

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 19 OF 2020

APPELLANT: Kazi Akiloddin Sujauddin,
Age 55 years, Occu: Agriculturist and
Land Developers, R/o Kazipura,
Tq. Barshitakli, Dist. Akola.

..V E R S U S..

RESPONDENTS 1] State of Maharashtra,
through Collector, Akola.

2] The Special Land Acquisition Officer,
Katepurna, Morna Project, Akola,
District -Akola.

3] The General Manager, Maharashtra State
Electricity Generation Company Ltd.,
Paras, Tq. Balapur, District Akola.

Mr Ateeb A. Syed, counsel for the appellant.

Mr M.A. Kadu, AGP for the respondent Nos. 1 and 2.

Mr G.E. Moharir, counsel for the respondent No.3.

CORAM : URMILA JOSHI-PHALKE, J. .

DATE : 23/03/2023

ORAL JUDGMENT :

1. The present appeal is preferred by the appellant, who is the original claimant against the judgment and award passed by the learned 3rd Joint Civil Judge, Senior Division, Akola in Land Acquisition Case No. 122/2012 dated 26/06/2019, by which the

reference petition of the claimant was dismissed, on the ground that protest application which was filed by the claimant does not bear the seal and signature of that Office and Officer. Thus the claimant has not raised any protest against the award passed by the Land Acquisition Officer, and hence he is not entitled for enhancement of the compensation.

2. Brief facts, which are necessary for disposal of the appeal are as under:-

The land survey No. 40/02 of Mouje Kasarkhed, Tq. Balapur, District Akola ad-measuring 4 H. 75 R, out of which the petitioner was having share is 2H. 73 R. and the remaining 2H. 2R was owned by his wife. Thus, the entire field survey No. 40/02 of Mouje Kasarkhed was owned and possessed by the petitioner and his wife.

3. Being an Industrial Land, the notification under Section 4 was issued on 02/07/2009, and award was declared on 28/02/2011 vide LAC No. 11/47/2007-08 of Mouje Kasarkhed, Tq. Balapur, District Akola. The notice under Section 12(2) was issued to the petitioner on 30/09/2011. The Land Acquisition Officer has assessed the amount of compensation of Rs. 29,429/- and the said amount was received by the petitioner under protest, as the amount of compensation awarded by the Land Acquisition Officer was inadequate. He preferred the reference petition before the learned Reference Court. As per the contention of the petitioner, the Land Acquisition Officer has not considered the fertility, potentiality of the land, and the fact that the acquired land was having potential of

non-agricultural and was awarded inadequate compensation.

4. Respondent No.3 resisted the reference petition by filing a reply vide Exhibit-12. Respondent Nos. 1 and 2 adopted the written statement of respondent No.3 by filing Pursis. As per contention of the respondent No.3, the petitioner has accepted the amount of compensation without any protest, and therefore, now the petitioner is not entitled to receive any compensation in view of Section 18 of the Land Acquisition Act,1894, and prayed for dismissal of the proceeding.

5. The learned Reference Court framed necessary issues and recorded the evidence. After recording of the evidence, the reference Court has observed that though, it has come in the evidence of the claimant that he received the amount of Rs. 29,429/- under protest. However, the said document does not bear the seal and signature of that Office and Officer. Thus there is no protest by the petitioner and he has accepted the amount of compensation and dismissed the reference of the claimant.

6. Being aggrieved and dissatisfied with the judgment and award passed by the learned Reference Court, the present appeal is preferred on the ground that the learned Reference Court has not considered the fact that the appellant has accepted the amount under protest. The filing of the Reference itself is the protest in view of provisions of the Land Acquisition Act,1894. Hence, the observation of the trial Court is arbitrary, erroneous, and liable to be set aside.

7. Heard Mr Ateeb A. Syed for the appellant/ claimant. He

reiterated the said contentions and submitted that the observation of the learned Trial Court that without protest the compensation amount was accepted by the appellant and hence he is not entitled to claim the enhanced compensation.

8. In support of his contention, he placed reliance in the case *State of Maharashtra vs Shridhar s/o Ramchandra Mokasdar*¹, wherein it is held by this Court that averment by the claimant that he received the amount of such compensation under protest, failure of the State Authorities to produce said voucher, no evidence led by them in rebuttal. The claimant's averment that he received the compensation under protest justified. He further placed reliance in the case of *Satyabhamabai Sitaram Deshmukh Vs State of Maharashtra*², wherein also, this Court has held that, let us consider whether the objection raised on behalf of the respondent for untenability of the reference under Section 18 of the Act on that ground is sustainable. At the outset, it may be stated that beyond raising such an objection, the respondent led no material evidence to show that the claimants received the compensation otherwise than under protest. Nevertheless, evidence on record is that the amount was received by the claimants under protest.

9. On the other hand, Mr G.E. Moharir, learned counsel for respondent No.3 submitted that there was no protest by the claimants in view of the provision of Section 18 (1) any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by

1 2005 (1) ALL MR 51

2 (1994) 96 BOMLR384

the Collector for the determination of the Court, whether his objection is to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. He submitted that thus the foundational fact that the claimant has not accepted the award itself is not proved by the claimant, as he has not raised the objection. Exhibit No. 24 does not bear the signature of the claimant which is sufficient to say that he has not raised any objection to the award passed by the Land Acquisition Officer. Therefore, the learned Reference Court has rightly rejected the application and no interference is called for.

10. Mr M.A. Kadu, learned AGP for the respondent Nos. 1 and 2 reiterated the same contention.

11. It is submitted that, so far as the purpose for which the Land Acquisition Act is enacted is to be taken into consideration. In the proceeding under the Land Acquisition Act, the Collector is of administrative authority, and in the capacity of Collector, the award passed by the Collector is an administrative offer. The offer declared by the Collector is of an administrative nature and not of a judicial or quasi judicial nature. When a Government intends to acquire land in any locality, it has to issue a notification under Section 4 in the official gazette as also in the newspaper and to give a public notice which entitles anyone on behalf of the Government or Government to enter into the land for the purposes of digging, taking measurement, set out boundaries etc. The notification puts forward the intention of the Government to acquire the land, in

terms whereof the government officials became entitled to investigate and ascertain whether the land is suitable for the purpose for which the land is sought to be acquired. The section also makes it mandatory for the officer or person authorised by the Government to give a notice of seven days signifying his intention to enter into any building or enclosed garden in any locality. This is a mandatory provision which is to be carried by the Land Acquisition Officer. Thereafter, the declaration under Section 6 is to be issued. Section-9 of the Land Acquisition Act requires the Collector to cause the public notice displayed at convenient place expressing the government's intention to take possession of the land, and requiring all persons interested in the land to appear before him personally and make claims for compensation before him. Section 11 makes it obligatory on the part of the Collector to safeguard the interest of all persons interested even though they might not have appeared before. While awarding the compensation, the Land Acquisition Collector should look into the estimated valuation of the land and give due consideration to the other factors. The procedure for reference as contained in Part-III of the Act reveals that except for the right of reference on the said three factual matters, the Act does not provide for an appeal from the award of the Collector.

12. The provisions of the Act must be read in their entirety, once the award is made having regard to the conclusiveness and finality attached by the Collector has also the statutory duty to offer payment of the awarded amount subject to the provision for

Reference. Section 18 of the Act is required to be read with a proviso appended to Section 31 of the Act. The person interested may question the correctness or legality of the award on one for the other grounds specified in Section 18 of the Act.

13. Thus, in view of Section 18(1) any person interested who has not accepted the award can file an application to the Collector, requiring that the matter be referred by the Collector for determination by the Court wherein, the objection is in respect of the measurement of the land, the land compensation, the persons entitled to receive the compensation, or apportionment of the compensation among the persons interested. The Hon'ble Apex Court has dealt with the issue regarding the protest by the claimants. In the case of *M/s. Steel Authority of India Ltd. V/s S.U.T.N.I. Sangam and others reported in (2009) 16 SCC1 Note-C* wherein it is held that objections filed in printed forms contending that all awards should be subject to objections and that the payments would be received under protest, raising of such objections in response to notice under Section 9 cannot have the effect of an application filed for reference under Section 18. However, when the application for reference is filed, protest to award is implicit and need not be filed expressly.

14. In para-77 of the judgment, it is observed by the Hon'ble Apex Court that learned counsel, however, invited our attention to take recourse to the purposive interpretation doctrine in preference to the literal interpretation. It is a well-settled principle of law that a statute must be read as a whole and then

chapter by chapter, section by section, and then word by word. For the said purpose, the Scheme of the Act must be noticed. If the principle of interpretation of statutes resorted to by the court leads to a fair reading of the provision, the same would fulfill the conditions of applying the principles of purposive construction.

15. In para-18 it is further observed by the Hon'ble Apex Court that we may, however, hasten to add that we do not intend to lay down a law that the protest in regard to making of an award must be done in a manner specified expressly. When an application for reference is filed, protest to the award is implicit as has been held by this Court in *Ajit Singh & Ors Vs State of Punjab and Ors*³. The Hon'ble Apex Court in *Ajit Singh and others V/s State of Punjab and others* referred (supra) observed as follows :-

"5. Having regard to the contiguity of these lands the High Court is correct in its valuation. Besides, the date of notification, issued under Section 4 of the Act, is October 4, 1978 while Exh. R-6 is nearer to it, namely, August 16, 1978, in comparison to Exh. A-6 dated January 14, 1977. Inasmuch as the appellants have filed an application for reference under Section 18 of the Act that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation. The District Judge and the High Court, therefore, fell into patent error in denying the enhanced compensation to the appellants."

16. In view of the observation of the Hon'ble Apex Court the filing of the reference itself is sufficient to show the protest which is ignored by the learned Trial Court. This Court has also referred in the case of *State of Maharashtra vs Shridhar s/o Ramchandra Mokasdar and Satyabhamabai Sitaram Deshmukh Vs State of Maharashtra referred (supra)* relied upon by the learned counsel of the appellant shows that the respondent need no material evidence to show that the claimants received the compensation otherwise than under protest.

17. In my view, in the present case, Exhibit No.24 is on record which shows that the claimant has filed an application and made protest. In view of the observation of the Hon'ble Apex Court in the case of *M/s. Steel Authority of India Ltd., Vs S.U.T.N.I. Sangam and others cited (supra)*, when the claimant has filed an application for reference, protest to the award is implicit and need not be filed expressly, which is not taken into consideration by the learned trial Court.

In view of that the judgment and award passed by the learned trial Court deserves to be set aside by remitting back the reference to the learned trial Court for reconsideration. In view of that, I pass to proceed with following order.

- a) The first appeal is **allowed**.
- b) The judgment and award passed by the learned 3rd Joint Civil Judge, Senior Division, Akola is quashed and set aside.
- c) The Reference in Land Acquisition Case No.

122/2012 is remitted back to the learned trial Court for reconsideration in view of the judgment of the Hon'ble Apex Court.

- d) The parties are at liberty to adduce the evidence in support of their claims.
- e) As the land acquisition process was initiated in the year 2009, the learned Reference Court shall expedite the reference and decide expeditiously.

The parties to appear before the learned trial Court 12/4/2023.

JUDGE

RKN