

# **SUPREME COURT OF INDIA**

Kazi Akiloddin Sujaoddin

Vs.

State of Maharashtra

C.A.No.5084 of 2013

(T.S.Thakur and Sudhansu Jyoti Mukhopadhaya JJ.)

03.07.2013

## **JUDGMENT**

### **SUDHANSU JYOTI MUKHOPADHAYA, J.**

1. Leave granted. The appellant is aggrieved by impugned order dated 15th September, 2011 passed by the Division Bench of the High Court of Bombay, Nagpur Bench, Nagpur in a Review Application, MCA No.774/2011. By the impugned order the Division Bench reviewed and recalled the judgment and order dated 5th October, 2010 passed in Writ Petition No.3883/2010(D) filed by the appellant. The High Court further directed the State of Maharashtra to deposit rental compensation at the rate of 8% of the amount of Rs.1,07,82,270/- as enhanced and awarded by the Reference Court, in First Appeal No.06/2010, as the same is pending against the award passed by the Reference Court. The High Court by the impugned order also allowed the appellant to withdraw only half of the amount deposited by the State upon furnishing security to the satisfaction of the Registrar and to keep remaining amount in FDR of a Nationalised Bank pending the litigation.

2. The only question involved in this appeal is whether the High Court of Bombay, Nagpur Bench was justified in directing the State to deposit the rental compensation with the Appellate Court at the rate of 8% per annum on the award value passed by the Reference Court for the period of occupation before formal acquisition, allowing the appellant to withdraw only 50% of such rental compensation during the pendency of the appeal.

3. The factual matrix giving rise to this appeal are as follows:-

The matter relates to payment of rental compensation with regard to land occupied by State before the formal acquisition. The Land Acquisition Act, 1894 does not contemplate the payment of any rental compensation. The entitlement of rental compensation is on the basis of resolutions and instructions issued by the State of Maharashtra from time to time since 7th February, 1949 including Resolutions dated 2nd May, 1961, 1st December, 1972, 2nd April, 1979 and 24th March, 1988.

4. By the aforesaid Resolutions, the State of Maharashtra has empowered the Irrigation and Power Department/Buildings and Communication Department Officers to take possession of lands required for its development works by private negotiations, wherever possible, as it was apprehended that the speed of acquisition of lands under the Land Acquisition Act, 1894(hereinafter referred to as the 'Act'), would not be, in view of its procedural requirements, commensurate with the speed of work planned by the Department, thus resulting in delay in execution of works. It was also indicated that prompt payment of such compensation should be done.

5. By Resolution dated 2nd May, 1961 it was decided by the State Government that in cases where awards have been declared by the Revenue authorities, rental compensation should be paid at the rate of 4% per annum on the award value for the period of occupation before the formal acquisition plus the adjustment which has been paid by the owner of the land for that period in respect of that land. Subsequently, by Resolution dated 1st December, 1972 while procedure for taking possession of the land by private negotiations were notified, the determination of rental compensation was enhanced to 6-1/2% per cent of the final award value, as apparent from the paragraph 6 of the said Resolution quoted hereunder:

“6 .Payment of rental compensation: The responsibility of payment of rental compensation of to the title holder of the lands taken over by I.& P.D./B & C.D. officers through private negotiations rests with I.&P.D. /B.&C.D. Officers for the period from the date on which possession of the land is taken over till the date on which the full amount of final Award is paid. Government has now decided that the rental compensation payable shall be 6-1/2% of the final award value in respect of both Non-Agricultural land and Agricultural land. With a view to avoiding any inconvenience to the owners of the land who have willingly parted with their land and to ensure timely and regular payments of rental compensation, the following procedure should be adopted.”

6. By the subsequent Resolution dated 2nd April, 1979 the State Government decided to increase the percentage from 6-1/2% to 8% for working out the amount for payment of rental compensation, which reads as follows:

“GOVERNMENT OF MAHARASHTRA

Irrigation Department,

Resolution No.IND.1078/1014/IMG-(3)

Sachivalaya, Bombay 400032,

Dated 2nd April, 1979.

Read: Government Resolution, Irrigation and Power Department, No.IPM.1069/20083/I(5), dated 1st December, 1972

Resolution: The question of raising the percentage of rental compensation admissible to the title holders of the lands during the period from the date of taking over the possession of their lands by private negotiations till the payment of final award was under the consideration of Government for some time past. Government is now pleased to increase the percentage from 6-1/2% to 8% laid down for working out the amount for payment of rental compensation in paras 6 and 7 of Government Resolution, Irrigation and Power Department, No.IPM.1069/20083-I(5), dated 1st December, 1972 with effect from 1st January, 1979.”

7. The State Government by its Resolution dated 24th March, 1988 directed the authorities to pay rental compensation on time else the amount is payable towards interest. The relevant portion of the said Resolution is quoted hereunder:

“3. It has come to the notice of the Government that the directions given in the aforesaid Government Resolutions are not being followed properly. As a result, the land owners are facing harassment and inconvenience. Due to the delay in sending proposal for acquisition of lands where possession has been taken through private negotiations, the amounts payable towards interest and rental compensation have increased.

4. In view of the amendment of the Land Acquisition Act, 1894 and the time limits specified for the acquisition of land as also in view of Section 4(1) of

the Act and the increase in the amount of solatium from 15% to 30%, special attention is required to be given to the completion of process of acquisition quickly.”

8. The respondent-State required the land of the appellant for construction of flood protection wall for the city of Akola and after negotiations the appellant handed over the possession of his land on 15th November, 1998 to the State. Subsequently, Notification under Section 4 of the Land Acquisition Act, 1894, was published on 3rd June, 1999 in respect of said land, followed by Notification under Section 6 of the Act published on 18th November, 1999. The Special Land Acquisition Officer by his award dated 4th August, 2000 determined the compensation at the rate of Rs.5,61,000/- per hectare and awarded total compensation of Rs.9,45,173/- in favour of appellant.

9. Aggrieved by the award, the appellant filed an application under Section 18 of the Act which on reference registered as LAC No.140/2000 in the Court of District Judge, Akola. During the pendency of the said reference case, the appellant received a sum of Rs.59,998/- on 7th August, 2001 towards rental compensation. The amount was calculated at the rate of 8% of the compensation awarded by the Land Acquisition Officer. The Reference Court by its award dated 2nd August, 2008 allowed the application and enhanced the rental compensation @ 8% per annum on Rs.1,07,82,270/- with interest at the rate of 9% from 12th October, 2000 to 11th October, 2001 that is for one year and interest at the rate of 15% per annum, thereafter, till the date of actual payment.

10. Aggrieved by the enhancement, the State Government preferred First Appeal No.06/2009 before the High Court of Bombay. In the said appeal, the High Court passed interim order on 28th January, 2009 staying operation, implementation and execution of the order passed by the Reference Court on the condition of depositing 50% of the amount granted by the Reference Court. The First Appeal No.06/2009 is still pending before the High Court for its decision.

11. The appellant was also not happy with the award passed by the Reference Court, therefore, he preferred First Appeal No.1210/2008, which is also pending before the High Court.

12. During the pendency of the appeals, the appellant applied to the 3rd respondent for grant of rental compensation on the basis of enhanced compensation awarded by the Reference Court by its order dated 2nd August, 2008. As no reply was received by the appellant he filed a Writ Petition No.2763/2009 before the High

Court of Bombay, Bench at Nagpur. The said writ petition was disposed of on 6th July, 2009 recording the statement of the Assistant Government Pleader that the application of the appellant would be decided on merits at the earliest. Thereafter, the 3rd respondent on consideration of the said application, by his letter dated 5th October, 2009 rejected the prayer on the ground that the order of Reference Court was under challenge before the High Court. Against the order of rejection the appellant preferred Writ Petition No.3883/2010, before the High Court of Bombay, Bench at Nagpur. In the said case, the Special Land Acquisition Officer, 4th respondent filed an affidavit assailing the order passed by Reference Court. According to the appellant, there is no statement made in the said reply that the appellant was not entitled for enhanced rental compensation on the basis of compensation awarded by the Reference Court. The High Court allowed the said writ petition by order dated 5th October, 2010 referring to the decision of this Court in State of Maharashtra and others vs. Maimuma Banu and others, (2003) 7 SCC 448. As the Division Bench ordered to pay enhanced rental compensation to the appellant as per award passed by the Reference Court, the respondents filed a review petition for recalling the order dated 5th October, 2010. It was submitted that the order was passed by the High Court on wrong interpretation of decision in Maimuma Banu (supra) and that there is an error apparent on the face of the record.

13. On notice and hearing the parties, the High Court passed the impugned order dated 15th September, 2011, recalling its earlier order dated 5th October, 2010. The following direction has been issued in place of earlier order:

“In the result, the judgment and order dated 5/10/2010 is reviewed and set aside. Instead we direct the State of Maharashtra to deposit as rental compensation 8% of the amount of Rs.1,07,82,270/-, in First Appeal No.6/2010, which is the compensation as enhanced by the Reference Court in this Court for the period from 15/11/1998 i.e. the date of taking possession till the date of the award i.e. 4/8/2000. The original petitioner Kazi Akiloddin Sujaoddin may withdraw the half amount deposited by the State upon furnishing security to the satisfaction of the Registrar. The remaining amount shall be kept in F.D.R. of a nationalized bank pending the litigation.

6. Four weeks time is granted to deposit the above said amount.

7. Order accordingly.”

14. Learned counsel for the appellant contended that the appellant is entitled for the enhanced rental compensation proportionate to the increase in compensation awarded by the Reference Court. As per the policy of the respondent-State, the claimant is entitled to rental compensation at the rate of 8% of the amount of compensation awarded to the claimant for acquisition of his land. Circulars issued by the State do not limit the rental compensation to 8% of the amount awarded by the Land Acquisition Officer. The resolutions do not stipulate that the rental compensation should not be enhanced proportionate to the enhancement of compensation awarded by the Reference Court or higher courts.

15. Learned counsel for the appellant further contended that the High Court committed a grave error in deciding against the appellant by reviewing its own order on the basis of judgment of this Court in *State of Maharashtra and others vs. Maimuma Banu and others*, (2003) (7) SCC 448.

16. Per contra, according to the respondents, the Reference Court enhanced the compensation exorbitantly. Therefore, the State Government was left with no other option but to challenge the award by filing the first appeal, registered as First Appeal No.06/2009.

17. In *Maimuma Banu (supra)* this Court noticed that the State of Maharashtra by its resolutions and instructions, contained in the circulars dated 1st December, 1972, 17th September, 1977, 2nd April, 1979 and 24th March, 1988 provided for rental compensation, payable to the title- holders of the lands. Apart from those resolutions, the provisions of the Land Acquisition Act, 1894 do not contemplate payment of any rental compensation. In the said case of *Maimuma Banu (supra)* the Court decided the question relating to the 'payment of interest on rental compensation' awarded to the persons whose lands were acquired under the Land Acquisition Act, 1894; this Court in the said case also held as follows:

“9.....It is not in dispute that in most of the cases the rental compensation has not been paid. If that factual position continues, it clearly is a case where the amount to which a person is entitled is withheld without any legitimate excuse. The learned counsel for the appellants strenuously urged that in most of the cases the proceedings have not yet attained finality and are pending either before the Reference Court or in appeal. That does not provide a legitimate excuse to the appellants to withhold payment of the rental compensation. The amount calculated on the basis of award by the Land Acquisition Officer cannot be below than the amount to be ultimately fixed. If in appeal or the reference proceeding, there is any variation, the

same can be duly taken note of as provided in law. There is no difficulty and we find none as to why the compensation on the basis of value determined by the Land Acquisition Officer cannot be paid. If there is upward revision of the amount, the consequences will follow and if necessary, redetermination of the rental compensation can be made and after adjustment of the amount paid, if any, balance can be paid. If, however, the Land Acquisition Officer's award is maintained then nothing further may be required to be done. In either event, payment of the rental compensation expeditiously would be an appropriate step. Looking at the problem from another perspective, one thing is clear that authorities have clearly ignored the sense of urgency highlighted in the various resolutions.”

18. From the aforesaid decision of this Court, it is clear that during the pendency of a reference proceeding or appeal before a Higher Court the rental compensation is to be determined on the basis of award passed by the Land Acquisition Officer. Subsequently, if there is upward revision of amount, consequences will follow and if necessary, re- determination of the rental compensation can be made and after adjustment of the amount paid, if any, balance can be paid.

19. In the present case, we find that the State Government along with the appellant is not satisfied with the award passed by the Reference Court and hence, two appeals against the said award by both parties are pending before the High Court of Bombay, Nagpur Bench for determination. Giving reference to the decision in *Maimuma Banu* (supra) it was not open to the High Court to direct the authorities to pay rental compensation as per award passed by the Reference Court. For the reason aforesaid, if the High Court recalled the order dated 5th October, 2010 and directed the State Government to deposit rental compensation at the rate of 8% of the amount awarded by the Reference Court with the appellate Court, allowing the appellant to withdraw the half of the amount, no interference is called for. However, this order will not stand in the way of appellant to claim proportionate higher rental compensation, if the order of the Reference Court is upheld or further enhancement of compensation is made by the Appellate Court.

20. We find no merit in this appeal. It is, accordingly, dismissed with observations as made above. No costs.