

BHUSAWAL MUNICIPAL COUNCIL
v.
NIVRUTTI RAMCHANDRA PHALAK & ORS.
(Civil Appeal Nos. 11227-11228 of 2013)

DECEMBER 17, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Land Acquisition:

Agricultural land – Acquired by Municipal Council – For opening a primary school – High Court, by an interim order, directing appellant-Council to pay to respondents 50% of enhanced compensation as awarded by reference court – Held: If the land is to be acquired, law requires prompt payment of compensation – In case the party by whom or for whom the land is acquired is not in a position to make the payment of compensation, the person-aggrieved becomes entitled to get the land restored – Payment of compensation as per award u/s 11 of the Act 1894, cannot be sufficient security to serve the interest of the person-interested pending adjudication of appeal against the reference court's award – The excuse that appellant-Council has paucity of funds cannot be accepted as a justified cause to entertain the petition – The appellant is directed to make the payment of the enhanced amount of compensation, failing which it must restore the possession of suit land to persons aggrieved who in turn would refund the entire amount received as compensation – Land Acquisition Act, 1894 – ss.11 and 18 – Maharashtra Regional and Town Planning Act, 1966.

Acquisition of land – Court showing its concern on State/ Authorities dragging uprooted claimants into litigation up to apex Court for payment of paltry amounts – Government litigation.

A *Constitution of India, 1950:*

Art.300A r/w Arts. 21 and 21-A – Acquisition of agricultural land for opening a primary school – Obligation of State or its instrumentality to open school and right of an individual land owner whose land is being acquitted for the purpose - Discussed.

C The instant appeals arose out of the interim order passed by the High Court in the appeal filed by the appellant-Municipal Council, directing it to pay to the respondents 50% of the enhanced compensation awarded by the reference court for acquisition of agricultural lands, and the order of the High Court rejecting the writ petition filed by the appellant seeking to stay the freezing of its bank accounts.

D Dismissing the appeals, the Court

E HELD: 1.1. The appellant might be willing to meet its Constitutional or legal obligation to open a primary school for imparting education to children below 14 years of age but it cannot be done at the cost of individual-citizens by depriving them of their Constitutional rights under Art.300A of the Constitution. [para 8] [265-F-G]

F 1.2. The provisions of the Land Acquisition Act, 1894 provide for two awards; one is made by a Land Acquisition Collector u/s 11 of the Act 1894 which is an offer on behalf of the State as he also acts as an agent of the State, and the second award is made by the court u/s18 of the Act 1894. The reference court after examining and considering the evidence adduced by the parties G assesses the market value of the land. In doing so, there may be some variation in actual valuation of the land but that does not justify staying the operation of the award in toto. [para 9] [265-H; 266-A-B]

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1.3. It has been noticed that land owners are being deprived of their valuable rights without complying with the statutory provisions of the Act 1894 or possession is taken without paying any amount of compensation. Right to property has been held not only a Constitutional or a statutory right but also a human right. Therefore, it is not permissible for any State/authority to uproot a person and deprive him of his human rights, without ensuring compliance of the statutory requirement under the garb of development. The fundamental right of a farmer to cultivate his land is a part of right to livelihood. [para 11,13 and 17] [266-D, G; 267-B; 268-C]

Tukaram Kana Joshi & Ors. v. Maharashtra Industrial Development Corporation & Ors. 2012 (13) SCR 29 = AIR 2013 SC 565; *K. Krishna Reddy & Ors. v. The Special Dy. Collector, Land Acquisition Unit II, LMD Karimnagar, Andhra Pradesh*, 1988 (2) Suppl. SCR 853 = AIR 1988 SC 2123; *Narain Das Jain (since deceased) by Lrs. v. Agra Nagar Mahapalika, Agra* 1991 (1) SCR 389 = (1991) 4 SCC 212; *Mahanadi Coal Fields Ltd. & Anr. v. Mathias Oram & Ors.* 2010 (8) SCR 750 = (2010) 11 SCC 269; and *Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.* 2011 (6) SCR 443 = AIR 2011 SC 1989 – relied on.

Girish Vyas & Anr. v. State of Maharashtra 2011 (12) SCR 781 = AIR 2012 SC 2043; *Raju S. Jethmalani & Ors. v. State of Maharashtra & Ors.* 2005 (1) Suppl. SCR 1 = (2005) 11 SCC 222 – referred to.

1.4. The judicial process of the court cannot subvert justice for the reason that the court exercises its jurisdiction only in furtherance of justice. The State/authority often drags poor uprooted claimants even for payment of a paltry amount upto this Court, wasting the public money in such luxury litigation without realising the miseries of a farmer and without realizing that poor citizens cannot afford the exorbitant costs of litigation;

A and no superior officer of the State is accountable for such unreasonable conduct. [para 16] [267-F-G]

1.5. There is no justification in the appellant approaching this Court with an object to get an interim order so as not to make any payment of enhanced amount of compensation. Such attitude not only amounts to high-handedness and arbitrariness on its part, rather it may cause serious prejudice to the respondents. The excuse that the appellant-Council has paucity of funds cannot be accepted as a justified cause to entertain the petition. If the land is to be acquired, law requires prompt payment of compensation. In case the party by whom or for whom the land is acquired is not in a position to make the payment of compensation, the person-aggrieved becomes entitled to get the land restored. Payment of compensation as per award u/s 11 of the Act 1894, cannot be sufficient security to serve the interest of the person-interested pending adjudication of appeal against the reference court's award. The appellant is directed to make the payment of the enhanced amount of compensation within a period of 10 weeks, failing which it must restore the possession of the suit land to the persons-aggrieved, who in turn would refund the entire amount received as compensation. [para 19-20] [269-F-H; 270-A-B, C-D]

F Case Law Reference :

	2011 (12) SCR 781	referred to	para 12
	2005 (1) Suppl. SCR 1	referred to	para 12
G	2012 (13) SCR 29	relied on	para 13
	1988 (2) Suppl. SCR 853	relied on	para 14
	1991 (1) SCR 389	relied on	para 15
H	2010 (8) SCR 750	relied on	para 17

2011 (6) SCR 443 **relied on** **para 17** A

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.
11227-11228 of 2013.

From the Judgment and Order dated 20.04.2012 of the
High Court of Judicature of Bombay, Bench at Aurungabad in B
Civil Application No. 1724 of 2012.

Sudhanshu S. Choudhari for the Appellant.

M. Y. Deshmukh for the Respondents. C

The Judgment of the Court was delivered by

DR. B. S. CHAUHAN, J. 1. Delay condoned.

2. Leave granted. D

3. These appeals have been filed with a delay of 308 days
against the orders dated 20.4.2012 and 5.3.2013 passed by
the High Court of Bombay (Aurangabad Bench) in Civil
Application No. 1724/2012 and Writ Petition (C) No. 1586/
2013 respectively, by which the High Court has granted interim E
relief to the extent of payment of 50% of the enhanced amount
of compensation as awarded by the reference court in land
acquisition proceedings.

4. Facts and circumstances giving rise to these appeals
are that: F

A. The land in dispute i.e. agricultural land bearing Gat No.
196/2B/1 to 196/2B/7 admeasuring 4.25 R. situated at
Bhusawal, Distt. Jalgaon, Maharashtra, was acquired resorting
to the provisions of the Maharashtra Regional and Town G
Planning Act 1966 (hereinafter referred to as the 'Act 1966')
and the Land Acquisition Act, 1894 (hereinafter referred to as
the 'Act 1894').

B. In respect of the land, the award was made on H

A 10.5.2000. After passing of the said award, the appellant took possession of the land on 11.2.2005 after making the payment of the awarded compensation to the tune of Rs.68,40,835/-.

B C. The respondents filed reference under Section 18 of the Act 1894, wherein the reference court made the award dated 16.9.2010 enhancing the amount of compensation to the tune of Rs.3,11,90,634/- only including solatium and interests etc.

C D. Aggrieved and dissatisfied, the appellant-Municipal Council preferred appeal before the High Court. Respondent Nos. 1 to 6 filed an execution application against which the appellant preferred a civil application before the High Court, wherein the High Court vide impugned order dated 20.4.2012 directed the appellant-council to pay 50% of the enhanced amount of compensation within 10 weeks as condition precedent for stay of further execution proceedings. However, the appellant did not pay any amount within the stipulated period. The respondents filed an application for vacating the interim order which was disposed of vide order dated 12.10.2012 observing that the order passed earlier was self-explanatory and did not require any further clarification.

E F. As the proceedings regarding enforcement of the award were not abated in view of the order passed by the High Court, the executing court continued with the proceedings. The appellant again approached the High Court by filing a writ petition to stay the freezing of its bank accounts. The said petition has been rejected and hence these appeals.

G 5. We have heard Shri Sudhanshu S. Choudhari, learned counsel for the appellant and Shri M.Y. Deshmukh, learned counsel for the respondents.

H 6. Shri Choudhari, learned counsel appearing for the appellant, could not explain as under what circumstances the appellant approached this Court with inordinate delay of 308 days and what could be the justification for this court to entertain

the appeals and grant the interim relief of non-payment of enhanced amount of compensation in toto. A

Shri Choudhari has submitted that the land had been acquired for public purpose, i.e., to meet the Constitutional obligation to impart primary education to children as required by Article 21A of the Constitution of India. The appellant-council does not have sufficient funds to pay the enhanced compensation to the persons aggrieved under the provisions of the Act 1894. Even though the High Court has directed to pay only 50 per cent of the enhanced amount of the compensation awarded by the Reference Court under Section 18 of the Act 1894, as an interim measure the appellant is not in a position to meet even the said requirement and therefore, this Court must grant stay of payment of the enhanced amount of compensation awarded by the Reference Court. B C D

7. Per-contra Shri M.Y. Deshmukh, learned counsel appearing for respondent Nos. 1 to 6, has vehemently opposed the appeals contending that payment of initial compensation awarded under Section 11 of the Act 1894 cannot be sufficient security to serve the purpose of the respondents. The facts and circumstances of the case do not warrant any interference by this Court and the appeals are liable to be rejected. E

8. We see no justification to accept the submissions so advanced on behalf of the appellant-council. Undoubtedly, the appellant might be willing to meet its Constitutional or legal obligation to open a primary school for imparting education to children below 14 years of age but the question does arise as to whether the appellant-council has a right to meet a public purpose or a Constitutional obligation at the cost of individual-citizens by depriving them of their Constitutional rights under Article 300A of the Constitution. F G

9. The provisions of the Act 1894 provide for two awards; one is made by a Land Acquisition Collector under Section 11 of the Act 1894 which is an offer on behalf of the State as he H

- A also acts as an agent of the State, and the second award is made by the court under Section 18 of the Act 1894. Assessing the market value of the land is generally a guess work. The Reference Court after examining and considering the evidence adduced by the parties assess the market value of the land. In doing so, there may be some variation in actual valuation of the land but that does not justify staying the operation of the award in toto.

10. In the instant case, the High Court had granted conditional stay to the tune of 50 per cent of the enhanced amount which appellant-council failed to pay.

11. This Court is faced with similar problems every day whereby land owners are being deprived of their valuable rights without complying with the statutory provisions of the Act 1894 or possessions is taken without paying any amount of compensation.

12. In *Girish Vyas & Anr. v. State of Maharashtra*, AIR 2012 SC 2043, this Court has held that if the municipality does not have sufficient fund to meet its requirement to pay the compensation for the land acquired, it may call upon the citizens to contribute for the project as there may be many philanthropist or corporate bodies or individuals who may come forward and support the public project financially. A similar view has been reiterated by this Court in *Raju S. Jethmalani & Ors. v. State of Maharashtra & Ors.*, (2005) 11 SCC 222.

13. In *Tukaram Kana Joshi & Ors. v. Maharashtra Industrial Development Corporation & Ors.*, AIR 2013 SC 565, this Court held that right to property is not only a Constitutional or a statutory right but also a human right and human rights are considered to be in realm of individual rights which are gaining an even greater multifaceted dimension and, therefore, in case the person aggrieved is deprived of the land without making the payment of compensation as determined by the Collector/

court, it would tantamount to forcing the said uprooted persons to become vagabond or to indulge in anti-social activities as such sentiments would be born in them on account of such ill treatment. Therefore, it is not permissible for any State/authority to uproot a person and deprive him of his human rights, without ensuring compliance of the statutory requirement under the garb of development.

14. In *K. Krishna Reddy & Ors. v. The Special Dy. Collector, Land Acquisition Unit II, LMD Karimnagar, Andhra Pradesh*, AIR 1988 SC 2123, this Court while directing the statutory authorities to make the payment of compensation at the earliest observed that the person so uprooted may not be having any savings, he may not be knowing any other avocation, thus, he may face starvation with rising inflation. A delayed payment may lose the charm and utility of the compensation. Thus, the compensation must be determined and paid without loss of time.

15. In *Narain Das Jain (since deceased) by Lrs. v. Agra Nagar Mahapalika, Agra*, (1991) 4 SCC 212, this Court placed reliance upon various reports including the report of the Law Commission of India which made it clear that "community has no right to enrich itself by deliberately taking away the property of any of its members in such circumstances without providing adequate compensation for it".

16. The judicial process of the court cannot subvert justice for the reason that the court exercises its jurisdiction only in furtherance of justice. The State/authority often drags poor uprooted claimants even for payment of a paltry amount upto this Court, wasting the public money in such luxury litigation without realising that poor citizens cannot afford the exorbitant costs of litigation and, unfortunately, no superior officer of the State is accountable for such unreasonable conduct. It would be apt to quote the well known words of Justice Brennan:

"Nothing rankles more in the human heart than a

A *brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the*

B *continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness."*

C 17. The fundamental right of a farmer to cultivate his land is a part of right to livelihood "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity." India being predominantly an agricultural society, there is a "strong

D linkage between the land and the person's status in the social system."

E "A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens. For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be

F traumatic." (Vide: *Mahanadi Coal Fields Ltd. & Anr. v. Mathias Oram & Ors.*, (2010) 11 SCC 269; and *Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.*, AIR 2011 SC 1989)

G 18. A farmer's life is a tale of continuous experimentation and struggle for existence. Mere words or a visual can never convey what it means to live a life as an Indian farmer. Unless one experiences their struggle, that headache he will never know how it feels. The risks faced by the farming community are

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many; they relate to natural calamities such as drought and floods; high fluctuation in the prices of input as well as output, over which he has no control whatsoever; a credit system which never extends a helping hand to the neediest; domination by middlemen who enjoy the fruits of a farmer's hard work; spurious inputs, and the recent phenomenon of labour shortages, which can be conveniently added to his tale of woes. Of late, there have been many cases of desperate farmers ending their lives in different parts of the country. The Principles of Economics provides for the producer of a commodity to determine his prices but an Indian farmer perhaps is the only exception to this principle of economics, for even getting a decent price for their produce is difficult for them. Economic growth through the 1990's had made India a more market-oriented economy, but had failed to benefit all Indians equally. The problems that plagued the farmers several decades ago are still glaringly present today; there is little credit available. What is available is very expensive. There is no advice on best practice in conducting agriculture operations. Income through farming is not enough to meet even the minimum needs of a farming family. Support systems like free health facilities from the government are virtually non-existent. The drama of millions leaving their homes in search of jobs, which are non-existent of villages swiftly losing able-bodied adults, leaving behind the old, hungry and vulnerable. Families break up as their members head in diverse directions.

19. We do not see any justification in the appellant approaching this Court with an object to get an interim order so as not to make any payment of enhanced amount of compensation. Such attitude not only amounts to high-handedness and arbitrariness on its part, rather it may cause serious prejudice to the respondents. The excuse that the appellant-council has paucity of fund cannot be accepted as a justified cause to entertain the petition. If the land is to be acquired, law requires prompt payment of compensation. In case the party by whom or for whom the land is acquired is not

- A in a position to make the payment of compensation, the person-aggrieved becomes entitled to get the land restored. Payment of compensation as per award under Section 11 of the Act 1894, cannot be sufficient security to serve the interest of the person-interested pending adjudication of appeal against the
- B reference court's award.

20. In view of above, the appeals are devoid of any merit. In such a fact-situation, the court cannot sit limply and allow the defaulter to go scot free and force the person seeking protection to loose hope. The court cannot adopt an indifferent and passive attitude in such circumstances. The appellant is directed to make the payment of the enhanced amount of compensation within a period of 10 weeks from today, failing which it must restore the possession of the suit land to the persons-aggrieved who in turn would refund the entire amount received as compensation.
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With these observations, the appeals are dismissed.

Rajendra Prasad

Appeals dismissed.