

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1928 OF 2018

Municipal Corporation of Greater
Mumbai

... Petitioner.

V/s.

M/s. B.J. Development Corporation
Pvt. Ltd. And ors.

... Respondents.

Mr. N.V. Walawalkar, Sr. Advocate a/w. Mr. Yashodeep
Deshmukh a/w. Ms Pooja Yadav for the Petitioner – Municipal
Corporation.

Mr. Pravin Samdani, Sr. Advocate a/w. Mr. Nitin Srivastava a/w.
Ms Hiral Vora a/w. Ms Hema Chhabra I/b Maniar Srivastava
Associates for Respondent No.1

Mr.H.S. Venegaonkar, Addl. G.P. for Respondent Nos.2 to 5 –
State in WP 1928 of 2018.

CORAM : R. M. BORDE AND

PUSHPA V. GANEDIWALA, JJ.

DATE : 15th FEBRUARY 2019.

JUDGMENT : (PER R.M. BORDE, J.)

1] Heard Mr. N.V. Walawalkar, learned Senior Advocate for the
petitioner – Municipal Corporation and Mr. Pravin Samdani,
learned Senior Advocate for Respondent No.1 – B.J. Development
Corporation Pvt. Ltd.

2] The petitioner - Municipal Corporation of Greater Mumbai is
raising challenge to the award declared by the Sub-Divisional

Officer on 3rd November 2017 determining the amount of compensation to the tune of Rs.31,93,26,175/- in respect of the land ad-measuring 4711 sq.meters situated at Malad, Bombay. The plot under question has been reserved for the purpose of Recreational Ground under the Development Plan prepared by the Municipal Corporation. A proposal was sent to the Collector for acquisition of the land by the Municipal Corporation on 3rd August 2013. A Notification under Section 6 read with 126 of the Maharashtra Regional and Town Planning Act, 1966 has been issued on 7th September 2013. The joint measurement of the property was conducted and it was found that the plot ad-measures 4711.40 sq.meters. In observance of the procedure prescribed under law, the Sub-Divisional Officer determined the amount of compensation of the acquired property at the rate of Rs.27,438/- per sq. meter and declared the award of compensation as above on 3rd November 2017.

3] The petitioner contends that the amount of compensation determined by the Sub-Divisional Officer is quite exorbitant and does not reflect the true market value. It is contended that though

the petitioner – Municipal Corporation was permitted to participate in the proceedings of the acquisition, the objections raised by the Municipal Corporation as regards valuation of the plot under acquisition have not been considered by the Sub-Divisional Officer, which has resulted in determining exorbitant amount towards the value of the acquired plot by the Sub-Divisional Officer. The petitioner contends that the plot in question, which is the subject matter of the acquisition, is reserved under the Development Plan and as such there are inherent restrictions in developing the said plot. The proper market value of the plot would be far less than what is arrived at by the Sub-Divisional Officer. It is contended that in the year 2007, the Agreement has been reached between the predecessor-in-title of respondent No.1 and respondent No.1 for transfer of the plot under acquisition for an amount of Rs.75 Lakhs. Though the Sale Deed is registered in the year 2012, the value prescribed for the subject plot at Rs.75 Lakhs in 2007 cannot be said to be proper value at Rs.32 Crores within a span of six years. The transaction between respondent No.1 and his predecessor is in respect of the same plot which has been valued at Rs.75 lakhs in

2007 and even if it is assumed that there is an yearly increase at about 10 or 15 per cent or even more, there can be no justification for awarding compensation amounting to Rs.32 Crores under the award by the Sub-Divisional Officer.

4] The petitioner while responding to the preliminary objection raised by respondent No.1 as regards maintainability of the instant petition objecting to the award declared by the Sub-Divisional Officer in exercise of writ jurisdiction under Article 226 of the Constitution of India has placed reliance on the judgment of the Constitution Bench of the Hon'ble Supreme Court in the matter of ***U.P. Awas Evam Vikas Parishad vs. Gyan Devi (Dead) By Lrs. And ors. - (1995) 2 SCC 326***. The Hon'ble Supreme Court has observed in paragraph 11 of the judgment that a local authority for whom land is being acquired has a right to participate in the proceedings for acquisition before the Collector as well as the reference court and adduce evidence for the purpose of determining the amount of compensation and the said right imposes an obligation on the Collector as well as the reference court to give a notice to the local authority with regard

to the pendency of those proceedings and the date on which the matter of determination of amount of compensation would be taken up. The recognition of this right raises the question whether the local authority, feeling aggrieved by the determination of the amount of compensation by the Collector or the reference court, can take recourse to any legal remedy. The answer to this issue finds place in paragraphs 19 and 20 of the judgment and the conclusions are drawn in paragraph 24. Those are recorded as below :

“19. We would now revert to the question regarding the legal remedies that are available to a local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court. In this context, it may be stated that the limitation placed by the proviso on the right conferred by Section 50(2) of the L.A. Act cannot be so construed as to deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference Court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act. The proviso to Section 50(2) only takes away the remedy of a reference under Section 18 of the L.A. Act. Examining this question in the context of the proceedings before the Collector we can envisage the following situations :

- (i) No notice was given to the local authority under sub-section (2) of Section 50 of the L.A. Act and as a result the local authority could not appear before the Collector to adduce evidence;*

(ii) Notice was served on the local authority and in response to said notice the local authority appeared before the Collector; and

(iii) Notice was served on the local authority but in spite of service of such notice the local authority failed to appear and adduce evidence before the Collector.

20. In a case where no notice is given to the local authority the position of the local authority is not different from that of the Municipal Corporation in *Neelgangabai v. State of Karnataka*. In that case there was an express provision in Section 20 of L.A. Act as modified by Land Acquisition (Mysore Extension Amendment) Act, 1961 providing for service of notice on the person or local authority for whom the acquisition is made. On a construction of Section 50 (2) we have found that service of such a notice is implicit in the right conferred under Section 50(2) of the L.A. Act, Since the failure to give a notice would result in denial of the right conferred on the local authority under Section 50 (2) it would be open to the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to challenge the award made by the Collector as was done in *Neelgangabai* case. In a case where notice has been served on the local authority and it has appeared before the Collector the local authority may feel aggrieved on account of it being denied opportunity to adduce evidence or the evidence adduced by it having not been considered by the Collector while making the award or the award being vitiated by mala fides. Since the amount of the compensation is to be paid by the local authority and it has an interest in the determination of the said amount, which has been given recognition in Section 50 (2) of the L.A. Act, the local authority would be a person aggrieved who can invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award in spite of the proviso precluding the local authority from seeking a reference. Such a challenge will, however, be limited to the grounds on which judicial review is permissible under Article 226 of the

Constitution. In a case where the local authority has failed to appear in spite of service of notice the local authority can have no cause for grievance. Even in such a case it may be permissible for the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award if it is vitiated by mala fides or is perverse.

...
...

24. To sum up, our conclusions are :

1. Section 50 (2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.

2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.

3. The proviso to Section 50 (2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

4. In the event of denial of the right conferred by Section 50 (2) on account of failure of the Collector to serve notice of the acquisition proceedings, the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference court and is entitled to be

impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. *In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.*

8. *In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court, the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.*

9. *Since a company for whom land is being acquired has the same right as a local authority under Section 50 (2), whatever has been said with regard to a local authority would apply to a company too.*

10. *The matters which stand finally concluded will, however, not be reopened."*

5] In the instant matter, it is not a matter of dispute that the local authority was served with notice and in response to the said notice, local authority, i.e., the petitioner appeared before the Collector. According to the petitioner, in the event, though the local authority may appear before the Collector and tender its evidence as regards determination of amount of compensation of the acquired property under acquisition, however, it may feel aggrieved if the evidence adduced by it having not been considered

by the Collector while making an award or the award being vitiated by *mala fides*. There are limitations in exercise of powers by the High Court invoking Article 226 of the Constitution of India and the limitation is circumscribed to the grounds on which judicial review is permissible under Article 226 of the Constitution of India. The local authority may invoke the jurisdiction of the High Court under Article 226 of the Constitution of India to assail the award if it is vitiated by *mala fides* or is perverse. It is not the contention of the petitioner that the award is vitiated on account of *mala fides* on the part of the Sub-Divisional Officer or Collector. However, it is contended that the material placed before the Sub-Divisional Officer to arrive at proper market value has not been considered and exorbitant amount is awarded towards compensation. Considering the scope of exercise of judicial review by the High Court, it shall have to be scrutinized as to whether the decision of the Sub-Divisional Officer in prescribing the valuation of acquired property can be considered as perverse.

6] According to the petitioner, Sub-Divisional Officer ought to have considered the value of the property based upon the agreed

value of property recorded in Agreement in the year 2007, i.e., Rs.75 Lakhs. It is contended that by no stretch of imagination, the value of the property which is at Rs.75 Lakhs in 2007 can be said to have sky rocketed at Rs.32 Crores within a period of six years.

7] So far as the Sale Agreement arrived in the year 2007 is concerned, *prima facie*, it appears the valuation reached under the Agreement in 2007 was much below the Ready Reckoner Rates prescribed in the said year. On consideration of Ready Reckoner Rates of the relevant year, i.e., 2007, the value of the property would not be less than Rs.3 crores. While drawing the award, the Sub-Divisional Officer is required to consider various aspects such as sale instances of the preceding three years, Ready Reckoner Rates prescribed by the State Government for registration of the documents etc.. *Prima facie* it does not appear that the Sub-Divisional Officer has committed any mistake in refusing to place reliance on the Agreement reached in the year 2007 in respect of the property for the valuation of Rs.75 Lakhs.

8] At this stage, it is appropriate to note that though the Agreement for Sale has been arrived at in 2007, the Sale Deed is registered in August 2012. On perusal of Index – II annexed to the Sale Deed, it appears that the market value of the property as per Ready Reckoner Rates determined in the year 2012 was Rs.12,57,33,000/- and respondent No.1 appears to have paid the Stamp Duty of Rs.62,86,650/- together with registration charges of Rs.30,000/- while registering the document. It would not be necessary to probe into the correctness of the valuation or undervaluation and its reasons prescribed by respondent No.1 while reaching an Agreement in 2007. It would also be beyond the scope of enquiry by the Sub-Divisional Officer to delve into the aforesaid issue. However, it must be noted that the property was valued at more than Rs.12 cores as per the Ready Reckoner Rates in the year 2012 and respondent No.1 has paid the Stamp Duty on such amount which appears to be equivalent or bit less than the Agreement value of the property. The Sub-Divisional Officer has considered the Ready Reckoner Rates of the year 2013 as one of the mode for arriving at the market value. The Sub-Divisional Officer has also considered the notional value of the plot of the

land based upon the scrutiny of sale transactions of flats having different dimensions. The Sub-Divisional Officer has taken into account the higher rates amongst the two options recorded by him in the award. The land rate as per Ready Reckoner Rates of 2013 is arrived at by the Sub-Divisional Officer at Rs.23,150 per sq. meter, whereas the plot rate of the area under acquisition calculated on the basis of the average of higher transactions of the open land is Rs.32,280/-. The Sub-Divisional Officer has further deducted 15 per cent amount while arriving at valuation which according to him is Rs.27,438/-. Thus the difference in value arrived at on the basis of the sale transactions and on the application of Ready Reckoner Rates prescribed by the State Government is not much and in any case is less than 20 per cent. The rates arrived at on the basis of Ready Reckoner is Rs.22,596/- whereas on the basis of the sale transactions is Rs.27,438/-. There is hardly any difference of Rs.5000/- per sq. meter. It must be taken note of that the property under acquisition is located in urban area, i.e., Mumbai Suburban district, which is already a part of developed urban area and the extent of the property is more than 4300 sq. ft.. Looking to the difference of the price

arrived at on the basis of the options recorded in the award itself, it cannot be concluded that the rate awarded by the Sub-Divisional Officer is substantially on higher side. As has been recorded above, even in the event of acceptance of option of deriving the rates on the basis of Ready Reckoner Rates, there would be hardly a difference of about Rs.500/- per sq.ft. In the circumstances, it cannot be concluded that the decision arrived at by the Sub-Divisional Officer in prescribing the value of the property at Rs.27,438/- per sq. meter is perverse. As has been recorded above, there are no *mala fides* alleged against the Sub-Divisional Officer. Thus the decision of the prescribed market value is neither perverse nor *mala fide*.

9] It is pointed out by the learned Senior Advocate for respondent No.1 that a draft award was earlier prepared and the same was forwarded to the State Government. Under the draft award, the value of the property which was arrived at on earlier occasion was more than Rs.120 Crores, which has been reduced in observance of the directives issued by the Higher Authorities

while preparing the final award and the valuation of the property was brought down to around Rs.32 Crores.

10] For the reasons recorded above, we do not find that the decision of the Sub-Divisional Officer in prescribing the market value under the award declared can be said to be perverse, necessitating interference by this Court in exercise of powers under Article 226 of the Constitution of India. The petition is devoid of any substance and as such stands rejected.

(PUSHPA V. GANEDIWALA, J.)

(R. M. BORDE, J.)