

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 6313 OF 2021**KANCHAN
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Date: 2022.06.18 15:50:34
+0530**M/s. Tirupati Developers****..... Petitioner****VERSUS****The Union Territory of Dadra and Nagar Haveli****Through its Administrator & Ors.****..... Respondents**

Mr. G.S.Godbole, i/b. Mr.Shivraj Patne for the Petitioner.

Mr.H.S.Venegaonkar for the Union of India.

CORAM: R. D. DHANUKA AND**MADHAV J.JAMDAR, JJ.****DATE : 14th JUNE, 2022****P.C:-**

By this petition filed under Article 226 of the Constitution of India, the petitioner seeks writ of mandamus directing the respondent nos. 1 to invoke the provisions of section 40 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and for various other reliefs.

2. Sometime in the year 2017 the petitioner has filed a writ petition bearing no. 13043 of 2017 seeking a writ of mandamus before this Court seeking a declaration that the acquisition proceedings had lapsed under section 24 of the said Act and to pay compensation.

3. On 1st March, 2019, this Court passed an order thereby directing the respondent no.4 Land Acquisition Collector to complete the acquisition proceeding in respect of the determination of amount of compensation and to declare the award as expeditiously as possible preferably within a period of one year from the date of the said order. It was made clear in the said order that after declaration of the award, amount of compensation determined shall be paid to the petitioner immediately thereafter.

4. Pursuant to the said order, the respondents issued notification under section 11(1) read with sub-rule (4) in respect of the said property.

5. On 14th January, 2020, the declaration came to be issued by the Collector, Dadra and Nagar Haveli, Silvassa declaring that the land in question was likely to be needed for the public purpose, namely for the purpose of the construction of the compound wall of Government Building (Pay and Accounts), Silvassa. The said declaration states that no objections were received by the Collector.

6. Mr. Godbole, learned counsel for the petitioner invited our attention to the said order passed by the Division Bench and would submit that the respondents had made incorrect statement before this Court that acquisition proceedings in respect of the property had been already initiated in accordance with the provisions of the said Act. He submits that notification itself was issued much after the order of this Court on 1st March, 2019.

7. It is submitted by the learned counsel that the notice for hearing was issued during the pandemic period. In view of the pandemic situation, the petitioner could not remain present. The petitioner addressed a letter to the land acquisition officer for postponement of the hearing. Instead of granting any fresh date, the Land Acquisition Officer made an award *ex-parte*.

8. Learned counsel placed reliance on section 40 of the said Act and would submit that the possession of the land was taken in the year 2014 without complying with the provisions of section 40 of the said Act. The petitioner though was entitled to an additional compensation of 75% of the total compensation as determined under section 27, no

such compensation has been awarded to the petitioner. He also relied upon section 69 of the said Act and would submit that entitlement of the petitioner under the said provision also has not been provided to the petitioner.

9. Mr. Venegaonkar, learned counsel for the respondents on the other hand submits that the award has been already rendered by the Special Land Acquisition Officer and the acquiring body has already deposited the amount with the competent authority. He submits that this Court thus shall not interfere with the impugned award rendered by the Acquisition Officer.

10. It is submitted that in any event, if the petitioner is not satisfied with the compensation awarded by the Special Land Acquisition, the petitioner is entitled to make a reference under section 64 of the said Act and upon making such reference, the authority is empowered to consider the objection to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of rehabilitation and resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested.

11. It is submitted by the learned counsel that the petitioner has never raised any objection in respect of the validity of the acquisition proceedings initiated by the respondents at any point of time and thus even if the petitioner could not remain present before the Special Land Acquisition Officer for personal hearing, no hardship would be caused to the petitioner. His right to claim enhanced compensation is guaranteed under section 64 of the said Act. Mr. Godbole, learned counsel for the petitioner does not dispute that his client has not opposed the acquisition proceedings.

12. A perusal of the order dated 1st March, 2019, passed by the Division Bench of this Court in the earlier petition filed by the petitioner clearly indicates that this Court had directed the Land Acquisition Collector to complete the acquisition proceedings in respect of the determination of amount of compensation and to declare the award as expeditiously as possible preferably within a period of one year from the date of the said order and further directed that after declaration of the award, amount of compensation shall be paid to the petitioner immediately thereafter. The petitioner did not challenge the said order passed by this Court directing the authority to make the

award and to pay the compensation to the petitioner thereafter.

13. Learned counsel for the petitioner also invited our attention to the correspondence exchanged between the petitioner and the authority. The correspondence annexed to the petition itself would indicate that the petitioner was praying for compensation in respect of the land of the petitioner having been acquired. It would be apposite to refer to the letter dated 12th November, 2019 addressed by the petitioner to the authority stating that the petitioner has been asking for compensation for the said land for several years but no cognizance was taken and the construction was carried out. The petitioner was thus forced to approach this Court for compensation under section 40 of the Land Acquisition Act, 2013 with interest. It is thus clear that though the petitioner had claimed compensation in the earlier writ petition under section 40 of the said Act with interest, the said relief was not been granted by this Court. This Court simplicitor directed the acquiring body to complete the acquisition proceedings within a period of one year from the date of the said order.

14. The question that arises for consideration of this Court is

whether the petitioner has suffered any prejudice by the authority making an award without giving sufficient opportunity of being heard to the petitioner or not before passing an award. It is not in dispute that the petitioner had applied for time before the Acquisition Officer. The Special Land Acquisition Officer however proceeded with and rendered an award without granting any hearing and has awarded certain amount of compensation. In our view, since the petitioner has not impugned the action on the part of the respondents to acquire the land in question and in the earlier writ petition also prayed only for compensation and interest, even if no hearing was granted to the petitioner by the Special Land Acquisition Officer, no prejudice is caused to the petitioner. Since there is no issue of acquisition raised in this matter, the only question survives is in respect of the compensation.

15. Though the respondents had taken possession of the land of the petitioner, even according to the petitioner in the year 2014, no steps were taken by the petitioner to challenge the action of taking possession of the land of the petitioner. Be that as it may, under section 64 of the said Act, the petitioner being an interested person and has not

having accepted the award, may make an application to the Collector and require that the matter be referred to the Collector for determination of the authority as the case may be regarding the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of rehabilitation and resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested. The authority has power to decide the application for compensation.

16. For the reasons recorded aforesaid, in our view, there is no merit in this writ petition. Writ petition is accordingly dismissed.

17. The petitioner would be at liberty to make an application under section 64 of the said Act for claiming compensation in accordance with law. If any such application is made, the Collector shall decide such application for the purpose of referring the claim to the authority for the determination under the said provision. No order as to costs.

[MADHAV J. JAMDAR, J.]

[R. D. DHANUKA, J.]