

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

**INTERIM APPLICATION NO. 30097 OF 2022
IN
ARBITRATION APPEAL NO. 26 OF 2022**

Vishant Regency Co. Op. Housing
Society Ltd. ...Applicant/ Appellant
Vs.
The Addl. Commissioner and the
Arbitrator, Kokan Div. Mumbai. ...Respondent

**WITH
INTERIM APPLICATION NO. 30095 OF 2022
IN
ARBITRATION APPEAL NO. 27 OF 2022**

Mohan Damodar Bhoir and Anr. ...Applicants/ Appellants
Vs.
The Addl. Commissioner and the
Arbitrator, Kokan Div. Mumbai. ...Respondent

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Mr. Dushyant Purekar a/w. Ms. Sharvari Joshi, for the
Applicants / Appellants.
Ms. Pradnya Bansode, for the Respondent No.3.

**CORAM : MANISH PITALE, J.
DATE : 14 DECEMBER 2022**

P.C.

. These two appeals are filed under Section 37 of the

Arbitration and Conciliation Act, 1996, to challenge the impugned order dated 16/11/2022 passed by the Principal District Judge, Thane, under Section 34 of the aforesaid Act.

2. The facts in brief leading up to filing of these two appeals are that the respondent No.2 as the competent authority undertook the process of acquisition of land and structures concerning the appellants, for the respondent No.3 for development of the Western Dedicated Freight Corridor Project of the Railways. The acquisition was undertaken as per the provisions of the Railways Act, 1989. As contemplated under the provisions of the said Act, the awards were rendered for compensation regarding acquisition of the land and compensation for the structures in question.

3. By award dated 19/3/2013, the respondent No.2, being the competent authority, pronounced its award determining compensation for the land acquired in the aforesaid process. By a separate award dated 19/9/2013, the respondent No.2 determined compensation for the structures of the appellants standing on the lands in question.

4. Being aggrieved by the quantum of compensation determined by the respondent No.2, the appellants i.e. the society in Arbitration Appeal No.26/2022 and individual

appellants in Arbitration Appeal No.27/2022, filed separate arbitration petitions under Section 20(F) of the aforesaid Act. By separate orders dated 9/3/2022, the arbitrator i.e. the respondent No.1 herein, rejected the applications by holding that the claimants i.e. the appellants had failed to lead sufficient evidence to support their case for enhancement of compensation.

5. Aggrieved by the aforesaid orders passed by the respondent No.1 / arbitrator, the appellants in both these appeals filed a joint application under section 34 of the Act of 1996 bearing Civil Misc. Application No.169/2022, to raise their grievance as regards the quantum of compensation and to challenge the two orders passed by the arbitrator. It appears that due to such joint application being filed, the pleadings placed for consideration before the Court of Principal District Judge at Thane, were mixed up in a confused manner. When the application actually came up for hearing, a *pursis* was filed on behalf of the appellants, seeking to withdraw the challenge as regards the enhancement of compensation pertaining to the acquisition of structures, thereby limiting the challenge to the question of determining the compensation for the land acquired.

6. In this backdrop, by the impugned order dated 16/11/2022, the Court of Principal District Judge at Thane held that the appellant society in Arbitration Appeal No.26/2022, did not

have any locus for the reason that it could not be said to be owner of the land and the matter stood decided on the aspect of locus against the appellants.

7. It is significant that in the meanwhile, the Sub Divisional Officer of Vasai, pronounced a further award for compensation pertaining to the structures acquired. The same was pronounced on 30/12/2021, this time determining the compensation to an enhanced amount of Rs.29,03,28,330/-, which was substantially higher than the quantum of compensation determined by the aforementioned award dated 19/9/2013.

8. When these appeals were taken up for consideration before this Court, it was realized that while the acquisition proceedings were undertaken, determining the quantum of compensation as per the provisions of the Railways Act, 1989 and challenges thereto were raised, the appellants continued in possession of the subject lands and structures. This Court found that under the statutory scheme of the Railways Act, 1989, or even otherwise, the appellants could not claim any right to continue in possession of the land and structures. In fact, the learned counsel appearing for the respondent No.3 brought to the notice of this Court that despite several attempts made to take possession of the lands and structures, the appellants had resisted the same and despite the fact that the Western Dedicated Freight Corridor Project was undertaken almost a decade ago, the same had not made any

significant progress due to possession of the lands and structures not being handed over. In these circumstances, this Court impressed upon the appellants that while they would be entitled to raise their contentions as regards the adequacy of compensation, for acquisition of the lands and structures, they could not claim any right to continue in possession thereof. The appeals were adjourned with a direction to the learned counsel for the appellants to take proper instructions in the matter. Today, when the appeals are taken up for hearing, the learned counsel for the appellants in both the appeals submitted that the appellants are ready to give an undertaking before this Court to vacate the land and structures on or before 15/1/2023. The learned counsel for the appellants submitted that the office bearers of the appellant society in Arbitration Appeal No.26/2022 i.e. Mr. Sundaran Krishnan, Chairman and Mr. Dhirendra Chandeshwar Jha, Secretary are present in Court. A resolution dated 13/12/2022 passed in the Special General Body Meeting of the appellant – society is handed over, wherein it is recorded that the society has resolved to give an undertaking to this Court that the members / occupants of ‘C Wing’ shall vacate their respective flats on or before 15/1/2023. The resolution is taken on record and marked ‘X’ for identification.

9. It is further submitted that the appellant No.1 in Arbitration Appeal No.27/2022, is present in Court and

identified by the learned counsel for the appellants and he undertakes on behalf of both the appellants to vacate the subject land and structures on or before 15/1/2023. The undertakings given on behalf of the appellants in both the appeals are recorded.

10. In the light of the aforesaid undertakings given on behalf of the appellants, it is submitted that in so far as the quantum of compensation pertaining to the acquired structures is concerned, in the light of the subsequent award pronounced on 30/12/2021, enhancing the quantum of compensation, the challenge raised on behalf of the appellants to the earlier award pertaining to the structures dated 19/9/2013, in a manner of speaking, has been rendered infructuous. Yet it is submitted that the appellants ought to be given an opportunity to further challenge the recent award dated 30/12/2021, in accordance with law. It is submitted that the appellants may be granted liberty to withdraw the quantum of compensation determined in the award pronounced on 30/12/2021, subject to their right to challenge the same on merits.

11. As regards the determination of compensation pertaining to acquired land, in so far as the appellant-society in Arbitration Appeal No.26/2022 is concerned, the learned counsel for the appellants has placed reliance on provisions of the Maharashtra Ownership Flats (Regulation of the promotion of construction,

sale, management and transfer) Act, 1963, to contend that as per the statutory scheme, the society would have rights in the land also. It is submitted that this aspect was never taken into consideration in the proper perspective while determining the quantum of compensation and the entitlement of the appellant society to the same. In so far as the appellants in Arbitration Appeal No.27/2022 are concerned, it was submitted that the appellants therein have individual claims to be owners of the subject land and that they are therefore, interested in challenging the quantum of compensation.

12. In support of both the appeals, on the question of enhancement of compensation for the acquisition of lands, the learned counsel for the appellants relied upon Section 20-F(8) of the Railways Act, 1989, to claim that the arbitrator failed to take into consideration factors specified in Clauses (a) to (d) therein while determining the quantum of compensation. By inviting attention of this Court to the order dated 9/3/2022, passed by the arbitrator, it was submitted that there was not even a semblance of reasoning therein and by a one line order stating that the claimants had failed to place on record sufficient evidence, entitlement to enhancement of compensation was rejected. As regards the impugned order passed by the Principal District Judge, Thane, the learned counsel for the appellants in both the appeals submitted that the matter was never taken up and

considered on merits on the aspect of quantum of compensation for acquisition of land and that therefore in the interest of justice, the impugned order as well as the award rendered by the arbitrator need to be set aside and the matters ought to be remanded to the respondent No.1 arbitrator for fresh consideration with appropriate directions.

13. On the other hand, Ms. Pradnya Bansode, learned counsel appearing for the contesting respondent No.3 submits that the appellant-society in Arbitration Appeal No.26/2022, does not have any locus to raise issue regarding adequacy of compensation pertaining to acquisition of concerned land and that therefore, this Court may not remand the matter back to the arbitrator/respondent No.1 in so far as appellant society is concerned. Even otherwise, it is submitted that the arbitrator was justified in passing the orders dated 9/3/2022, for the reason that the appellants themselves failed to produce on record any cogent material to support their case for enhancement of compensation as regards the acquisition of lands. In so far as the impugned order passed by the Principal District Judge at Thane is concerned, it is submitted that since the appellant-society itself gave up its challenge to compensation pertaining to the acquisition of structure and limited the same to determination of compensation concerning acquisition of land, the Court was justified in rejecting the application on the ground of locus

standi. It was submitted that the appellants had continued in possession of the land in question for almost a decade, which had hampered progress of the development project undertaken by the respondent.

14. As regards the award pronounced on 30/12/2021 pertaining to determination of compensation for acquisition of acquired structures, it was submitted that the appellants may take appropriate steps with regard to the same, but the appellants can no longer continue in possession of the structures. On this basis, it was submitted that the appeals may be dismissed.

15. This Court heard the learned counsel for the rival parties in the backdrop of the material on record. As regards the impugned order dated 16/11/2022, passed by the Principal District Judge, Thane, the appellants themselves, particularly the appellant society has to blame for the confusion that occurred due to the nature of pleadings placed before this Court and the manner in which the *pursis* was placed on record, on behalf of the appellants. The joint application filed by the appellants in both the appeals to challenge distinct orders dated 9/3/2022, passed by the respondent No.1/arbitrator led to confusion and the consequent order passed by the Court of Principal District Judge at Thane.

16. Be that as it may, in so far as quantum of compensation pertaining to acquisition of structures is concerned, there is no dispute about the fact that, as per the subsequent award pronounced on 30/12/2021, the quantum of compensation has been enhanced. Since the said award has been pronounced recently, the appellants would be entitled to raise grievance with regard to the same. Therefore, in so far as the question of quantum of compensation for the acquired structures is concerned, this Court is inclined to grant liberty to the appellants to challenge the said award pronounced on 30/12/2021, in accordance with law.

17. In so far as the question of determination of compensation for the acquired lands is concerned, this Court has perused the orders / awards dated 9/3/2022, passed by the respondent No.1/ arbitrator. A perusal of the same shows that major portion of the orders consists of recording the rival submissions and the reasoning is contained in only two paragraphs towards the end of the orders. The respondent no.1/arbitrator has simply recorded that the claimants did not lead sufficient evidence while seeking enhancement of compensation and only on the basis of said observation, the applications filed by the appellants have been rejected. There is not even a semblance of reasoning in said award.

18. The appellants are justified in raising a grievance with regard to the same in the context of Section 20(F)(8) of the Railways Act, 1989. The said provision enjoins the competent authority or the arbitrator to take into consideration the specific factors enumerated in Clauses (a) to (d), while determining the amount of compensation. The tenor of the statutory provision is such that the arbitrator is expected to take into consideration the aforementioned factors in Clauses (a) to (d), indicating that a detailed exercise is expected from the arbitrator while considering the question of enhancement of compensation. A bare perusal of the orders dated 9/3/2022, passed by the respondent No.1 arbitrator shows that no such exercise was undertaken, thereby rendering said orders vulnerable. The challenge raised to the said two orders dated 9/3/2022, by way of a joint application filed by the appellants, led to confusion and resultantly the Court of Principal District Judge did not consider on merits the grievance of the appellants as regards the quantum of compensation pertaining to acquisition of lands. Although the appellants themselves can be said to be partly responsible for the situation, this Court is of the opinion that when matters concerning compulsory acquisition are before the Court, the crucial factor is payment of just and fair compensation to the claimants. In that view of the matter, this Court is of the opinion that appellants have succeeded in making out a case for remanding the matter to the respondent No.1 for fresh consideration, in so far as the

question of determination of compensation for acquisition of lands is concerned.

19. In view of the above, the appeals are disposed of as follows:

ORDER

(i) The undertakings given by the appellants hereinabove are recorded and the appellants shall handover possession to the respondents of the subject lands and structures on or before 15/1/2023.

(ii) The appellants would be at liberty to challenge the award pronounced on 30/12/2021, pertaining to compensation for the acquired structures, in accordance with law.

(iii) The appellants shall be entitled to withdraw the quantum of compensation determined for the acquisition of the structures under the award dated 30/12/2021, without prejudice to their rights to challenge the said award on merits. If the appellants institute such a challenge to the award dated 30/12/2021, the same shall be decided in accordance with law.

(iv) The orders dated 9/3/2022 passed by the respondent No.1 in Arbitration Petition No.104/2016 and 105/2016, as also the impugned order dated 16/11/2022 passed by the Court of Principal District

Judge at Thane in Civil Misc. Application No.169/2022, are quashed and set aside.

(v) The matters are remanded to the respondent No.1 for fresh consideration, only as regards the question of quantum of compensation payable to the appellants for acquisition of the lands. It is made clear that the question as to whether the appellant society in Arbitration Appeal No.26/2022, is entitled for grant of compensation for acquisition of the land, is kept open.

(vi) The respondent No.1 is directed to consider the challenge raised on behalf of the appellants to the quantum of compensation payable for the acquisition of the lands on merits, by applying the provisions of the Railways Act, 1989, particularly those indicated under Section 20(F)(8)(a) to (d) thereof.

(vii) Interim applications, if any, also stand disposed of.

MANISH PITALE, J.