
(2014) 10 BOM CK 0162
In the Bombay High Court
Case No : F.A. No. 203 of 1999

Anil

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 23(1-A), 28, 4

Citation : (2015) 6 ALLMR 839 : (2015) 2 MhLj 675

Hon'ble Judges : S.B. Shukre, J.

Bench : Single Bench

Advocate : A.Z. Jibhkate, for the Appellant; Bhoyar, AGP, for the Respondent

Final Decision : Allowed

Judgement

S.B. Shukre, J. By this appeal, the judgment and decree dated 4th September, 1998 passed in Land Acquisition Case No. 433/92 by Jt. Civil Judge (Sr. Dn.), Pusa, district Yavatmal has been challenged. The agricultural land of the appellant bearing Gat No. 60, admeasuring 1 H 87 R situated at village Chincholi, district Yavatmal came to be acquired for the purpose of Arunawati Project. Notification under section 4 was published on 6-2-1986. The Land Acquisition Officer granted compensation for the acquisition of the land of the appellant by passing an Award on 4-3-1989. Since the compensation awarded by the Land Acquisition Officer was considered to be insufficient by the appellant, the appellant preferred reference under section 18 of the Land Acquisition Act for enhancement of the compensation. It was resisted by the respondents. Upon consideration of the evidence available on record and arguments of other side, the learned Civil Judge found that the appellant was not entitled to receive enhanced compensation as claimed, and therefore, dismissed the reference with costs by the judgment and decree dated 4-9-1998. Not satisfied with the same, the appellant is before this Court in this appeal.

2. I have heard Shri Jibhkate, learned counsel for the appellant and Shri Bhoyar, learned AGP for the respondents.

3. I have carefully gone through the impugned judgment, decree and record of the case and also the judgment and decree dated 22-12-1995 passed in Land Acquisition Case No. 418/92, copy of which as contained in Paper Book of the Reference Court, has been filed on record of the case. The Paper Book is marked for identification as "DOCUMENT-X" and the Judgment starting from Page No. 9 thereof and ending on Page No. 49 is marked as "DOCUMENT - Y Colly" and also the judgment and decree dated 21-1-1995 passed in LAC No. 432/92. The only point which arises for my consideration in the appeal is as under :

"1. Whether the appellant is entitled to enhanced compensation ? If yes, at what rate ?

2. What order?"

4. Shri Jibhkate, the learned counsel for appellant submits that the land involved in Land Acquisition Case No. 432/92 was Gat No. 58 and it belonged to Vyankatrao, the uncle of all these appellants and it was also a family land, in which the Reference Court awarded compensation at the rate of Rs. 25,000/- per hectare. This land was similar to the land acquired in the instant matter and there was absolutely no evidence led by the respondents to establish that its quality, fertility and potentiality is different from the land involved in present matter, he submits further. Therefore, he also submits, the Reference Court has committed serious illegality in not considering this aspect of the matter and dismissing the reference.

He also submits that subsequently in Land Acquisition Case No. 418/92, Reference Court by its judgment and decree dated 22-12-1995 granted compensation at the rate of Rs. 1,00,000/- per hectare and land involved therein belonged to father of the appellant and it was a part and parcel of family lands, just as the land involved in the present appeal. He submits that since the land involved in the said case was Gat No. 67, being similar to the land involved in this case, the appellant would be entitled to the compensation at the rate of Rs. 1,00,000/- per hectare. He also submits that compensation is required to be fixed by determining market value of the land and it is the duty of the Court to find out the market value of the land and grant compensation accordingly. He relied upon the judgment of the Hon"ble Apex Court rendered in the case of Bhimasha v. Special Land Acquisition Officer and another, reported in (2008) 10 SCC 797.

5. Shri Bhoyar, learned AGP for respondents submits that the Reference Court has rightly held that the appellant has failed to establish similarity of the land acquired in this case with the land involved in the Land Acquisition Cases, on which reliance is being placed by the appellant. He, therefore, submits that there is no reason for making any interference in the impugned judgment and award.

6. Upon perusal of the impugned judgment and award and also record of the case and judgments relied upon by the learned counsel for the appellant, I find that the Reference Court has committed serious illegality in ignoring the

similarity of the lands of the appellant and his uncle Vyankatrao involved in LAC No. 432/92. Vyankatrao's land was a part of family lands belonging to the appellant and his joint family and they were adjoining to each other. Therefore, unless some specific evidence was available on record distinguishing the land acquired in this case and the land involved in LAC No. 432/92, the learned Civil Judge ought not to have found, simply on the basis of conjunctures, that lands and their portions have tendency to differ from one place to another. There is no presumption in law that two lands bearing two different survey numbers although adjoining to each other are different in terms of grade, quality, potentiality and fertility and, in my view, to make such a conclusion, some scientific evidence is required showing the differences in lands. On the other hand, if lands comprising several gat numbers form one larger chunk of land, there is a greater possibility of the lands, though donning different gat numbers bearing similarity to each other. Therefore, by applying law of probability, the inference that has to be drawn in the absence of evidence to contrary in case of adjoining lands would be towards their similarity in terms of vital soil parameters that determine lands' character and potentiality.

7. Upon perusal of the evidence available on record, I find the contentions of the appellant in this regard do not appear to be seriously challenged by the respondents and there is no satisfactory evidence reasonably establishing dissimilarities between the said lands. Therefore, the finding recorded in this regard by the Reference Court is perverse and arbitrary and as such needs to be quashed and set aside.

8. Once it is found that the land acquired in this case could not have been distinguished from the land involved in LAC No. 432/92, it would also have to be found by applying law of probability that both these lands are similar to each other, and therefore, required to be treated equally. But then, there is one difficulty in giving equal treatment, as there has been a subsequent development. A similar land belonging to the joint family of the appellant and standing in the name of his father late Amrutrao Khushalrao Deshmukh bearing Gat No. 67, which was acquired by the same notification and awarded compensation by the same award dated 4-3-1989, got enhancement in compensation in LAC No. 418/92 by the judgment and decree dated 22-12-1995 passed by Pusad Court. This time, the compensation was fixed at the rate of Rs. 1,00,000/- per hectare. Even this land, being a part of larger piece of land belonging to the joint family of the appellant, can be reasonably said to be similar in terms of the grade, quality and fertility with the land acquired in this case and, therefore, available for determining market value of the land acquired in this case by comparison.

The judgment and decree dated 22-12-1995 passed in LAC No. 418/92 has been confirmed by this Court, when this Court dismissed the appeal preferred against it in 223/1995. This is clear from the affidavit filed on record by the appellant dated 22-9-2014. Now, this being the highest compensation granted amongst all

similar lands, would have to be taken into account for determining market value of present land as it is the law that when two market rates are available for comparison, the one which benefits most the claimant should be taken as relevant for calculating market value of his land.

9. Learned AGP for the respondents/State submits that the adjoining lands in village Chincholi acquired under same notification have been granted compensation at the rate of Rs. 70,000/- per hectare by this Court in First Appeal No. 242/94 and other connected matters including First Appeal No. 243/94 decided on 27th April, 2010 and 16th September, 2010 and has submitted that these lands being similar to the acquired land in this case, no more compensation than at the rate of Rs. 70,000/- per hectare can be granted.

10. However, I am not inclined to accept the said argument of learned AGP for the simple reason that although these lands have been acquired for the same project under the same notification, they are admittedly not forming part of the joint family lands belonging to the appellant and his joint family. The appellant's land acquired in this case forms part of a larger piece of joint family land of which, the lands involved in LAC No. 432/92 and LAC No. 418/92 were forming part. Therefore, as I have already found, there is a greater possibility of these lands bearing similarity to each other and lesser possibility of the land acquired in this case being similar to the lands involved in First Appeal No. 242/94 and connected matters including First Appeal No. 243/94.

11. In the circumstances, I am of the view that in the instant case also, the acquired land being similar to the land involved in LAC No. 418/92, deserves to be given same rate of compensation as has been granted in the said case by Reference Court, Pusad and confirmed by this Court. Consequently, the appellant would be entitled to receive compensation at the rate of Rs. 1,00,000/- per hectare for the land acquired in this case vide Notification dated 6-2-1986. The point is answered accordingly.

12. The appeal is allowed. The impugned judgment and decree are quashed and set aside.

13. The appellant be given compensation at the enhanced rate of Rs. 1,00,000/- per hectare.

14. The appellant be also given 12% component on the amount of enhanced compensation as per section 23(1-A) of the Land Acquisition Act from the date of notification under section 4 till delivery of compensation or the date of award, whichever is earlier and 30% solatium on the amount of enhanced compensation as per section 23 of the Land Acquisition Act. If any amount is already paid to the appellant and received by him under protest, the same be deducted from the enhanced amount granted by this order. The appellant be given interest at the rate of 9% per annum for one year from the date of taking over possession of the land and at the rate of 15% per annum for remaining period on the excess amount till it is deposited in the Court, as per section 28 of the Land Acquisition

Act.

Costs to follow suit.