
(2014) 02 BOM CK 0232
In the Bombay High Court
Case No : First Appeal No. 2373 of 2012

Balaji, Samrat, Vilas and Tanaji

APPELLANT

Vs

The State of Maharashtra and The Executive Engineer,
Medium Project Division

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 23(2) 28 4

Citation : (2015) 1 MhLj 51

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : Milind M. Patil Beedkar, for the Appellant; M.S. Patni, AGP and Smt. D.G. Ansingkar, for the Respondent

Final Decision : Partly Allowed

Judgement

K.U. Chandiwal, J.—Heard. Admit the appeal.

Heard finally.

Perused the record and in particular sale deed at Exh. 16 and earlier award at Exh. 17 concerning LAR No. 83/2004.

The appellant feels aggrieved by the order of the learned Civil Judge, Senior Division, Biloli, dated 3rd May, 2012, whereby he directed respondent State to pay additional compensation which was enhanced to Rs. 8,40,960/- for bare market value of 2 H. 92 R. land from Gat No. 61 at the rate of Rs. 2,88,000/- per Hectare and Rs. 3,30,009/- for well.

2. Mr. Patil, learned Counsel for the appellant says, the sale instances under sale deed Exh. 15 done about 9 years before the notification dated 15.5.2008 and the sale deed at Exh. 16 was for the period of around seven years before the said notification. He urged, considering the escalation in prices of immoveable property at least a scale of 12 per cent per annum for the intervening period to

be added to the enhancement. Learned Counsel says, even if one proceeds to the award in LAR No. 83/2004 (Exh. 17), which was in respect of notification dated 15.7.2001; still, such escalation is warranted.

3. I have gone through the sale instances. By perusal of original record, the appellant did not produce village map before the learned Judge to indicate exact location of his property-vis-a-vis the properties referred in the sale instances and also the property referred in LAR No. 83/2004. In fact, the property in LAR No. 83/2004 was an irrigated land where Rs. 2,50,000/- per Hectare was awarded for said land Gat Nos. 63 and 65 acquired under notification u/s 4 of the Land Acquisition Act, dated 15.7.2001.

4. Mr. Patil says that the land (Gat No. 61), subject property, has been acquired under notification dated 15.5.2008 and is an adjacent land. I quite see, barring affidavit of the claimant, there is no cogent evidence to establish, and impress upon that the acquired land Gat No. 61 has the identification of potentiality and proximity to the land referred in sale instances, and also land in LAR No. 83/2004.

5. The learned Judge, based on the afore referred sale instances, hypothetically carried the enhancement of 20 per cent to Rs. 2,40,000/- awarded/earmarked by the Land Acquisition Officer.

6. Shri Patil has urged for enhancement at 12 per cent in the light of the award in LAR No. 83/2004 as it was dated 15.7.2001, while the notification at hand is dated 15.5.2008. Though this submission was cozy in its character, however, difficult to act upon. The agricultural property, subject of sale deed Exh. 15 or 16 has its independent characteristics; still, by going to reference of its numbers, one may generate an impression that they are at proximity. One fact is certain that the same forms part of the same village Ramtirth. Unfortunately, the acquiring body or the State did not advert to the evidence and distorted narration of the claimant of proximity to the property, or nearness thereof. In this situation, even if there is bare affidavit of the claimant, his statement, to some extent will have to be tuned with.

Learned Counsel for the acquiring body stiffly opposed for enhancement as, according to her, the comparative sale instances indicate that those properties had good yield and there is already 20 per cent increase by the Reference Court. Hence, according to her, there should not be any enhancement.

In the light of the position as indicated above, it is only a guess work and hypothesis that is to be carved out. The learned Judge has added 20 per cent to the award of Special Land Acquisition Officer which was Rs. 2,40,000/- and made it Rs. 2,88,000/- In fact, there is inherent element of guess work in such cases involving determination of market value. Relevant factors are date of notification and prior sale instances, proximity, potentiality and truthfulness in such transactions. In the light of the two sale deeds and Land Acquisition Reference referred to above, it would be just and feasible to enhance the compensation to

40 per cent than the Land Acquisition Officer granting Rs. 2,40,000/-.

Appellant would be entitled to the additional compensation by calculation, at the rate of Rs. 48,000/- per Hectare. For 2 H. 92 R., it would be Rs. 1,40,160/-. The appellant claimant shall be entitled in addition, to other statutory benefits in terms of Section 23(2) and 28 of the Land Acquisition Act. The claims and Award in respect of well or for pipeline remain unaltered.

Appeal partly allowed to the extent as above. No costs. Deficit Court fee, if any, be paid.