(2022) 04 BOM CK 0045

In the Bombay High Court

Case No : First Appeal No. 1004 Of 20 17

Agriculture Produce Market APPELLANT

Vs

Ramesh Marotrao Deulkar (Dead) And Others RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 18, 54
Code Of Civil Procedure, 1908 — Section 96

Citation : (2022) 04 BOM CK 0045

Hon'ble Judges : A. S. Chandurkar, J;M. S. Jawalkar, J

Bench : Division Bench

Advocate : Kapil V. Deshmukh, Shakil V.Deshmukh, A. B. Nakshane, H. N. Jaipurkar

Final Decision : Partly Allowed

Judgement

A. S. Chandurkar, J

1. This appeal filed under Section 54 of the Land Acquisition Act, 1894 (for short, the said Act) read with Section 96 of the Code of Civil Procedure, 1908 raises challenge to the judgment of the Reference Court dated 03/05/2017 in LAC No.127/2007. The enhancement granted in the amount of compensation in proceedings under Section 18 of the said Act filed by the respondents has been challenged by the beneficiaries of the acquisition proceedings.

2. Gat No.60 admeasuring 2H 32R situated at mouja Nandura Tal. Babhulgaon, Dist. Yavatmal was the subject matter of acquisition since land was required by the Agricultural Produce Market Committee, Babhulgaon. Notification under Section 4 of the said Act was issued on 17/06/2004. The Land Acquisition Officer passed his award on 16/06/2006 and awarded compensation of Rs.1,04,000/- per hectare. The land owners being dissatisfied with the quantum of compensation filed reference proceedings under Section 18 of the said Act. The reference Court after considering the evidence led by the parties by its award dated 03/05/2017 enhanced the amount of compensation to Rs.603/- per square

meter. This enhancement has been challenged by the Agricultural Produce Market Committee.

3. Shri K. V. Deshmukh, learned counsel for the appellant submitted that the enhancement granted by the Reference Court was in the absence of sufficient supporting documentary evidence on record. The appellant had placed on record various sale-deeds from Exhibits-94 to 104 with regard to transactions of sale of lands located at Nandura itself. However by relying upon the decision in State of West Bengal vs. Secretary, Union Club AIR 1972 Calcutta 225 the Reference Court discarded various sale transactions on the ground that those sale transactions had not been considered by the Land Acquisition Officer while passing his award. This was contrary to the law laid down by the Honourable Supreme Court in Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona AIR 1988 SC 1652. He submitted that if the parties had brought on record of the Reference Court relevant sale transactions, they were liable to the taken into consideration irrespective of the fact whether the same were considered or not by the Land Acquisition Officer. He then submitted that the joint measurement of the acquired land was undertaken on 10/10/2003. This was clear from the award passed by the Land Acquisition Officer. Thereafter on 20/10/2003 the present claimants had executed a sale-deed at Exhibit-64 by which a plot admeasuring 150 square meters at neighbouring village Kopra came to be sold for an amount of Rs.1,53,300/- This transaction having been entered into by the claimants after the joint measurement of the acquired land was done clearly indicated that the claimants after getting knowledge of the fact that their land was to be acquired, entered into a transaction of a small plot of land. That transaction therefore was not a bonafide transaction for being taken into consideration in the reference proceedings. The Reference Court erred in relying upon Exhibit-64 for enhancing the amount of compensation.

4. The learned counsel then submitted that vide Exhibit-72 the claimants had applied for converting the land in question for non-agricultural use on 20/09/2003. However before the agricultural land could be so converted, the notification under Section 4 of the said Act came to be issued. Thus on the date of issuance of such notification the land remained to be agricultural land. The Reference Court was not justified in enhancing the amount of compensation by referring to sale instances of small plots from a layout located at village Kopra which had been converted for non-agricultural use. On the contrary the claimants had relied upon various sale-transactions of agricultural lands especially the sale instances dated 08/08/1999 which were at Exhibits-104 and 105 from village Nandura itself. Since these sale transactions were of agricultural lands from the same village there was no reason to discard them at all. It was thus submitted that the determination of enhanced compensation was also flawed for the reason the value of small plots from village Kopra which was an adjoining village were taken into consideration ignoring the sale instances from village Nandura. When the sale instances of agricultural land from the same village were available, there was no reason to take into consideration sale instances of converted plots of

small dimensions from the adjoining village. Assuming that such sale instances could have been considered, it was submitted that the deduction towards development charges taken at 33% and 10% for smallness of those plots was also on a lower side. As a result the compensation of Rs.1,04,000/- per hectare as granted by the Land Acquisition Officer was enhanced to Rs.60,30,000/- per hectare. Such exorbitant enhancement was not at all justified on the basis of the evidence on record. The learned counsel also submitted that the claimants had examined their Power of Attorney holder at Exhibit-54 and he had deposed from his personal knowledge and not of the facts informed to him by the claimants. The deposition of the Power of Attorney holder was thus liable to be discarded. The learned counsel placed reliance on the following decisions to substantiate his contentions :

(1) Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona AIR 1988 SC 1652

(2) Land Acquisition Officer Eluru vs. Jasti Rohini 1995 (1) SCC 717

(3) State of Uttar Pradesh vs. Ram Kumari Devi AIR 1996 SC 3370

(4) The Land Acquisition Officer, Revenue Divisional Officer, Chittor vs. Kamalamma (Dead) by LRs and ors. AIR 1998 SC 781

(5) Land Acquisition Officer vs. Nookala Rajamallu and ors. 2004(5) ALLMR (SC) 176

(6) Janki Vashdeo Bhojwani and ors. vs. Indusind Bank Ltd. and ors. 2005 (1) MhLJ 1170 (SC)

(7) Dalip Singh vs. State of U.P. and Ors. (2010) 2 SCC 114

(8) Kalyan Kumar Gogoi vs. Ashutosh Agnihotri and anr. 2011(1) SCALE 516

(9) Vidarbha Irrigation Development Corporation vs. Kamlaji Balaji Jadhav and ors. 2011 (3) Bom.C.R. 331

(10) Chandrashekar (Dead) by LRs and ors. vs. Land Acquisition Officer and anr. (2012) 1 SCC 390

(11) Kapil Mehta vs. Union of India (UOI) 2015(4) MhLJ 40 (SC)

(12) Dattatraya Uddhav Uplenchwar (D) Thr. LRs vs. State of Maharashtra 2015(7) ALLMR 958

It was thus submitted that the judgment of the Reference Court was liable to be set aside and the award passed by the Land Acquisition Officer ought to be restored.

5. Shri A. B. Nakshane, learned counsel for the claimants supported the award passed by the Reference Court. He invited attention to the evidence on record and especially the documents at Exhibits-73, 76 and 109 to indicate the

proximate location of the sale instance at Exhibit-64 with the acquired land. The sale transaction at Exhibit-64 was dated 20/10/2003 which was just prior to the notification under Section 4 of the said Act dated 17/06/2004. The other sale instances relied upon by the appellant were rightly discarded since they were executed much prior to issuance of the notification under Section 4 of the said Act. Placing reliance on the decision in Mehrawal Khwaji Trust (Regd) Faridkot and ors vs. State of Punjab and ors. AIR 2012 SC 2721 it was submitted that the highest sale instance on record ought to be considered and the same was rightly considered by the Reference Court. The acquired land having been acquired for setting up the market of the Market Committee, it was obvious that it had great non-agricultural potential. The surrounding lands had been converted for non-agricultural use and the enhancement in the amount of compensation on that basis was justified. The reliance placed by the Reference Court on the decision in Secretary, Union Club (supra) was justified. The claimants had also examined the valuer who had inspected the claimants' land and had submitted the valuation report. The witness examined by the claimants was fully aware about the subject matter of the proceedings and he had deposed on the basis of instructions given by the claimant. His deposition therefore could not be faulted. In support of his submissions the learned counsel placed reliance on the decisions in Land Acquisition Officer and Mandal Revenue Officer vs. V. Narasaiah AIR 2001 SC 1117, Thakarsibhai Devjibhai and ors. vs. Executive Engineer, Gujrat and anr. AIR 2001 SC 2424, Chandra Bhan (Dead) Thr. LRs and ors. (2015) 15 SCC 343 and K. S. Sanjeev (Dead) By LRs and ors. vs. State of He therefore submitted that as the enhancement granted by the Reference Court was reasonable and justified in the facts of the case, there was no reason to interfere with the impugned judgment.

6. In the light of rival submissions the following point arises for determination :

" Whether the Reference Court has granted fair compensation to the claimants not warranting any interference or whether the compensation as enhanced by the Reference court is on a higher side without sufficient supporting evidence ? "

7. For answering the point as framed it would be necessary to first refer to the relevant evidence led by the parties before the Reference Court. The claimants examined one Shailesh D. Shirbhate who was the Power of Attorney holder of the claimants. His affidavit is at Exhibit-54. He has deposed about the non-agricultural potentiality of the acquired land to justify the enhancement in the amount of compensation. He has stated that various lands adjoining the acquired land were already converted for non-agricultural use. The land was got valued by one Shri C. P. Wankhade and his valuation report was also placed on record. The said witness placed on record various sale-deeds including the valuation report. In his cross-examination he admitted that he had not filed sale transactions of village Nandura nor was any document filed to indicate the income earned from the acquired land. The suggestion that the land would be acquired in the future for which reason the application for conversion for non-agricultural use was filed

was denied.

The second witness examined was Chandrashekhar Panjabrao Wankhade at Exhibit-77. The said witness was a registered valuer and according to him the value of the acquired land was Rs.17,212/- per square meter. In his cross-examination he admitted that Gat No.60 was situated in front of Gat No.61. He denied the suggestion questioning the manner in which valuation of the land was undertaken.

8. The acquiring body examined Shri Nitin Mankar who was Secretary of the Market Committee at Exhibit-90. He placed on record various sale transactions of village Nandura to indicate the prevailing market price of the said lands. He denied the suggestion that the acquired lands had got great non-agricultural potentiality.

9. It would be necessary to refer to the sale transactions relied upon by the claimants as well as by the Market Committee with a view to determine the fair market value of the acquired land. The claimants placed on record sale-deed at Exhibit-63 which is dated 14/09/2000. By this sale-deed land admeasuring 0.02R which is about 600 square feet from Gat No.85 Survey No.37 situated at village Kopra was sold for a consideration of Rs.3,00,000/-. At Exhibit-64 is another sale-deed dated 20/10/2003 by which 150 square meters or 1416 square feet of non-agricultural land from a layout plot situated at village Kopra was sold for Rs.1,53,000/-. The vendors were the claimants themselves. The claimants had sought to convert the land from Gat No.60 which was subsequently acquired for non-agricultural use. The application in that regard dated 20/09/2003 is at Exhibit-72. At Exhibit-73 is a map showing location of various plots/Gat numbers of village Nandura after consolidation.

Insofar as the Market Committee is concerned it has relied upon the sale-deeds at Exhibit-96 dated 12/02/2004 by which plot Nos.22 and 32 admeasuring 437.50 square meters or 4707.50 square feet from mouja Nandura were sold for Rs.52,500/- or Rs.120/- per square meter. Yet another sale-deed at Exhibit-101 is with regard to plot Nos.8 and 9 of village Nandura. The sale-deed dated 23/04/2004 was in respect of sale of 518.58 square meters for Rs.63,500/- or Rs.120/- per square meter. At Exhibit-104 is a sale-deed dated 18/08/1999 from Gat No.58 of village Nandura. Agricultural land admeasuring 1H 62R was sold for Rs.85,500/- which comes to approx. Rs.53,000/- per hectare. At Exhibit-105 is another sale-deed of agricultural land from village Nandura dated 18/08/1999. Gat No.68 of village Nandura admeasuring 1H 77R was sold for Rs.93,000/-. Rate per hectare comes to Rs.53,000/-. The aforesaid sale instances are found to be relevant for determining the fair market value.

10. At this stage it would be necessary to refer to the observations of the Reference Court in paragraph 11 of the impugned judgment. While considering various sale instances on record reference was made to the decision in Secretary, Union Club (supra) and it was held that it would not be permissible for the

acquiring body to rely upon those sale instances that were not taken into consideration by the Land Acquisition Officer while passing the award. On that count various sale instances relied upon by the Market Committee were not taken into consideration by the Reference Court. Perusal of the decision in Secretary, Union Club (supra) indicates that it has been held by the Calcutta High Court that when the Collector who acts as the agent of the Government in assessing the market value of the acquired land has not relied upon particular sale transactions, it will not be open for the Government to rely on such transactions in reference proceedings. We however find that the aforesaid observations ought not to have been relied upon by the Reference Court as the Honourable Supreme Court in Chimanlal Hargovinddas (supra) has in paragraphs 3 and 4 of its decision held that the Reference Court has to treat the proceedings under Section 18 of the said Act as original proceedings before it and determine the market value afresh on the basis of the material produced before it. The claimant is in the position of a plaintiff who has to show that the price offered for his land is inadequate on the basis of the material produced before the Court. The material placed and proved by the other side can also be taken into account for this purpose.

Thus from the aforesaid decision it is clear that the Reference Court is bound to take into consideration the entire material placed before it and proved in accordance with law notwithstanding the fact that the Land Acquisition Officer had not referred to that material while passing the award. We therefore find that the Reference Court committed an error in refusing to take into consideration the sale instances placed on record by the acquiring body only for the reason that said sale instances had not been considered by the Land Acquisition Officer while making the award.

11. The material on record indicates that on 10/10/2003 joint measurement of the land proposed to be acquired was undertaken. This fact is evident as it has been stated in paragraph 2 of the award dated 06/06/2006 passed by the Land Acquisition Officer. The sale-deed at Exhibit-64 dated 20/10/2003 is shortly after the aforesaid joint measurement. This sale-deed has been executed by the claimants and a small plot admeasuring 150 square meters at village Kopra, an adjoining village was sold at the rate of Rs.1022/- per square meter. This sale-deed at Exhibit-64 has been relied upon by the claimants for seeking enhancement. In Jasti Rohini (supra) the Honourable Supreme Court has observed that the reasonable method to determine the market value of the acquired land is on the evidence of transactions of bona fide sales, but not on evidence of sale of such land got up having had knowledge of the proposed acquisition. The sale transaction must not only be proved but it must also be a bona fide transaction. It is in this context it was urged by the learned counsel for the Market Committee that the sale-deed at Exhibit-64 was got executed by the claimants after getting knowledge of the proposed acquisition of their agricultural land at Nandura in view of the joint measurement carried out.

This aspect would have to be kept in mind while determining the amount of fair compensation for the acquired land.

12. Another aspect to be borne in mind is that the acquired land admeasures 2H 32R. This land was not converted for non-agricultural use and an application for its conversion at Exhibit-72 dated 20/09/2003 was pending when the notification under Section 4 of the said Act came to be issued. The Reference Court has proceeded to enhance the amount of compensation by relying upon Exhibit-64 which pertains to village Kopra and that sale transaction was with regard to 150 square meters of non-agricultural land. In Ramkumari Devi (supra) the Honourable Supreme Court has held that the burden to prove the prevailing market value of the acquired land is on the owner and it is the duty of the Court to assess reasonable compensation based on the evidence led by the parties. The acid test which the Court has to adopt is that it has to sit in the armchair of a prudent purchaser and consider whether a reasonable prudent purchaser in the open market would offer the same price which the Court intends to fix as market value of the acquired land. In that case while determining the market value of 13.75 acres of land sale instances of small pieces of land admeasuring about 1600 square feet were taken into consideration. It was held that the Court had applied a wrong principle of law while determining the compensation relying upon the sale instance of a small plot of land.

This is another relevant aspect that cannot be disregarded while assessing the fair market value of the acquired land.

13. A perusal of the village map at Exhibit-73 indicating location of various Gat numbers situated in village Nandura after consolidation reveals that village Kopra shares a boundary with village Nandura. After Gat No.60 which is the acquired land there are various lands situated after which one would reach the border of village Nandura so as to come in the area of mouja Kopra. The Market Committee has sought to rely upon the sale instances at Exhibits-104 and 105 which pertain to sale of agricultural land from Gat No.68 of village Nandura itself. As can be seen from Exhibit-73 Gat No.68 is nearer to Gat No.60 while village Kopra is at a distance from Gat No.60. In other words, though sale instances of agricultural land from the same village were available, the Reference Court on the specious plea that these sale transactions were not referred to by the Land Acquisition Officer in his award refused to consider the same. It is also material to note that Gat Nos.60 and 68 are agricultural lands while the sale instance at Exhibit-64 relied upon by the Reference Court pertaining to village Kopra is a small plot of non-agricultural land. We therefore find that when sale instances of agricultural lands from the same village were available on record in the form of Exhibits-104 and 105 there was no justification whatsoever to rely upon a sale transaction of a small plot of non-agricultural land from the adjoining village. Moreover, that sale-deed at Exhibit-64 was executed after the joint measurement of the proposed acquired land was undertaken by the Authorities. As stated above when agricultural land admeasuring 2H 32R was the subject matter of

acquisition, it would not be prudent and reasonable to determine its market value by considering the market value of the small plot of land admeasuring 150 sq. meters that too situated in an adjoining village. We may note that in a recent decision of the Honourable Supreme Court in Civil Appeal Nos. 176 and 177 of 2022 (Union of India vs. Premlata and others) decided on 06/04/2022, it has been reiterated that small plot/parcels of land cannot offer same market value when a large tract of land is purchased in open market by a willing and prudent purchaser. Generally, sale instances with regard to small plots/parcels of land are not comparable to a large tract of land for the purpose of determining the amount of compensation.

For these reasons, we find that the Reference Court was not justified in relying upon Exhibit 64 which is a sale deed dated 20/10/2003 of a small plot of land admeasuring 150 square meters from the adjoining village as a comparable sale instance while determining the market value of the acquired land which is admeasuring 2 H 32 R.

14. Now the sale instances of agricultural land from village Nandura itself being sale deeds dated 18/08/1999 of Gat Nos.58 and 68 can be taken into consideration as comparable sale instances for determining the fair market value subject to necessary appreciation considering the passage of time. As stated above Exhibit 104 is a sale deed dated 18/08/1999 of agricultural land admeasuring 1 H 62 R for Rs.85,500/-. Exhibit 105 is another sale deed of the same date of agricultural land admeasuring 1 H 77 R which was sold at Rs.93,000/-. The rate per hectare of both the aforesaid lands comes to Rs.53,000/-. Since these sale deeds were dated 18/08/1999, appreciation in the value of the land with the passage of time would have to be considered. The normal rule prescribed for such appreciation is 10% of the value for each year. Considering the evidence on record, we find that besides standard appreciation, there is evidence on record to indicate non-agricultural potentiality of surrounding lands in the vicinity. The claimants herein had also sought such conversion for non-agriculture use prior to issuance of the Notification under Section 4 of the said Act. The land however remained agricultural land on 17/06/2004 when the Notification under Section 4 came to be issued. For this reason, additional appreciation of 10% per year is liable to be considered in the present case. If the rate per hectare in 1999 was Rs.53,000/-, 20% appreciation for the first year would come to Rs.10,600/-. The claimants would be entitled for similar appreciation for the subsequent years on the appreciated value. For the second year the appreciation would be Rs.12,720/-, for the third year it would be Rs.15,264/-, for the fourth year it would be Rs.18,317/- and for the fifth year the appreciation would come to Rs.21,980/-. The total appreciated value would be Rs.1,31,881/-. Taking an overall view of the matter and considering the purpose of acquisition of land in question, in our view an amount of Rs.1,35,000/- per hectare would be fair market value of the acquired land on 17/06/2004 when compared to its value at Rs.53,000/-hectare in 1999.

15. The reference Court committed an error in determining the market value by referring to Exhibit 64 which was a sale deed of non-agriculture plot of land admeasuring 150 square meters from adjoining village Kopra. This sale transaction was executed by the claimants on 20/10/2003 shortly after the joint measurement of the acquired land was conducted on 10/10/2003. If the market value of Rs.603/- per square meter as determined by the Reference Court is taken into consideration the rate per hectare comes to Rs.60,30,000/-. Thus, when the said market rate is compared with the sale transactions dated 18/08/1999 of agricultural lands from the same village, the great discrepancy in the market value becomes quite obvious. Within a period of five years the appreciation in the prices of lands in the same village would not rise more than sixty times. The sale transactions brought on record by the acquired body were ignored by the Reference Court only on the ground that those sale transactions did not find mention in the award passed by the Land Acquisition Officer. It is only on that count that the Reference Court determined the market value on the basis of square meters after considering the sale transaction of non-agricultural land of 150 square meters. The report of the valuer examined at Exhibit 77 has not been considered by the Reference Court and the claimants have not challenged the same. After considering the ratio of the decisions cited by the learned counsel we are satisfied that the market value of the acquired land deserves to be fixed at Rs.1,35,000/- per hectare. For these reasons, the determination of the market value of the acquired land by the Reference Court is erroneous and same is liable to be set aside. The point as framed is answered by holding that the Reference Court was not justified in enhancing the compensation to the extent it did so without sufficient supporting evidence.

16. Accordingly, the following order is passed:

(i) The judgment of the Reference Court in LAC No.127 of 2007 dated 03/05/2017 is modified. It is held that the claimants are entitled to compensation for land admeasuring 2 H 32 R from Gat No. 60 Mouza Nandura, Taluka Babhulgaon, District Yavatmal @ Rs.1,35,000/- per hectare alongwith all statutory benefits.

(ii) First Appeal No.1004/2017 is partly allowed in aforesaid terms with no order as to costs.

