

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

FIRST APPEAL NO.327 OF 2004

Shri Dattatraya Sanstha,
Datta Bardi, Hadgaon,
through Treasurer,
Narayan Bapurao Deshmukh,
age 72 years, Occu: Agri.
R/o Hadgaon, Tq. Hadgaon,
Dist. Nanded.

= Appellant
(Orig. Claimant)

VERSUS

1. The State Of Maharashtra,
through District Collector,
Nanded.

2. The Spl. Land Acquisition Officer,
Building & Communication, Nanded.

3. The Principal,
Industrial Training Institute,
Hadgaon, Tq. Hadgaon,
Dist. Nanded.

= Respondents
(Orig.Resp.)

Mr.ND Narwadkar, Adv. h/for Shri M.V.Deshpande, Advocate
for Appellant/s;

Mr. SJ Salgare, AGP for Respondent-State

CORAM : P.R.BORA, J.

DATE : 1st February, 2019

ORAL JUDGMENT

1. The claimant in LAR No.1/1994 decided by the Court of Civil Judge, Senior Division, at Nanded on 17th April, 2002, has preferred the present appeal against the said judgment.

2. Agricultural land bearing Survey No. 188/2, admeasuring 6 hectares and 3 Ares, situated at Hadgaon, Tq. Hadgaon, District Nanded, belonging to the appellant-claimant, which is a charitable trust, was acquired for the establishment of Industrial Training Institute (ITI) at Hadgaon.

3. Notification under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as the Act) in that regard was published in the official gazette on 20th October, 1988 and Award under Section 11 of the Act came to be passed on 20th October, 1991. Special Land Acquisition Officer had offered the compensation @ Rs. 30,500/- per hectare. Dissatisfied with the amount of compensation so offered, the claimant preferred an application under Section 18 of the Act, which was adjudicated by the Court of Civil Judge, Senior Division, at Nanded. The said court is hereinafter referred to as the Reference Court.

4. The claimant had claimed the compensation @ Rs.1,00,000/- per hectare. In order to substantiate the claim so raised by it, the

claimant had brought on record eight sale instances. The Reference Court, after having considered the oral and documentary evidence brought on record, though held the claimant entitled for the enhanced compensation @ Rs. 35,000/- per hectare, ultimately dismissed the Reference Application being not filed within period of limitation. Aggrieved by, the claimant has preferred this appeal.

5. Shri Narwadkar, learned counsel appearing for appellant claimant submitted that the Reference Application was filed by the claimant well within period of limitation, however, the Reference Court has mis-interpreted the provision as about the limitation in the Act, and has wrongly held the Reference Application to be barred by limitation. The learned counsel further submitted that notice under Section 12(2) of the Act was issued in the name of Raigir Maharaj, who was not alive on the said date and had died much prior to that.

6. The learned counsel further submitted that thereafter an application was filed, seeking

correction in the Award passed under Section 11 of the Act and the Award was corrected on 30th March, 1993. The learned counsel further submitted that on 31st March, 1993, amount of compensation was paid to the claimant trust which was accepted under protest. The learned counsel further submitted that since the copy of the Award was not supplied to the claimant, an application was preferred by the claimant seeking certified copy of the Award on 13th April, 1993. The learned counsel further submitted that certified copy was received to the claimant trust on 17th March, 1993 and within a week thereafter, i.e. 26th May, 1993, the claimant filed the application under Section 18 of the Act. The learned counsel submitted that since the claimant has filed the appeal within a week after receipt of the certified copy of the Award, the application filed by the claimant under Section 18 of the Act was well within the period of limitation.

7. The learned counsel submitted that the facts that i) correction in the Award was made on on 30th March, 1993; ii) Copy of the Award was not

supplied to the claimant along with notice under Section 12(2) of the Act; iii) that the application was made by the applicant seeking certified copy of the said Award on 13th April, 1993 and it was provided to the claimant on 17th May, 1993, have been completely ignored by the Reference Court. The learned counsel further submitted that the Reference Court has also failed in appreciating that the notice under section 12(2) of the Act, allegedly issued on 20th April, 1992, was issued in the name of Raigir Amrutgir, who was not alive on the said date. The learned counsel submitted that the Reference Court has computed the limitation without considering the aforesaid facts and has wrongly held the application filed by the claimant trust to be time barred. The learned counsel, in the circumstances, prayed for setting aside the finding recorded by the Reference Court on the point of limitation and consequently to hold that the Reference Application filed by the claimant trust was well within period of limitation.

8. The learned counsel further submitted that the Reference Court has also failed in

determining the market value appropriately. The learned counsel submitted that, though total eight sale instances were brought on record by the claimant, the Reference Court has failed in appreciating the market value received to the lands which were the subject matter in all those sale instances. The learned counsel submitted that considering the sale instances brought on record the Reference Court must have determined the market value of the acquired land @ Rs.1,00,000/- per hectare and must have enhanced the amount of compensation accordingly. The learned counsel, therefore, prayed for enhancing the amount of compensation by determining the market value of Rs. 1,00,000/- per hectare of the land acquired of the claimant trust.

9. Shri Salgare, learned AGP appearing for the respondents, supported the impugned Judgment and Award. The learned AGP submitted that the Reference Court has passed a well-reasoned order on the point of limitation as well as on the point of enhancement in the amount of compensation and no interference is required in the Judgment and Award

impugned in the present appeal.

10. I have given due consideration to the submissions made by the learned counsel for the appellant and learned AGP for the State. I have perused the impugned judgment as well as the evidence on record. The material on record reveals that the Award under Section 11 of the Act itself was passed in the name of a dead person and notice dated 20th April, 1992, issued under Section 12(2) of the Act, was also issued in the said name. It is the specific case of the claimant trust that the application, along with revenue record, was made to the Special Land Acquisition Officer, who carried out necessary enquiry and eventually amended the Award on 30th March, 1993, and on the same day the claimant trust received the amount of compensation under protest. As has been observed by the Reference Court in para 4 of its judgment, the claimant filed the application seeking certified copy of the Award on 13th April, 1993, and it was supplied on 17th May, 1993. It is not in dispute that the application under Section 18 of the Act was filed by the claimant on 26th May, 1993.

11. The facts, as aforesaid, have been duly proved by the claimant trust. The Reference Court however has discarded the said evidence. In para 80 of the impugned judgment, the Reference Court has recorded a finding that it should be presumed that the claimant got the knowledge of the Award, passed under Section 11 of the Act, on 30th March, 1993, the date on which the compensation was paid to the claimant and was accepted by it. The Reference Court has also observed that the claimant, by getting corrected /amended the Award on 30th March, 1993 came on record and received the amount of compensation on the same day and in the circumstances, was estopped from taking a plea that trustees were not aware of passing of the Award under Section 11 of the Act. The Reference Court has computed the period of limitation from 30th March, 1993, observing that when the claimant accepted the amount of compensation on the said date, it has to be held that the manager/trustee of the claimant trust got knowledge of passing of the Award under Section 11 of the Act on the said date.

12. It is, however, difficult to agree with

the observations so made and the conclusion so recorded by the Reference Court. It was the specific contention of the claimant that he applied for the certified copy on 13th April, 1993 and received the same on 17th May, 1993. The contention so raised by the claimant trust has remained unrebutted. Nothing has been brought on record by the respondents showing that the copy of the Award was supplied or given to the claimant trust before 17th May, 1993. No such material is brought on record by the respondents showing that the notice under Section 12(2) of the Act was accompanied by the copy of the Award. On the contrary, as noted above, notice under Section 12(2) of the Act was indisputably issued in the name of dead person. It is also a matter of record that thereafter, correction was made in the Award on 30th March, 1993. The respondents have also not disputed the fact that the claimant applied for the certified copy of the Award on 13th April, 1993 and the certified copy was provided to the claimant on 17th May, 1993. In absence of any contrary evidence on record, it has to be held that the claimant became aware of the contents of the Award

only after obtaining the certified copy of the Award.

13. The Hon'ble Apex court in the case of Premji Nathu Vs. State of Gujrath – (2012) 5 SCC 250 has held that, “ copy of the Award under Section 11 of the Act is essential for effective exercise of right vested in the claimant to seek reference under Section 18(1) of the Act.” Relying on the said judgment, the Hon'ble Apex court in its recent judgment in the case of Vijay Mahadeorao Kubade Vs. State of Maharashtra through the Collector – (2018) 8 SCC 266, has reiterated that the claimant can be said to be aware as about the contents of the Award only after receiving the copy of the Award or service of the copy of the Award on him. In the said case, similar contention was raised by the appellant therein that, copy of the Award was not supplied to him along with notice under Section 12(2) of the Act and he became aware of the contents of the Award only after obtaining the certified copy of the Award. The contention so raised by the appellant therein was accepted by the Hon'ble Apex court.

14. In view of the law laid down by the Hon'ble Apex court in the aforesaid two judgments, I have no hesitation in holding that in the present matter, the claimant became aware about the contents of the Award only after obtaining the certified copy of the Award on 17th May, 1993. Since the appellant filed the reference application under Section 18(1) of the Act within one week after obtaining the certified copy of the Award, the Reference Application, filed under Section 18(1) of the Act, has to be held to have been filed within the stipulated period of limitation. The Reference Court has manifestly erred in holding that the claimant did not file the Reference Application within the period of limitation. The finding so recorded by it deserves to be set aside and as I noted herein above, it has to be held that the Reference Application was filed by the appellant claimant well within the stipulated period of limitation.

15. It is the further contention of the appellant claimant that the amount of compensation, as has been enhanced by the Reference Court, is

insufficient and inadequate. The Reference Court in the impugned judgment, after having considered the sale instances brought on record by the appellant claimant, has determined the market value of the acquired land @ Rs.35,000/- and has accordingly directed enhancement in the amount of compensation. According to the learned counsel appearing for the appellant claimant, the Reference Court has failed in properly appreciating the sale instances brought on record, because of which the market value of the subject land has been determined by Reference Court on lower side. The learned counsel submitted that the Reference Court has rejected the sale instance at Exhibit-136 and the other sale instances for wrong reasons. The learned counsel submitted that though the other sale instances were pertaining to small pieces of lands, the land involved in sale instance at Exh.136, was admeasuring 1 hectare and 51 Ares and was sold for the consideration of Rs. 1,51,000/-, i.e. Rs.1,00,000/- per hectare. The learned counsel submitted that the market value of the subject land must have been, therefore, determined at par with the said land, i.e. @ Rs.1,00,000/- per

hectare.

16. Submission made as above on behalf of the appellant is however difficult to be accepted. Material on record reveals that the land which was the subject matter of the sale deed at Exh.136 was abutting to road having large frontage and was fully irrigated. There was a well as well as the electric motor and pipe line in the said land. It is thus evident that the market value received to the said land was not liable to be received to the land involved in the present matter, it being a non-irrigated land situated at the interior part. It appears to me that the Reference Court has rightly determined the market value of the subject land @ Rs.35,000/- per hectare. No case is made out by the appellant claimant so as to grant any further enhancement in the amount of compensation so determined by the Reference Court.

17. In the result, following order is passed,
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ORDER

i. The finding recorded by the Reference Court holding the Reference

Application to have been filed beyond period of limitation is set aside. The Reference Application is held to have been filed within the period of limitation and stands allowed in the following terms, -

(A) The appellant trust is held entitled for the enhanced compensation @ Rs.5,000/- per hectare in addition to the compensation awarded by the Special Land Acquisition Officer @ Rs. 30,000/- per hectare;

(B) The appellant trust is also held entitled for the statutory benefits under Section 23(1A) and 23(2) of the Land Acquisition Act, 1894 on the enhanced amount of compensation;

(C) The appellant trust is held entitled for the interest on the

(15)

enhanced amount of compensation under Sections 28 and 34 of the Act from the date of passing of the Award under Section 11 of the Act, i.e. from 20.10.1991;

(D) Award be drawn accordingly;

(E) Deficit court fee, if any, be recovered from the appellant claimant;

ii. The appeal stands allowed in the aforesaid terms. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/