

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.105 OF 2003

1 Shri Narendra Janardan Mhatre

Age: 37 yrs., Service

2 Shri Nitin Janardan Mhatre

Age: 35 yrs., Occ: Service

... Appellants

Vs

1 The State of Maharashtra

Through Collector, Thane

2 Special Land Acquisition Officer,

Metro Centre No.2, Thane

3 The City and Industrial Development

Corporation,

“Nirmal”, Iind Floor,

Nariman Point,

Bombay- 400 021

Respondent

...

...

Mr. Rajesh S. Datar for the Appellant.

Mr. Deepak Thakre, GP along with Mr. Yogesh Dabke, Asst.
Govt. Pleader for the Respondent-State.

CORAM: SANDEEP K. SHINDE, J.

RESERVED ON: 14TH FEBRUARY, 2019

PRONOUNCED ON: 15TH MARCH, 2019

JUDGMENT :

“What is the legal efficacy of an award passed under the Land Acquisition Act, 1894, which is not signed by the author who meanwhile expires without signing the same is the substantial question of law arising in this appeal.”

. Heard learned counsel for the appellant and the learned Government Pleader for the State. None appears for the respondent no.3 - City and Industrial Development Corporation (CIDCO).

2 Facts in brief are that appellant/plaintiff had filed suit for declaration to this effect that defendant no.2 (Special Land Acquisition Officer, Metro Central No.2, Thane) did not pass any award at all and the land in dispute did not vest in the Government. It was also contended that the State Government is not entitled to dispossess the plaintiff from the suit land. Hence, relief of injunction of perpetual nature was sought for in the suit along with relief of declaration. Following two reliefs were sought:

(1) It may be declared as defendant no.2 has not declared award of suit land under Section 11 of the Act (Amended), 1984, it may be declared that the suit property does not vest in the Government as per Section 16 of the Act;

(2) It may be declared that the CIDCO-Defendant No.3 is not entitled to treat the suit property as lawfully acquired.

3 The State and the Special Land Acquisition Officer did not file any written statement and were also absent even on the date of hearing. They were marked ex-parte in the suit. It is only defendant no.3-CIDCO filed its say-cum-written statement on the basis of which the learned trial Court framed issues.

4 The CIDCO challenged jurisdiction of the Civil Court on the ground that Notification, on the basis of which award was passed could not be challenged before the Civil Court for want of jurisdiction

and it is only Hon'ble High Court in its writ jurisdiction under which it can probe into merit of - as well as award. The CIDCO further contended that after passing of the award, notice was issued to the plaintiff to collect the compensation and the possession was also taken over by the authorities through the Special Land Acquisition Officer. It also further contended that the land had already vested in it.

5 The learned trial Judge dismissed the suit on all counts by answering all the issues against the plaintiff. Aggrieved by the decree passed by the trial Court, Regular Civil Appeal No.172 of 1997 was preferred; however, it met with the same fate and the point nos.1 and 2 were answered in negative, i.e., against the appellants by judgment and order dated 10th January, 2001.

6 It is against the decree passed in Civil Appeal No.172 of 1997, this Second Appeal is preferred. The appeal was admitted on 31st March, 2003 on the substantial question of law as re-produced

here-in-above.

7 In this case, Notification was issued in the year 1970, notices were issued thereafter in response to which written objections were submitted on behalf of the appellants to the acquisition authorities. Acquisition proceedings started and award came to be settled. The main grievance of the appellant is that in spite of filing application for certified copy of the award, it was not furnished to the appellant and for want of certified copy of the award, plaintiff could not file reference under Section 18 of the Act. Another grievance is that ex-parte possession could not have been taken under Section 16 of the Act, on the basis of unsigned award which was not executable being non-est.

8 It appears that the concerned Land Acquisition Officer who has dealt with bunch of land acquisition proceedings of the suit land as well as other adjoining lands and awards were also typed and kept ready by him but before awards could be signed by him, he died

of sudden cardiac arrest. It appears from the judgment of the appellate Court that in the appeal proceedings, the Government Pleader made a statement before the Court that this event of sudden cardiac arrest and death of the officer concerned was not known to the litigants. It appears the Government Pleader had informed the Court that officer of Land Acquisition office has moved the Commissioner's office to allow present Land Acquisition Officer to sign the unsigned award.

9 On the other hand, it is the State's claim that possession of these suit lands were taken by drawing panchanama dated 8th June, 1986 in pursuance to the valid award and it is stated that since appellant/a person interested had participated in acquisition proceedings, it was valid acquisition. The State further contended that signing of the award is ministerial act and in the case in hand, award was not signed for the reason beyond the control of the State.

. However, it is the appellant's case that panchanama was drawn ex-parte without notice and that till date, they are in possession of it. It may also be stated that pending this appeal, appellant sought injunction to restrain the defendants from dealing with and/or disposing of the suit land. The said application was disposed of by this Court on 31st March, 2003 by passing the following order:

“ The Respondents shall pay the whole amount of compensation under the alleged Award to the Appellants without prejudice to the rights and contentions of both the sides within 12 weeks. C.A. stands disposed of.”

3 The only relief granted by this Court was that the respondents should pay whole amount of compensation under the alleged Award to the Applicants without prejudice to the rights and contentions of both the sides. Therefore, this Court declined to grant injunction in earlier Civil Application.”

10 The learned counsel appearing for the appellants submitted that respondents have not yet paid compensation in terms of the order dated 31st March, 2003. This contention of the appellant is not disputed by the learned Government Pleader for the State.

11 Section 11 of the Land Acquisition Act reads as under:

“11. Enquiry and award by Collector : (I) On the day so fixed. or on any other day to which the enquiry has been adjourned. the Collector shall proceed to enquire into the objections (if any) which any person interested has; stated pursuant to a notice given under section 9 to the measurements made under section 8. and into the value of the land at the date of the' publication of the notification under section 4, sub-section (I), and into the respective interests of the persons claiming the: compensation and shall make an award under his hand of;

I) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land. of whom, or of whose claims. He has information. whether or not they have respectively appeared before him:

l(Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate government or of such officer ..0; the appropriate government may authorised in this behalf:

Provided further that it shall be competent for the appropriate government to direct that the Collector may make such award without such approval in such class of cases as the appropriate government may specify in this behalf.)

l[(2) Notwithstanding anything contained in sub-section (I). if at any stage of the proceedings. the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.”

12 Section 16 deals with taking possession and it reads as under:

*" 16. **Power to take possession**- When the Collector has made an award under section II. he may take possession of the land. which shall thereupon vest absolutely in the Government. free from all encumbrances."*

13 Mr. Datar the learned counsel for the appellant submits that Section 11 of the Act requires Collector to make an enquiry and pass award under his hand (*emphasis supplied*) in respect of the true area of the land, compensation payable and apportionment of the compensation amongst the persons known or believed to be interested in the land and it attains the finality when such award is filed in the collector's office in terms of the provisions of Section 12 of the Act. He contended that it is only when award is filed in the collector's office, it is conclusive evidence of the true area and value of the land between the collector and the person interested. Once the award is filed in the office, collector is required to give notice of his award to such persons interested who were not present personally or

through their representative when award was made. Section 13A of the Act enables the collector to make corrections of clerical errors. Mr. Datar further submits that it is under Section 16 of the Act, collector is empowered to take possession of the land and provisions of Section 16 pre-supposes existence of valid award made by the Collector under his hand (emphasis).

14 In the case in hand, it is admitted fact that award was not signed by the Land Acquisition Officer. I have perused the unsigned award.

15 The expression “shall make an award under his hand” is to be interpreted and understood in the context of the provisions of the said Act. This expression employs the word “shall”, meaning thereby making Award is mandatory. Black's Law Dictionary 8th Edition has defined expression “under one's hand” to mean of a person's' signature, affixed manually, as opposed to the printed or stamped. The same meaning has to be assigned to the expression

“under his hand”. Thus, the Land Acquisition Officer is required to affix manually his signature on the award passed under Section 11.

16 The moot question is, if the Land Acquisition Officer does not sign the award, what is the efficacy of such award.

17 Mr. Datar the learned counsel appearing for the appellant has relied on the judgment of the Calcutta High Court in the case of ***Leath Elies Joseph Solomon v. H.C.Stork AIR 1934 Calcutta 758***. In the said case, the Land Acquisition Officer rejected the Petitioner's application requiring reference to the Collector under Section 18 of the Act for decision of her objections to the amount of award made by the Land Acquisition Officer under the provisions of Section 11 of the Act. The application was rejected on the ground that it was not within the time allowed by law. That while dealing with the issue, in paragraph 5 of the cited judgment, it was held that award cannot be said to be made until it is so drawn up and signed. In paragraph 5, it was held thus:

“5 The learned Collector appears to have overlooked the terms of S.11 of the Act, directing that an award shall be made “under his hand” and contain particulars of apportionment amongst those interested as well as the total compensation. It follows that the award cannot be said to be made until it is so drawn up and signed. In the present case this took place on 30th March and the affidavits show that the petitioner was not herself present on that date. The learned Land Acquisition Officer was therefore not entitled to reject her application as barred under S.18(2)(a) by six weeks limitation on the ground that she was so present. However, his order can be supported on the ground that though she was not present she was represented and so comes within the terms of S.18(2)(a), for under the orders of this Court she was represented by a receiver of the estate a portion of which is the property in question. Under the direction of this Court the receiver was to accept the award on behalf of the claimants and there is no doubt that when he appeared before the Collector on 30th March and accepted the award he was representing them under the orders of the Court. This would not take away the petitioner's right to make a reference, especially inasmuch as the appointment of the receiver was without prejudice to the contentions of the parties concerned.”

Mr. Datar therefore submitted that unless award is drawn up and signed, it cannot be said that the award is made. Mr. Datar has also relied upon the judgment of the Apex Court in the case of **Kaliyappan v. State of Kerala and Others** (1989) 1 Supreme Court Cases 113. In the cited case, the issue was relating to the period of limitation within which reference is to be made by the

Collector. In paragraph 5 of the said judgment, the Apex Court has held that under Section 11A of the Act, Collector is empowered to make an award before the expiry of the period of two years from the date of the publication of the declaration under Section 6 of the Act. If an award is not made within the prescribed period, it is open to the person interested in the lands to approach the collector and tell him that the acquisition proceedings should be dropped unless the collector is able to produce before him an award made by him within the period of two years.

18 The expression 'To make an award' has been explained by the Apex Court which means “sign the award”. That is the ordinary meaning ascribed to the words 'to make an award'. Mr. Datar the learned counsel for the appellant, would, therefore, submit that unless an award is signed by the Land Acquisition Officer, it is not an award in eyes of law. He further submits, that collector was not empowered to execute the said award by taking possession of the subject land. Mr. Datar further submits that alleged

act of taking possession has not resulted into vesting of the subject land into the Government. He would, therefore, pray that this Court may decree the suit and hold that the subject lands were not acquired and not vested into the Government.

19 It may be stated that the provisions of the Act do not contemplate “declaration of award” or “pronouncing the Award” what it says is that award is to be made by the collector under his hand. Thus, there is difference between the “declaration of award” or “pronouncing the Award” and to make an award.

20 Though the proceedings before the Land Acquisition Officer are not subject to provisions of the Code of Civil Procedure, 1908, however, to understand efficacy and the merit of the expression “to make an award” one can refer to provisions of the Order XX Rule 1 of the Code of Civil Procedure, 1908. It may be stated that even under the Criminal Procedure Code, 1973, certain irregularities in delivering judgment are curable. It says, as soon as

the judgment is delivered under the provisions of the Code of Criminal Procedure that becomes operative pronouncement of the Court. In the case of **Surendra Singh and Others v. State of U.P. AIR 1954 SC 194**, the Apex Court has held that 'as soon as the judgment is delivered, that becomes the operative pronouncement of the Court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this defer but they do not form the essence of the matter and if there is irregularity in carrying them out it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered (*emphasis supplied*), would stand good despite defects in the mode of its subsequent authentication. The facts in the cited case were that; two Judges of the High Court who heard an appeal in a criminal case; one purporting to write a joint judgment, prepared a judgment, signed it and sent it to the other judge but before it was delivered, died then the judgment, if delivered by the other judge,

was held to be not valid judgment.

. Thus, what is laid down by the Apex Court is once the judgment is delivered/pronounced (*emphasis supplied*), but inadvertently not signed may be for one reason or another such a irregularity is curable and proceedings consequent on it would be valid.

. Admittedly, the Land Acquisition Act does not provide for 'declaration of award' but the expression used is 'to make an award'. It attains finality once it is filed in the office of Collector.

21 Since the expression 'declaration' or 'pronouncement of award' is absent in the scheme of the Land Acquisition Act, 1894, expression 'making an award' has to be understood by drawing analogy, from the ratio in cited judgment. In the case in hand, there is nothing on record to establish that the Land Acquisition Officer had declared the award and filed it in the office of Collector. It is settled law that the judgment or order is operative no sooner it is

pronounced in the open Court duly intimating the parties and the world at large. In **Firm Gokal Chand Jaga Nath v. Firm Nand Ram Das Atma Ram AIR 1938 Privy Council 292**, facts were that the Division Bench delivered the judgment on 22nd February, 1933, but Judge Harrison went on leave before signing the judgment, which was signed by Haider J. The Deputy Registrar appended a note that Harrison, J. had gone on leave before signing the judgment he delivered.

. That upon taking recourse to the provisions of Order 41 Rule 31, the Privy Council held that rule does not say that if its requirements are not complied with the judgment shall be a nullity and such defect is merely an irregularity. It was held that the defect being merely an irregularity and not affecting merits of the case or the jurisdiction of the Court and, therefore, was not ground for setting aside the decree.

22 In both the cases cited hereinabove one is by the Apex Court and another by Privy Council, Judgments were declared and

pronounced, whereby intimating the parties results of the proceedings and world at large. However, in the case in hand, there is no evidence either documentary or otherwise to establish that award was made by the Land Acquisition Officer and filed in the office of the Collector as required under Section 12 of the Act. Therefore, drawing the analogy from the aforesaid two judgments since award was neither signed nor filed under Section 12 of the Act by the Land Acquisition Officer, it is to be held that the award was not made. Irregularities in the award post making the award are curable and would not affect merits of the matter. Admittedly, in the case in hand, no evidence was led by the respondent that the Land Acquisition Officer made the award.

23 Thus, taking into consideration the judgments in the case of **Leath Elies Joseph Solomon (Supra)** of Calcutta High Court and **Kaliyappan (Supra)** of the Apex Court wherein it has been held in clear terms that making an award under Section 11 means to 'sign the award'. Expression 'under his hand' has been

interpreted by the Calcutta High Court in the case of **Leath Elies Joseph Solomon (Supra)** means, that award cannot be said to be made until it is drawn up and signed. I, therefore, hold the award purportedly drawn by the Land Acquisition Officer was not an award made under Section 11 of the Land Acquisition Act.

24 In the result, following order is passed:

(1) Appeal is allowed and the judgment and the decree dated 18th August, 1997 passed in Regular Civil Suit No.415 of 1994 by the II Joint Civil Judge, Senior Division, Thane and judgment and decree passed by the learned District Judge, Thane in Civil Appeal No.172 of 1997 are set aside.

(2) It is declared that the defendant no.2 has not made an award in respect of the suit land under Section 11 of the Land Acquisition Act (Amended 1984) and the suit property has not vested in the Government.

(3) Appeal is allowed in the aforesaid terms with cost and disposed of accordingly.

(SANDEEP K. SHINDE, J.)