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

WRIT PETITION NO.13156 of 2023

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The Municipal Corporation
of Greater Mumbai & Ors.

... Petitioners

V/s.

Mangla Realtors Pvt. Ltd.

... Respondent

Mr. Dharmesh Vyas with Mr. R.Y. Sirsikar for the
petitioner (MCGM).

Mr. Mayur Khandeparkar with Ms. Snehal Modi for the
reespondent.

Mr. Mahesh G. Patil, Assistant Engineer (Maintenance)
S Ward, is present.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 22, 2023

PC.:

1. The petitioners are challenging order dated 25 April 2023 passed by the learned Additional Chief Judge, Court of Small Causes Court, Mumbai in Municipal Application No.1 of 2022 thereby allowing application for amendment of Municipal Application No.1 of 2022 to incorporate pleadings regarding enhancement of compensation and permitting documents to prove enhanced compensation.

2. The dispute pertains to a strip of land ad-measuring 1474.84 sq. mtrs. which was acquired by the petitioners in November 2009

for the purpose of widening of Goregaon-Mulund Link Road. The Commissioner in exercise of power under Section 301 of the Mumbai Municipal Corporation Act, 1949 offered compensation of Rs.9,19,47,136.20 ps on 10 February 2022.

3. The petitioners, therefore, filed Municipal Application No.1 of 2022 claiming enhancement of compensation.

4. During pendency of such Municipal Application, the petitioners based on revised valuation report dated 20 June 2022 filed an application to amend Municipal Application No.1 of 2022. The petitioners sought revised compensation of Rs.4,34,51,00,000/-.

5. The petitioners contested the said application by filing affidavit in reply. The Trial Court by the impugned order dated 25 April 2023 allowed the application for amendment and also permitted the respondents to place on record revised valuation report.

6. Being aggrieved by the order dated 25 April 2023 the petitioners filed present writ petition.

7. Learned advocate for the petitioners submitted that the Trial Court had no power to allow application for amendment seeking enhancement of compensation as such power is not available under statute. He submitted that the Commissioner while passing order under Section 301 of the Mumbai Municipal Corporation Act, 1949 determines amount of compensation and against such determination the exercise of power by the Chief Judge of the Court of Small Causes is appellate in nature. As per statute, a

person seeking compensation requires to make a claim before the Municipal Commissioner under Section 301 and only thereafter such person can approach the Chief Judge of the Court of Small Causes under Section 504. Under the garb of amendment, the affected person is not entitled to make claim for enhancement. Considering the nature of proceedings under Section 504 of the Mumbai Municipal Corporation Act, 1949, additional evidence in the form of Valuer's Report is not permissible. Therefore, according to the petitioners the impugned order deserves to be quashed and set aside.

8. Per contra, it is submitted on behalf of the respondents that while deciding quantum of compensation under Section 301, the Commissioner is not adjudicating on the amount of compensation and the compensation awarded by the Commissioner in the nature of offer and it is for the respondents to make a reference to the Chief Judge, Court of Small Causes if such offer is not acceptable. Since under Section 301 of the Act, the Municipal Commissioner is not required to grant opportunity before awarding compensation, the proceedings before the Chief Judge, Court of Small Causes is original proceedings. The determination of amount which is to be paid by the person disputing the amount is to be made by the Chief Judge, Court of Small Causes.

9. Rival contentions fall for consideration.

10. For the purpose of deciding the issue involved, it is necessary to set out relevant provisions of the Mumbai Municipal Corporation Act, which read thus:

“301. Compensation to be paid in cases under the three last sections. — (1) Compensation shall be paid by the Commissioner to the owner of any building or land acquired for a public street under section 298 or 299, for any loss which such owner may sustain in consequence of his building or land being so, acquired and for any expense incurred by such owner in consequence of the order made by the Commissioner under either of the said sections ; provided that any increase or decrease in the value of the remainder of the property of which the building or land so acquired formed part likely to accrue from the set-back to the regular line of the street shall be taken into consideration and allowed for in determining the amount of such compensation.

(2) If, in consequence of any order to set forward a building made by the Commissioner under the last preceding section, the owner of such building sustains any loss or damage, compensation shall be paid to him by the Commissioner for such loss or damage.

(3) If the additional land which will be included in the premises of any person required or permitted under the last preceding section to set forward a building belongs to the corporation, the order or permission of the Commissioner to set forward the building shall be a sufficient conveyance to the said owner of the said land; and the 1[price to be paid to the corporation by the said owner for such additional land and the other] terms and conditions of the conveyance shall be set forth in the said order or permission.

(4) If when the Commissioner requires a building to be set forward, the owner of the building is dissatisfied with 2[the price fixed to be paid to the corporation or any of the other] terms and conditions of the conveyance, the Commissioner shall, upon the application of the said owner at any time within fifteen days after the said terms and conditions are

communicated to him, refer the case for the determination of the Chief Judge of the Small Cause Court, whose decision thereupon shall be conclusive.

504. Amount of expenses of compensation to be determined in all cases of disputes by the Chief Judge of the Small Cause Court — If, in any case not falling under section 491, any person is required by this Act, or by any regulation or by-law framed under this Act, to pay any expenses or any compensation, the amount to be so paid, and if necessary, the appointment of the same, shall, in case of dispute, be determined, except as is otherwise provided in sections 502 and 515, by the Chief Judge of the Small Cause Court on application being made to him for this purpose at any time within one year from the date when such expenses or compensation first became claimable.”

11. Analysis of Section 301 read with Section 504 of the Mumbai Municipal Corporation Act, 1949 indicates that any person who does not accept Award passed by the Commissioner under Section 301 can raise a dispute before the Chief Judge, Court of Small Causes as provided under Section 504 of the said Act. From the bare reading of this section 504 it is quite clear that the application under this section is to be filed before the Chief Judge of the Small Cause Court within a period of one-year from the date on which the compensation first became claimable. On perusal of Sections 301 and 504, it appears that the Commissioner while awarding compensation does not adjudicate on the amount of compensation but merely makes an offer for acquired land on behalf of the Municipal Corporation. If the land owner considers the amount offered by the Commissioner under Section 301 to be inadequate and makes a request within the prescribed period, it is for the

Chief Judge, Court of Small Causes to determine the compensation. Therefore, exercise of power under Section 504 of the Mumbai Municipal Corporation Act is exercise of original power by the Chief Judge, Court of Small Causes.

12. It needs to be noted that the land owner when he loses the land may not know the exact value of his land as on the date of acquisition. While referring the matter to the Chief Judge, Court of Small Causes disputing compensation amount awarded by the Commissioner, the land owner may not really know the actual market value. It is possible that instances of comparable sales are not available. Therefore, determination of real market value of the land should not be restricted by technicalities to provisional amount claimed by the land owner disputing the amount of compensation.

13. The period of limitation under Section 504 of one year has nothing to do with the amount of compensation claimed. It, therefore, follows that in the dispute in regard to the objection to the amount of compensation, the Chief Judge, Court of Small Causes can permit any application for amendment of claim relating to compensation. The persons aggrieved will have to give only the nature of objection to the award, and briefly mention the grounds in support of it. Though the landowner can give the details of his claim and quantum, he is not bound to do so. I, therefore, hold that the time-limit under Section 504 of the Act is only for raising the dispute to the amount of compensation.

14. On perusal of Section 504, it appears that it does not require

land owner to specify the amount of compensation sought while objecting to the amount of compensation awarded under Section 301. As there is no obligation to specify the amount, such amount can be specified at latter stage of proceedings by way of amendment.

15. It is well settled that the compensation depends upon the market value established by evidence and it is not dependent on the guesswork of the land owner regarding market value of his land. If the land owner under the erroneous information of market value claims lesser amount, such ignorance should not come in the way of land owner resulting in determination of value lesser than the market value of land.

16. The Division Bench of this Court in **Municipal Corporation of Greater Mumbai v. Durgaprasad Shankarrao Rege & Anr.** reported in AIR 1980 SC 93 while considering challenge to Sections 298, 299, 301 of the Mumbai Municipal Corporation Act, 1949 held in paragraph 44 as under:

“44. It is true that unlike in the Bombay Provincial Municipal Corporations Act, there is no provision in the Act with which we are concerned, namely the Bombay Municipal Corporation Act, for the holding of an inquiry at the time when the Municipal Commissioner determines the compensation. This, in our opinion, makes no difference, for which under that Act the original determination is to be by the Municipal Commissioner and an appeal is to lie to the Judge of the Court of Small Causes in the City of Ahmedabad and a second appeal to the District Court under the Bombay Municipal Corporation Act the original determination itself, in case the compensation offered by the Municipal

Commissioner is not acceptable to the owner, to be by a Judicial Officer, namely, the Chief Judge of the Court of Small Causes at Bombay, from whose decision an appeal lies to the High Court. Thus, the above observations of the Supreme Court apply with equal force to the case before us.”

17. Another Division Bench while considering the issue as to whether reference made on a dispute arising from demand made under Section 491 is an application or not and whether provisions of the Limitation Act would apply to such reference observed in paragraph 16 in **Municipal Corporation of Greater Bombay & Ors. v. Thakurdevi Shriniwas Khemraj & Ors.** reported in 1985 Mh.L.J. 581 as under:

“16. ... The determination of the amount which is to be paid by the person disputing the amount is to be made by the Chief Judge of the Small Causes Court. When the amount is ascertained by the Chief Judge of the Small Causes Court under the provisions of Section 504 and if, on demand, the amount so ascertained is not paid by the person liable to pay, then the amount becomes due as if the same were due under a decree of the Small Causes Court. This is so provided in Section 505.”

18. It is, therefore, clear that the adjudication by the Chief Judge of the Court of Small Causes under Section 504 of the said Act is original determination which is not akin to appeal against the adjudication by the Commissioner. Therefore, also the person aggrieved by the offer made by the Commissioner under Section 301 can amend the claim.

19. Therefore, in my opinion, the impugned order passed by the Chief Judge of the Court of Small Causes allowing respondent to

amend his claim and permitting the respondent to produce on record documents in support of enhanced claim of compensation does not suffer from error of jurisdiction.

20. The petitioner is entitled to file written statement to the amended claim and also entitled to produce documents, if any.

21. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)