

(2013) 10 BOM CK 0236

In the Bombay High Court

Case No : First Appeal No. 1067 of 2001 and Cross Objection St. No. 39179 of 2001

Divisional Controller, Maharashtra State Road Transport Corporation

APPELLANT

Vs

Nashik Panchwati Panjrapol Trust

RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2014) 1 ABR 324

Hon'ble Judges : G.S. Patel, J;A.S. Oka, J

Bench : Division Bench

Advocate : G.S. Hegde, for the Appellant; J.H. Ahuja and A.R. Patil, AGP, for the Respondent

Judgement

1. By this appeal, an exception has been taken to the Judgment and Award dated 30th May, 2001 passed by the learned Joint District Judge, Nashik in a reference u/s 18 of the Land Acquisition Act (hereinafter referred to as "the said Act"). The acquisition relates to land bearing Gat No. 287/A2 totally admeasuring 2 Hectares (for short "the acquired land") situated at Nashik, Taluka and District Nashik. A notification u/s 4 of the said Act in respect of the acquired land was published in the Government Gazette on 17th October, 1990. The notification u/s 4 was lastly published on village Chawdi on 22nd November, 1990. Award u/s 11 of the said Act was made on 22nd January, 1993. The Special Land Acquisition Officer fixed the market value at the rate of Rs. 150/- per square meter. Other statutory benefits were granted under the said award. A reference u/s 18 of the said Act was made at the instance of the first respondent-claimant. In the reference, the market value of the acquired land was claimed at Rs. 1000/- per square meter. Additional compensation was sought in respect of the trees as well as iron angles and wires. Compensation was also claimed in respect of the structures. By the impugned Judgment and Award, the market value of the acquired land has been fixed by the Reference Court at Rs. 575/- per square meter. The present appeal is preferred by the Maharashtra State Road Transport

Corporation at whose instance, the acquisition was made for construction of a bus stand and allied establishments. There is a cross objection filed by the first respondent-claimant claiming enhancement of compensation by Rs. 425/- per square meter. Thus, by the cross objection, total market value is claimed at Rs. 1000/- per square meter. The learned counsel for the appellant pointed out that the impugned Judgment and Award is based only on two sale instances at Exhibits 49 and 51. He pointed out that the area of the plots of land subject matter of sale instances at Exhs. 49 and 51 is only 505.78 square meters and 148.75 square meters respectively. As against this, the area of the acquired land is 20,000 square meters. Hence, the said two sale instances of very small plots will have to be kept out of consideration. He pointed out that the acquired land had a direct access to a State Highway and the sale instance lands are away from the Highway. He urged that the acquired land was undeveloped land whereas the land subject-matter of sale deed at Exh. 51 was a developed plot and in fact, there was a construction up to the plinth level on the land subject-matter of the sale deed. He urged that the market value reflected from the said sale deed includes the market value of the plinth constructed on the land subject-matter of the sale-deed. He invited our attention to the recitals in both the sale deeds. He pointed out that as far as sale deed at Exh. 51 is concerned, there is a specific recital that the Municipal Corporation had approved the lay out and the District Collector had granted permission for non agricultural use in accordance with Section 44 of the Maharashtra Land Revenue Code, 1966. He pointed out that the first recital in the sale-deed refers to the construction carried out up to plinth level of four rooms and a toilet block. He urged that both the sale deeds cannot be said to be the sale deeds of the lands comparable with the acquired land. He invited our attention to the evidence of Shri Ramji Zaveri, the Managing Trustee of the first respondent. He urged that there is no evidence adduced by him to prove the comparability of the acquired land with the sale instance lands. The burden was on the first respondent to prove that the market value offered by the Land Acquisition Officer by the Award u/s 11 was inadequate. He urged that once the only two sale instances relied upon by the first respondent are kept out of consideration, it becomes a case of no evidence. He invited our attention to the findings recorded by the Reference Court. He pointed out that in paragraph 16, a finding has been recorded by the Reference Court that the market value of the acquired land was Rs. 288/- per square meter. However, he urged that the Reference Court has illegally doubled the said rate on the ground that the acquired land had a better potential considering its proximity to the Bombay Agra National Highway. He submitted that assuming that the sale instances relied upon by the first respondent are of comparable lands, the market value of the acquired land could not have exceeded Rs. 288/- per square meter.

2. The learned counsel for the first respondent pointed out from the evidence that not only did the acquired land have a frontage on a Highway but another 60 feet wide road provided in the development plan was close to it. He invited our attention to the certain statements in the Award u/s 11 of the said Act and

submitted that the Land Acquisition Officer accepted that on the relevant date, the acquired land had a potential for commercial use. He urged that the acquired land had a frontage of 550 meters on the Highway and was far superior to the sale instance lands subject matter of sale deeds at Exhs. 49 and 51. He urged that considering the several positive factors in respect of the acquired land, in fact, the market value thereof on the relevant date was much more than Rs. 575/- per square meter. He, therefore, urged that by dismissing the appeal preferred by the appellant, the market value be suitably enhanced by allowing the cross-objection. The learned AGP supported the impugned Judgment and Award.

3. We have carefully considered the submissions. The relevant date for determination of market value in the present case is 22nd November, 1990. With a view to understand the location of the acquired land it will be necessary to advert to the oral evidence of Shri Ramji Pragji Zaveri who was the Managing Trustee of the first respondent-trust at the time of filing the reference. It is not in dispute that the purpose of acquisition is construction of State Transport bus stand and allied establishments. As regards the location of the acquired land, in paragraphs 2 and 3, he has deposed thus:

2. The said acquired land is situated within the Nashik Municipal Corporation area. It is at a distance of one kilometer from Panchawati-Karanja. The acquired land is situated on Nashik-Aurangabad State Highway. Bombay-Agra National Highway joins Nashik-Aurangabad road at Adgaon-Naka. This Adgaon-Naka is at a distance of half kilometer from the acquired land. It requires only two minutes by walk to reach Bombay-Agra road from the acquired land.

3. The acquired land is abutting to Aurangabad road having frontage of 550 meters. The depth of the acquired land from Aurangabad Road is 150 meters. I got the lay out of the acquired land approved from the competent authority. But, the NA of the acquired land was not made as there was proposal to acquire the acquired land for ST bus stand. Had the acquired not been acquired for the ST stand, then the acquired land would have been used for commercial complex, being having frontage to the Aurangabad Road.

(Underline added)

4. Perusal of the cross-examination of the witness made by both the Appellant and second Respondent-State shows that the evidence as regards the location of the said land and the frontage of the acquired land on the Nashik-Aurangabad Highway is not seriously challenged. He has deposed that Bombay Agra National Highway joins the Nashik Aurangabad Highway at Adgaon Naka which is only at a distance of half a kilometer from the acquired land.

5. In paragraph 4 of his deposition, he stated that at the time of acquisition and for a period of 15 years prior to that date, there was all round development around the acquired land. He deposed that facilities like drainage, electricity, water were available to the acquired land. He deposed that the land bearing

Survey No. 287/B is adjacent to the acquired land which has been converted for non-agricultural use on which there is a shopping complex, residential buildings and residential bungalows for last 20 years. He stated that Swami Narayan Mandir as well as a Marriage Hall are on the said survey number. He deposed that Survey No. 288 is opposite to Survey No. 287 on which there are many commercial shops, banks, police station and Ruby Concrete factory. In the cross-examination by the second respondent, he denied the correctness of the suggestion that Adgaon Naka is about one and half kilometers from the acquired land. In the cross-examination, it is brought on record that the lay out of the acquired land was prepared in 1994, but permission for non-agricultural use was not granted. He denied the correctness of the suggestion that in the year 1990, the acquired land was in the agricultural zone. In the cross-examination by the appellant, he admitted that Swami Narayan Mandir faces the Agra Road and the acquired land is situated to south of the Swami Narayan Mandir.

6. At this stage, it will be necessary to make a reference to Award u/s 11 of the said Act made by the Special Land Acquisition Officer. It is true that the said Award is in the nature of an offer. However, factual statements made in the Award as regards the location and the nature the acquired land constitute admissions of the State which can be always relied upon. The State is bound by the said statements. In clause (d), under the head of the situation of the acquired land, the Special Land Acquisition Officer has stated that the acquired land is located along the Nashik Aurangabad Road side in the Panchavati area of Nashik City. He stated that Bombay-Agra Road is on the northern side of the acquired land. It is stated that the acquired land had frontage of 350 meters on the Aurangabad-Nashik Highway. It is noted that the lay out plan was approved by the Nashik Municipal Corporation. It is observed that the acquired land has a potential for non-agricultural development activity. In paragraph 7 of the Award, it is stated that in the sanctioned Development Plan of 1980 and in the Draft Development Plan of 1989 the acquired land was shown in the residential zone.

7. Thus, from the evidence on record it emerges that on the relevant date, the acquired land had a wide frontage on Nashik Aurangabad Highway. The acquired land was in close proximity of Bombay Agra National Highway. On the relevant date, the acquired land was situated within the limits of the Municipal Corporation of city of Nashik. In the Draft Development Plan, the acquired land was shown for residential zone. The lands around the acquired land were already put to residential and commercial use. Thus, but for the reservation for the public purpose, the acquired land could have been used for construction buildings consisting of residential tenements and shops. Moreover, there is a very wide frontage available on a major road like Nashik-Aurangabad Highway. These are the positive factors in respect of the acquired land.

8. For determining the market value in accordance with Section 23 of the said Act, reliance can be always placed on the sale instances of smaller but comparable plots of land in the vicinity of the acquired land. If the acquired land

is very large as compared to the sale instance lands, appropriate deduction can be made on account of development cost for arriving at the market value of the acquired land (see *Trishala Jain and Another Vs. State of Uttaranchal and Another*, . The said deduction normally ranges from 20% to 70% depending upon peculiar facts of each case. If a comparable sale instance of a proximate date is not available, reliance can be always placed on a comparable sale instance of pre-notification/acquisition period. However, the gap should not be more than three to four years depending upon facts of individual cases. In such event, for arriving at the market value of acquired land, suitable escalation can be considered (see *The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another*,).

9. In the light of this well settled position of law, we proceed to consider the two sale instances which are relied upon by the first respondent. The first sale instance at Exh. 49 is of the land bearing Survey Nos. 292/1B/1/5 (Plot No. 8) admeasuring 505.78 square meters which was sold by a registered sale-deed dated 16th October, 1987. One Shri Nimbaji Zipru Sonawane was the vendor of the said plot of land. He has been examined by the first respondent. He stated in the evidence that the plot of land subject-matter of the sale deed was in a residential zone but it was undeveloped plot for which there was no permission obtained for non-agricultural use. He stated that the acquired land of the first respondent had a commercial potential being nearer to the National Highway (Bombay-Agra Road) as compared to the sale instance land. A suggestion was given to him in the cross-examination that the purchaser Chordiya belongs to Marwadi community and as the Swami Narayan temple was situated very close to the said plot of land, the purchaser purchased the same by paying exorbitant consideration as it was a special property for him. The correctness of the said suggestion was denied by the witness. We may note here that in the examination-in-chief, he stated that there was no facility of light, drainage and water available to the land subject-matter of sale deed at Exh. 49 and there was only a Kaccha road available as per the lay out. The market value reflected from the said sale deed is Rs. 237/- per square meter. The sale deed was executed about 3 years and 1 month prior to the relevant date.

10. Witness Rajendra Chagan Khairnar was also examined by the first respondent. He is the younger brother of Bhaskar Chagan Khairnar. He stated that he had the knowledge about the sale deed at Exh. 51. His brother Bhaskar purchased plot No. 21 out of survey No. 279/4+3, admeasuring 148.75 meters on 13th July, 1989 by the sale deed at Exhibit 51. The market value reflected from the sale deed is of Rs. 287.00 per square meter. He stated that he along with his brother participated in the negotiations with the Vendor Shri Ramulla. The witness stated that when he purchased the plot, there was no facility of water, light and drainage available to the plot and that the said amenities were available to the acquired land which is abutting the Aurangabad Road. The plot purchased by him is inside the main road at the distance of half kilometer. The witness was cross-examined by the appellant. He denied the correctness of the

suggestion that the plot purchased by him was constructed up to the plinth level. However, in the examination-in-chief, he stated that on a part of the plot, there was already a plinth constructed.

11. At this stage, we may note that the appellant relied upon the sale deed dated 27th June 1989 in respect of the plot No. 24 out of Survey No. 287/A/1 admeasuring 613.154 square meter. The witness Vilas Mahadev Sanade who sold the said plot to one Balu Rajaram Pawar has been examined by the Appellant. He stated that the acquired land is situated on the rear side of the land sold by him. The said sale deed has been kept out of consideration by the Reference Court. The reason is that in the cross-examination, the witness admitted that he sold the said Plot No. 24 as he was indebted. He admitted that he sold the plot without verifying its market value. The admission of the vendor makes it very clear that the transaction was not of a genuine sale inasmuch as it was a distress sale. The said deed does not reflect the true market value. Therefore, the sale deed will have to be kept out of consideration.

12. We have already indicated the positive factors in respect of the acquired land. One of the negative factors in respect of the lands subject-matter of two sale deeds at Exhibits 49 and 51 is that they are away from the Nashik-Aurangabad Highway as compared to the acquired land. Moreover, on the relevant date, basic facilities of water supply, drainage and electricity supply were not available to both the sale instance lands. The land-subject matter of Exh. 51 was already converted into non-agricultural use. This is a positive factor. As far as land subject-matter of Exh. 49 is concerned, considering the location of the land, it had a potential for non-agricultural use on the date of sale. Both the sale-deed lands are situated in the close vicinity of the acquired land. Both had potential for non-agricultural use on the relevant date. It is brought on record that on a portion of one of the two sale instance land, plinth was constructed. It is not brought on record that the plinth was constructed on the basis of a sanctioned building plan. Hence, the plinth will not make any material difference in the market value of the plot. Therefore, on the basis of the sale deeds at Exhs. 49 and 51, the market value of the acquired land can be determined.

13. Both the sale instances are of pre-notification sales. The sale deed at Exh. 51 has been executed one year and four months before the relevant date. The sale deed at Exh. 49 has been executed three years and one month before the relevant date. Therefore, for determination of the price of the acquired land on relevant date, certain additions will have to be made to the price reflected from the two sale deeds.

14. At this stage, it will be necessary to make a reference to the decision of the Apex Court in case of The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, . Paragraphs 13 to 16 of the said decision read thus:

13. Primarily, the increase in land prices depends on four factors: situation of the

land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas, unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties.

14. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore, if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.

15. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisitions), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied on sale transactions/acquisitions precede the subject acquisition by only a few years, that is, up to four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is of only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the "rate" of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

16. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-1995 or 1995-1996 are taken as the base price

and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should, therefore, avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may.

(Emphasis added)

In paragraphs 18 and 19, the Apex Court proceeded to consider the question whether the yearly enhancement in market value should be taken on the cumulative basis. The said paragraphs read thus:

18. The increase in market value is calculated with reference to the market value during the immediate preceding year. When market value is sought to be ascertained with reference to a transaction which took place some years before the acquisition, the method adopted is to calculate the year to year increase. As the percentage of increase is always with reference to the previous year's market value, the appropriate method is to calculate the increase cumulatively and not applying a flat rate. The difference between the two methods is shown by the following illustration (with reference to a 10% increase over a basic price of Rs. 10 per square meter):

Year	By flat rate increase method	By cumulative increase method
------	------------------------------	-------------------------------

19. We may also point out that application of a flat rate will lead to anomalous results. This may be demonstrated with further reference to the above

illustration. In regard to the sale transaction in 1987, where the price was Rs. 10 per square meter, if the annual increase to be applied is a flat rate of 10%, the increase will be Rs. 1 per annum during each of the five years 1988, 1989, 1990, 1991 and 1992. If the price increase is to be determined with reference to sale transaction of the year 1989 when the price was Rs. 12 per square meter, the flat rate increase will be Rs. 1.20 per annum, for the years 1990, 1991 and 1992. If the price increase is determined with reference to a sale transaction of the year 1990 when the price was Rs. 13 per square meter, then the flat rate increase will be Rs. 1.30 per annum for the years 1991 and 1992. It will thus be seen that even if the percentage of increase is constant, the application of a flat rate leads to different amounts being added depending upon the market value in the base year. On the other hand, the cumulative rate method will lead to consistency and more realistic results. Whether the base price is Rs. 10 or Rs. 12.10 or Rs. 13.31, the increase will lead to the same result. The logical, practical and appropriate method is therefore to apply the increase cumulatively and not at a flat rate.

(Emphasis added)

15. Therefore, for arriving at the market value of the acquired land on the basis of the market value reflected from Exhibits 49 and 51, the law laid down in the said decision in the case of the The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, will have to be applied. In the case in hand, on the relevant date, the lands were situated in the Municipal Corporation area and there was all around non-agricultural development of the lands in the vicinity of the acquired land as well as the lands subject-matter of Exhibits 49 and 51. Therefore, the lands will have to be treated as urban lands. Accordingly, escalation will have to be calculated on cumulative basis at the rate of 15% per annum.

16. We may note here that it was tried to be submitted by the first respondent that both the sale deeds show that the earnest money was paid prior to the execution of sale deeds and therefore, the date of payment of earnest money will have to be treated as the date of bargain. No witness has deposed that the bargain was made earlier. Moreover, there is no recital in the sale deed to show that there were prior agreements for sale and therefore, the date of sale deeds will have to be treated as the respective dates of bargain. As far as the sale deed at Exh. 49 is concerned, taking the escalation for a period of about three years and one month at the rate of 15% per annum on cumulative basis, the market value on the relevant date comes to Rs. 364.95. In case of sale deed at Exh. 51, the escalation will have to be for a period of one year and four months. The market value on the relevant date comes to Rs. 340.52. The average of the price reflected from two sale deeds at Exhs. 49 and 51 will be Rs. 352.73. Therefore, it can be reasonably said that on the relevant date in the present case, in case of lands having non agricultural potential situated in the vicinity of the acquired land, but away from the Nashik-Aurangabad Highway, the market value was Rs. 353/- per square meter.

17. As we have held earlier, the acquired land had a wide frontage of at least 350 meters on the Nashik Aurangabad road (as narrated in the Award u/s 11 of the said Act). Moreover, it was close to the Bombay-Agra Road. On the other hand, the sale instance lands were in the interior part and they were away from the Nashik-Aurangabad Highway. Market value of a land abutting a highway is always more than market value of a land away from it (see Union of India and others etc. Vs. Mangatu Ram, etc.,). The Reference Court has taken double the market value of the sale deed lands as the market value of the acquired land. A land abutting highway has a negative factor. Some portion of the land abutting highway has to be kept open and cannot be built upon. Hence, the market value cannot be doubled. Considering the facts of the case, for determining the market value of the acquired land, 50% of the market value of the sale instance lands will have to be added. Hence, the market value of the acquired land can be taken as Rs. 528.50 (353 + 176.50) per square meter.

18. As repeatedly held by the Apex Court, some deduction will have to be made on account of development cost which ranges from 20% to 70% depending upon the facts of each case. We may note here that Managing Trustee of the first respondent stated that a lay out plan of the acquired land was already made. The purpose of acquisition cannot be altogether ignored while fixing the market value. The acquired land had a direct access to the State Highway in view of very broad frontage. Considering these peculiar facts, deduction can be made at minimum rate of 20%. By deducting 20% from Rs. 528.50, the market value will be Rs. 422.80 i.e. Rs. 423/- per square meter.

19. Therefore, the appeal preferred by the MSRTC will have to be allowed and the cross-objection of the first respondent will have to be dismissed. Hence, we pass the following order:

(i) Impugned Judgment and Award dated 30th May, 2001 is modified. The market value of the acquired land shall be Rs. 423/- per square meter (inclusive of the market value offered by the Special Land Acquisition Officer);

(ii) The first respondent shall be entitled to all the statutory benefits in accordance with Sections 23(1A), 23(2) and 28 of the Land Acquisition Act, 1894;

(iii) The first respondent shall be entitled to proportionate costs of the reference;

(iv) Accordingly, First Appeal No. 1067 of 2001 is hereby allowed with no order as to costs. Cross Objection St. No. 39179 of 2001 is dismissed with no order as to costs.

(v) The Reference Court shall determine the compensation payable to the first respondent in accordance with modified award. This exercise shall be completed within a period of two months from the date of the receipt of the writ of this Judgment. After the determination of the amount, the Reference Court shall pass appropriate order of refund/withdrawal of the amount already deposited.