

(2009) 03 BOM CK 0053

In the Bombay High Court

Case No : First Appeal No. 250 of 1994 in Land Acquisition Reference No. 403 of 1989

Damu Rathod and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-03-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4, 6

Citation : (2009) 4 BomCR 390

Hon'ble Judges : K.K. Tated, J

Bench : Single Bench

Advocate : M.A. Kulkarni, for the Appellant; S.P. Dound, A.G.P., for the Respondent

Judgement

K.K. Tated, J.—Heard Mr. Kulkarni, learned Counsel for the Appellants and Mr. S.P. Dound, learned A.G.P. for Respondent - State. Present First Appeal preferred by Appellants/original claimants against the Judgment and award dated 24th April, 1992 passed by IInd Additional District Judge, Beed, in L.A.R. No. 403 of 1989.

2. The undisputed facts are that, the Special Land Acquisition Officer (for short "S.L.A.O.") issued Notification u/s 4 of the Land Acquisition Act dated 17th December, 1987 for acquiring land of the Appellants/original claimants for percolation tank from village Pachegaon, Tq-Georai, Dist-Beed. The S.L.A.O. Jayakwadi Project No. 2, Beed issued Notification for acquiring land of the Appellants from Survey No. 910 admeasuring 7 Hectar and 18 Rs. for the said project. Thereafter S.L.A.O. issued Notification u/s 6 of the Land Acquisition Act dated 21st July, 1988. After following due process of law, S.L.A.O. declared award dated 20th March, 1989 and awarded compensation in respect of acquired land at the rate of Rs. 100/- per R i.e. Rs. 10,000/- per Hectar. Being aggrieved by the said award passed by the S.L.A.O., Appellants preferred Reference u/s 18 of the Land Acquisition Act. In the said Reference the Reference Court awarded

compensation in respect of acquired land at the rate of Rs. 10,000/- per acre i.e. Rs. 25,000/- per Hectar.

3. Being aggrieved by the said award of the Reference Court, the Appellants preferred present Appeal on the ground that the learned Reference Court without applying principle of law, mechanically determined the market price of the land and thereby rejected Appellants submissions for fixing the market price of acquired land at the rate of Rs. 625/- per R i.e. Rs. 62,500/- per Hectar. Mr. Kulkarni, learned Counsel for the Appellants submitted that the Reference Court wrongly discarded the testimony of the witnesses when they support the contention of the Appellants in respect of market value. Learned Counsel for Appellants submitted that in any case the Appellants are entitled to compensation in respect of acquired land at the rate of Rs. 62,500/- per Hectar.

4. On the other hand, Mr. Dound, learned A.G.P. appearing on behalf of the Respondent - State submitted that the Reference Court determined the market value of the acquired land as per the prevailing rate on the date of issuance of Notification u/s 4 of the Land Acquisition Act. He further submitted that the Appellants failed to produce any sale deed in support of their contention about market value. He further submitted that in view of these facts, this Court should dismiss the present First Appeal with exemplary cost.

5. It is settled principle of law that for determining the market value of the acquired land either the Court has to rely on sale deeds in respect of lands of the same locality and/or previous Judgments in respect of acquisition for the same project from same locality. If both these things are not available, this Court has to decide market value on the basis of testimony of the witnesses examined by the parties for fixing the market value of the acquired land. In the present case the Appellants examined PW1 Pandurang Jemla Rathod at Exhibit 17 to prove a sale deed dated 4th June, 1986. This witness stated that he purchased 25 Gunthas of land out of Block No. 357 from Tikaram Lalu Rathod for Rs. 17,000/- on 4th June, 1986. He produced the sale deed on record which is marked at Exhibit 10 collectively. He further stated that his land is near to the acquired land. The sale deed dated 4th June, 1986 is in respect of Bagayat land whereas the land involved in the present Appeal is Jirayat land. In similar way the Appellant examined witness No. 2 at Exhibit 18 Vishwanath Mansing Rathod to prove the sale deed dated 29th October, 1989. The said witness stated that he purchased 22 Rs. of land out of Block No. 569 from Bhagwan Leela Rathod for Rs. 15,000/- on 29th October, 1989 under the registered sale deed. He also stated that the land involved in this sale deed was Bagayat land. The land involved in this sale deed is also from same locality from which the Respondent acquired land. The Appellants also examined one Devidas Ambadas Gholap at Exhibit 22 for proving the sale deed dated 6th May, 1985. This witness stated that he sold 30 Rs. of land out of Block No. 387 for Rs. 10,000/- on 6th May, 1985. In respect of this sale deed the rate comes to Rs. 33,333/- per Hectar.

6. The Reference Court in Para 10 of the Judgment failed to consider all these

sale deeds in proper manner. Without considering all these sale deeds the Reference Court erred in coming to the conclusion that Appellants are entitled to compensation in respect of acquired land at the rate of Rs. 10,000/- per acre i.e. Rs. 25,000/- per Hectar. If we take the sale instance dated 6th May, 1985, it gives the rate of Rs. 33,333/- per Hectar, sale deed dated 29th October, 1989 gives the rate of Rs. 68,181/- per Hectar and sale deed dated 4th June, 1986 gives the rate of Rs. 68,000/- per Hectar. All these sale deeds are in respect of lands from the same locality and the dates of sale deeds are near about the date of issuing Notification u/s 4 of the Land Acquisition Act in the present case i.e. 17th December, 1987. For deciding the market value in respect of Jirayat land on the basis of sale deeds of Bagayat land, some deduction is necessary. Our High Court in the matter of State of Maharashtra and Another Vs. Baliram Girdhar Patil, held that market value of Bagayat land generally to be double than the value of the dry crop land. Head Note (b) of the said Judgment reads as under:

(b) Land Acquisition Act, 1894, Section 23 - Market price of dry crop land and irrigated land - If the market price of dry crop land is worked out, for working out the market price of irrigated land, in absence of any other evidence on record, double the market rate of jirayat land has to be awarded.

7. For fixing the market value on the basis of Bagayat land, learned Counsel for Appellant relied on the Judgment in the matter of State of Maharashtra Vs. Prashram Jagannath Aute, . In this case it is held by our High Court that it is settled principle of law that onus to prove entitlement to receive higher compensation is upon the claimants and each case would have to be examined on its own facts scrutinizing the evidence led by the claimants or the State as the case may be. It is further held by our High Court that market value of Bagayat and Jirayat land can depend upon the situation and fertility of the lands. Market value of Bagayat land may be double than the value of Jirayat land depending upon the other factors like location near to high way or to the Gavthan.

8. Considering the sale instance produced by the Appellants/original claimants dated 4th June, 1986, the market value in the present case should not be less than Rs. 40,000/- per Hectar. For determining the market value on the basis of sale deed dated 4th June, 1986 which is in respect of 25 Rs. of land only, some deductions are necessary. Similar view is taken by the Apex Court in the matter of M.S.N. Nadaf (Deceased) by L.Rs and Others Vs. Special Land Acquisition Officer, . Considering these facts I hold that the claimants are entitled to compensation in respect of acquired land at the rate of Rs. 40,000/- per Hectar.

9. In view of the above mentioned facts and circumstances, present First Appeal is required to be partly allowed. Hence the Order:

ORDER

(i) First Appeal No. 250 of 1994 is partly allowed.

(ii) The Judgment and award dated 24th April, 1992 passed by IInd Additional

District Judge, Beed in L.A.R. No. 403 of 1989 is modified to the extent that Appellants/original claimants are entitled to compensation in respect of acquired land at the rate of Rs. 40,000/- (Rs. Forty Thousand only) per Hector.

(iii) No order as to the costs.

(iv) Award be drawn accordingly.