that amount of Rs.66,308.55/- was paid to Keshav Pandurang Mahalle. It is argued by the learned Advocate for respondent Nos.1(i) to 1(iv) that documentary evidence is not placed on record to substantiate that amount was paid to Keshav Pandurang Mahalle. The respondent Nos.1(i) to 1(iv) have disputed the claim of the applicant that the signature on the roznama dated 14.4.1981 is of Keshav Pandurang Mahalle.

The learned Senior advocate for the applicant has submitted that the roznama dated 14/04/1981 and para no. 7 of the order passed by the Reference Court and the details of the compensation claimed by the landowner as stated in the application filed by him under Section 18 of the Act of 1894, show that the amount of Rs. 66, 308.55ps. was paid to the landowner towards compensation as determined by the Land Acquisition Officer and suppressing this fact and misrepresenting that the amount of compensation determined by the Land Acquisition Officer is not paid to the landowner, the judgment in first appeal is obtained seeking benefit of the provisions of Section 24 (2) of the Act of 2013.

It is submitted that this is a case of fraud on this Court and now when it is brought to the notice of the Court, it is the duty of this Court to investigate the matter and if it is satisfied that the judgment is obtained by playing fraud on this Court, to recall the judgment delivered in the first appeal.

To support the submission, reliance is placed on

the judgment given in the case of *Dadu Dayal Mahasabha vs. Sukhdev Arya and another* reported in (1990) 1 SCC at page 189. Relying on the judgment given in the case of *Ram Prakash Agarwal and another vs. Gopi Krishan (Dead Through LRs.) and others* reported in (2013) 11 SCC at page 296, it is submitted that when the judgment is obtained by playing fraud, this Court should exercise inherent powers conferred by Section 151 of the Code of Civil Procedure and recall the judgment.

It is further submitted that the landowner never made any grievance from 1981 till 2015 that the amount of compensation determined by the Land Acquisition Officer is not paid to him.

The landowners have again denied this fact by submitting that the execution proceedings are filed in 2000 seeking recovery of the amount of compensation for which the landowner was entitled and the execution proceedings were pending till decision of the first appeal.

The proposition laid down in the judgments referred above make it clear that if any party obtains a judgment by playing fraud on the Court, the Court is not helpless and it can exercise inherent powers under Section 151 of the Code of Civil Procedure, and direct investigation investigate itself and if it finds that the judgment or order is obtained by playing fraud on it by a party, the judgment or order should be recalled. But the question is whether in the present case, it can be said that the judgment in first appeal is obtained by the landowner by playing fraud on this Court ? It is well settled that when fraud is alleged, the party alleging fraud should prima facie, satisfy the Court on that point by bringing on record appropriate material. In the present case, I

find that in the civil application which is supported by an affidavit sworn by Vijay Shankar Mulekar, Senior Airport Director and Chief Operating Officer, Mihan India Ltd., Nagpur, reliance is placed on the two receipts dated 24/03/1981 to contend that the amount of compensation determined by the Land Acquisition Officer is paid to the landowner. The award passed by the Land Acquisition Officer is dated 24/03/1981. It is almost impossible to accept that the amount of compensation is paid by the acquiring body on the same day on which the award is passed. No details are placed on record to show as to how the amount is paid. Faced with this situation, the learned Senior advocate appearing for the applicant-Mihan India Limited made a statement that the applicant is not relying on the two receipts and submitted that even if those two receipts are overlooked, the roznama dated 14/04/1981, the claim made by the landowner in the application under Section 18 of the Act of 1894 for enhanced amount of compensation excluding the amount of Rs. 66,308.55 ps. and the details mentioned in para no. 7 of the award passed by the Reference Court on 05/05/2000 make it clear that the amount of Rs. 66,308.55 ps. is paid to the landowner. Apart from the change in stand by the applicant at the time of hearing, in my view, substantive right of the landowner which is adjudicated upon by this Court while deciding the first appeal cannot be again reopened by drawing inference that the amount is paid to the landowner specially when the applicant has not been able to even point out the mode by which the amount is paid.

In 1981, Mihan India Limited was not in existence and the acquisition proceedings were undertaken and looked after by the State Government. During the pendency of the

first appeal, the Airport Director, Airport Authority Civil Aerodrome, Ambedkar International Airport, Nagpur was impleaded as the respondent on the application filed by the Executive Engineer (C.P.W.D), as according to it, the Airport Authority of India was the acquiring body. The applicant - Mihan India Limited was not the acquiring body and it claims its right through the Airport Authority of India.

The Airport Authority of India is also not able to show that amount of Rs.66,308.55 ps. was paid to the landowner.

In the above facts, neither it can be said that the applicant- Mihan India Limited has placed material on record to prima facie show that fraud is placed on this Court while obtaining the judgment in the first appeal nor it can be said that the grievance as made by the applicant-Mihan India Limited can be examined by this Court by recalling the judgment delivered in the first appeal.

In view of the above, the civil application is dismissed. In the circumstances, the parties to bear their own costs.

If the applicant has any grievance, it can avail appropriate remedy before appropriate forum.

JUDGE