

2023 LiveLaw (SC) 632

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SURYA KANT; J., DIPANKAR DATTA; J.
August 07, 2023

CIVIL APPEAL NO.4952 OF 2023 (Arising out of SLP(Civil) No.13402 of 2022)
M/ S. TIRUPATI DEVELOPERS versus THE UNION TERRITORY OF DADRA AND NAGAR HAVELI & ORS.

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Award passed during covid lockdown – Held, Fair opportunity of hearing must be given to claimant. Award passed in respect of the acquired land is set aside. (Para 10)

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - It is imperative that a fair opportunity of hearing is given to the persons whose rights are affected. This requires that the interested person is given an effective opportunity to put forth his or her claim. Any deviation to the prescribed procedure, especially when it has seemingly affected the interested person, would militate with the very object of legislative mandate. (Para 8)

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – the Collector is obligated to hold an inquiry on certain relevant aspects, including the objections submitted by the interested persons, and pass an award concerning: (a) the exact area of the acquired land; (b) the compensation as may be determined under Section 27 of the Act; and (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land. (Para 5)

(Arising out of impugned final judgment and order dated 14-06-2022 in WP No.6313/2021 passed by the High Court of Judicature at Bombay)

For Petitioner(s) Mr. Vinay Navare, Sr. Adv. Mr. Prashant Shrikant Kenjale, AOR

For Respondent(s) Mr. Vikramjit Banerjee, A.S.G. Mr. Harish Pandey, Adv. Mr. Ajay Kr. Singh, Adv. Mr. Kanu Agrawal, Adv. Mr. Varun Chugh, Adv. Dr. N. Visakamurthy, Adv. Mr. Shreekant Neelappa Terdal, AOR Mr. Tathagat Sharma, Adv. Ms. Akansha, Adv. Mr. Prashant Rawat, Adv.

ORDER

1. Leave granted.

2. The appellant is stated to be the owner of land admeasuring 4970 sq. meters bearing Survey No.113/27 situated in Village Amli, Silvassa, Union Territory of Dadra & Nagar Haveli. In May, 2015, a part of the said land (allegedly measuring 1479 sq. meters) was utilized by the respondents for a public purpose without completing the acquisition process. The appellant approached the High Court seeking directions that the acquisition under the Land Acquisition Act, 1894 stood lapsed and his land may be acquired and compensation be paid in accordance with provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short '2013 Act'). Disposing of the writ petition on 01.03.2019, the High Court directed respondents no.3 and 4 to complete the acquisition process within one year and pay compensation to the appellant for the acquired land. It is not in dispute that acquisition was thereafter carried out under the 2013 Act and a declaration under Section 19 thereof was issued on 14.01.2020. The Collector-Dadra and Nagar Haveli, thereafter, issued a notice on 04.03.2020 to the appellant under Section 21 of the 2013 Act to appear and

raise its objections, if any, with respect to the determination of the amount of compensation. The appellant sent a communication on 20.03.2020 requesting the Collector to grant time to submit the objections as the appellant was unable to contact its lawyer due to COVID-19 pandemic and lockdown in Mumbai. Without considering that request, the Collector passed the award on 04.05.2020. The Collector went ahead to pass the award despite the fact that the Bombay High Court vide an order dated 26.03.2020 had observed in no uncertain terms that considering the permanent shut-down and other covid related issues, the Government, Municipal Authorities, and other agencies or instrumentalities of the State were expected to be slow in taking any coercive steps so as to drive the citizens to court of law during that period.

3. The appellant, thereafter, challenged the award in a writ petition before the High Court, which has been dismissed vide impugned judgment, observing that the appellant has liberty to make an application to seek enhancement of compensation through the process of Section 64 of the 2013 Act. The aggrieved appellant is before us.

4. We have heard learned senior counsel for the appellant and learned Additional Solicitor General on behalf of the respondents.

5. It appears to us that the very object of issuing notice under Section 21 of the 2013 Act is to give a fair and reasonable opportunity to the interested persons to submit their claim with respect to the compensation for the acquired land. Such compensation can be claimed on the basis of various factors that may be relevant in the context of acquisition. The interested persons are further entitled to make a statement before the Collector in terms of Section 22 of the 2013 Act, whereupon the Collector is obligated to hold an inquiry on the objections submitted by the interested persons and pass an award with respect to: (a) the exact area of the acquired land; (b) the compensation as may be determined under Section 27 of the Act; and (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land.

6. While determining the market value, the Collector shall be guided by the factors as are enumerated in Section 26 of the 2013 Act and, thereafter, determine the amount of compensation under Section 27 of the 2013 Act. Again, Section 28 of the 2013 Act mandates that the Collector shall follow the parameters defined under the said provision in determining the amount of compensation. The Collector is equally obligated to determine the value of things attached to the land or building in accordance with Section 29 of the 2013 Act. The right to pursue with the objections by seeking reference to the authority with regard to the measurement of the land, the amount of compensation, to whom such compensation is payable, etc., as provided under Section 64 of the 2013 Act, is a later stage after the Collector has followed the procedure prescribed under Chapter IV of the 2013 Act, and culminating into determination of compensation and passing of the award.

7. In the case at hand, the appellant has not been accorded hearing in terms of Section 21 of the 2013 Act. Thus, in the absence of objections, which the appellant could not file for the reasons beyond its control, no inquiry as per Section 23 of the 2013 Act could be held.

8. For a fair and just determination of compensation within the statutory scheme of the 2013 Act, it is imperative that a fair opportunity of hearing is given to the persons whose rights are affected. This requires that the interested person is given an effective opportunity to put forth his or her claim. Any deviation to the prescribed procedure, especially when it has seemingly affected the interested person, would militate with the very object of legislative mandate.

9. We are, thus, of the view that the appropriate recourse would be that the Collector–respondent no.3 must give one opportunity to the appellant to submit its objections, if any, followed by a personal hearing to the authorized representative, and then pass an appropriate award after holding inquiry under Section 23 of the Act.

10. For the reasons afore-stated, the appeal is allowed in part and the award dated 04.05.2020 passed in respect of the acquired land of the appellant is set aside together with the impugned judgment and order of the High Court. The Collector–respondent no.3 is directed to issue a fresh notice to the appellant under Section 21 of the 2013 Act within two weeks from the date of receipt of the copy of this order. The appellant shall submit its objections, if any, within the stipulated period. The Collector shall, thereafter, hear the appellant’s representative and pass award afresh after conducting inquiry in accordance with the scheme of 2013 Act.

11. The Collector shall pass the award as early as possible but not later than three months from the date of receipt of the copy of this order.

12. It goes without saying that the acquired land already stands vested in the respondents/Authorities, free from all encumbrances. They shall be entitled to utilize this land for any public purpose in accordance with law. However, this shall not affect the right of the appellant to seek fair and just market value of the said acquired land.

13. It is clarified that we have not expressed any opinion on merits of the claim of the parties.

14. The appeal is disposed of in above terms.

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