

(2017) 07 BOM CK 0282
In the Bombay High Court
Case No : 132 of 2006

Anand s/o Tukaram Banmare

APPELLANT

Vs

The Special Land Acquisition Officer, & Ors.

RESPONDENT

Date of Decision : 13-07-2017

Acts Referred:

[Land Acquisition Act, 1894](#), [Section 4](#), [Section 18](#), [Section 54](#) - Publication of preliminary notification and powers of officers thereupon. - Reference to Court - Appeals in pro

Citation : (2017) 07 BOM CK 0282

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : N.D. Khamborkar, Shamsi Haider, M.M. Agnihotri

Final Decision : Dismissed

Judgement

1. This appeal is preferred by the original claimant challenging the judgment and award dated 27.07.2005 passed by the 4th Adhoc Additional District Judge, Wardha in Land Acquisition Case No.70/1995, under Section 18 of the Land Acquisition Act, granting additional compensation of Rs.27,132/. Being not satisfied the meagre amount of compensation awarded by the Reference Court; the appellant has approached this Court.

2. Brief facts of the appeal can be stated as follows: The appellant was the owner of the agricultural land, bearing Survey No.362 admeasuring 2.12 H.R. situate at Mouza Jamb, Tahsil Samudrapur, District Wardha. The said land was acquired by the respondents in pursuance of the notification issued under Section 4 of the Land Acquisition Act, on 07.12.1989 and in pursuance of the award passed by the L.A.O. on 08.12.1994. The L.A.O. granted compensation for the acquired land at the rate of Rs.19,000/per hectare. According to appellant, the market value of the acquired land was Rs.50,000/per hectare. Therefore, he has approached the Reference Court.

3. In support of his case, the appellant examined himself and one witness by name Keshao Pandurang Wadwha to prove the sale instance of the land at village Kankati. Respondent also examined the Land Acquisition Officer Shri Nishikant Suke to prove that the valuation of the land made by him was reflecting the correct market value.

4. The Reference Court, after considering the evidence on record, was pleased to hold that the acquired land could have fetched the market value of Rs.25,000/per hectare, enhanced the compensation from Rs.19,000/per hectare to Rs.25,000/per hectare. As to the claim of the appellant for compensation of Rs.35,500/towards the various trees in the acquired land, Learned Reference Court rejected the said claim holding that there was no evidence on record about the existence of the said trees.

5. Being dissatisfied with the rejection of his claim for compensation towards the trees and also on account the meagre enhancement in the compensation amount, awarded by the Reference Court this appeal is preferred under Section 54 of the Land Acquisition Act.

6. According to learned counsel for appellant, the Reference Court has not properly considered the evidence on record especially the fact that the acquired land was adjoining to the road and secondly the evidence of the witness Keshao which prove that his land situate at village Kankati was sold for a consideration of Rs.1,30,000/per hectare. According to learned counsel for appellant, the certified copy of the index II produced at Exh.47 shows one sale transaction between Damodhar and Durgesh, according to which, the land at Kankati was sold for a consideration of Rs.1,08,000/per hectare. Thus, it is submitted that in view of this evidence on record, the amount of compensation awarded by the Reference Court needs to be enhanced in this appeal.

7. Per contra, learned counsel for respondents has supported the judgment and order of the Reference Court by pointing out that absolutely no evidence was brought on record by the appellant before the Trial Court in respect of the sale instances of village Jamb. It is urged that the sale instances relied upon by learned counsel for the appellant are of village Kankati, which is situated far away from village Jamb and moreover the sale transaction of Damodhar and Durgesh is of the year 1992 i.e. three years after the notification. Hence, according to learned counsel for respondents, as the compensation awarded by the Reference Court is legal and correct, no interference is warranted therein.

8. In view of these rival submissions advanced before me by learned counsel for both the parties, the only issue arising for my consideration is whether the appellant is entitled to any enhanced amount of compensation than the one awarded by the Reference Court.

9. As stated above, the S.L.A.O. has granted compensation at the rate of Rs.19,000/per hectare, which is increased by the Reference Court at the rate of Rs.25,000/per hectare. Now, the question for consideration is whether any

further enhancement is justified in the said amount of compensation? Respondent herein has not challenged this enhancement of Rs.25,000/per hectare as awarded by the Reference Court.

10. In the fact of this case, the evidence which was adduced before the Reference Court by the appellant was only of two sale instances and both the sale instances are of the different village. The first sale instance at Exh.47 is for the land admeasuring 1.11 hectare of Survey No.243/3 and it was for total consideration of Rs.1,20,000/, which was executed on 28.12.1992 and the market rate of the said sale instance appears to be Rs.1,08,000/per hectare. However, as rightly observed by the Reference Court, the said sale instance is three years after the notification in this case was issued on 07.12.1989.

11. In this respect, learned counsel for respondent has relied upon the judgment of the Apex Court in the case of General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jivanbhai Patel and another (2008) 14 SCC 745. It was in reference to the recent trend to determine the market value of acquired lands, with reference to future sale instances of acquisition. It was held that, "one of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of the acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas, resulting in a sudden or steep spurt in the prices". It was further held that, "even if there is no actual improvement in infrastructure, the potentiality and possibility of improvement on account of the future acquisition is likely to result into a higher rate of escalation in prices. The Courts should therefore, have not determined market value with reference to subsequent or future transactions.

12. As a result, the only piece of evidence on which the appellant can place reliance in this is the evidence of witness No.1 Keshao, who has stated that the government has granted him compensation at the rate of Rs.52,400/per acre which comes to Rs.1,30,000/per hectare, for his acquired land situated at Kankati. However, he has admitted that village Kankati is situated 10 Km. away from Jamb. The Reference Court has considered that the copy of the map was not produced to show the location of the land acquired. Therefore, it cannot be said that the acquired land of Keshao and of the present appellant is of the same quality and same potentiality. Moreover as said land is situated Kankati and hence, of a different village, that evidence was also not of much or any help to the appellant.

13. In such a situation, sans any evidence produced on record by appellant, the Reference Court has relied upon the evidence of Land Acquisition Officer Nishikant Suke and found that whatever sale transactions, which he has considered while determining the market value of the acquired land, also included the sale transaction of the land situate at Jamb at the rate of Rs.23,750/ and Rs.25,000/per hectare. As this was the highest exemplar, the Reference Court accepted the same, keeping in mind the fact that acquired land is adjacent

to the NagpurHyderabad road and the road area in between Hinganghat to Jamb is a developing area. Thus, all the factors on which the learned counsel for appellant is relying upon in this case for enhancement of the compensation amount as awarded by the S.L.A.O., are already considered by the Reference Court, and thereafter granted additional compensation, increasing the rate from Rs.19,000/per hectare to Rs.25,000/. In such situation, in the absence of any other evidence on record, no further enhancement in the amount of compensation can be granted in this appeal.

14. As regards the compensation for trees the Reference Court has rightly held that neither the 7/12 extract of the acquired land nor the joint measurement report reveals the existence of the trees and hence again on this aspect also in the absence of any evidence on record, the Reference Court has pleaded its inability to grant enhanced amount of compensation.

15. Thus, the amount of compensation as awarded by enhancement by the Reference Court being just, legal and correct, no interference is warranted therein. Hence, the appeal stands dismissed, with no order as to costs.