Writ Petition No. 47 of 2014

Zarina Dada v. State of Maharashtra

2014 SCC OnLine Bom 305 : (2014) 4 Bom CR 200

(BEFORE ANOOP V. MOHTA AND M.S. SONAK, JJ.)

1. Smt. Zarina Dada Widow of Ahmed Izzat, Mohammed Hasham Dada
2. Smt. Saadia Maqdoom Moosa
3. Smt. Nasreen Saleh Salim
4. Ms. Farah Dada, All Petitioners residents of No. 2, "Rukiya Manzil", Ground Floor, 61-A, Bhulabhai Desai Road, Mumbai-400 026 ..... Petitioners

v.

1. State of Maharashtra Through the Government Pleader, High Court, Bombay.
2. Principal Secretary, Urban Development Department, Government of Maharashtra, Mantralaya, Mumbai-400 032.
3. Mumbai Metropolitan Region Development Authority, having its Office at MMRDA Building, Bandra-Kurla Complex, Bandra (East), Mumbai-400 051.
4. The Chief R & R, Mumbai Metropolitan Region Development Authority, having his Office at MMRDA Building, 3rd Floor, Bandra-Kurla Complex, Bandra (East), Mumbai-400 051.
5. Deputy Collector/Land Acquisition Officer, Mumbai Metropolitan Region Development Authority, having his Office at MMRDA Building, 3rd Floor, Bandra-Kurla Complex, Bandra (East), Mumbai-400 051.
6. Mumbai Corporation of Greater Mumbai, Mahapalika Nagar, Mumbai-400 001 ..... Respondents

Mr. Milind Sathe, Senior Advocate with Mr. Mukul Taly with Ms. Mallika Taly with Mustafa Kachwala for the Petitioners.

Ms. Geeta Shastri, AGP for Respondent No. 1.

Ms. Kiran Bagalia for Respondent No. 3.

Ms. Komal Punjabi for Respondent No. 6.

Writ Petition No. 47 of 2014
Decided on March 5, 2014

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.):-

Rule, returnable forthwith.

The learned counsel for the respective Respondents waive service.

Heard finally by consent of the parties.

2. The Petitioners have challenged impugned letter/order dated 5 September 2013,

apart from merit, also on the ground of breach of principles of natural justice whereby, without giving any opportunity, before passing the impugned order, the Head of Social Development Ward of Mumbai Metropolitan Region Development Authority (for short, "MMRDA") has decided the compensation for the affected area of land owned by the Petitioners, after deducting the alleged Authority's expenditure from the amount to the extent of Rs. 1,68,00,000/- (Rupees one crore sixty eight lacs only), without providing any details in the order.

3. The submission is made by referring to Sections 299 and 301 of the Mumbai Municipal Corporation Act, 1888, (for short, "the MMC Act") as those sections deal with the procedures to be followed while acquiring the land or land occupied by platforms, within the regular line of a street, and the compensation to be paid in such cases that, there is no requirement of prior hearing or any opportunity as contemplated under law.

4. In the present case, pursuant to earlier orders passed by this Court on 15 November 2011 and 4 March 2013, the Respondents-Authorities proceeded to award the compensation. The submission that these Sections nowhere contemplate any hearing and therefore, there is no question of providing any opportunity to the Applicants/Petitioners, is unacceptable. It is the settled principle that while assessing and/or awarding damages by any Court and/or any authority, pre-notice and hearing is required to be given. There is nothing on record and/or in impugned order dated 5 September 2013, to show that any show cause notice and/or any opportunity of any kind was given to the Petitioners before passing the order. The reasons are also missing with regard to the alleged expenditure so deducted, which is more than 50% of the amount determined as compensation.

5. The submission is also made that in reply filed in the Petition, they have justified their order including the expenditure. In our view, the same is also unacceptable for the simple reason that the Statutory Authority and/or Quasi Judicial Authority cannot give and/or add any reasons for the first time by filing the reply in the Court proceedings. The Authority, one who determined and who deduct the expenditure, are under obligations to provide details and reasons in the order. The Petitioners in given case able to demonstrate many materials to support the demand of their reasonable compensation and be in a position to give explanation and/or ask for the explanation for the amount so deducted and/or so granted unilaterally. The question is of taking a decision with regard to the compensation/damages in favour of the parties without hearing, who are entitled for the same in view of above compulsory acquisition of the property. The reasonable compensation is a constitutional and legal rights.

6. The fact of issuing notice and/or passing the order in favour of the Petitioners, at this stage itself is sufficient, not to accept the contention of the learned counsel appearing of the Respondents that there is a dispute even with regard to the ownership/title of the Petitioners. Nothing is mentioned in the order. However, this is also additional factor to show that the authorities by giving reasons for the first time in reply, trying to support the order.

7. The Sections which so read and referred, in no way can be read and/or interpreted to mean that, any Authority one who passes the adverse order, the affected parties should not be entitled for any notice and/or hearing, prior in point of time. These Sections are in the interest of all the parties including the Petitioners/owners of the properties, whose land/s, the Respondent-Corporation have acquired, but also intended to provide them compensation. The person affected, therefore at least, has this much right to ask for compensation/damages at the market rate, in accordance with law. There is no question of denying the rights to claim compensation by

following due procedure of law, which includes to give every opportunity to file documents in support of claim/compensation. The reference of Ready Reckoner of 2006 itself is not sufficient. The methodology and the mechanism which the Authority wants to follow, must be noted and informed to the concerned party. Any mechanism to determine any such compensation cannot be followed unilaterally.

8. Those Sections are therefore, clear that there is no total bar and/or bar of any kind for giving no opportunity to the parties whose lands are acquired and who are entitled for the compensation. The above basic principles from the plain reading of Sections, show that it is inherent in such provisions, where the civil rights are decided for and/or against the parties. The impugned order is unsustainable in law also.

9. Considering the fact that the claim is pending since long, it is desirable that the concerned Respondents to decide the claim as early as possible, by giving an opportunity to all the parties, preferably within four months from the date of receipt of this Judgment. Therefore, in the interest of justice, by keeping all points open, we are inclined to set aside impugned order.

10. Resultantly, the following order:-

ORDER

(a) Impugned order dated 5 September 2013 is quashed and set aside.

(b) The matter is remanded back for reconsideration.

(c) The concerned Respondents to re-hear the matter and pass order/decide the claim, as early as possible, preferably within four months from the date of receipt of this Judgment, in accordance with law, by giving an opportunity to all the parties.

(d) Liberty is granted to the Petitioners to place on record supporting documents for their compensation/claims.

(e) All points are kept open.

(f) Rule made absolute in the above terms.

(g) There shall be no order as to costs.

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