(2024) 01 BOM CK 0050

In the Bombay High Court

Case No : First Appeal No. 959 Of 2007

Bhanudas And Others APPELLANT

Vs

State Of Maharashtra And Others RESPONDENT

Date of Decision : 16-01-2024

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 18

Citation : (2024) 01 BOM CK 0050

Hon'ble Judges : Anil L. Pansare, J

Bench : Single Bench

Advocate : V. R. Baseshankar, H. N. Prabhu, N. M. Gaidhane

Final Decision : Partly Allowed

Judgement

Anil L. Pansare, J

1. The appellants – original claimants are aggrieved by the award dated 28-11-2001 passed by the Civil Judge Senior Division, Bhandara in Land Acquisition Reference Case No. 30/2000.

2. The land bearing Survey No. 96/1 and 96/2 admeasuring 0.69 H.R. and 0.35 H.R. situated at Village, Shendri (Khurd) came to be acquired by the respondent – State Government for irrigation project, namely, Indira Sagar Project. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act of 1894') was issued and published on 3-7-1992. The respondent no. 2 Land Acquisition Officer (LAO) has, vide award dated 14-7-1994, determined the market value of the acquired land at the rate of Rs. 53,100/- per Hectare. The appellants were not satisfied with the aforesaid rate and, therefore, preferred reference under Section 18 of the Act of 1894 before the civil court.

3. My attention has been invited to the valuation done by the LAO. He has relied upon two sale instances preferred by the appellants. Two persons have purchased separate parts of the agricultural land bearing Gat No. 424. Both the

sale deeds were executed on 31-3-1992 and consideration amount was Rs. 52,083/- per Hectare. The LAO noted that material date is 13-9-1992 and thus was within close proximity and accordingly relied upon both the sale deeds to fix the rate of acquisition at Rs. 53,100/- per Hectare.

4. The reference Court has noted that the appellants'/ claimants' land is similar to the sale instance at Exhibits 44 and 46 and upheld the valuation of LAO and thus dismissed the reference.

5. Learned counsel for the appellants has invited my attention to the sale deeds, Exhibit 44 and 46. The status of land is/was dry land. He submits that land acquired was, however, irrigated land. The respondents do not dispute that the acquired land was irrigated land. The 7/12 extract, Exhibit 29 indicates that the appellants have in the year 1992-93 taken crops in seasons viz. Kharip, Rabbi and Unhali. Learned counsel for the appellants has referred to the judgment dated 13-7-2017 passed by this Court in First Appeal No. 570/2005 wherein the Court has enhanced the market value by doubling the rate on the ground that the appellants therein have taken crops in two seasons viz. Kharip and Rabbi. Similar request has been made by the appellants herein.

6. Learned Assistant Government Pleader and learned counsel for respondent no. 3 - VIDC though made an attempt to justify the award, considering the status of land viz. irrigated land and considering the fact that the appellants have at the relevant time taken crops in three seasons, the appellants are entitled for double the amount of compensation awarded by the respondent no. 2 LAO. In other words, the appellants are entitled for compensation at the rate of Rs. 1,06,200/- per Hectare.

7. The reference Court has failed to consider that the acquired land was irrigated land and that there was sufficient evidence that the appellants have taken crops for more than one season and, therefore, will be entitled to double the amount of compensation assessed for the dry land.

8. The award under challenge therefore, is, unsustainable. Hence, following order.

ORDER

(i) The appeal is partly allowed.

(ii) The appellants/original claimants are entitled to get the compensation at the rate of Rs. 1,06,200/- per Hectare in respect of land which is the subject matter of the appeal with interest and other statutory benefits.

(iii) The appellants/original claimants will not be entitled to get interest and other benefits for delayed period of 2303 days.

(iv) Respondent no. 3 is directed to deposit the amount enhanced as per this judgment with interest and other benefits within three months.

(v) The appellants/claimants are directed to pay the deficit Court Fees on the enhanced amount of compensation within four weeks. If the deficit Court Fee is not paid by the appellants/claimants, then the same shall be recovered/deducted from the enhanced compensation amount.

(vi) First appeal stands disposed of with no order as to costs.

