

(2014) 02 BOM CK 0149

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 7540 of 2011

Datta Rao, Subhash and Uttam
Rao

APPELLANT

Vs

The State of Maharashtra, The
Land Acquisition Officer and The
Executive Engineer

RESPONDENT

Date of Decision: Feb. 24, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 54 96
- Constitution of India, 1950 - Article 132 133 136 14 19(1)(g)
- Land Acquisition Act, 1894 - Section 11 18 18(1) 26 26(2)

Citation: (2014) 3 ABR 96 : (2014) 3 ALLMR 385 : (2015) 1 BomCR 874 : (2014) 3 MhLJ 923

Hon'ble Judges: S.C. Dharmadhikari, J; Ravindra V. Ghuge, J

Bench: Division Bench

Advocate: S.K. Adkine, for the Appellant; G.K. (Naik) Thigale, A.G.P. for Respondent Nos. 1 and 2, Mr. B.R. Surwase, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Ravindra V. Ghuge, J.

Heard the respective advocates. Rule. Rule made returnable forthwith and heard finally. This petition is filed by 3 petitioners who are agriculturists, under Article 226, 227, 300A, 31 and 19(1)(g) of the Constitution of India, 1950 for challenging an order dated 30.6.2011 passed by respondent No. 2/Land Acquisition Officer, Nanded. By the impugned order dated 30.6.2011, the application of the petitioners filed u/s. 28A of the Land Acquisition Act, 1894 came to be rejected.

2. The submissions of the petitioners can be summarized as follows:

a. The agricultural lands of the petitioners were sought to be acquired for the construction of Upper Paneganga Project (Canal).

b. Compensation at the rate ranging between Rs. 5,500/- to Rs. 6,000/- per hectare was granted. An award dated 2.3.1981 was passed granting compensation at the rate of Rs. 5,500/- to Rs. 6,000/- per hectare by an award dated 2.3.1981.

c. One agriculturist, Sambharao Tukaram Deshmukh, being aggrieved by the Award dated 2.3.1981, filed L.A.R. No. 32/1985 u/s. 18 of The Land Acquisition Act, 1894, seeking enhancement of compensation to the tune of Rs. 10,000/- per acre.

d. By judgment dated 30.9.1987, L.A.R. No. 32/1985 was allowed on 30.9.1987. Enhanced compensation @ Rs. 1,500/- per acre was granted by the Competent Court.

e. Being dissatisfied by the abovesaid judgment, the claimant Sambharao Tukaram Deshmukh filed First Appeal No. 1530/2010 u/s. 54 of the Land Acquisition Act, 1894 seeking enhancement in compensation @ Rs. 10,000/- per acre before the learned Single Judge of this Court.

f. By judgment and order dated 23.9.2010, the First Appeal was allowed and compensation @ 9,000/- per acre with 9% interest per annum from the date of taking possession for a period of 1 (one) year followed by interest @ Rs. 15% p.a. till realisation of the amount. 30% solatium on the said enhanced amount, so also interest @ Rs. 12% p.a. from the date of notification u/s. 4 of the Land Acquisition Act, 1894 till the date of taking possession, were also granted.

g. The petitioners claimed to have obtained a certified copy of the said judgment dated 23.9.2010 and then filed an application dated 24.12.2010 u/s. 28A of The Land Acquisition Act, 1894.

h. By the impugned order dated 30.6.2011, the said application was rejected on the ground that a previous application u/s. 28A filed by these petitioners was already rejected.

i. The petitioners, therefore, claimed that the judgment of the High Court, in the First Appeal has rendered finality to the amount of compensation and the same needs to be granted to the petitioners u/s. 28A of the Land Acquisition Act, 1894 in view of settled Law.

j. The petitioners have, therefore, put forth prayer clause "B" which reads as under:-

Quashed and set aside the letters dated 30.6.2011 issued by Deputy Collector (Land Acquisition) P.T. And M.I.W. Nanded about rejection the application under Sec. 28A of the Land Acquisition Act applied dated 24.12.2010 and re-determine the compensation about acquired land Gat No. 146, 159, 177 to the extent acquired area comparing with the judgment and order dated 23.9.2010 passed in First Appeal No. 1530/2010 and that may be given to the petitioners within 4 weeks.

3. Respondent Nos. 1 and 2 have filed a detailed affidavit dated 19.3.2013 alongwith several annexures. Mr. G.K. Naik Thigale, learned Addl. G.P. for respondent Nos. 1

and 2 has seriously opposed this petition and his submissions can be summarized as under:-

- a. The petition suffers from suppression of material facts and therefore laches are attributable to the conduct of the petitioners.
- b. A similar land reference was decided on 30.9.1987 by the learned Civil Judge, S.D. Nanded in L.A.R. No. 47, 48 and 49 of 1985.
- c. Thereafter the very same petitioners had filed an application u/s. 28A before the Land Acquisition Officer on 18.10.1989, which was filed beyond the statutory period of 3(three) months. The said application of the petitioners was rejected on account of being delayed, vide order dated 31.10.1992.
- d. The said order dated 31.10.1992 has not been challenged by the petitioners before the Higher Court.
- e. In view of an earlier application u/s. 28A having been rejected, the petitioners could not have filed another application under the same section for the same cause.
- f. The conduct of the petitioners is covered by the doctrine of "acceptance sub silentio" since they did not challenge the order dated 31.10.1992.
- g. The petitioners have slept over their rights.
- h. The petitioners are not genuinely aggrieved persons since they have been sitting silent without litigating and watching for another agriculturist namely Sambharao Tukaram Deshmukh, who kept on litigating for almost 20 years till his First Appeal was allowed by the High Court.
- i. Just because the said Sambharao Tukaram Deshmukh achieved success in the High Court, would not entitle the petitioners to any enhancement in compensation since they were sitting idle and did not even challenge the rejection of their application u/s. 28A, dated 31.10.1992.

4. We have, with the assistance of the learned Advocates for the respective sides, gone through the entire petition paper book. We find that the petitioners have indeed not divulged the entire facts before us. When the L.A.R. No. 32/1985 filed by Sambharao Tukaram Deshmukh was partly allowed on 30.9.1987, the petitioners moved an application u/s. 28A on 18.10.1989, which was rejected on 31.10.1992. The petitioners, in order to approach this Court with clean hands, could have mentioned these details in the petition.

5. Since 1992, the petitioners maintained silence and then filed another application u/s. 28A on 24.12.2010, pursuant to the judgment dated 23.9.2010, passed in the First Appeal No. 1530/2010, filed by Sambharao Tukaram Deshmukh. These facts were also not mentioned by the petitioners in their application dated 24.12.2010 filed u/s. 28A. By the impugned order dated 30.6.2011, it is revealed that an earlier

application of the petitioners was rejected. The relevant documents are placed on record by respondent Nos. 1 and 2 alongwith their affidavit.

6. In the case of Babua Ram and Others Vs. State of U.P. and Another,, the Hon'ble Apex Court has considered the issue of delay and the right of such agriculturists. Paragraph Nos. 18, 20, 24 and 33 need to be reproduced for ready reference hereinbelow:

18. The person aggrieved must, therefore, be one who has suffered a legal grievance because of a decision pronounced by Civil Court giving higher compensation for the acquired lands similar to his own while he is denied of such higher compensation for his land because of operation of Section 18 read with Section 31 of the Act resulting in affectation of his pecuniary interest in his acquired land directly and adversely by that award of the Collector made under s. 11. As such, he becomes an aggrieved person entitled to avail of the right and remedy conferred upon him u/s 28A(1) to make good his denied right to receive compensation in excess of the amount awarded by the Collector/L.A.O. Acceptance of the contention of Shri G.L. Sanghi, learned Senior Counsel and his companions, that person who under protest received payment of compensation for their lands but failed to avail of the right and remedy u/s 18 waiting in the wings for success of the land owners of the adjoining lands to get higher compensation u/s 28A(1) as person aggrieved robs the poor and inarticulate who by reason of their poverty or ignorance failed to avail of the right and remedy u/s 18, and creates not only invidious discrimination between same class of persons similarly situated but would be highly unjust and arbitrary offending Article 14 of the Constitution, apart from flying in the face of express animation of the statute as espoused in its Statement of Objects and Reasons and the Financial Memorandum. In this context, we make it clear that we have looked into Statement of Objects and Reasons and the Financial Memorandum to know what is it that induced the introduction of the Bill but not as an aid to interpret Section 28A(1). Therefore, we have no hesitation to hold that any interested person in the land acquired under the same Notification published u/s 4(1) who failed to avail the right and remedy u/s 18(1) read with second proviso to Section 31(2), becomes a person aggrieved u/s 28A(1) of the Act, when the owner of the other land covered by the same notification is awarded higher compensation by the Civil Court on a reference got made by him u/s 18.

20. The question then is when exactly the period of limitation starts running for making an application in writing under Subsection (1) of Section 28A. A bare reading of sub-section (1) along with its proviso would indicate that the making of the award by the civil court or judicial officer which becomes the judgment and decree u/s 26, is the starting point from which the period of limitation allowed for making an application u/s 28A. However, the person aggrieved in computing the period of three months allowed for making an application u/s 28A would be entitled to exclude the day on which the award was pronounced by the court or the judicial

officer and the time requisite for obtaining the certified copy of the award which is a judgment and decree u/s 26. In other words, the proviso to sub-section (1) of Section 28A excludes the requisite time taken for obtaining the copy of the award and in computation of the period of three months from the date of the award, the time required to obtain a certified copy of the award should be excluded. Limitation begins to run from the date the award was pronounced by the court u/s 26. It is well-settled that the law of limitation limits the time after which a suit or other proceeding cannot be entertained in a court of justice or before appropriate authority, "though it does not affect the substantive rights of the parties. Once the limitation begins to run, it runs in its full course until its running is interdicted by an order of the court. Explanation to Section 11 provides internal evidence in this behalf to make the point poignantly clear which states that in computing two years" period to make award u/s 11, the period during which any action or proceeding to be taken in pursuance of the declaration u/s 6 is stayed by an order of a court, should be excluded. The legislature prescribed three months" limitation to quicken diligence like caveat emptor and provided to a non-protester right to redetermination provided the application in writing is made to the Collector within three months from the date of the award of the civil court of original jurisdiction, excluding the requisite time taken to obtain a copy of the award. In other words, the right and remedy provided by Section 28A(1) stands extinguished with the expiry of three months from the date of the award u/s 26....

24. Sub-section (1) of Section 28A reads that where an award under this part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all other lands covered by the same notification u/s 4(1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector u/s 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be redetermined on the basis of the amount of the compensation awarded by the Court. A person interested becomes aggrieved, when for other lands covered by the same notification u/s 4(1) of the Act, the court awards compensation in excess of the compensation awarded u/s 11 to him for his land and to others for their land. Such aggrieved persons who had not made an application to the Collector u/s 18 earlier becomes entitled to invoke Section 28A. Therefore, the verb "allows" indicates that the right to an aggrieved person u/s 28A(1) arises only when the reference court grants compensation in excess of the amount awarded u/s 11 i.e. after 24.9.1984. It is prospective in operation after the Act had come into force. The amount "awarded" speaks of past tense. In other words there must be an award in existence u/s 26 made after the Amendment Act came into force. The right and remedy to claim redetermination accrues to an interested aggrieved persons after 24.9.1984. The proviso amplifies it when it speaks of exclusion of the time taken to obtain copy of the award u/s 26 till it is supplied, i.e. it operates in future. It

is, therefore, clear that Section 28A does not apply to an award u/s 26 made prior to 24.9.1984.

33. Thus considered from the internal and external aids of interpretation, we are of the view that an award made u/s 11 is final and cannot be reopened by having recourse to Section 28A if an award was made u/s 26 on reference u/s 18 before 24.9.1984. Therefore, if an owner of the land or person interested in compensation of the land acquired by the same notification u/s 4(1) had not sought reference u/s 18 in respect to an award made u/s 11 by the Collector/L.A.O., but if on a reference made u/s 18 prior to 24.9.1984 in respect of land covered by the same notification any award made u/s 26, prior to the Amendment Act had come into force, the award u/s 11 is not liable to be reopened for redetermination of compensation even through three months period has not expired by 24.9.1984 for to hold otherwise would amount to giving retrospective operation to Section 28A. Any other non-protester claimant will not be entitled to get an award reopened u/s 11 though on reference at the instance of one or other of the owner or interested person he had the benefit of determination of higher compensation by an award made u/s 26 before 24.9.1984 on his reference u/s 18 made prior to 24.9.1984. An award u/s 11 made prior to 24.9.1984 and a reference u/s 18 sought and secured was pending in the civil court on 24.9.1984 and civil court determines higher compensation on or after Sept. 24, 1984, persons interested in other land covered by the same Notification u/s 4(1) would be entitled to make an application/applications in writing to the Collector to redetermine the compensation and to make an award u/s 28A(2) on the basis of the award and decree u/s 26. It would be so, for that would not amount to retrospective reopening of an award made u/s 11 but drawing antecedents facts from a pending reference for giving effect to the prospective operation of the provisions in Section 28A(1) consistent with the language as explained earlier and the object of the amendment.

7. The issue of delay in filing an application u/s. 28A of The Land Acquisition Act, 1894 was considered by the learned Single Judge of this Court in the case of State of Goa Vs. Joaquim Antonio Filomeno Jose Peres de Britto and Mrs. Maria Fatima Clemente Misquita e Britto, . The only issue before the learned Single Judge was whether an application u/s. 28A can be considered beyond the limitation period and whether delay could be condoned by the Land Acquisition Officer or the Reference Court. Paragraph No. 10 of the said judgment reads thus:

10. It is well settled that an application u/s 28A of The Act seeking enhanced compensation on the basis of another award in respect of the lands covered under the same notification is to be filed within a period of three months from the date of award. As stated above, it is also well settled that neither the Land Acquisition Officer nor the Reference Court has the power to condone the delay under the Act. This being the position, I find merit in the submission of Mr. Talaulikar that the application filed by the respondents was barred by limitation and as such, the Land

Acquisition Officer could not have entertained the application filed u/s 28A of the Act. On this ground alone, the impugned judgment and order is liable to be set aside.

8. The Division Bench of this Court in the case of Surendrakumar Madhusudan Mor Vs. The State of Maharashtra and Another, (to which one of us Shri. S.C. Dharmadhikari, J. is a party) dealt with the restriction of making an application within 3 months from the date of the award. It was canvassed before the Court that the rule of limitation imposed through Section 28A is violative of Article 14 and 300A of The Constitution of India. While dealing with the said challenge, the Court ruled as under:

14. It is well settled that statutes of limitation are intended to put an end to stale and belated claims. Rule of limitation is one of repose and public peace. It only elaborates the settled principle that no one should be vexed and be troubled with old and stale claims and recoveries. That being the intent and purpose sought to be achieved, it is not possible to agree with Mr. Mehadia that the restriction of the nature imposed and the rule of limitation prescribed, is any way arbitrary, discriminatory, unreasonable and unfair. Hence, it cannot be struck down as violative of Article 14 and 300A of the Constitution of India. There is no question of violation of the constitutional mandate enshrined by Article 14 on the right conferred by a statute of the present nature as the restriction is in public interest and subject to section 28A(3) gives finality to the Award and the quantum of compensation. If the law enacts a beneficent provision and provides for the manner of exercise of the right but places a restriction thereon, then, it cannot be said that it falls foul of Article 300A of the Constitution of India. Plainly, a person is not being deprived of his land without authority of law.

9. The peculiar facts before us are that the petitioners had moved two applications u/s. 28A. After the award dated 30.9.1987 was passed by the Reference Court, the petitioners had moved their first application on 18.10.1989, which came to be rejected on the ground of delay on 31.10.1992. After the learned Single Judge of this Court delivered its judgment in First Appeal No. 1530/2010 on 23.9.2010 with reference to Sambharao Tukaram Deshmukh, the petitioners moved their second application on 24.12.2011. The question before us, therefore, is as to whether the petitioners could have moved two applications u/s. 28A on the ground that the first application was made after the Reference Court passed an award u/s. 18 and the second application was then moved after the first appeal was decided by the learned Single Judge of this Court u/s. 54.

10. In support of the above stated facts, it is canvassed by Mr. Adkine, learned Advocate for the petitioners that the entire land acquisition proceedings were decided by the last judgment of the learned Single Judge on the point of enhancement in compensation. Therefore, the judgment of the learned Single Judge in the first appeal should be treated to have given finality to the acquisition

proceedings. Being beneficial legislation, the agriculturists should be given the benefit of the first appeal judgment u/s. 54 as the intent and object of The Land Acquisition Act, 1894 is to grant larger benefits to the agriculturists and which will meet the ends of justice.

11. Though at first blush, the contention of the petitioners may appear to contain some merit, the said submissions are apparently fallacious. This issue has been decided by the Hon'ble Supreme Court in the Babua Ram Case (supra) in paragraph No. 20. The relevant portion deciding this controversy in the said paragraph No. 20 reads thus:-

..... It is true that in a given set of facts, there could be more than one reference u/s 18 at the behest of different claimants of the lands covered by Section 4(1) notification and the court may make successive awards at various times. Compensation given in the respective awards may vary and may be higher than the one given in an earliest award. In the teeth of the express language in sub-section (1) of Section 28A, limitation of three months once expires in respect of earliest award by efflux of time, none of the later awards could provide any assistance to revive the lapsed time u/s 28A(1) nor provide fresh cause of action or successive causes of action when multiple awards are made at different times or dates. Application u/s 28A(1) may be made at the instance of the selfsame person or different persons. Any other interpretation would amount to rewriting the proviso to subsection (1) of Section 28A. The judgment and decree of the Court of appeal either u/s 54 or u/s 96 of CPC or under Articles 132, 133 or 136 of the Constitution does not furnish fresh cause of action nor provide fresh limitation to make application u/s 28A(1) of the Act as has already been held in that they are not covered under Part III of the Act. May be that they are continuation of original decree made in Section 26(2) and in law the executable decree is that of the Supreme Court or the High Courts. But the legislature has conferred right of reopening the award u/s 11 only when the civil court u/s 26 awarded higher compensation in Part III to a person having an interest in the land covered by the same Notification u/s 4(1) and an application in writing if made within limitation.

12. The judgment of the Hon'ble Supreme Court in the Babua Ram case (supra) is binding upon us and the litigating parties. Since the Hon'ble Supreme Court has thus concluded that though successive awards at the behest of several agriculturists covered u/s 4 (1) may vary and may be higher than the one given in an earliest award, in the teeth of the express language in Section 28A(1), limitation of 3 (three) months would expire in respect of the earlier award by efflux of time and neither would it amount to a continuous cause of action pursuant to the later awards, nor would it tantamount to giving a fresh cause of action to the agriculturists. Similarly, the Hon'ble Supreme Court has held that a judgment u/s. 54 of The Land Acquisition Act, 1894 would not furnish a fresh cause of action to provide fresh limitation to make an application u/s 28A(1).

13. As such, we have no hesitation in concluding that an application under 28-A(1) will have to be made in accordance with the express language of the said Section within 3 (three) months from the first award and any further awards with reference to the said acquisition proceedings, would not give the concerned agriculturist a fresh cause of action for moving an application u/s. 28A. Therefore, we conclude that the second application of the petitioners filed u/s. 28A, pursuant to the judgment of the learned Single Judge in the first appeal u/s. 54, is untenable in law. The petition is, therefore, devoid of merit. In the light of the above, the petition stands dismissed. Rule is, therefore, discharged with no order as to costs.