
(2003) 02 BOM CK 0129
In the Bombay High Court
Case No : First Appeal No. 579 of 1989

Dhondiba Sakharam Thange	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 28, 4, 6

Citation : (2003) 105 BOMLR 369

Hon'ble Judges : D.S. Zoting, J

Bench : Single Bench

Judgement

D.S. Zoting, J.—Heard Mr. P.S. Pawar, Advocate holding for Mr. V.S. Bedre, the learned Counsel for the appellant and Mr. P.B. Warale, the learned A.G.P. for the respondent.

2. This is an appeal preferred by the original claimant against the Judgment and Award dated 19th September, 1.987, passed by IInd Joint Civil Judge, Senior Division, Ahmednagar in L.A.R. No. 30/1979.

3. The State of Maharashtra issued a notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) seeking to acquire the land belonging to the appellant situated at Tikhoh for public purpose namely construction of minor irrigation tank. The above said notification was published in Maharashtra Government Gazette on 12th July. 1973. The declaration u/s 6 of the Act was published in the Maharashtra Government Gazette. The Special Land Acquisition Officer determined the price of the acquired land and he passed the award on 27th March. 1978. He offered the price as determined, to the claimant (land owner), The claimant was not satisfied with the same, as according to him the price determined was grossly inadequate and, therefore, he made a request for making reference u/s 18 of the Act. Accordingly, the reference is made by Collector to the District Judge, Ahmednagar.

4. On notice being served, the original respondent/State put an appearance

through the learned District Government Pleader. However, the respondent/State had not filed any written statement and learned District Government Pleader relied upon the award itself.

5. Reference Court framed the issues.

6. In all five witnesses have been examined on behalf of the claimant. The original respondent, did not adduce any evidence. After considering the evidence produced by the claimant, the reference Court fixed the market value of the acquired land belonging to the appellant at the rate of Rs. 10,000/- per hectare for bagayat land and Rs. 5,000/- for Jirayat land. He has also awarded Rs. 5,000/- for the five mango trees standing on the acquired area. The reference Court came to the conclusion that the claimant was entitled to get the compensation to the tune of Rs. 18,100/-. However, the Special Land Acquisition Officer awarded him compensation to the tune of Rs. 7,766/-. Deducting the amount awarded by the Special Land Acquisition Officer, the reference Court awarded the enhanced compensation to the tune of Rs. 10,394/-. On the said amount of enhanced compensation he awarded the statutory benefits as per the provisions of the Act.

7. Being aggrieved by the partial success in the land reference, the owner of the land has preferred this appeal, challenging the correctness of the award passed by the reference Court.

8. The learned A.G.P. has fully supported the award and submitted that the award has been passed on the basis of the evidence adduced by the claimant himself and maximum benefits have been granted to the claimant. He further submitted that there is no evidence on record in support of the claim of the appellant to award more compensation. Therefore, according to him, the appeal deserves to be dismissed.

9. The valuation of the trees and the bunds as worked out by the reference Court has not come to be disputed, as the same is based on the evidence of 1 expert examined by the claimant himself. Only the valuation of the agricultural land acquired by the State has come to be disputed. The learned Counsel for the appellant contended that the reference Court has erred in ignoring the sale instance Exh. 15 produced by the claimant before the reference Court. He submitted that three sale deeds were produced before the reference Court in support of the claim of the claimant. He further submitted that not only this but the purchaser of the land namely Muktabai has been examined so also the another purchaser namely Maruti has been examined.

10. The second sale deed is at Exh. 22. As already stated notification u/s 4(1) of the Act was issued on 12th July, 1973 and as such the market value of the acquired land prevailing on that date are required to be ascertained.

11. As pointed out above, three sale deeds were available for consideration while ascertaining the market value of the land. All the sale deeds are of the period

prior to the notification u/s 4(1) of the Act. Witness Maruti deposed that he purchased six gunthas land for consideration of Rs. 1,700/- on 26th March, 1971 situated at village Kinhi. It may be noted that acquired land is situated at village Tikhoh, whereas the land purchased by witness Maruti is situated at Kinhi. Moreover, the sale deed is in respect of very small piece of land of six gunthas. It is well settled that the sale deed of small piece of land cannot reflect the correct value of the large acquired land as held by the Supreme Court in Padma Uppal and Others Vs. State of Punjab and Others, and Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another, . Therefore, I find that the reference Court has rightly held that sale deed Exh. 22 in respect of six gunthas land cannot reflect the correct value of the acquired large area.

12. Similarly, the sale deed Exh. 15 is in respect of a small piece of land of 7.1/2 (seven and half) gunthas land, the said land was sold for Rs. 1,000. At this rate, the rate per hectare comes to Rs. 13,333/-. The appellant claimed that market rate of his land should be fixed at this rate. It is being small piece of land, the same principle as is applicable to the sale instance of six gunthas land, is also applicable to this sale instance in view of the decisions of the Supreme Court referred to above.

13. The third sale instance is dated 22nd June, 1971 is in respect of 15gunthasland fetching value at Rs. 1,500/- i.e. Rs. 10,000/-per hectare.

14. It is pertinent to note that the area of the acquired land belonging to the appellant is, as under :

15. The reference Court accepted this sale deed as a comparable sale instance for ascertaining the market value of the lands of the appellant and relying on this sale instance, the market value of the acquired area has been fixed at the rate of Rs. 10,000/- per hectare. No other sale instance is produced in support of the claim to show that (the land can fetch more than Rs. 10,000/- per hectare, except, the two sale instances, referred to above which were already rejected. Under such circumstances, I find that the reference Court was not in error in fixing the market value at the rate of Rs. 10,000/- per hectare and as such I do not find any error in the order awarding enhance compensation, to the extent of Rs. 10,394/-.

16. The learned Counsel for the appellant has pointed out that no doubt the statutory benefits have been awarded to the claimant, however, the interest payable at the rate of 9% and 15% as per provisions of Section 28 of the Land Acquisition Act, 1894, is not awarded on the amount of solatium. Relying on the decision of the Supreme Court in Sunder Vs. Union of India, he submitted that interest should be awarded on the amount of solatium also. In the case referred to above, the Supreme Court held that interest is payable on solatium which forms an integral and statutory part of the compensation awarded to a land owner.

17. In the result, the appeal deserves to be allowed partly. Accordingly, the

appeal is allowed partly by way of modification to the award dated 19th September, 1987 passed by the reference Court, by issuing further direction that the interest awarded as per the order also be paid on the amount of solatium as per the provisions of Section 28 of the Land Acquisition Act, 1894.

18. Considering the facts and circumstances, there shall be no order as to costs.