

S.R.JOSHI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4555 OF 2024
WITH
INTERIM APPLICATION NO.13699 OF 2024
IN
WRIT PETITION NO.4555 OF 2024

Shri Sitaram R. Harak
& Others

...Petitioners

Versus

The State of Maharashtra
& Others

...Respondents

Mr. Pramod N. Joshi with Ms. Rukmini Khairnar, for the Petitioners.
Ms. P. N. Diwan, AGP for the Respondent-State.

CORAM: G. S. KULKARNI &
 FIRDOSH P. POONIWALLA, JJ.
DATED: 10th OCTOBER, 2024

P.C.

1. This Petition, under Article 226 of the Constitution of India, is filed praying for a substantive relief that the Land Acquisition Award dated 31st December, 2013 rendered by Respondent No.2 – Deputy Collector (Land Acquisition National Highway Project, Nashik) is illegal and cannot be enforced under Section 12 (2) of the Land Acquisition Act, 1894 (for short “**1894 Act**”) on the ground that such notice was issued after a period of 4 years. It is prayed that the Award dated 31st December, 2013 and the Notice under Section 12(2) of the 1894 Act be declared as in-executable / unenforceable.

2. At the outset, we may observe that as fairly pointed out by Mr. Joshi, learned Counsel for the petitioners, that the notice issued to the petitioners under Section 12(2) of the 1894 Act, on the basis of which a case is sought to be asserted in the petition, is not annexed to the petition, however, he submitted that the averments in that regard are made in the memo of petition, as also in the Petitioner's application filed under Section 18 of the 1894 Act, seeking enhancement of the compensation, a copy of which is annexed to the petition.

3. It is not in dispute that under an arrangement between the State Government and the petitioners which was prior to the Land Acquisition Award dated 31st December, 2013, the land of the petitioners was handed over by the petitioners to the respondents. Such arrangement is set out in the Award, which reads as under:-

“Possession of the Land:-

As the Land Acquiring Officer has taken the possession of the land on 21.11.1991 by way of private negotiation, the Land Acquiring Officer shall pay to the farmers concerned, the amount of lease in respect of the area of the land taken into possession, from the date of taking possession thereof till the declaration of the Award pertaining thereto. However, after declaration of the Award, the possession shall duly be taken as provided in Section 16 and only thereafter, the lands under acquisition, free from all encumbrances, shall be vested in the Government.”

4. In so far as the land acquisition is concerned, the relevant facts are:- On 23rd February, 2011, a notification under Section 4 of the 1894 Act was issued to acquire the petitioners' land for construction of Bhorkhind Canal. On 25th February, 2011, this notification was published in the local newspapers. Thereafter, on 15th March, 2011, it was published on the village Chavadi, and on 24th March, 2011 it was published in the Government Gazette.

5. On 27th February, 2012, a notification under Section 6 of the 1894 Act was issued and the same was published in the Government Gazette on 1st March, 2012. Thereafter, a notice under Section 9 of the 1894 Act was issued to the petitioners between 15th May, 2012 to 18th May, 2012.

6. It is not in dispute that the land acquisition award was made within a period of two years from the issuance of declaration under Section 6, hence, there was compliance of the provisions of Section 11 of the 1894 Act. It is the case of the petitioners that, however, payment of the compensation was immediately not made to the petitioners under the Award. It is the petitioners' case that, although the award was published on 31st December, 2013, however, in terms of Section 12 (2) of the 1894 Act, which provides that for such persons who were interested and who were not present personally or through a representative when the award was made, a notice under Section 12(2) of the 1894 Act be issued. Such notice was issued on 9th January, 2018, which is stated to be almost 4 years after the publication of the award. It is the petitioners' case that such facts came to the knowledge of the petitioners on 24th January, 2018 when the said notice was received by the petitioners.

7. The petitioners contend that on receipt of the Award, in March, 2018, they approached Respondent No.2, and filed an application under Section 18 of the 1894 Act, praying for enhancement of the compensation. Such Reference Application is made to the Civil Court which is pending before the Civil Court.

8. It appears that, although such Reference Application was made by the petitioners on March, 2018, the petitioners after resorting to such proceedings for the first time in June 2021, which is almost after more than two and half years of the Reference Application, decided to approach this

Court by the present Petition, praying for the reliefs as noted by us hereinabove.

9. Mr. Joshi, learned Counsel for the petitioners, has limited submissions to support the petitioners' case for the reliefs as prayed for. His contention is that, by virtue of the provisions of Section 12(2) of the 1894 Act, the Award is rendered invalid or illegal and/or has lapsed for the reason that the notice under sub-section (2) of Section 12 of the 1894 Act was issued after a period of more than 4 years from the date of declaration of the award. It is submitted that this is not a reasonable period and, for such reason, the Award has lost efficacy, hence, the same be held invalid. The second contention as urged by Mr. Joshi is that the impugned action on the part of the Respondents is also not bonafide inasmuch as Respondent No.2 published the award on 31st December, 2013, as the Respondents were aware that "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" (for short "**2013 Act**") was to be notified, and if the same is notified, the petitioners would be granted or become entitled for a higher compensation under the 2013 Act. Mr. Joshi submitted that, for this reason also, the Award is required to be held as illegal. In support of his contentions, Mr. Joshi has placed reliance on the decision of the Supreme Court in *Raja Harish Chandra Raj Singh v/s. Deputy Land Acquisition Officer & Another*.¹ Mr. Joshi, hence, submits that the petitioners are entitled for the reliefs as prayed for in the Petition.

10. On the other hand, Ms. Diwan, learned AGP has opposed the Petition. She submits that the petition deserves to be dismissed, inasmuch as the contentions as urged by the petitioners are contrary to or not borne by Section 12(2) of the 1894 Act. She also submits that the submissions of Mr. Joshi that the Award is rendered illegal, the same being declared on 31st December,

¹ AIR(1961) SC 1500

2013, for the reason that the respondents were aware that the 2013 Act would be notified under which the State would be required to pay more compensation is mis-conceived, considering the clear provisions of Section 114 of the 2013 Act, read with the provisions of Section 6 of the General Clauses Act. She submits that, in fact, the petitioners accepted the award and after accepting the same, they have also taken a recourse to the remedy of seeking an enhancement of the compensation by a Reference under Section 18 of the 1894 Act. She submitted that, for this reason also, the present Petition is mis-conceived.

11. Having heard the learned Counsel for the parties, at the outset, it may be observed that the submissions of Mr. Joshi revolve around the implications Section 12 of the 1894 Act would bring about. Section 12 needs to be noted which reads as under:-

Land acquisition Act, 1894

Section 12. Award of Collector when to be final -

(1) Such award shall be filed in the Collectors office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

12. A bare reading of Section 12(1) would show that, once the Award is filed in the Collector's Office, it would be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested. Sub-section (2) of Section 12 provides that the Collector shall give

immediate notice of the Award to such of the persons interested as are not present personally or by their representatives when the Award is made.

13. If this is the purport of Section 12 of the 1894 Act, we would be at a loss to understand as to how Mr. Joshi's submissions on different consequences as urged by him being rendered under sub-section (2) of Section 12 of the 1894 Act, the award would be held to be illegal, i.e. on the ground that merely because the notice of the award is claimed to be belatedly received by the persons interested, by virtue of the provisions of Section 12(2), the award be held to have lapsed. Such contention of Mr. Joshi, firstly militates against the statutory provision of Section 12(2) and secondly, accepting such submission would amount to reading something into sub-section (2) which the legislature itself has not provided. It cannot be that the legislature was not aware of how lapsing of acquisition would taken place, when specific provisions with regard to lapsing have been made in Section 11-A of the 1894 Act. Section 12(2) neither explicitly nor by any implication provides for any lapsing of the award or for the same being rendered invalid on the ground of its delayed communication under sub-section (2) of Section 12 of the 1894 Act. Following the well settled principles of interpretation of statutes and more particularly the Golden Rule of Interpretation, it is not possible to read into the legislative provisions something which the legislature has not provided or to attribute a different meaning not intended to be attributed by the legislature or destroy the original meaning as assigned/provided by the legislature. In our opinion, on this ground alone, Mr. Joshi's submission to read lapsing of award or of the same being rendered invalid under sub-section (2) of Section 12 of the 1894 Act on the ground delayed notice is required to be rejected.

14. In so far as the next contention of Mr. Joshi is concerned that the action on the part of the Respondents in publishing the award on 31st December,

2013 was in anticipation of the 2013 Act to be notified, under which it was likely that the respondents would be required to pay an enhanced compensation, also cannot be accepted, in view of the fact that in the present case, Section 6 notification itself was issued on 23rd February, 2011 and, thereafter within the period of two years, the Respondents published an award as provided for under Section 11-A of the 1894 Act. This shows that the entire procedure of acquisition was contemplated as per the provisions of 1894 Act. Hence, there is no scope for this argument of Mr. Joshi being accepted, for the reason that, once acquisition in the present case as initiated under the 1894 Act, then considering the provisions of Section 114 of the 2013 Act, being the 'repeal and saving' provisions, as also by virtue of application of Section 6 of the General Clauses Act, 1897, the acquisition proceedings initiated prior to the commencement of the 2013 Act would be saved. It is appropriate to note Section 114 of the 2013 Act and Section 6 of the General Clauses Act, 1897 which read thus:-

“114. Repeal and saving.—(1) *The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.*
 (2) *Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.*

Section 6 of the General Clauses Act, 1897, reads thus:-

“6. Effect of repeal -

Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

15. Thus, the second submission of Mr. Joshi also cannot be accepted and is required to be rejected.

16. In so far as the reliance of Mr. Joshi on the decision of the Hon'ble Supreme Court in **Raja Harish Chandra Raj Singh** (supra) is concerned, we may observe that in the facts of the present case this decision is clearly not applicable. In this decision, the issue which fell for consideration before the Supreme Court was an issue on limitation under the proviso to Section 18 of the 1894 Act. It is in such context, the Supreme Court has made observations in paragraphs 6 and 7 of the decision in regard to the mis-communication of the award considering the period of limitation. The Supreme Court observed that the knowledge of the party affected by an award, either actual or constructive, is an essential element which was to be satisfied, before the decision was brought in to force. It was observed that if, without notice of the date of its publication, the award was to be pronounced and when the party was not present, the award is made when it is communicated to the parties later. It was observed that knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and

natural justice, the expression "*the date of the award*" used in the proviso to Section 18 must mean the date when the award is either communicated to the party or is known by him either actually or constructively. It is in such context that the Supreme Court observed that it is unreasonable to construe the words "*from the date of the Collector's award*" used in proviso to Section 18. There can be no quarrel on this proposition as laid down by the Supreme Court, however, we fail to understand as how such decision would assist the petitioner to support the propositions canvassed by Mr. Joshi on the lapsing of the award under sub-section (2) of Section 12 of the 1894 Act. This is also a clear case where the possession of the land was already handed over and, under the Award, the petitioners' lands were held entitled for compensation.

17. In the light of the aforesaid discussion, we find no merit in the petition. However, we clarify that this order would not in any manner affect the rights and contentions of the parties in the pending Reference proceedings.

18. Petition is accordingly rejected. No costs.

19. In view of the disposal of the petition, Interim Application does not survive, it is accordingly disposed of as infructuous.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)