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(2006) 5 BomCR 739 : (2006) 3 MhLj 577

Bombay High Court (Aurangabad Bench)

Case No: First Appeal No"s. 887 to 891 of 1989 and 45 and 46 of 1991

State of Maharashtra	APPELLANT
Vs	
Shyamkant Dattatraya Patil	RESPONDENT

Date of Decision: Jan. 23, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 152
- Constitution of India, 1950 - Article 14
- Land Acquisition Act, 1894 - Section 13A, 15, 18, 20, 23

Citation: (2006) 5 BomCR 739 : (2006) 3 MhLj 577

Hon'ble Judges: J.H. Bhatia, J

Bench: Single Bench

Advocate: K.G. Chute Patil, A.G.P, for the Appellant; Amol P. Nikam, holding for V.T. Choudhari, for the Respondent

Final Decision: Dismissed

Judgement

J.H. Bhatia, J.
This group of seven appeals may be disposed of by common judgment as they arise out of common order passed by the learned Civil Judge (S.D.) Jalgaon on applications made before him under Land Acquisition Act.

2. Facts leading to these appeals may be stated in brief thus : The appellant, the State of Maharashtra, acquired certain lands for Hatnoor Right Bank Canal which is Distributory of Thorgavan and Manwel, Tq. Yawal. Notification u/s 4 of the Land Acquisition Act dated 8-1-1980 was published in the Government Gazette dated 7-2-1980. Special Land Acquisition Officer made the award on 3-3-1982 by passing common order in respect of the respondents. The respondents being not satisfied by the amount of compensation as per the award passed by the Special Land Acquisition, made references u/s 18 of the said Act. The references were also decided and the Civil Judge (S.D.) passed awards on

21-12-1984 by enhancing the market value of the lands acquired from them. Pending the references before the Civil Judge (S. D.), Land Acquisition Act was amended by the Amending Act No. 68/1984 with effect from 24-9-1984. By the said amending Act certain additional benefits were given. By addition of Sub-section (1A) to Section 23 additional component of the rate of 12% p.a. of market value was provided for the first time. By making amendment in Sub-section (2) of Section 23, the amount of solatium was increased from 15% to 30% and by making amendment in Section 34, rate of interest was also increased from 6% to 9% for first year after taking possession of the land and 15% beyond period of one year after taking possession till the payment of the compensation amount. After the award was passed by the Civil Judge (S.D.) on reference u/s 18, by the judgment dated 21-12-1984, the respondents filed Misc. Applications Nos. 148, 149, 150, 151, 152 and 153 of 1985 and 148/1986 seeking additional benefits in view of the amendment of the Act.

3. The applications were opposed on behalf of the State. However, after hearing the parties relying on certain Supreme Court and High Court authorities, the learned Civil Judge (S.D.) passed the impugned order dated 2-9-1986 granting additional benefits as per the amended provisions of the Land Acquisition Act. The said order has been challenged in the present appeals by the State of Maharashtra. It is contended by the State that reference was already decided and the award was passed by the Civil Judge (S.D.), on 21-12-1984, and therefore, it had no jurisdiction to entertain the application for grant of additional benefits. Further it is contended that the land acquisition proceedings in question were not pending as on 30-4-1982, since the award was already passed by the Collector prior to that date and therefore, the amended provisions would not be applicable to the instant cases. It is contended that the trial Court committed error in passing the impugned order.

4. Heard Shri K.G. Ghute Patil, learned A.G.P. for the appellant and Shri Amol P. Nikam, advocate holding for Shri V.T. Choudhari, learned advocate for the respondents.

5. Perused the impugned order and relevant provisions of law.

6. Following points arise for my determination and I record the findings against them.

(i) Whether the learned Civil Judge (S.D.) committed error in granting additional component amount calculated at the rate of 12% p.a. on such market value from the date of the notification or the date of taking possession whichever is earlier to the date of award, in view of Section 23-1A added by the amending Act No. 68/1984? ... Yes.

(ii) Whether the learned Civil Judge (S.D.) committed error in granting enhanced rate of interest on total compensation amount by virtue of amendment in Section 34 of the Act by the amending Act No. 68/1984 ? ... Yes.

(iii) Whether the learned Civil Judge (S.D.) committed error in granting increased solatium at the rate of 30% instead of 15% granted earlier in view of amendment to Section 23(2)

by the amending Act No. 68/1984? ... No.

(iv) Whether the appeals deserve to be allowed? ... The appeals deserve to be allowed partly.

(v) What order? ... As per final order.

7. The factual aspects are mentioned above and need not be repeated unless they are absolutely essential. Mainly the impugned order as well as the appeals depend on the interpretation of amended provisions as per Amendment Act No, 68/1984. The learned trial Court while passing the award relied upon Supreme Court authority in Bhagsing and Ors. v. Union Territory of Chandigadh 1985 (2) SCC 737 for granting solatium " 30% and Delhi High Court Judgment in Raghbir Singh Vs. Union of India and Others, for all the benefits.

8. The relevant amended provisions and the provisions of Section 30 pertaining transitional provisions of the amending Act were subject-matter of interpretation before the several High Courts and then Supreme Court in several matters. However, now, the legal position has been settled. Section 23-1A as added by the amending Act reads as follows :

(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4, Sub-section (1) in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

By this provision, in addition to the market value of the lands as determined u/s 23-(1), the Court shall in every case award additional component at the rate of 12% p.a. on the market value from the date of the publication of the notification u/s 4 or the date of taking possession of the land whichever is earlier. This benefit was not available prior to the amendment. Such amendment is generally prospective. However, Amendment Bill was introduced in the House of People on 30-4-1982 and it appears that in the wisdom of legislature this additional benefit was also given to the proceedings which were pending before the Collector on 30-4-1982, the date of introduction of the amendment bill, in which no award was passed before that date. Therefore, Section 30 Sub-section (1) of the amendment Act provided as follows :

30. Transitional provisions -- (1) The provisions of Sub-section (1A) of Section 23 of the principal Act, as inserted by Clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to, --

(a) every proceeding for the acquisition of any land under the Principal Act pending on the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People, in which no award has been made by the Collector

before that date;

(b) every proceeding for the acquisition of any land under the Principal Act commenced after that date, whether or not an award has been made by the Collector before the commencement of this Act.

9. The effect of Section 30(1) of the Amending Act read with Sub-section (1A) of Section 23 added by the amending Act was considered by the Supreme Court in Union of India and Ors. v. Filip Tiago De Gama AIR 1990 SC 981. Their Lordships observed as follows :

20. Entitlement of additional amount provided u/s 23(1-A) depends upon pendency of acquisition proceedings as on 30 April, 1982 or commencement of acquisition proceedings after that date. Section 30, Sub-section (1)(a) provides that additional amount provided u/s 23(1-A) shall be applicable to acquisition proceedings pending before the Collector as on 30th April, 1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 Sub-section (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after 30 April, 1982 irrespective of the fact whether the Collector has made an award or not before 24 September, 1984. The final point to note is that Section 30 Sub-section (1) does not refer to Court award and the Court award is used only in Section 30, Sub-section (2).

This view has been reiterated by the Supreme Court in K.S. Paripoornan Vs. State of Kerala and Others, , wherein Their Lordships observed in para 55 as follows :

In our opinion, the provisions of Section 23(1-A) of the Principal Act and Section 30(1) of the amendment Act have been correctly construed in Filip Tiago, AIR 1990 SC 981 (supra) to mean that the obligation to pay additional amount in respect of proceedings initiated before the date of commencement of the amending Act is confined to the matters covered by Clauses (a) and (b) of Sub-section (1) of Section 30 of the amending Act and we endorse the said view.

10. In view of the legal position settled by these two Supreme Court authorities, there remains no doubt that the benefit of additional component under Sub-section (1-A) of Section 23 may be given only if the proceedings for acquisition was pending and award was not passed by the Collector. It has no reference to the award to be passed by the Court on reference u/s 18 of the Act. As such the respondents, in whose case the award was already passed by the Collector prior to 30-4-1982, could not be entitled to the benefit of additional component u/s 23(1-A). In the present case, as stated earlier, the award was passed by the Collector on 3-3-1982 i.e. prior to 30-4-1982 when the Land Acquisition Amendment Bill was introduced in the House of People. Therefore, the benefit of Section 23(1-A) could not have been granted in the present matters. Hence, it must be held that the learned trial Court committed error while granting the benefit.

11. The learned trial Court directed that total compensation amount shall carry interest at the rate of 9% p.a. from the date of notification u/s 4 or the date of taking possession whichever is earlier till expiry of one year and awarded interest at the rate of 15% p.a. for the period beyond expiry of one year. This was clearly granted in view of the amended provisions of Section 34. Section 34 reads as follows :

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of (nine per centum) from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

It may be noted that in the original Section 34 rate of interest was 6%. By the amendment, it was increased to 9%. There was no proviso to Section 34, it was added by the amending Act of 1984. In view of this, prior to the amendment, when the amount of compensation is not paid or deposited or before taking possession of the land, the Collector was to pay compensation amount with interest thereon at the rate of 6% from the time of taking possession till the amount of award was paid or deposited. However, by the amendment not only the rate of interest was increased from 6% to 9% but it is also made clear that if the amount is not paid within a period of one year after taking possession, the rate of interest would be 15% p.a. for the period beyond one year.

12. This amended provision was also given some retrospective effect by Section 30 Sub-section (3) of the amending Act of 68/1984, which reads as follows :

(3) The provisions of Section 34 of the Principal Act, as amended by Section 20 of this Act shall apply, and shall be deemed to have applied, also to, and in relation to,

(a) every case in which possession of any land acquired under the principal Act had been taken before the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment), Bill, 1982 in the House of the People,] and the amount of compensation for such acquisition had not been paid or deposited u/s 31 of the Principal Act until such date, with effect on and from that date; and

(b) every case in which such possession had been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said Section 31, with effect on and from the date of taking such possession.

From Clause (a) of Section 30(3), it becomes clear that if the possession was taken prior to 30-4-1982 and the compensation amount was not paid or deposited till 30-4-1982, then only the amended provisions would be applicable with effect from 30-4-1982. If the payment is already made or deposited prior to 30-4-1982 as per the award passed by the Collector, the increased rate of interest would not be applicable. In the present case not only the award was passed on 3-3-1982 but, as per the statement made by Shri K.G. Ghute Patil, A.G.P. at the Bar, the payment of compensation amount was also made on 17-3-1982, As the compensation amount was paid before 30-4-1982 the amended provisions of Section 34 enhancing the rate of interest could not have been applicable to the facts of the present case. In view of this, it is clear that the learned Civil Judge (S.D.) committed error in giving directions for payment of enhanced rate of interest, on whole of the compensation. Such direction could be given only in respect of the enhanced amount of compensation in excess of the compensation awarded by the Collector.

13. Last point pertains to enhanced rate of solatium. As per the provisions of Sub-section (2) of Section 23, prior to the amendment, solatium was to be paid at the rate of 15% on the rate of market value in consideration of compulsory nature of acquisition. This amended provision was also given a restricted retrospective effect by Section 30(2) of the amending Act which reads as follows: "30(2) The provisions of Sub-section (2) of Section 23 and Section 28 of the Principal Act, as amended by Clause (b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the Principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People] and before the commencement of this Act.

In respect of this provision, in Bhagsing v. Union Territory of Chandigadh (supra), it was held that the amended provisions enhancing the payment of solatium, when the award was made by the Collector or by the Court even prior to 30-4-1982 but was pending appeal in any Court on that day and was disposed of subsequently, would be applicable. It may be noted that Bhagsing was overruled in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., . It was held that the enhanced amount of solatium is payable and the benefit of Section 30 Sub-section (2) of the amending Act is available to an award by the Collector or the Court made after 30-4-1982 and before the commencement of the amending Act i.e. 24th September, 1984 but the benefit is not available if the award was made by the Collector or the Court, as the case may be, before 30-4-1982. In the case of Raghubir Singh, Their Lordships observed as follows :

We think that what Parliament intends to say is that the benefit of Section 30(2) will be available to an award by the Collector or the Court made between the aforesaid two dates or to an appellate order of the High Court or of the Supreme Court which arises out of an award of the Collector or the Court made between the said two dates. The word "or" is used with reference to the stage at which the proceeding rests at the time when the

benefit u/s 30(2) is sought to be extended. If the proceeding has terminated with the award of the Collector or of the Court made between the aforesaid two dates, the benefit of Section 30(2) will be applied to such award made between the aforesaid two dates. If the proceeding has passed to the stage of appeal before the High Court or the Supreme Court, it is at that stage when the benefit of Section 30(2) will be applied. But in every case, the award of the Collector or of the Court must have been made between April 30, 1982 and September 24, 1984.

14. Naturally, the benefit was also applicable to the award to be passed by the Court after the commencement of the Amending Act. Same view was taken by the Supreme Court in Union of India and Ors. v. Filip Tiago (supra), wherein Their Lordships observed in para 18 :

Take another example; the proceedings of acquisition initiated, say, in the year 1960 in which award was made on 1 May, 1982. Then the amended Section 23(2) shall apply and higher solatium is entitled to. But in an acquisition initiated on 23 September, 1984 and award made in the year 1989 the higher solatium is ruled out. This is the intrinsic illegality if the award made after 24 September, 1984 is not given higher solatium. Such a construction of Section 30(2) would be vulnerable to attack under Article 14 of the Constitution and it should be avoided. We, therefore, hold that benefit of higher solatium u/s 23(2) should be available also to the present case. This would be the only reasonable view to be taken in the circumstances of the case and in the light of the purpose of Section 30(2). In this view of the matter, the higher solatium allowed by the High Court is kept undisturbed.

Therefore, it is clear that the enhanced rate of solatium is applicable to the award passed by the Collector or the Court after 30-4-1982 but before the commencement of the Act as well as thereafter. As stated earlier in the present case even though the Collector had passed the award on 3-3-1982, reference was pending before the Civil Judge (S.D.) u/s 18 and the Reference Court passed the award on 21-12-1984 i.e. after the commencement of the Amending Act. In view of this, it must be said that as per amended provisions of Section 23(2), while passing the award the Civil Judge (S.D.) should have granted solatium at the rate of 30% and not 15%. It appears that while passing the award on 21-12-1984, the amended provision of Section 23(2) enhancing the rate of solatium was not brought to the notice of the Court and therefore, the Court had awarded solatium at the rate of 15% in spite of commencement of the Amending Act prior to the date of award passed by the Reference Court. From this, it is clear that the Civil Judge (S.D.) should have granted solatium at the rate of 30% while passing the award on 21-12-1984. This mistake was rectified by the Civil Judge (S.D.) while passing the impugned order.

15. Aforesaid reasons pertaining enhanced solatium are equally applicable to the enhanced rate of interest on the amount of compensation awarded by the Court in reference u/s 18 in excess of the amount of compensation awarded and already paid by the Collector in view of the provisions of Section 30(2) of the Amending Act quoted

above. According to Shri K, G. Ghute Patil, learned A.G.P., the Civil Judge (S.D.) did not have jurisdiction to entertain the said application and to pass the impugned order. According to him, the Civil Judge had no power either to review or amend its own award which was converted into decree u/s 26(2) of the Act. In support of this contention Shri K.G. Ghute Patil, learned A.G.P. placed reliance upon State of Maharashtra Vs. Maharau Srawan Hatkar, , wherein Their Lordships observed as follows:

8. Thus, it would be seen that a decree having been made u/s 26(2), the Civil Court is left to correct only either clerical or arithmetical mistakes as envisaged expressly u/s 13-A of the Act or u/s 152, Civil Procedure Code. Though Section 151, CPC gives inherent power to the Court, it is intended only to prevent abuse of the process of the Court or to meet the ends of justice. The present is not a case of such nature. Further, since Section 23 is an express power under which the Civil Court has been conferred with the jurisdiction to determine compensation, and in addition to the market value certain percentage of the amount is directed to be awarded as envisaged under Sections 23(1-A) and 23(2) and the interest component u/s 28, the invocation of Section 151, CPC by necessary implication stands excluded.

However, it may be noted that in the matter before the Supreme Court, the award was passed by the Land Acquisition Officer on 17-12-1981 and the award was passed by the Civil Judge (S.D.) on reference u/s 18 on 25-10-1983. After that the Civil Judge (S.D.) passed an order on 31-3-1986 awarding additional component at the rate of 12% and enhanced solatium and enhanced rate of interest by invoking inherent powers u/s 151, Civil Procedure Code. It is material to note that the Civil Judge (S.D.) had passed the award on 25-10-1983 before the Amending Act came into force. He could not have passed any additional award or could not give any additional benefit, in view of the amended provisions of the Act. However, in the present case as noted above the award was passed by the Civil Judge (S.D.) on 21-12-1984 i.e. after the amendment Act had come into force. In fact, it was necessary for him to take a note of the amended provisions of Section 23(2) pertaining to solatium. It appears that the amended provisions was not brought to his notice when he passed the award and granted solatium at the rate of 15% only. It was a material omission. Even, the Supreme Court in the case of State of Maharashtra v. Maharau Srawan (supra) observed that the Civil Court can make either clerical or arithmetical correction u/s 152 of the Civil Procedure Code. Section 152 of the CPC provides that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either by its own motion or on application of the parties. The Reference Court, while passing the award, awarded solatium at the rate of 15% by not taking note of the amended provisions either by accidental slip or omission on his own part or on the part of the advocates appearing in the matter. Had the amended provisions been brought to his notice, he could not have awarded solatium at the rate of 15% in spite of the amendment. Therefore, I hold that in view of the facts of the present case, it was accidental slip or omission on the part of the Reference Court and that mistake could

have been rectified suo motu or on the application of the concerned parties. The learned Civil Judge (S.D.) on application of the claimants corrected that mistake and awarded solatium at the rate of 30% by the impugned order. Therefore, the part of the impugned order pertaining to the enhancement of the solatium cannot be assailed and has to be upheld.

16. In view of the facts and the legal position discussed above, the impugned order passed by the Civil Judge (S.D.) to the extent of enhancement of solatium to 30% appears to be correct. The direction given by the Civil Court to give enhanced rate of interest on whole of the compensation amount cannot be supported but such direction could be given to the extent of the compensation amount awarded by the Court in excess of the compensation already awarded and paid by the Collector in view of the amendment in Section 28 read with Section 30(2) of the Amending Act. The impugned order to the extent of additional component by virtue of Section 23(1-A) cannot be supported. Therefore, these appeals deserve to be allowed partly.

17. For the aforesaid reasons, the appeals are partly allowed. The impugned order to the extent of additional component is hereby set aside. The said order awarding enhanced rate of interest on whole of the compensation amount i.e. total market value plus additional component plus solatium stands modified to the extent that the enhanced rate of interest shall be payable only on the amount of compensation awarded by the Court in excess of the compensation awarded and paid by the Collector. Appeals to the extent of enhanced solatium stand dismissed. No order as to costs.