Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 108 OF 2022
IN
MISC. CIVIL APPLICATION NO. 278 OF 2021

THE DEPUTY COLLECTOR, S.D.O. II, (LAO), MARGAO AND ANR …. Applicants.

Versus.

MARIO MORAES AND 4 ORS …. Respondents.

Mr. Pravin Faldessai, Addl. Govt. Advocate *for the Applicants-State.*

Ms. A.A. Agni, Senior Advocate with Ms. J. Sawaikar, Advocate *for the Respondents.*

CORAM : M. S. SONAK, J.

DATE : 29th July 2022

P.C: -

1. Heard Mr. Faldessai for the Applicants-State and Ms. Agni, the learned Senior Advocate who appears along with Ms. J. Sawaikar for the Respondents.

2. This application seeks recall of an order dated 3rd January 2022 in Misc. Civil Application No. 278/2021 in First Appeal No.140/2019 by which the Respondents were permitted to withdraw 50% of the amount deposited by the State in this Court, subject to their filing an undertaking that such withdrawal shall abide by the final orders in the Appeal.

3. Mr. Faldessai points out that the Reference Court, in its Judgment, Award and Order dated 8th January 2019 in Land Acquisition Case No.7/2016 had already made it clear that the excess amount awarded by the Reference Court, along with interest and costs, shall be kept with the Reference Court and the same would be paid to the parties only after the reference under Section 30 of the Land Acquisition Act, 1894 (said Act) which was said to be pending, is disposed of.

4. The operative portion of the Award, reads as follows :

> *" The reference is partly allowed with costs. Market rate of acquired land is fixed at ₹2,000/- per square metre as on the date of Section 4 Notification, i.e. 19.07.2013.*
>
> *The applicants are entitled for solatium as provided in Section 30 of the new Act together with interest of 12% per annum on the market value, as found mentioned in Section 30(3) of the new Act read with Section 69(2) and, (3) of the new Act.*
>
> *Similarly, applicants are entitle for interest on the excess amount, which the Collector/Land Acquisition Officer did not award, at the rate of 9% per annum from the date on which the Collector took possession of the land up*

to the date of payment of such excess amount with the Authority.

It is reported that there is another reference under Section 30 of the old Act with regard to the same land pending between the present applicants and others and therefore, the excess amount awarded by this Court along with interest and costs shall be kept with this Authority only in fixed Deposit, in case the same is deposited and shall be paid only after the decision of the reference under Section 30 pending before this Court."

5. Admittedly, the reference referred to above, is the Land Acquisition Case No.5/2016. There is no dispute that the same is pending todate.

6. By inadvertence and due to communication gap between the Counsel and the parties, the above Award dated 8th January 2019 was not brought to the notice of this Court. In case the Court were to have noticed the above Award, then, no orders would have been made permitting withdrawal. Therefore, based on this ground, a case is made out for recall of the order dated 3rd January 2022.

7. However, Ms. Agni, the learned Senior Advocate for the Respondents tenders an affidavit of Mario Moraes dated 27th July 2022. Based on the affidavit and the accompaniments, she submitted that there were several other orders made by the Civil

Court, Reference Court and even this Court in connected matters where the rights of the Respondents to whom she represents, were accepted and acknowledged. She, therefore, summits that even if the above Award were to be noticed, in all probabilities, this Court, would have permitted the withdrawal. It thus makes it clear that it was only on account of some communication gap that the Award could not be noticed by this Court. She also referred to several proceedings on the issue of acquisition, enhancement and apportionment between the parties which led to the communication gap.

8. From the circumstances presented, it is obvious that there was no intention whatsoever to not disclose the above Award. However, now that the Award is noticed by this Court, some orders are necessary for either recall or for securing the amounts withdrawn.

9. In the affidavit/statement annexed, filed by Mario Moraes, it is stated that in terms of this Court's order dated 3rd January 2022, the Respondents have withdrawn an amount of ₹18,88,17,280/-. The affidavit/statement annexed, further states that out of this, an amount of ₹16,25,39,460/- has been invested in banks/post offices. A detailed chart is set out in the statement of details at Exhibit-5 to this affidavit (page 171).

10. Ms. Agni, on instructions, states that the originals of bank/Postal instruments in which this amount of ₹16,25,39,460/- is invested, will be deposited with the Registry of this Court within two weeks from today. Further, on instructions, she states that these amounts will not be withdrawn or otherwise, dealt with. She, however, seeks leave to take necessary steps for renewals as and when such renewals become due.

11. Ms. Agni again, on instructions, states that the balance amount of ₹2,62,77,820/- will be brought back within six weeks. However, she states that the Respondents may be permitted to make investments in a nationalized bank corresponding to this amount in the name of the Registrar of this Court. She states that the bank instruments certifying this investment in a nationalized bank in the name of the Registrar of this Court in an amount of ₹2,62,77,820/-, will be deposited in the Registry of this Court within four weeks from today.

12. Considering the peculiar circumstances of this case, the above offer made by the Respondents through their learned

Counsel, can be accepted. The ultimate objective is to secure these amounts so that if the pending reference is decided one way or the other, the amounts would be readily available to the parties who are to be ultimately awarded the same in the pending Section 30 reference.

13. Accordingly, this application is disposed of by directing the respondents to comply whatever they have offered, within two weeks and four weeks, respectively.

14. The original instruments corresponding to an amount of ₹16,25,39,460/- will be deposited in the Registry of this Court within two weeks from today. Further, the necessary bank instruments in the name of the Registrar of this Court in an amount of ₹2,62,77,820/-, will also be placed with the Registry, within four weeks from today. Necessary intimation should be given by the Respondents to the learned Counsel for the Applicant-State so that they can verify the compliances.

15. This misc. application is disposed of in the above terms.

M. S. SONAK, J.

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL Date: 2022.07.29 17:13:58 +05'30'