

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9745 OF 2017

01 Suresh J. Shah,
age: years, Occ: Retired as
District Judge of Mumbai,
Indian Inhabitant, residing at
104, Challenger Co-operative
Housing Society Ltd.,
Thakur Village, Kandivali (East),
Mumbai 400 101.

02 Hemlata S. Shah,
aged 75, Occ: Housewife, having
address at D/301, Saraswati
Apartment, behind Shakti Nagar,
Dahisar (East),
Mumbai 400 068.

03 Ketan V. Shah,
aged 51, Occ: Business;

04 Nikesh V. Shah,
aged 46, Occ: Not known,

both having address at
A/401, Trilangi Apartment,
Kandarpada, Dahisar (West),
Mumbai 400 068.

05 Pratibha Jaiprakash Shah,
aged 58, Occ: Housewife,

06 Nayan Jaiprakash Shah,
aged 30, Occ: Not known,

both having address at 9/A,
Anuj Apartment, Parvat Nagar,
Dahisar (East),
Mumbai 400 068.

Petitioners

Versus

01 Union of India, represented

through Administrator,
Daman & Diu, having its
address at Daman, U.T.

02 The Hon'ble Collector, Diu,
having its office at
Collectorate, Diu, U.T.

03 The Mamlatdar, Diu,
having address at
Administration Building,
Diu, U.T.

Respondents

Mr.Mehul Shah i/b Bharat Joshi for the Petitioners.
Mr.Shrishailya S. Deshmukh for the Respondents.

**CORAM : R.M.BORDE AND
N.J. JAMADAR, JJ.**

DATE OF RESERVE : 2ND MAY, 2019

DATE OF PRONOUNCEMENT : 26TH JULY, 2019

JUDGMENT (PER R.M. BORDE, J.) :

1 Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The petitioners, whose landed property has been acquired for public purpose under an award declared by the Collector on 05.01.1996, which has been further modified by the State Government on 27.12.1996 in respect of an area to the extent of 500 square meters, are objecting to the order passed by the Mamlatdar, Diu, directing the petitioners to hand over an area to the extent of 500 square meters. The direction appears to have been issued by the Mamlatdar on 24.07.1997 pursuant

to the judgment and award passed by the Reference Court in Land Acquisition Reference No.02 of 1997. In pursuance to the directions of the Tahsildar, during pendency and disposal of this petition, the respondents have enforced the possession over additional 500 square meters area and as such, petitioners are claiming back the aforesaid area, possession of which has been forcibly taken on 24.07.2017.

3 The proceedings in respect of acquisition of an area, belonging to the petitioners, totally admeasuring 14,319 square meters was initiated with issuance of notification under Section 4(1) of the Land Acquisition Act on 08.03.1994. In observance of the procedure prescribed under the law, the proceedings were taken up by the Collector and an award was declared for a sum of Rs.22,23,335/- inclusive of compensation for the structure that was proposed to be acquired, amounting to Rs.06,78,485/- on 05.01.1996.

4 It appears that the petitioners approached the government for dropping the acquisition proceedings in respect of 500 square meters area surrounding the bungalow admeasuring 180 square meters. The request made by the petitioners for amending the award has been accepted by the

Government vide Diary No.1942 on 27.12.1996 and an area to the extent of 500 square meters was dropped from the acquisition and the valuation of the remaining area acquired was declared at Rs.19,40,065/- inclusive of remaining structure in the landed property having been valued at Rs.3,31,985/-. Respondent No.1 took possession of an area to the extent of 13,819 square meters and petitioners by constructing a boundary wall, demarcated the said portion, thereby segregating the area in possession of the petitioners to the extent of 500 square meters.

5 The petitioners, being aggrieved by the quantum of the compensation awarded under the amended award dated 06.01.1997, presented Land Acquisition Reference No.02 of 1997 to the Principal District Judge, Diu. The Principal District Judge, Diu, after receiving the evidence, was pleased to declare the award. However, in paragraph 12 of the judgment, the Reference Court has observed that once an award is passed, there is no provision under the Act for effecting amendment thereto. In the premise, that the joint applicants- co-owners claimed compensation for the entire area, the Reference Court proceeded to determine the compensation in respect of an area to the extent of 14,319 square meters belonging to the

petitioners. In paragraph 12 of the judgment, the Reference Court has observed thus:

“12 At the outset, I would like to mention here that, by order dated 06.01.1997 i.e. a year after original award was passed the then LAO – Collector, Diu carried out amendment in the award. In the amended award Collector, Diu has mentioned that Suresh Shah (one of the applicant and the co-owner of field survey No.PTS-115/10 submitted undertaking in the form of affidavit dated 03.04.1996 and 25.05.1996 with letters dated 06.04.1996 and 30.05.1996 mentioning therein that, they will not claim any damages from the Government for the Bungalow and surrounding area of 500 square meters, approximately from the award dated 05.01.1996. As such, the then Collector, Diu reduced the area of 500 square meters from the total area of 14.19 in respect of PTS-115/10 and accordingly the amount of compensation for the Land was reduced. Whereas the original copy of the said amended award was not sent or filed alongwith entire R & P. So also, once the award is passed, there is no provision under the Act for such amendment. No such amendment in the award is permissible unless for correction of clerical or arithmetical error.

So also, neither the alleged undertaking or the affidavit of applicant Suresh Shah or the alleged correspondence/letters are sent to this Court by Collector, Diu to this Court along with R & P, so as to see and satisfy as to why the said surrender was made. No prudent man will surrender his part of the claim which is already awarded in his favour. All the 5 joint applicants/co-owners of survey no.PTs-115/10 in their reference u/sec. 18 of the Act has claimed compensation for the entire land admeasuring 14319 square meters, with proposed increase of market value of the land and the structures too. Moreover, it is for the Court to determine just compensation and hence, the contentions of LAO – Collector, Diu in his reference letter Exh.1 regarding consideration of the land to the extent of 17504 sq. mts. only, instead of total acquired land of 18004 sq.mts., cannot be taken into consideration.

6 After declaration of award by the Reference Court on 11.02.2016, the information thereof was received by the Mamlatdar, Diu. The Mamlatdar, Diu, in the light of the award passed by the Reference Court, proceeded to direct the petitioners by notice dated 24.07.2017, to vacate the possession over the land to the extent of 500 square meters and hand over

the peaceful possession thereof on 29.07.2017 at 15.00 hours.

7 The petitioners approached this Court objecting to the notice issued by the Mamlatdar on 27.07.2017.

8 According to the petitioners, before the orders could be secured, possession of the property has been taken forcibly by the Mamlatdar. The petitioners have, in pursuance to the leave granted by this Court, amended the petition and requested for restoration of 500 square meters' area, which has been taken in possession by the respondents.

9 The petitioners contend that though the award has been declared by the Collector initially on 05.01.1996 determining the amount of compensation in respect of 14,319 square meters area, the petitioners made an application to the respondents for deletion of an area to the extent of 1000 square meters. The petitioners contend that there is a constructed residential bungalow; and an area occupied by the bungalow and surrounding portion needs to be deleted from the acquisition. The petitioners contend that they are residing in the bungalow and in the event, the property is taken over in possession, they would be rendered homeless and will have to find out a new

residential accommodation. The representation of the petitioners was considered by the respondents. They were directed to tender an undertaking and affidavit. The petitioners tendered an affidavit and undertaking as directed in respect of 1000 square meters area and requested to drop the proceedings to that extent and to modify the award. It appears that the request of the petitioners was considered and the amended award came to be declared by the Collector on 06.01.1997. The amended award has been published in the Official Gazette of Union Territory Administration of Daman and Diu, on 11.04.1997. It is recorded in the amended award that the petitioner - Suresh J. Shah has submitted an undertaking in the form of affidavits on 03.04.1996 and 25.05.1996 with the letters dated 06.04.1996 and 30.05.1996, that they will not claim any damages from the Government for deletion of bungalow and surrounding area from the award dated 05.01.1996. In view of the communications referred to above and on perusing the same, it is clear that an area of 500 square meters and bungalow came to be deleted from the total area of 14319 square meters out of S.No.PTS-115/10. The amount of compensation has been arrived at in respect of the balance area. The State Government has accorded approval to the amended award vide Diary No.1942 dated 27.12.1996.

10 It is the contention of the petitioners that since the original award has been modified and the respondents have declared the modified award on 06.01.1997, it was an error on the part of the Reference Court to hold that the LAO - Collector does not have any power to direct amendment to the award. The Reference Court, while dealing with the issue of determination of compensation for the acquired land, has exceeded its jurisdiction in observing that the action of amending award and deletion of an area to the extent of 500 square meters is not within contemplation of law. The Reference Court, firstly, was not called upon to consider the legality of the award. There was no issue framed in that regard nor any finding has been arrived at. The Reference Court merely observed in paragraph no.12 of the judgment that, it would be for the Court to determine just compensation and as such, proceeded to determine the amount of compensation for the total area under acquisition disregarding the fact that an area to the extent of 500 square meters has already been deleted from the acquisition with the approval of the State Government. The Reference Court has not dealt with the legality of the amended award nor has recorded a finding that the amended award is bad in law.

11 In fact, it is not within the domain of the Reference Court to consider the question of legality of the award. The Court, dealing with the Reference Application, is required to determine the objections as regards measurement of the land, amount of compensation, persons to whom it is payable or apportionment of the amount of compensation amongst the persons interested. The Reference Court shall have to deal with the aspects within the parameters of Section 12 of the Act. Even otherwise, assuming that the Reference Court has determined the amount of compensation for the whole of the area overlooking the fact of deletion of 500 square meters area from the acquisition, it does not, in itself, automatically invalidate the amended award nor it can be said that the Reference Court has put a stamp of approval to the initial award declared by the Collector on 05.01.1996.

12 It is contended by the learned counsel appearing for the Respondents that the question of correctness of the award passed by the Reference Court shall have to be dealt with in an appeal presented under the land acquisition act and may not be a matter of consideration in the writ petition. It must be noted that firstly, the Reference Court, while recording reasons, has merely observed that the Collector could not have amended the

award and as such, proceeded to determine the amount of compensation in respect of the whole area admeasuring 14,319 square meters. The judgment and award in the Reference proceedings does not have an effect of setting aside the amended award declared with the approval of the State Government on 06.01.1997.

13 In view of the provisions of Section 48 of the Land Acquisition Act, the Government has power to withdraw from the acquisition of any land of which possession has not been taken. It is not a matter of dispute that the possession of an area to the extent of 500 square meters was not taken over by the respondents. The liberty to withdraw from the acquisition, available to the State Government, shall include liberty to withdraw from the part of the acquisition proceedings. It is permissible for the State Government to direct deletion of part of the acquisition by taking recourse to Section 48 of the Land Acquisition Act.

14 In the instant matter, the amended award was declared with the approval of the State Government and it shall be deemed to be within the powers exercisable under Section 48 of the Land Acquisition Act. The proceedings of award under

Section 12 of the Act is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, *inter alia*, in respect of the amount of compensation which shall be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceedings is required to be taken; the amount is paid and compensation proceedings concluded. If, however, the owner does not accept the offer, Section 18 gives him the statutory right of having the question determined by the Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case, it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for acceptance. Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. (*See: Raja Harish Chandra*

Raj Singh Vs. The Deputy Land Acquisition Officer and another, AIR 1961 SC 1500)

15 The Reference Court, exercising jurisdiction under Section 18 merely has to consider the objections to the measurement of the land, amount of compensation, person to whom it is payable or the apportionment of amount of compensation amongst the persons interested. It is not within the powers of the Reference Court to consider the legality of the amended award.

16 In the instant matter, the Reference Court has not, in terms, recorded a finding holding that the amended award is not legal and not binding on the State. From the aforesaid analogy, the notice dated 24.07.2017, issued by the Mamlatdar, for taking over possession of an area to the extent of 500 square meters belonging to the petitioners, which area has already been deleted from the acquisition in view of the amended award, shall have to be branded as illegal. Merely because the Reference Court has determined the amount of compensation in respect of whole of the area, overlooking the amended award, that, in itself, does not empower the respondents to take possession of an area of the excluded portion from the award.

17 Another contention raised by the petitioners also deserves consideration. The petitioners contend that admittedly, the possession of 500 square meters area has been taken over in pursuance to the notice issued by the Mamlatdar on 24.07.2017, though the award, in the instant matter, has been initially declared on 05.01.1996, which has been modified on 06.01.1997. In the meanwhile, the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, are made enforceable. In view of provisions of Section 24(2) of the Act, since possession of an area of 500 square meters was not taken over, even within the period of five years from the date of declaration of award or amended award by the respondents and the possession remained with the petitioners, the proceedings of acquisition in respect of the part i.e. 500 square meters area shall be deemed to have lapsed and the appropriate Government, if chooses, shall have to initiate the proceedings of acquisition afresh in accordance with the provisions of the Act.

18 It is not a matter of dispute that the possession of 500 square meters area, which, in fact, has been deleted from the acquisition has not been taken over within five years from the date of declaration of initial award or amended award and as

such, by virtue of operation of Section 24(2) of the Act of 2013, the action of enforcing the possession by the Mamlatdar in the year 2017 is illegal.

19 In the instant matter, it would not be necessary to consider the provisions of Section 24(2) of the Act, since an area of 500 square meters, possession of which has been taken over by the respondents in pursuance to the notice dated 24.07.2017, is not even a part of award declared by the Collector and the proceedings, in that regard i.e. acquisition of 500 square meters area, have been dropped and the amended award has been declared on 06.01.1997 and the legality of the said award has not been questioned by anybody. So also the said amended award has not been set aside nor it has been declared illegal even by the Reference Court. Even otherwise, it is beyond the purview of the Reference Court to do so.

20 For the reasons recorded above, writ petition deserves to be allowed and same is accordingly allowed. The Respondents are directed to hand over possession of 500 square meters area, as demarcated in the plan, annexed at Exhibit-D along with the articles and things which have been taken over by the respondents, as expeditiously as possible, preferably within a

period of three months from today. The petitioners shall be entitled to the amount of compensation, as determined by the Land Acquisition Officer under the amended award as well as in consonance with the determination by the Reference Court restricting to the area which has already been taken in possession i.e. to the extent of 13,819 square meters.

21 It would, however, be open for the respondents to take steps for acquisition of 500 square meters area together with the bungalow, in the event such acquisition is necessitated for public purpose, in accordance with Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

22 Rule is made absolute to the extent as specified above. There shall be no order as to costs.

23 In view of disposal of writ petition, Civil Applications, if any, do not survive and stand disposed of.

(N.J. JAMADAR, J.)

(R.M.BORDE, J.)