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A.H. Kharodawalla Vs The State of Bombay

Special Civil Application No. 1325 of 1957

Court: Bombay High Court

Date of Decision: Sept. 3, 1957

Acts Referred:
Bombay Land Requisition Act, 1948 â€" Section 5(1)

Citation: (1957) 59 BOMLR 1221

Hon'ble Judges: Tambe, J; Chainani, J

Bench: Division Bench

Judgement

Chainani, J.
The petitioner is the owner of a land at Dohad. On February 28, 1951, the Collector of Panch Mahals requisitioned this land

for respondent No. 2, the State Transport Corporation, u/s 5(1) of the Bombay Land Requisition Act. The Prant Officer was then authorised to

determine the amount of compensation payable to the petitioner u/s 8(1) of the Act. After holding an inquiry, he passed an order that the petitioner

should be paid compensation at the rate of Rs. 10-14-0 per guntha per month. Respondent No. 2 considered that the amount of compensation

awarded to the petitioner was excessive. It, therefore, submitted a representation to the State Government. The Government called for the record

of the proceedings held by the Prant Officer and then issued a notice to the petitioner. In this notice the petitioner was informed that in passing his

order the Prant Officer had failed to take several material facts into consideration, that he had, therefore, not applied his mind properly to the

determination of the reasonable compensation payable to the petitioner for the land requisitioned, that the award given by him was improper and

irregular, and that in the opinion of the Government, arrived at after consideration of all the relevant factors, compensation at the rate of Rs. 2 per

guntha per month would be reasonable. The petitioner was, therefore, asked to appear before the Collector of Panch Mahals and to show cause

why the compensation fixed by the Prant Officer should not be revised. The petitioner then appeared before the Collector and also submitted a

representation in writing. The Collector then submitted his report to Government. After considering this report and the representation made by the

petitioner, Government passed an order, exh. F, by which it set aside the award made by the Prant Officer and fixed the rate of compensation

payable to the petitioner at Rs. 2 per guntha per month. It is this order, which has been challenged by the petitioner.

2. The order has been attacked on various grounds. It is, however, necessary to consider only one of them, on which, in our opinion, this petition

must succeed, and that is, that u/s 8-A(i) of the Act, Government has no power to itself fix the amount of compensation payable for the

requisitioned land. Subsection (1) of Section 8 states that when any land is requisitioned, there shall be paid compensation to persons having

interest in such land, the amount of which shall be determined by an officer authorised in this behalf by the State Government, who shall hold an

inquiry in the manner prescribed. Sub-section (3) of Section 8 provides for an appeal against the decision of the officer under Sub-section (1),

except in cases where the total amount of compensation in respect of the land does not exceed an amount prescribed in this behalf by the State

Government. Such appeal is to be filed within a period of 60 days from the date of the decision. The amount prescribed for the purpose of this

sub-section is Rs. 250, if the requisitioned land is situated, as in the present case, within the municipal limits. If, therefore, a party is awarded

compensation of an amount exceeding Rs. 250, he can, if he is not satisfied with it, file an appeal to get the amount increased. Then comes Section

8-A1, which rung as follows:-

8-A1. The State Government may,

(a) in cases in which no appeal lies under Sub-section (3) of Section 8, or

(b) in cases in which such appeal lies, but has not been filed within the period specified in the said Sub-section (3), alter the period for filing such

appeal has expired, call for the record of the inquiry or proceedings of the officer, who has given the decision under Sub-section (1) or (2) of the

said Section 8, for the purpose of satisfying itself as to the legality, propriety or regularity of such inquiry or proceedings, and may pass such order

thereon as it deems fit. Any order passed by the State Government under this section shall be final.

Under this section, Government can call for the record of the inquiry or proceedings held by the officer appointed to determine the amount of

compensation u/s 8 in order to satisfy itself whether the inquiry or proceeding was legal, proper or regular. The word ""proceedings"" is very wide

and would cover everything done by the officer u/s 8. The words ""may pass such order thereon as it deems fit"" are also very wide and would

prima facie suggest that Government can revise or alter the amount of compensation determined by the enquiry officer u/s 8. This is in fact what has

been urged before us by the learned Government Pleader.

3. Section 8-A1 did not form part of the Act, when it was enacted. It was inserted by Bombay Act No. V of 1953. In Chaturbhuj Hotchand

Asarpota Vs. The State of Bombay and Others, which was decided on June 16, 1952, it was held by the late Mr. Justice Kajadhyaksha and

myself that a person, to whom the requisitioned premises are allotted by Government, has no locus standi in the proceedings before the

Compensation Officer and has no right to file an appeal u/s 8 of the Act against the order passed by the Compensation Officer. Section 8-A1 was

inserted in the Act thereafter. It has, therefore, been contended by the learned Government Pleader that the main object of enacting this section

was to empower Government to give relief to persons, for whose benefit the requisition had been made, by revising the orders of compensation in

cases in which the compensation awarded was excessive;. Clause (b) in the section however, imposes a limit on the powers, which may be

exercised by the Government, Under this clause, in cases in which an appeal lies, Government can take action only if an appeal has not been filed

within the period specified in Section 8. If, therefore, the Legislature had intended to empower Government to reduce the amount of compensation

awarded, this intention could easily and always be defeated by filing an appeal, claiming a nominal amount in addition to that awarded, and

thereafter not prosecuting the appeal. Thus, in the present case, Government would not have been able to take any action, if the petitioner had

appealed against the order of the enquiry officer, claimed in appeal an additional compensation of only one rupee per month and thereafter allowed

the appeal to be dismissed for default. It is doubtful whether the Legislature could have intended to confer such an illusory power on the State

Government.

4. The exercise of such a power may also cause considerable hardship and defeat the right of appeal given to a party u/s 8. A party may not be

satisfied with the amount of compensation awarded to him, but may still decide not to file an appeal, if he feels that on the whole it cannot be said

to be unreasonable. If, however, a smaller amount had been awarded to him, he might have filed an appeal. Section 8-A1 states that the order

passed by the State Government under this section shall be final. No appeal, therefore, lies against an order passed by the State Government. The

result, therefore, would be that while a person could appeal against an order awarding compensation in order to obtain increased compensation, he

would have no remedy, if the compensation awarded to him was subsequently reduced by the State Government u/s 8-A1 of the Act. This might

cause hardship and injustice in many cases. Thus in the present case the petitioner had claimed compensation at a rate very much higher than Rs.

10-14-0 per guntha awarded to him. He did not regard this as very low and, therefore, did not appeal. It is, however, quite likely that if the enquiry

officer had awarded compensation at the rate of Rs. 2 per guntha, the rate fixed by Government, he would have appealed against the order, and it

is possible that the appeal Court might have awarded a rate greater than Rs. 2 per guntha. The effect of the order passed by Government has,

therefore, been to deprive the petitioner of the right given to him by Section 8, a right which in all probability he would have exercised, if

compensation had originally been determined at the rate now fixed by Government. It is a well-recognised rule of interpretation that a statute

should, so far as possible, be construed so as to avoid hardship and injustice.

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of

the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which

modifies the meaning of the words, and even the structure of the sentence."" (See Maxwell on the Interpretation of Statutes, page 229).

5. The language used in Section 8-A1 giving powers to Government to revise orders is also different from that used in other similar provisions,

such, for instance, as are contained in Section 211 of the Bombay Land Revenue Code. The latter section provides that the State Government may

call for and examine the record of any; inquiry or the. proceedings of any subordinate officer for the purpose of satisfying itself as to the legality or

propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. This section, therefore, empowers,

Government to examine not only the regularity of the proceedings held by a subordinate officer, but also the legality or propriety of any decision or

order passed in those proceedings. The words "decision or order" do not occur in Section 8-A1, which only empowers the Government to satisfy

itself as to the legality, propriety or regularity of the inquiry or proceedings held u/s 8. Having regard to the different language used in Section 8-A1

and to the considerations, which I have mentioned above, and particularly to the limitation on the powers of Government put by Clause (6), it

seems to us that even though the words ""may pass such order thereon as it deems fit"" in Section 8-A1 of the Act are very wide, a restricted

meaning must be given to these words and that Government cannot itself determine the amount of compensation to be paid to the person, whose

land has been requisitioned. Government can no doubt examine the legality, propriety or regularity of the proceedings held by the enquiry officer

u/s 8. If Government finds that there had been no proper inquiry or that it was irregular, because it had not been conducted in the manner laid

down in the rules made u/s 19 of the Act, it may set aside the order passed by the enquiry officer u/s 8 of the Act: and remand the case back to

him for a fresh or further inquiry. But it cannot itself hold a fresh inquiry and substitute its own order of compensation for, that made by the enquiry

officer. This construction will also preserve the right of appeal conferred by Section 8 and not make it ineffective. For if the claimant is dissatisfied

with the compensation awarded to him as a result of the fresh or further enquiry, he can appeal against the order of compensation u/s 8.

6. We are, therefore, of the opinion that while the Government had the power to set aside the order of compensation passed by the Prant Officer

and send back the case to him for fresh or further inquiry, it had no power to itself re-fix the amount of compensation payable to the petitioner. The

rule will, therefore, be made absolute and the order passed by the State Government, dated March 28, 1957, exh. F, will be set aside. There will

be no order as to costs of this petition.