

(2018) 01 BOM CK 0077
In the Bombay High Court
Case No : 890 of 2016

Executive Engineer, (V.I.D.C.)

APPELLANT

Vs

Hansraj Sakharam Pise

RESPONDENT

Date of Decision : 18-01-2018

Acts Referred:

Land Acquisition Act, 1894, Section 4, Section 18 - Publication of preliminary notification and powers of officers thereupon. - Reference to Court

Citation : (2018) 01 BOM CK 0077

Hon'ble Judges : Manish Pitale

Bench : Single Bench

Advocate : M. A. Kadu, ?A. B. Nakshane, ?S. M. Ghodeswar

Judgement

1. Heard M.A. Kadu, Advocate for appellant, Shir A. B. Nakshane, Advocate for respondent No.1 and Cross-objector and Shri S. M. Ghodeswar, AGP for State.
2. Admit appeal as well as cross-objection.
3. Heard forthwith with the consent of the the parties.
4. The present appeal and cross-objection concern the amount of compensation payable to the claimant for acquisition of land belonging to him in Gat No. 3, admeasuring 1 H 17 R and Gat No. 64, admeasuring 1H 21 R situated at village Bhatmarg, tq. Babhulgaon, District Yavatmal, for submergence of Bembla Project. The Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 17.12.1998 and upon conclusion of the proceedings before the Land

Acquisition Officer, the award was passed on 16.06.2001, wherein compensation was granted to the claimant at Rs. 54,093/- per hectare for Gat No. 3 and Rs. 57,835/- per hectare for the acquired land in Gat No. 64. Aggrieved by the same, the claimant preferred Reference Application under Section 18 of the said Act, which has been decided by the impugned judgment and order dated 12.03.2012 passed by the Reference Court. In its judgment and order, the Reference Court has enhanced compensation to Rs. 1,50,000/- per hectare for the acquired land in both the aforesaid Gat numbers.

5. The State has filed First Appeal No. 890/2016 challenging the said order, claiming that the enhancement granted by the Reference Court is not justified, while the claimant/respondent No.1 has filed cross-objection No. 44/2017 claiming that enhancement ought to have been granted by the Reference Court.

6. My attention has been invited to the judgment and order passed by this Court in First Appeal No. 632/2013 and connected appeals dated 05.02.2016, concerning land acquired from the same village pursuant to the very same notification under Section 4 of the said Act dated 17.12.1998. In the said judgment and order, this Court has granted enhanced compensation to the claimant at the rate of Rs. 1,80,000/- per hectare for irrigated land and Rs. 1,20,000/- for dry crop land.

7. On the basis of aforesaid judgment and order, it is contended on behalf of the claimant that since his lands that were acquired from the two aforesaid Gat numbers in the same village, were both irrigated lands, he deserves to be granted enhanced compensation for the entire land at the rate of Rs. 1,80,000/- per hectare.

8. On the other hand, Mr. S. M. Ghodeswar, learned counsel appearing on behalf of the State submits that even if the judgment and order dated 05.02.2016 in the First Appeal No. 632/2013 and

connected appeals is to be accepted, the claimant deserves to be granted compensation at the rate of Rs. 1,80,000/- per hectare for his land acquired from Gat No. 64, since it was irrigated land and that for the land acquired from Gat No. 3, the claimant deserves to be granted compensation only at the rate of Rs. 1,20,000/- per hectare as it was dry crop land.

9. Therefore, it would be necessary to appreciate as to what material was placed on record by the claimant to show that both pieces of acquired lands could be terms as irrigated land. In this context, the learned counsel appearing for the claimant submits that in his evidence placed on record before the Reference Court, he had categorically stated that both the fields were irrigated from a big well situated in Gat No. 64, which had an electric motor pump and oil engine. It was stated in the evidence that both the lands were irrigated from water taken from the said well and that such entry could be found in the records of rights i.e. 7/12 extract of the said two fields.

10. Perusal of the relevant portion of the affidavit and evidence filed by the claimant before the Reference Court shows that such fact was indeed stated by the claimant and that there was no cross-examination of much significance in this regard. Apart from this, the learned counsel appearing for the claimant has invited my attention to Exhibit-27, which is an electricity bill showing use of electricity, inter alia, for electric motor pump on the said well. Learned counsel appearing on behalf of State has disputed the said assertion and he has stated that in the cross-examination, the claimant has admitted that he had taken only one crop from both the fields. He submits that the claim of the respondent No.1/claimant regarding the fields being irrigated, was not supported by the evidence on record.

11. I have considered the evidence and material on record and I am satisfied that both the fields belonging to the claimant could be said

to be irrigated. Therefore, following the judgment and order passed by this Court dated 05.02.2016 in the First Appeal No. 632/2013 and connected appeals, I hold that the claimant is entitled to compensation at the rate of Rs. 1,80,000/- per hectare for both the fields situated in Gat Nos. 3 and 64 in village Bhatmarg, tq. Babhulgaon, Distirict Yavatmal. Accordingly, the order of the Reference Court is modified to that extent and it is held that the claimant is entitled to enhanced compensation at the aforesaid rate along with statutory benefits. Consequently, the First Appeal No. 890/2016 is dismissed and Cross-objection No. 44/2017 is partly allowed. No order as to costs.

12. The learned counsel appearing on behalf of the appellant submits that cheque for the amount of compensation granted by the Reference Court has been received and that it would be deposited within one week from today. Such permission is granted. Upon such deposit of the amount, in the light of what has been held in this judgment, the claimants are permitted to withdraw the amount unconditionally. As regards the balance amount payable to the claimants in view of further enhancement granted by this Court, the proceeding may be undertaken before the Reference Court.