

(2022) 04 BOM CK 0030

In the Bombay High Court

Case No : First Appeal No. 1250 Of 2006, 1774 Of 2008

Dasrao And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 07-04-2022

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 18, 18(2)(b), 23(2), 28, 34, 54

Citation : (2022) 04 BOM CK 0030

Hon'ble Judges : Shrikant D. Kulkarni, J

Bench : Single Bench

Advocate : A. B. Kale, S. N. Morampalle, S. G. Sangle

Final Decision : Disposed Of/Dismissed

Judgement

Shrikant D. Kulkarni, J

1. Feeling aggrieved and dissatisfied by the impugned judgment and award passed in LAR No.138 of 2002 by the Reference Court/Civil Judge, Senior Division, Nilanga, the original claimant as well as the acquiring body have preferred the present appeals by taking aid of Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act" for the sake of convenience).

2 The land admeasuring 4 Hectare 37 R out of Survey No.18 and land admeasuring 35 R out of Survey No.19 owned and possessed by the claimant and situated at village Ambawadi came to be acquired by the Government for Masalga Medium Project.

3 Relevant events and dates of the acquisition proceedings are as under:

- a) On 5th August, 1993, notification under Section 4 of the Act came to be published.
- b) On 1st March, 1995, notification under Section 6 of the Act came to be published.

- c) On 29th September, 1996, the SLAO was pleased to pass award.
- d) The SLAO was pleased to award compensation at the rate of Rs.225/- per R i.e. at the rate of Rs.25,000/-per Hectare; and
- e) The Reference Court was pleased to enhance the compensation at the rate of Rs.40,000/- per Acre for Bagayat land and Rs.27,500/- per Acre for dry land.

4 Heard Mr. A. B. Kale, learned counsel for the appellant/claimant (in First Appeal No.1250 of 2006), Mr. S.G. Sangle, learned counsel for the appellant/acquiring body (in First Appeal No.1774 of 2008) and Mr. S. N. Morampalle, learned AGP for the respondent/State in both the appeals.

5 Mr. Kale, learned counsel for the original claimant invited my attention to the impugned judgment passed by the Reference Court. He also referred relevant part of the evidence of original claimant coupled with documentary evidence. He pointed out that Survey Nos.18 and 19 owned and possessed by the claimant are adjacent to each other. There was well in land Survey No.18. Entry of well is also reflected in 7/12 extract. The claimant has categorically stated that he was taking Kharip as well as Rabbi crops in the acquired lands. It was a black cotton soil and capable of taking crops like hybrid Jawar, wheat and sunflower. The crop of sugarcane was also being taken in the acquired land by using well irrigation facility. The acquired land was fertile and of good quality. Both lands ought to have been held under the category of Bagayat land. The Reference Court has committed an error in recording the finding that the land Survey No.19 is dry land since no evidence is produced on behalf of First Appeals 1250 of 2006 n 1774 of 2008.odt the claimant. He pointed out that the claimant was supplying his sugarcane crop to nearby sugar factory and also produced documentary evidence to that effect. Even then the Reference Court has held the land bearing Survey No.18 as semi Bagayat land. He submitted that the claimant has produced sale instance vide Exhibit-21 and also examined concerned witness. The land under acquisition and the land under sale instance is within the radius of 1 to 1 and ½ kilometer. There was no difficulty for the Reference Court to accept that sale instance and determine the market value of the acquired land. He pointed out the impugned judgment paragraph 16 and submitted that though the Reference Court has held that claimant has proved on the basis of available material that the land under acquisition was black cotton soil and yielding Kharip and Rabbi crops and land vide Survey No.18 was irrigated land, not awarded the compensation by treating it as Bagayat/perennially irrigated.

6 Mr. Kale, learned counsel for the claimant pointed out that sale instance vide Exhibit-28 relied upon by the Reference Court does not indicate true market value at the relevant point of time. The land under sale instance at Exhibit-21 is at a distance of 1 to 1 and ½ kilometer from the acquired land, which indicates true market value and that needs to be relied upon in absence of any contra evidence by the State. He submitted that at the relevant point of time, the market value of the acquired land was more than Rs.1,25,000/- per Acre. The

Reference Court has awarded inadequate compensation by making differentiation between two acquired lands though the acquired lands are adjacent to each other but having different survey numbers. Both the lands were being irrigated by using well water facility. As such, the claimant is entitled to get compensation of the acquired land at the rate of Rs.1,25,000/- per Acre by modifying the impugned award passed by the Reference Court.

7 Mr. S. G. Sangle, learned counsel for the acquiring body vehemently submitted that the Reference Court has awarded exorbitant compensation in respect of acquired land. He submitted that the claimant has not produced satisfactory evidence to show that the acquired land was perennially irrigated. He submitted that though issue of limitation was raised by the acquiring body before the Reference Court, the Reference Court has not even framed the issue of limitation. The Reference Court has presumed that the reference is within limitation and proceeded to decide the same on wrong presumption. He submitted that the Reference Court has overlooked the evidence on record and the sale instances and recorded incorrect findings. He, therefore, urged that the market value determined by the SLAO needs to be upheld by allowing the appeal. He submitted that in rural areas, there is less prospect of development and that aspect needs to be considered. He further pointed out that the Reference Court has given 10% rise to the sale instance in question when the difference is less than a year. He further submitted that copy of judgment delivered in different LAR i.e. LAR No.679 of 1992 cannot be relied upon.

8 Mr. S. G. Sangle, learned counsel for the acquiring body has placed his reliance on the following stock of citations:

- a) General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and another, reported in, 2008 AIR SCW 5947 ;
- b) Kolkata Metropolitan Development Authority Vs. Gobinda Chandra Makal and another, reported in, AIR 2011 Supreme Court 3834 ; and
- c) Manoj Kumar Etc. Vs. State of Haryana and others, reported in, AIR 2018 SC (Supp) 247.

9 By way of reply, Mr. Kale, learned counsel for the original claimant invited my attention to the copy of judgment and award passed in LAR No.679 of 1992 vide Exhibit-29. He submitted that it is the same judgment and award arising out of same acquisition and project and it needs to be considered.

10 Mr. S. N. Morampalle, learned AGP for the State submitted that the rate of compensation awarded by the SLAO is very much adequate having regard to the market price prevailing at the relevant point of time. The Reference Court has enhanced the compensation in respect of acquired land on the basis of wrong presumption and assumption. He, therefore, urged to set aside the impugned judgment and award passed by the Reference Court.

11 I have considered the submissions of Mr. Kale, learned counsel for the original

claimant, Mr. Sangle, learned counsel for the acquiring body and Mr. Morampalle, learned AGP for the State.

12 Mr. Sangle, learned counsel for the acquiring body has raised the issue of limitation during the course of argument. According to Mr. Sangle, the reference filed by the claimant under Section 18 of the Act is barred by limitation and the Reference Court has neither framed the issue nor recorded any reasons. I have gone through the record and proceedings of LAR No.138 of 2002. On perusing the original file, it is evident that the claimant has accepted the amount of compensation under protest on 15th January, 1999. He has filed the reference under Section 18 of the Act in the office of Special Land Acquisition Officer at Latur on 24th February, 1999. The reference is filed within six weeks from the date of payment of compensation in view of Section 18(2)(b) of the Act. In view of this factual scenario, the reference under Section 18 of the Act filed by the claimant is found to be within limitation. No merit found in the objection regarding maintainability of the reference on account of limitation.

13 There is landmark judgment of the Honourable Supreme Court in the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona, reported in, 1988 (3) SCC 751, wherein the Honourable Supreme Court has given guidelines regarding determination of market value of the acquired land.

14 On going through the impugned judgment more particularly paragraph 17, it is noticed that the Reference Court has not accepted the sale instance vide Exhibit-21 since it is from different village Tupadi. The view taken by the Reference Court cannot be said to be improper or incorrect. When the sale instances from same village are available for determining the market value of the acquired land, there is no need to take help of sale instances from adjoining village.

15 The sale instance from Index-II Register dated 16th March, 1992 vide Exhibit-28 is from same village Ambawadi. The Reference Court has accepted the said sale instance, which is in respect of land Survey No.20 and seems to be adjoining to the acquired land. The Reference Court has also rightly relied upon the case of Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, reported in, AIR 1990 Supreme Court 2192, while accepting the sale instance from Exhibit-28 by taking into consideration proximity of the land under acquisition. The Reference Court has also observed that the claimant has even not disputed the said sale instance vide Exhibit-28.

16 The Reference Court has determined the market value of the acquired land on the basis of sale instance dated 16th March, 1992 vide Exhibit-28 by recording reasons, which appear to be sound. Even though the learned counsel for original claimant has placed reliance on the copy of judgment passed in LAR No.679 of 1992 vide Exhibit-29, connected evidence is yearning. As such, it would not be safe to rely upon that copy of judgment and award passed in another LAR proceedings i.e. LAR No.679 of 1992. Mr. Sangle, learned counsel for acquiring

body has also rightly placed reliance on the citation in case of Manoj Kumar Etc. Vs. State of Haryana and others (supra) wherein it is held by the Honourable Supreme Court that the awards and judgment in the cases of others not being inter-se parties are not binding as precedents. Further, it is observed by the Honourable Supreme Court that trend of the Courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The Courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequal's.

17 On the other hand, the sale instance shown in Index-II Register vide Exhibit-28 as referred above is from same village. It has been executed on 16th March, 1992, much before the date of notification under Section 4 of the Act published on 5th August, 1993. It is noticed that land admeasuring 1 Hectare 21 R from land Survey No.20 came to be sold for consideration of Rs.75,000/- under sale instance vide Exhibit-28. The market price of the land under sale instance comes to Rs.25,000/- per Acre at the relevant time. The Reference Court has given 10% increase by placing reliance on the citations in the cases of M.L.Boob Vs. State of Maharashtra, reported in, 1992 B.C.J. Page 969 and A.J.Sonekar Vs. State of Maharashtra, reported in, 1992 B.C.J. Page 929. However, Mr. Sangle, learned counsel for the acquiring body submitted that the sale instance vide Exhibit-28 relied upon by the Reference Court is less than a year prior to issuance of notification under Section 4 of the Act. He, therefore, submitted that 10% increase cannot be given while determining the market value on the basis of sale instance vide Exhibit-28. Mr. Sangle has also placed his reliance in the case of Kolkata Metropolitan Development Authority Vs. Gobinda Chandra Makal and another (supra). In this context, it is important to note that the sale instance vide Exhibit-28 is executed on 16th March, 1992. The notification under Section 4 of the Act came to be published in the Gazette on 5th August, 1993. After having necessary calculations, the time gap comes to one year, four months and some odd days. Therefore, I do not find any legal error on the part of the Reference Court while determining the market price by adding 10% increase. The Reference Court has rightly determined the market value of the acquired land at Rs.27,500/- per Acre by adding 10% increase for one year.

18 On going through the evidence, it is evident that the land Survey Nos.18 and 19 are adjacent to each other. There was well in land Survey No.18. The entry of well is also recorded in the 7/12 extract vide Exhibit-17. It is also evident from the testimony of claimant coupled with documentary evidence that the claimant was taking sugarcane crop in the acquired land and supplying the same to Killari Sugar Factory prior to the acquisition of land. The sugarcane receipt for the year 1988-89 is produced vide Exhibit-15. The Reference Court though accepted while recording reasons that land Survey No.18 has well irrigation facility and claimant was taking sugarcane crop, however, by treating the land Survey No.18 as seasonally irrigated and land Survey No.19 as dry land. I am unable to accept this finding recorded by the Reference Court.

19 What is perennially irrigated land? Perennially irrigated land means land which is assured of regular and actual supply of water for a period of not less than ten months during the year from any source of irrigation and which is consequently capable of growing at least two crops in a year or is utilised for growing sugarcane crop.

20 As pointed out earlier land Survey Nos.18 and 19 are adjacent to each other. Well is situated in and Survey No.18. The claimant was taking sugarcane crop in land Survey No.18. Certainly, the land Survey No.18 ought to have been held as perennially irrigated land. Equally the land Survey No.19 ought to have been held as perennially irrigated land since it is also adjoining to land Survey No.18. No contra evidence is produced by the State to dispute that factual position. It is also brought on record through the evidence of claimant that Kharip and Rabbi crops were being taken in the acquired lands. It was fertile and of good quality black soil. The SLAO has also observed the same facts in the award. In this background, the view taken by the Reference Court by making distinction of acquired land Survey No.18 as seasonally irrigated land and land Survey No.19 as dry land is factually incorrect on the basis of evidence. That finding needs to be modified.

21 Having regard to the above reasons, I am of the considered view that the claimant is entitled to get compensation of the acquired lands by treating it as perennially irrigated land. As pointed out earlier, the Reference Court has determined the market price of the acquired land at Rs.27,500/- per Acre for dry land. It is settled position of law that the claimant is entitled to get compensation in respect of irrigated land double than the value of dry land and the reference can be made in the case of State of Maharashtra Vs. Vithal Rodbaji Shinde, reported in, 1993 LAC 233 (Bombay High Court), though referred, not properly made applicable by the Reference Court.

22 Accordingly, the claimant is entitled to get compensation in respect of his acquired land from Survey Nos.18 and 19 at the rate of Rs.55,000/- per Acre, however, by deducting compensation paid earlier by the SLAO.

23 So far as the question of rental compensation is concerned, it is evident from the award passed by the SLAO as well as from the impugned judgment that the State has taken possession of the acquired lands by way of private negotiation before the notification under Section 4 of the Act. Certainly the claimant is entitled to get rental compensation in view of the decision in the case of Maimuna Banu Hamid Ali Khan and others Vs. State and others, reported in, 2001 (2) LAC 114 (Bom.) rightly relied upon by the Reference Court.

24 In the order dated 3rd January, 2022 passed in Civil Appeal No.2 of 2022 arising from the SLP (C) No.3 of 2022 [Diary No.17566 of 2020] (Gayabai Digambar Puri (Died) Thr. LR. Vs. The Executive Engineer & Ors), the Honorable Supreme Court has held as under:

"It is well-settled that the normal rule is that if on account of acquisition of land a

person is deprived of possession of his property, he should be paid compensation immediately and if the same is not paid to him forthwith, he would be entitled to interest on the compensation amount from the date of taking possession of the land till the date of payment thereof as expounded in R.L. Jain (D) by Lrs. Vs. D.D.A. & Ors. reported in (2004) 4 SCC 79 (in particular paragraph 17.1)."

25 As such, the claimant is entitled to get rental compensation in this case when the claimant is dispossessed prior to issuance of notification under Section 4 of the Act.

26 The claimant is also entitled to get interest under Sections

28 and 34 of the Act from the date of award in view of the Full Bench decision of this Court in the case of State of Maharashtra Vs. Kailash Shiva Rangari, reported in, 2016 (3) Mh.L.J. 457.

27 Having regard to the above reasons and discussion, the appeal preferred by the original claimant needs to be partly allowed whereas the appeal preferred by the acquiring body needs to be dismissed. In the result, the following order is passed:

ORDER

I. First Appeal No.1250 of 2006 preferred by the original claimant stands partly allowed as under:

II. The impugned judgment and award passed in LAR No.138 of 2002, is hereby modified as under:

(a) The appellant/claimant shall be entitled to get enhanced compensation of his acquired land at the rate of Rs.55,000/-per Acre. However, after deducting the compensation paid earlier by the Special Land Acquisition Officer.

(b) The appellant/claimant is entitled to get 30% solatium on the above said amount of compensation under section 23(2) of the Land Acquisition Act.

(c) The appellant/claimant is also entitled to get interest under Sections 28 and 34 of the Land Acquisition Act from the date of passing of award.

(d) The appellant/claimant is also entitled to get rental compensation at the rate of 8% per annum from the date of taking over of possession till the date of passing of award by the Land Acquisition Officer.

(e) The award be modified and drawn up accordingly.

(f) No order as to costs.

III. First Appeal No.1774 of 2008 preferred by the acquiring body stands dismissed.

IV. No order as to costs.

V. In view of disposal of first appeals, civil applications, if any also stand disposed of.