

Vidya Amin

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

ARBITRATION PETITION (St.) NO. 16172 OF 2019

Smt. Pramila Rakesh Thakkar (Dhak)	... Petitioner
V/s.	
The Additional Commissioner and the Arbitrator, Konkan Division, Mumbai	... Respondent

**WITH
ARBITRATION PETITION (St.) NO. 16174 OF 2019**

M/s. Sai Rydham Real Tors Pvt. Ltd.	
Through its Director Mr. Devendra Rajanikant	... Petitioner
V/s.	
The Additional Commissioner and the Arbitrator, Konkan Division, Mumbai	... Respondent

Mr. S.M. Shettigar for the petitioner in both the petitions.
None for the respondent.

**CORAM : G.S.KULKARNI, J.
DATE : 11th September, 2019**

P.C.:

These are two Petitions filed under section 34 of Arbitration and Conciliation Act, 1996 (for short “the Act”) whereby the petitioners challenge two orders both dated 16th October, 2018 passed by the Additional Commissioner and the Arbitrator, Konkan Division, Mumbai on Arbitration Petition Nos. 74 of 2017 and 75 of 2017. By the impugned orders, the learned arbitrator has rejected applications filed by the petitioners under section 20F(6) of the Railway Amendment Act, 2008 on the ground that

when on 29th March, 2011, Section 20A notification was issued under the provisions of Railway Act, the petitioners were not the owners of the land, as the land was subsequently acquired by the respective petitioners on 14th February, 2012 and 6th February, 2012 respectively. As the impugned orders are similar, one of the order is required to be noted, which reads thus:

“The Claimants being aggrieved by an Award passed by the Competent Authority/Deputy Collector (Land Acquisition), Surya Project, Dahanu dated 19/09/2013 in respect of land bearing S.No./G. No.. 86/1, 104 and 87/1.2.3 situated at village Rajavali, Taluka Vasai, District Palghar, thereby challenging the compensation award under the said award has preferred this petition under section 20F(6) of the Railway Amendment Act, 2008. The Petition is being filed by the claimant challenging the determination of the compensation by the respondent in an award dated 19/09/2013 with respect to land belonging to the claimant.

The respondent no. 1 in his reply dated 22/3/2018 has clarified that the award has been declared in the name of the land owners as per revenue records i.e. 7/12 records on the date of publication of initial notification dated 29/3/2011 under clause 20A of RAA 2008 under which the land acquisition process is being done. It has been further clarified that the petitioner has purchased the above land on 6/2/2012, i.e., after publication of 20A notification.

The respondent no. 2 i.e. DFCCIL in their reply dated 19/1/2018 have also repeated the same as has been contended by respondent no. 1 saying that the award has been correctly declared by the competent authority in the name of the persons to whom the land was belonging to as per land and revenue records on the date of publication of notification, i.e., 29/3/2011 under section 20A of RAA 2008 and therefore the applicant has no locus standi to appeal in this forum against the respondents.

FINDINGS

It is noted from the award dated 19/9/2013 of village Rajavali declared by the competent authority that the compensation in respect of above land claimed by the petitioner has been declared to some other persons and not to the petitioner. Since the impugned land was not standing in the name of the petitioner on the crucial date of publication of land acquisition notification u/s. 20A of RAA 2008, the petitioner has no right to claim compensation in respect of the said land and hence the petition is dismissed.

ORDER

- 1) The application is rejected.
- 2) The compensation in respect of above land claimed by the petitioner has been declared to some other persons and not to the petitioner.
- 3) This order communicated to all the parties.
- 4) Close the file and consign to record.”

2. The acquisition in question was a land acquisition under the Railways Act for ‘Dedicated Freight Corridor Corporation of India Ltd.’ As per the provisions of the said Act, the land acquisition award was published on 19th September, 2013.

3. Learned counsel for the petitioners submits that although the petitioners have purchased the land subsequent to the issuance of Section 20A notification which came to be issued on 29th March, 2011, the petitioners would nonetheless become entitled to challenge the land acquisition award, as the compensation which has been arrived at is not adequate. It is his submission that the petitioners will become entitled as owners of the land to assail the award and the reason as set out by the learned arbitrator in rejecting the applications of the petitioners is purely on the ground that the petitioners were not the owners when the notification under section 20A was issued. It is his submission that this amounts to erroneous application of the provisions of Act. It is accordingly submitted that on this limited count, the impugned award is required to be set aside.

4. On the last occasion, the respondents were represented and at their request, the hearing of the Petition was adjourned by the order dated 28th August, 2019, which reads thus:

“1. At the request of learned counsel for respondent nos. 1 and 2, stand over to 11th September, 2019 (High On Board). On the adjourned date of hearing, the Court shall proceed to hear both the parties and make an endeavour to dispose of this Petition. There shall be no further adjournment.

2. The advocates for the parties shall also keep ready all necessary record for the perusal of the Court on the adjourned date of hearing.”

5. Today none appears for the respondent. I have accordingly heard the learned counsel for the petitioners.

6. Perusal of the impugned orders would clearly indicate that the case of the petitioners in ascertaining the claim for higher compensation could not have been rejected on the sole ground that at the date of issuance of the notification under section 20-A the petitioners were not the owners. It appears to be not in dispute that on the issuance of said notification, i.e., on 14th February, 2012 and 6th February, 2012 the petitioners had purchased the land.

7. A bare reading of Section 20-A of the Railways Act would also indicate

that when notification under section 20-A is issued for acquisition of land for a special railway project, it is only an intention to acquire the land which is notified. Thus, issuance of such a notification would not per se amount to any embargo on the transfer of land by the owners so as to hold that a transfer of land was not permissible. Section 20A which reads thus:

“20A. Power to acquire land, etc. - (1) Where the Central Government is satisfied that for a public purpose any land is required for execution of a special railway project, it may, by notification, declare its intention to acquire such land.

(2) Every notification under sub-section (1), shall give a brief description of the land and of the special railway project for which the land is intended to be acquired.

(3) The State Government or the Union territory, as the case may be, shall for the purposes of this section, provide the details of the land records to the competent authority, whenever required.

(4) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which shall be in a vernacular language.”

8. Accordingly, as the petitioners purchased the land even subsequent to the issuance of such notification, they not only become persons interested but also become the owners of the land. Section 20F(4) clearly provides that before proceeding to determine the amount under sub-section (1) or sub-section (3), the competent authority shall give a public notice published in two local newspapers, one of which shall be in a vernacular language “inviting claims from all persons interested in the land to be acquired”. Sub-section (6) of Section 20F further provides that if the amount determined by the competent authority under sub-section (1) or as the case may be, sub-

section (3) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government. It is this provision which has been invoked by the petitioners.

9. It thus clearly appears that the reasoning as set out in the impugned orders passed by the learned arbitrator to reject the applications on the ground that the petitioners have no locus as they were not the owners of the land is clearly contrary to law and illegal.

10. In the above circumstances, I am of the clear opinion that the impugned orders are required to be quashed and set aside.

11. Petitions are allowed in the above terms. No costs.

12. Parties to act on the authenticated copy of this order.

(G.S.KULKARNI, J.)