

(2018) 02 BOM CK 0021
In the Bombay High Court
Case No : 11 of 2007

Diwakar s/o Tejram Bhure

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

Land Acquisition Act, 1894, Section 18,
Section 12 - Reference to Court - Award of Collector when to
be final

Citation : (2018) 02 BOM CK 0021

Hon'ble Judges : Manish Pitale

Bench : Single Bench

Advocate : B.G. Kulkarni, Geeta Tiwari

Final Decision : Allowed

Judgement

1. The appellants herein have challenged the judgment and order dated 06.09.2006 passed by the 1st Adhoc Additional District Judge, Bhandara (hereinafter referred to as the reference Court) in Land Acquisition Reference No. 1/2000 (old No. 8/1989) whereby the reference Court has dismissed the application filed by the appellants under Section 18 of the Land Acquisition Act, 1894. The reference Court has dismissed the application of the appellants on the ground of limitation as well as on merits.

2. By a Notification issued under Section 4 of the aforesaid Act, the respondents initiated the process of acquisition of land belonging to the appellants in Survey Nos.893/1, 893/2 and 893/3 in Tumsar, District

Bhandara, admeasuring 0.33.66 HR (3366 square meters). Upon culmination of the process of acquisition under the said Act, the Land Acquisition Officer passed award on 10.04.1987 granting compensation of Rs.74,494/- to the appellants.

3. Being dissatisfied with the said award, the appellants filed reference application on 13.08.1987 under Section 18 of the said Act seeking enhancement of compensation. In the proceedings before the reference Court, on the issue of quantum of compensation, the appellants placed reliance on sale instance of nearby plot of land which had fetched a price of above Rs.10/- per square feet. The purchaser of the said plot appeared as witness in support of the contentions raised on behalf of the appellants.

4. By the impugned judgment and order, the reference Court held firstly, that the reference application itself was not within limitation and secondly, that there was no ground made out for enhancement of compensation. The reference Court has proceeded on the basis that the award was declared on 10.04.1987 by the Land Acquisition Officer and that notice under Section 12 of the said Act was issued on 30.06.1987 and further because there was no evidence placed on record by the appellants regarding the date on which the said notice was received, it could be concluded that the reference application filed on 13.08.1987 was beyond the period of limitation of six weeks provided under proviso (b) of Section 18 of the said Act. In fact, in its judgment, the reference Court has also referred to the date on which the appellants had filed their written objections in the proceedings before the Land Acquisition Officer as if the said date could be taken as a reference point for calculating period of limitation.

5. The record shows that the appellants had received the amount of compensation granted by the Land Acquisition Officer on 08.07.1987. Therefore, even if the said date is taken as a date on which the appellants

became aware of the award, the reference application filed on 13.08.1987, was well within the period of limitation provided under Section 18 of the said Act. Thus, the finding rendered against the appellants on the question of limitation by the reference Court is on the face of it unwarranted.

6. On the question of enhancement of compensation, the only evidence placed on record on behalf of the appellants is the aforesaid sale instance of nearby plot, which had fetched about Rs.10/- per square feet. While considering the said aspect, the reference Court has discussed the said evidence including the deposition of AW-2, the purchaser of the said plot. It has found that the dimensions of the said plot were 25x50 ft., while the land belonging to the appellants which was subject matter of acquisition was about 3366 square meters i.e. approximately about 33,000 square feet. On this basis, the reference Court found that since the dimensions of the plot purchased by AW-2 were very small as compared to the land of the appellants, it cannot be taken as a reliable basis for ascertaining the quantum of compensation payable to the appellants.

7. The appreciation of the oral and documentary evidence on record, on the question of quantum of compensation by the reference Court, does not appear to be illogical or unsustainable. It is settled law that sale instances pertaining to the small plots cannot be the basis for calculating compensation of huge plots. Therefore, I am in agreement with the findings rendered by the reference Court pertaining to the quantum of compensation payable to the appellants.

8. In the light of above, the appeal is partly allowed. It is held that the reference Court was not justified in dismissing the reference application on the ground of limitation. The finding rendered by the reference Court on the quantum of compensation is confirmed and, therefore, the amount of compensation granted by the Land Acquisition Officer under award dated 10.04.1987 is upheld. The appeal is disposed of accordingly with no order as to costs.