
(2018) 01 BOM CK 0133
In the Bombay High Court
Case No : 31 of 2007

Damodhar s/o Domaji Bhure		APPELLANT
	Vs	
The State of Maharashtra		RESPONDENT

Date of Decision : 23-01-2018

Acts Referred:

Land Acquisition Act, 1894, Section 4 -
Publication of preliminary notification and powers of officers thereupon.

Citation : (2018) 01 BOM CK 0133

Hon'ble Judges : Manish Pitale

Bench : Single Bench

Advocate : M.B. Agasti, ?Geeta Tiwari, ?Ashwini S. Athalye

Final Decision : Disposed Of

Judgement

1. There are five appeals for consideration before this Court wherein First Appeal Nos.31 of 2007, 622 of 2008, 983 of 2008 and 32 of 2008 arise from common judgment and order dated 07.09.2006 of the District Court, Wardha, in Land Acquisition Cases pertaining to acquisitions of land in Survey Nos. 351, 353 and 356 of mouza Salod, district Wardha, for the purposes of rehabilitation of project affected persons. While First Appeal No. 31 of 2007 has been filed by the claimant/land owner in Survey No. 356 for further enhancement of compensation, the other appeals are filed by the State and the Acquiring Body i.e. Vidarbha Irrigation Development Corporation, challenging the said common judgment and order

of the Reference Court, contending that the enhancement granted by the said Court is unjustified and that the award passed by the Special Land Acquisition Officer deserves to be restored.

2. The other appeal bearing First Appeal No.452 of 2009 taken up for hearing along with the above mentioned appeals, pertains to acquisition proceedings undertaken in pursuance of a different and earlier notification issued under Section 4 of the Land Acquisition Act, but since it pertains to acquisition of land from Survey No.338 of the same mouza Salod, district Wardha, it has been taken up for hearing along with the said appeals. This is an appeal filed by the claimant for further enhancement of compensation.

3. The facts pertaining to the aforesaid group of four appeals are that notification for acquisition of lands in Survey No. 351, 353 and 356 of mouza Salod, district Wardha, under Section 4 of the Land Acquisition Act, 1894, was issued on 7.6.2000. On completion of the acquisition proceedings, the Special Land Acquisition Officer passed award on 31.08.2002 granting compensation to the claimants/land owners for the acquired lands at the rate of Rs.48,800/- per hectare.

Aggrieved by the quantum of compensation granted in the said award, the claimants preferred reference application under Section 18 of the said Act before the District Court at Wardha. These reference applications were taken up for consideration by the Reference Court together.

4. By common judgment and order dated 7.9.2006, the Reference Court held that the quantum of compensation granted by the Special Land Acquisition Officer in his award was inadequate and thereupon, the Reference Court granted

enhanced compensation to the claimants @ Rs.1,50,000/- per hectare. The enhanced compensation at the aforesaid rate was calculated by the Reference Court and it was directed that the enhanced amount would be paid to the claimants along with statutory benefits.

5. First Appeal No.31 of 2007 has been filed by one of the claimant/land owner i.e. Damodhar Bhure for acquisition of his land in Survey No. 356 mouza Salod, district Wardha. He has claimed that on the basis of the material and evidence on record, the Reference Court ought to have granted enhanced compensation @ Rs.3,00,000/- per hectare. First Appeal No. 622 of 2008 has been filed by the State of Maharashtra against the common judgment and order of the Reference Court in respect of enhanced compensation granted in the case of land in Survey No. 351 belonging to the claimant/land owner Krishna Sawarbandhe. First Appeal No. 983 of 2008 has been filed by the acquiring body i.e. V.I.D.C. as against the same land owner i.e. Krishna Sawarbandhe. First Appeal No. 32 of 2008 has been filed by the acquiring body V.I.D.C. against the same common judgment and order of the Reference Court pertaining to land in Survey No. 353 belonging to claimant/land owner Kishor Kubde.

6. I have heard the learned counsel appearing for the parties in these appeals. Mr. M.B. Agasti, learned counsel appearing on behalf of the appellant/claimant in First Appeal No. 31 of 2007 has submitted that the enhancement granted by the Reference Court for compensation @ Rs.1,50,000/- per hectare is inadequate because sale instances pertaining to lands in the vicinity of his acquired land in Survey No.356 showed that the said lands had fetched price upto

Rs.4,58,455/- per hectare. According to the learned counsel appearing for the appellant, it was evident that compensation at least @ Rs.3,00,000/- per hectare ought to have been granted. It was further contended that the Reference Court completely failed to appreciate the aspect of non-agricultural potentiality of the land in question, particularly when the surrounding areas had already been developed and even the land in question had been acquired for residential purpose of rehabilitation of project affected persons. It was contended that these factors clearly demonstrate that the enhancement of compensation granted by the Reference Court was much below the fair market value of the land in question. It was emphasised that the appellant/claimant was not only claiming enhancement on the basis of the sale instances but also on the potentiality of development of the said land, taking into consideration the entirety of the material and evidence on record. The learned counsel for the appellant relied upon the judgments of the Hon''ble Supreme Court in Thakur Kuldeep Singh .vs. Union of India - (2010) 3 Supreme Court Cases 794, Special Land Acquisition Officer .vs. Karigowada and others - (2010) 5 Supreme Court Cases 708 and Digambar .vs. State of Maharashtra -AIR 2013 Supreme Curt 3532.

7. The learned counsel appearing for the State of Maharashtra and the acquiring body V.I.D.C. in First Appeal Nos. 622/2008, 983/2008 and 32 of 2008 contended that there was no substance in the contentions raised on behalf of the claimant/appellant in First Appeal No.31 of 2007 for further enhancement and that, in fact, the Reference Court had committed a grave error in enhancing the compensation from

Rs.48,800/- per hectare to Rs.1,50,000/- per hectare. It was claimed that the Special Land Acquisition Officer was justified in relying upon sale instances of land from Survey No. 352, while granting compensation as the said land was similarly circumstanced like that of the claimants/land owners and that Reference Court had committed a grave error in relying upon the sale instances pertaining to land located in Survey No. 362.

8. Ms. Athalye, learned counsel appearing on behalf of the acquiring body V.I.D.C. in First Appeal Nos. 983 of 2008 and 32 of 2008 submitted that a perusal of the map on record showing the location of various survey numbers relevant for the present case would show that the finding of the Land Acquisition Officer in the award while granting compensation @ Rs.48,800/- per hectare was wholly justified. It was contended that when a sale instance is taken as a basis for rendering a finding regarding fair market value of the acquired land, it must be ascertained that the land which is subject matter of the sale instance under consideration is adjacent to the acquired land and that it possesses similar advantages. For this purpose, the learned counsel has relied upon the judgment of the Hon"ble Supreme Court in the case of Karnataka Urban Water Supply & Drainage Board .vs. K.S . Gangadharappa - (2009) 11 Supreme Court Cases 164. It is contended that the sale instance relied upon by the Reference Court pertained to a land which was not comparable to the acquired land and that the acquired land did not possess the same advantages of facility of irrigation etc. Mrs. Geeta Tiwari, learned Assistant Government Pleader appearing on behalf of the State in First Appeal No. 622 of 2009 made similar

submissions and contended that the impugned judgment and order of the Reference Court was unsustainable and that the award passed by the Special Land Acquisition Officer was required to be restored.

9. Mr. S.V. Sohoni, the learned counsel appearing on behalf of the respondent/claimant in First Appeal No. 622/2008, whose land at Survey No. 351 was also the subject matter of acquisition in the present case, submitted that the contentions raised on behalf of the acquiring body and the State were not justified and that the findings rendered by the Reference Court were reasonable and based on proper appreciation of the evidence and material on record. The learned counsel invited my attention to the map on record to demonstrate that the location of the acquired land was such that the compensation granted by the Reference Court was justified. Mr. Sohoni, the learned counsel contended that there was non-agricultural potentiality in the land in question and he also placed reliance upon judgment of the Hon"ble Supreme Court in the case of Digambar (supra).

10. Mr. K.R. Luley, learned counsel appearing on behalf of the respondent/land owner in First Appeal No. 32 of 2008 concerning acquisition of land in Survey No.353, also submitted that the judgment and order of the Reference Court did not deserve interference and that apart from the value of the land calculated on the basis of sale instance, the development potentiality of the land was also required to be taken into consideration. He relied upon judgment of the Hon"ble Supreme Court in the case of General Manager, ONGC .vs. Rameshbhai Jivanbhai Patel - (2008) 14 Supreme Court Cases 745.

11. In First Appeal No. 452/2009, which has been heard along with the aforesaid appeals, although pertaining to an acquisition proceeding initiated earlier but pertaining to the same mouza Salod, district Wardha, Mr. M.R. Joharapurkar, learned counsel appearing for the appellant, has submitted that the compensation granted by the Reference Court in the said case @ Rs.48,383/-, was on the lower side and that taking into consideration the location of the land, further enhancement ought to be granted. In support of his contention, the learned counsel relied upon, judgments of the Hon"ble Supreme Court in the case of Union of India .vs. Harinder Pal Singh - AIR 2006 Supreme Court 447, and Sagunthala (Dead) through L.Rs. .vs. Special Tahsildar ((L.A .) - 2010 (2) Civil L.J. 748. In the said appeal Mrs. Geeta Tiwari, learned AGP appearing on behalf of the State opposed the contentions raised on behalf of the appellant and she submitted that the impugned judgment and order of the Reference Court did not deserve interference.

12. Having heard learned counsel for the parties and upon perusal of the pleadings, evidence and documents on record, the point that arises for determination in all these appeals is:

"As to whether the Reference Court was justified in granting enhancement of about three times in the quantum of compensation for acquisition of the lands and whether the claimant/land owner of land in Survey No. 356 is justified in claiming further enhanced compensation?

13. I am first considering the appeals filed by the claimant and the acquiring body as also the State in respect of common judgment and order dated 7.9.2006 passed by the Reference Court pertaining to acquisition of lands in Survey Nos. 351, 353 and 356 of mouza Salod, district Wardha. While

considering the question as to whether the quantum of compensation granted by the Special Land Acquisition Officer in his award to the claimants/land owners in these appeals @ Rs.48,800/- per hectare, the Reference Court has arrived at a finding that the compensation so determined by the Special Land Acquisition Officer was very inadequate. The Reference Court found that there were as many as 49 sale instances taken into consideration by the Special Land Acquisition Officer while considering the claims of the land owners. It is evident from the list of the said sale instances that they pertained to the period between January 1996 and May 2000. Out of all these sale instances, the Special Land Acquisition Officer has chosen the sale instance at Serial No.6 pertaining to Survey No. 353, where the land fetched a price of Rs.33,333/- per hectare. The map on record shows the location of the lands in various survey numbers, including the lands that were subject matter of acquisition. It is the contention raised on behalf of the State and the acquiring body that since the said Survey No. 352 was in proximity to the survey numbers wherein the lands of the claimants/land owners were located, the reliance placed by the Special Land Acquisition Officer on the said sale instances was fully justified.

14. On the other hand, the Reference Court has chosen to rely upon sale instance at Serial No.17 in the list of sale instances recorded in the award of the Special Land Acquisition Officer. In the said sale instance, the price fetched by the land was Rs. 1,23,684/- per hectare. The aforesaid sale instance is dated 20.06.1997. The map on record shows that the said Survey No. 362 is located on the other side of Wardha-Yavatmal road as compared to survey numbers in which the

lands of the claimants/land owners are located. The Reference Court has discussed this aspect of the matter in paragraph nos. 13 to 20 in the impugned judgment and order. It has been held that since the aforesaid sale instance at Serial No. 17 in the list pertained to the year 1997, by calculating an increase @ 10 % from 1997 to the year 2000, the price of the land would come to Rs.1,64,622/-. Thereafter, the Reference Court has reduced the amount of Rs.14,622/- per hectare, as Survey No. 362 touched upon the Wardha-Yavatmal road while the survey numbers in which the lands of the claimants were located, were at a little distance away from the road. On this basis, the Reference Court has arrived at the figure of Rs.1,50,000/- per hectare as a reasonable price or fair market value of the lands in question. The learned counsel appearing for the State and the acquiring body have failed to demonstrate as to why the aforesaid finding of the Reference Court can be held to be erroneous.

15. In fact, the Reference Court has also held that the acquired lands were having non-agricultural potentiality as they were near the Wardha-Yavatmal road. This was a factor not considered at all by the Special Land Acquisition Officer while granting compensation @ only Rs.48,800/- per hectare. The contentions raised on behalf of the claimant/land owner in First Appeal No. 31/2007 that the aspect of non-agricultural potentiality was ignored by the Reference Court is not correct because specific reference to this aspect is found in the impugned judgment and order. The learned counsel appearing for the appellant in the said appeal has contended that the appellant had relied upon sale instance at Exh.28 pertaining to land at Survey No. 340 wherein the price fetched was

Rs.4,58,455/- and that, therefore, further enhanced compensation was required to be granted. But, a perusal of the impugned judgment and order, shows that the said sale instance was also taken into consideration by the Reference Court and it was found that the land in Survey No. 340 was absolutely touching the Wardha-Yavatmal road and further that the said land had a well, two electric pumps, G.I. pipeline, standing teak trees and tin shed of three rooms. This was found to be a distinguishing feature by the Reference court as regards the higher price fetched by the land located in Survey No.340. The Reference Court also noted that the acquired land belonging to the said appellant in Survey No. 356 was not comparable to the land in Survey No. 340. Thus, there was consideration of this aspect in the impugned judgment and order.

16. As regards the judgments of the Hon''ble Surpeme Court relied upon by the counsel appearing for the claimants/land owners pertaining to the question of non-agricultural potentiality, it is necessary that the claimants/land owners place on record cogent material to show the extent at which compensation is required to be enhanced for such potentiality. In the impugned judgment and order, the Reference court has indeed taken this factor into consideration and, therefore, it has granted enhancement in the quantum of compensation, which is more than three times than the amount granted by the Special Land Acquisition Officer. Therefore, the appellant in First Appeal No. 31 of 2007 cannot be said to have made out a case for further enhancement of compensation.

17. As regards the contentions raised on behalf of the

State and the acquiring body that the impugned judgment and order deserves to be set aside and the award of the Special Land Acquisition officer deserves to be restored, I do not find any substance in the same. The reliance placed on the judgment of the Hon''ble Surpeme Court in the case of Karnataka Urban Water Supply (supra) by the learned counsel appearing on behalf of the acquiring body does not further its case, because the Reference Court in the instant case has indeed applied the principles laid down by the Hon''ble Supreme court in the said case, as it has been found by the Reference Court by analyzing the material on record that the land in respect of which the sale instance is relied upon, is in the vicinity of the acquired land and that it possesses similar advantages.

18. Insofar as First Appeal No.452/2009 is concerned, the notification under Section 4 of the aforesaid Act was issued on 2.4.1998 and the acquired land was located in Survey No. 338 of mouza Salod, district Wardha, admeasuring 1 H 18 R. The Special Land Acquisition Officer in the said case granted compensation @ Rs.49,000/- per hectare and upon the appellant approaching the Reference Court, the compensation was increased to Rs.90,000/- per hectare. Since the acquired land is located in the same village, the quantum of compensation awarded by the Reference Court in the common judgment and order dated 7.9.2006, which is a subject matter of challenge in the above mentioned four appeals, can be a relevant factor to be taken into consideration. The notification under Section 4 in the said cases was dated 7.6.2000, while the notification under Section 4 of the said Act in the instant First Appeal No. 452 of 2009 was 2.4.1998. As the lands in all these

cases pertained to the same village and they were acquired for the same purposes of rehabilitation of project affected persons, by taking that the quantum of compensation granted in the aforementioned cases at Rs.1,50,000/- per hectare in the acquisition proceedings initiated on 7.6.2000, it can be concluded that the enhanced compensation granted by the Reference Court in its judgment and order dated 14.11.2008 which is subject matter of challenge in First Appeal No. 452 of 2009 at Rs.90,000/- per hectare is slightly on the lower side. Therefore, considering the aforesaid factors, I find that the compensation payable to the appellant/claimant in First Appeal No. 452 of 2009 deserves to be enhanced to Rs.1,00,000/- per hectare.

19. The counsel for the respective parties have referred to a number of judgments of the Hon"ble Supreme Court in respect of principles for ascertaining non-agricultural potentiality of land, comparability of the sale instances and other factors to be taken into consideration, while deciding the quantum of compensation. I find that the said principles have been applied by the Reference Court in the impugned judgment and order dated 7.9.2006, which is subject matter of First Appeal Nos. 31/2007, 622/2008, 983/2008 and 32/2008. Insofar as First Appeal No. 452/2009 is concerned, since I have found that the Reference Court granted compensation at a slightly lower side, it is directed to be enhanced as aforesaid. In this light, the aforesaid judgments relied upon by the respective parties have not been discussed in detail in this judgment.

20. In the light of the above, First Appeal Nos. 31/2007, 622/2008, 983/2008 and 32/2008 are dismissed and the

common judgment and order dated 7.9.2006 passed by the Reference Court in L.A.C. Nos. 116/2003, 117/2003 and 118/2003, stands confirmed. First Appeal No. 452/2009 is partly allowed and the impugned judgment and order of the Reference Court therein dated 14.11.2008 is modified to the extent that the enhanced compensation payable to the appellant therein is fixed at Rs.1,00,000/- per hectare. The appellant in this appeal shall also be entitled to statutory benefits on such enhanced component of compensation.

21. Accordingly, the appeals are disposed of with no orders as to costs.