

Supreme Court of India

State Of Maharashtra vs Maharau Srawan Hatkar on 21 February, 1995

Equivalent citations: 1995 SCC (3) 316, JT 1995 (2) 582

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

STATE OF MAHARASHTRA

Vs.

RESPONDENT:

MAHARAU SRAWAN HATKAR

DATE OF JUDGMENT 21/02/1995

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

HANSARIA B.L. (J)

CITATION:

1995 SCC (3) 316 JT 1995 (2) 582

1995 SCALE (2) 100

ACT:

HEADNOTE:

JUDGMENT:

## ORDER

1. Since the respondent had not been represented, we have requested learned Advocate Shri G.K. Bansal to assist the Court which he accepted and has given good assistance for which we express our gratitude to him.

2. This appeal by special leave, arises from the judgment of the Division Bench of the High Court of Bombay in First Appeal No. 169/87, dated 24.4.1987. Notification under s.4(1) of the Land Acquisition

Act 1894 (for short, 'the Act'), was published on 13.8.1979 in the State Gazette acquiring the land for percolation tank in village Kasampura. The Land Acquisition Officer by his award dated 17.12.1981 awarded the compensation. At the instance of the claimants, on reference under s. 18 of the Act, the Civil Judge, Sr. Division, Jalgaon in his award and decree dated 25.10.1983, enhanced

the compensation. It would appear that no appeal appears to have been preferred. After the Land Acquisition (Amendment) Act 68 of 1984 had come into force on September 24, 1984, the claimants made an application to the reference court for awarding the enhanced solatium, additional compensation and interest under the Amendment Act. The Civil Judge by his order dated March 31, 1986 allowed the application and awarded as under:

"i) All the petitioners are entitled to the additional amount of compensation as calculated at the rate of 12 per cent p.a. from the date of notification or the date of dispossession, whichever is earlier to the date of Award on the entire market value, i.e. the market value as assessed by the Spl. L.A.O. and increased by this Court in their respective cases.

ii) The petitioners are also entitled to the solatium at the rate of 30% on the entire market value.

iii) The petitioners are also entitled to the interest at the rate of 9% p.a. from the date of notification under s.4 of the L.A. Act or the date of dispossession, whichever is earlier, till the expiry of one year from that date and thereafter till the date of payment of 15% p.a. on the amount of compensation i.e. the total market value plus components, plus solatium at 30 per cent for their respective cases.

iv) Whatever has already been paid on account of market value, solatium, interest shall be deducted from their respective claims."

Dissatisfied therewith, the State carried the matter in appeal and the High Court summarily dismissed the appeal. Thus this appeal by special leave.

3. The only question that arises for consideration is whether the Civil Court has power and jurisdiction to award the benefits of the Amendment Act 68 of 1984. Shri Bhasme, the learned counsel for the State contended that the Civil Court gets jurisdiction to determine compensation under s.23(1) of the Act only on reference. On its making the award enhancing the compensation under sub-s.(1) of s.23, it would be a decree under s.26(2). The Court thereafter has no power to amend the decree except in accordance with law. This is not either a clerical or arithmetical mistake for correction under s. 152 of CPC or under s. 13 A of the Act, but is an independent exercise of power. Unless the Court is empowered to, do so by law, the civil court is devoid of Jurisdiction to give the benefits under the Amendment Act.

4. Shri G.K. Bansal, learned counsel, on the other hand, contended that since CPC is made applicable to the proceedings of reference under s. 18, by operation of s.53 of the Act, the civil court gets inherent power under s. 151 of CPC to grant the benefits and that, therefore, the court can pass a fresh order giving the benefits under the Amendment Act.

5. We find no force in the contention of Shri Bansal. On receipt of reference under s. 18, the procedure prescribed under ss. 19 and 20 of the Act is required to be followed and the civil court determines the compensation in the manner indicated under sub-s.(1) of s.23 of the Act which

envisages that in determining the amount of compensation to be awarded for the land acquired under the Act, the court shall take into consideration clauses first to sixthly mentioned thereunder while determining the compensation. Sub-s.(1A) of s.23, which was brought by the Amendment Act, and sub-s.(2) of s.23 provide that:

"(1-A) 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 under s.4, sub-s.(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.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition"

6. Section 28 envisages that:

"28. Collector may be directed to pay interest on excess compensation ...If the sum which, in the, opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took position of the land to the date of payment of such excess into court: Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is 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 such excess or part thereof which has not been paid into Court before the date of such expiry."

7. It would thus be seen that the additional amounts envisaged under sub-ss. (1A) and (2) of s.23 are not part of the component of the compensation awarded under sub-s.(1) of s.23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case' where the Court has not enhanced the compensation on reference, the Court is devoid of power to award any interest under s.28 or the spreading of payment of interest for one year from the date of taking possession at 9% and 15% thereafter till date of payment into the court as envisaged under the proviso.

8. Section 26 of the Act envisages that:

"(1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub- s.(1) of s.23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts (2)

Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of s.2, clause (2), and s.2, clause (9), respectively, of the Code of Civil Procedure, 1908. (5 of 1908)."

9. Thus, it would be seen that a decree having been made under s.26(2), the civil court is left to correct only either clerical or arithmetical mistakes as envisaged expressly under s. 13-A of the Act or under s. 152 CPC. Though s. 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 s.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 s.23(1A) and 23(2) and the interest component under s.28, the invocation of s. 151 CPC by necessary implication stands excluded.

10. Thus, we hold that the civil court had inherent lack of jurisdiction and it was devoid of power to entertain the application to award additional benefits under the Amendment Act. The order thereby is clearly a void order. The High Court has not applied its mind to this crucial consideration but summarily dismissed the appeal.

11. The appeal is accordingly allowed. The order of the High Court and that of the civil court are set aside and the petition stands dismissed. In the circumstances, we make no order as to costs.