

(2008) 03 BOM CK 0011

In the Bombay High Court

Case No : First Appeal No"s. 475 of 1998 and 237 of 1999

Fulchand Rawat

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 07-03-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 6, 9

Citation : (2008) 3 ALLMR 734 : (2008) 6 BomCR 694 : (2008) 4 MhLj 202

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : J.T. Gilda, in F.A. No. 475 of 1998, for the Appellant; J.B. Jaiswal, Assistant Government Pleader in F.A. No. 475 of 1998 and D.M. Kale, Assistant Government Pleader and J.T. Gilda in F.A. No. 237 of 1999, for the Respondent

Judgement

C.L. Pangarkar, J.—These two appeals arise out of award passed by the Civil Judge (Jr. Dn.) in land acquisition reference. One appeal is filed by the claimant while the other is filed by the State.

2. Facts are as follows:

The Government of Maharashtra decided to acquire the Land Survey No. 305 of village Narkhed for establishment of a Technical Secondary School. The extent of land acquired is 2.90 hectares/Ares. Government issued a Notification u/s 4 of the Land Acquisition Act on 18-8-1986. Subsequently, Notification u/s 6 of the Act was also issued on 12-12-1986. The Land Acquisition Officer thereafter held an inquiry and passed an award. He awarded compensation at the rate of Rs. 38,000/- per hectare. The owner felt aggrieved by this award and sought a reference. The Reference Court recorded the evidence of owner and awarded compensation at the rate of Rs. 50,000/- per hectare. Being aggrieved by this order, the owner as well as the State have preferred these two appeals.

3. I have heard the learned Counsel for the appellant/claimant and the respondent/State.

4. The following points arise for my determination.

REASONS

5. It appears that before these proceedings for compulsory acquisition were started, the acquiring body had privately negotiated the purchase of the property. The appellant/claimant has placed on record the copy of the letter written by Inspector of Technical Education to the Secretary to the Government on 18-7-1986, i.e. before the Notification u/s 4 of the Land Acquisition Act was issued. In this letter, it is clearly mentioned that since the Government land is not available, it is decided to purchase the Land Survey No. 305 of Shri Fulchand -claimant at the rate of Rs. 50,000/- per acre. The Government was requested to make the funds of Rs. 4,20,000/- available. This letter is Exh.36. Exh.38 is the Government Resolution sanctioning a sum of Rs. 4.20 lakhs for being paid as compensation at the rate of Rs. 50,000/- per acre. It is thus clear from the original Government Resolution of the Government that the Government had in fact accepted the proposal to acquire this land by negotiation and had agreed to pay compensation at the rate of Rs. 50,000/- per acre. Along with this letter (Exh.36), there is also a Certificate of Tahsildar (Exh.37) stating therein that the Government land is not available and the market price of the land of the claimant was Rs. 50,000/- per acre. The learned Judge of the Trial Court has refused to rely on these documents. He observed that the custody of these documents is not proved and they are not original. He also observed that they are not proved as per the provisions of the Evidence Act and therefore, they cannot be read in evidence. The observation of the learned Judge appears to me to be strange. I say so because it appears from the learned Judge's own observation further that these documents were admitted by the Government pleader. No party had taken any objection to their being exhibited. Once they are admitted by the Government Pleader, there was no reason for the claimant - appellant to offer any formal proof therefor. In fact, Exh.38 is an original document and the observation of the learned Judge that the documents are not original is not correct at least to that extent. In view of this, there was no difficulty in relying on these documents. Be that as it may, that was not the only evidence available on record.

6. The appellant/claimant has claimed compensation at the rate of Rs. 50,000/- per acre and we have seen that the Land Acquisition Officer has awarded compensation at the rate of Rs. 38000/- per hectare. The Civil Judge (Sr. Dn.) has awarded Rs. 50,000/- per hectare. The appellant - owner has relied upon the sale instances. The Supreme Court in a case reported in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, has elaborately laid down the method of determination of the compensation. Following are the observations:

4. The following factors must be etched on the mental screen:

(1) A reference u/s 18 of the Land Acquisition Act is not an appeal against the

award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the award approve or disapprove its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an Appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the material produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification u/s 4 of the Land Acquisition Act (dates of Notifications under sections 6 and 9, are irrelevant).

(6) The determination has to be made standing on the date of line of valuation (date of publication of notification u/s 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of land.).

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle.

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-avis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors. Plus factors.

1. Smallness of size.
2. Proximity to a road.
3. Frontage on a road.
4. Nearness to developed area.
5. Regular shape.
6. Level vis-a-vis land under acquisition.
7. Special value for an owner of an adjoining property to whom it may have some very special advantage.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

for table see below

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a larger tract or block of land of say 10000 sq.yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a layout, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

Minus factors.

1. largeness of area.
2. situation in the interior at a distance from the road.
3. narrow strip of land with very small frontage compared to depth.
4. lower level requiring the depressed portion to be filled up.
5. remoteness from developed locality.
6. some special disadvantageous factor which would deter a purchaser.

(16) Even case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the just must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.

The first thing that we have to look into is the plus and minus factors. The total extent of land is 2.90 hectares. It is not a very large piece of land. It is stated by PW 2 Shamrao that the field in question is situated on Katol road and is in municipal area. Now, besides this, there is authentic evidence available to determine all these factors. The claimant has filed a map of development plan of Narkhed city as maintained by the Municipal Council. It is certified true copy. It clearly shows that the appellant's Field Survey No. 1232 is situated on main road. The area reserved for residential development abuts the land of the claimant. The shopping center, Treasury Office of the Government are also close-by. The land has a regular shape and being an agriculture land is in level. It has also all plus points except that the area of land to be acquired is not a small plot of land. There are no minus factors in fact. Since it is not a strip of land nor is it away from developed locality and it is a plain land. It is located within the Municipal area as can be seen from the Certificate (Exh.48) issued by the Municipal Council. It is thus apparent that the land has advantage of being abutting to the residential area, commercial locality, S.T. Stand and Government Offices. The land, therefore, certainly has very high potential of conversion into a non-agricultural use.

7. The owner has tendered evidence of three witnesses. PW 3 Kamalakar has been examined. He is the owner of Survey No. 1229, 1230 and 1231. The claimant's Survey No. is 1232. All these survey numbers adjoin each other. It is stated by PW 3 that there is in fact a common boundary between his field and that of the claimant. This fact is not challenged in the cross-examination and is in fact corroborated by the development plan referred to above. PW 3 states that he converted his field into non-agricultural use and sold the plots to various persons. The area of his field was 4.20 acres and 53 plots were laid in it. He further goes on to depose that in one acre 25000 sq.ft. land becomes available for plots. Thus, the total 1,12,000/- feet of land became available for laying plots

leaving roads etc. He has placed on record the sale-deeds Exh.28, 29, 30 and 31. These sale-deeds are of the year 1991. It appears that small plots of land 1600 to 1800 sq. ft. were sold. The price per plot is between Rs. 20,000 to 23000/- depending upon the area. He has also stated that the land was sold at the rate of Rs. 13/- per sq.ft. The claimant's total land acquired is 2.90 hectares i.e. 7.25 acres/gunthas. One acre is around 44000 sq. feet. If 25000/- sq. ft. of land becomes available in one acre, the total land available in the claimant's land would come to 1,88,000/- sq. ft. On an average, it is considered that about 45% of the land is utilised for purpose of roads etc. in one acre and 55% becomes almost available. Therefore, we have seen that about 1,88,000/- sq. ft. of land would be available for being sold to the claimant. If 1,88,000/- sq. ft. of land is sold at the rate of Rs. 13/- per sq. ft, the total price would come to Rs. 24,44,000/-. Thus, if the claimant had laid the plots, he would have certainly earned sum of Rs. 24,44,000/- in the year 1991. We have seen that the Notification is of the year 1986. Even if we take that the prices had escalated by 10% per year and deduct 10% per acre for five years, that would certainly come to more than Rs. 50,000/- per acre. Thus, in any case the price of the land of the claimant in 1986 could be taken as Rs. 12,22,000/-. This price goes to more than Rs. 1,00,000/- per acre in 1986.

8. The next instance is of sale of Survey No. 1216 having an area 40 Ares. The sale-deed (Exh.19) is dated 26-6-1990. It is proved by the purchaser of the property Shri Ganpatrao Surjuse, who is examined as PW 1. He has deposed that the land was purchased by him and the said land purchased by him is only 150 feet away from the land in question. He states that both lands are situated within Municipal limits. He further goes on to depose that his land is in residential zone and the land in question also has a potential of conversion into a residential use. In cross-examination it is elicited that the land was purchased by the witness as an agricultural land and that he intended to convert it. But the fact is that he purchased it before it was converted. The price of 40 Ares of land which is almost equivalent to 1 acre is Rs. 90,000/-. Thus, the price of even agriculture land was Rs. 90,000/- per acre in 1990 i.e. 4 years after the acquisition. If we take that the price had escalated at 10% per acre from 1986 onwards and therefore deduct 40% out of which paid by the witness, still the price per acre would come to Rs. 54000/- per acre in 1986.

9. The Government did not lead any evidence as against this. On the other hand, the Government's responsible Officer Tahsildar had issued a certificate about the price of the land being Rs. 50,000/- per acre. Not only this, but the Officers of the Education Department i.e. Acquiring Body had negotiated the price with the owner and sent a proposal to Government to acquire the land at Rs. 50,000/- per acre and the Government even accepted the proposal of the Education officer. The Government even sanctioned the amount and thus made the financial provision. That is evident from Exh.38. The acquiring body itself, therefore, had sent a proposal to the Government that on negotiation the price is settled at 50,000/- per acre and that the Government should make a provision for that.

The Acquiring Body, therefore, cannot now resile from this position, consequently the Government cannot resile from it. It appears, therefore, to me that the learned Judge of the Reference Court had not considered the evidence properly. He does not give any reason why he fixed the price at Rs. 50,000/- per hectare instead of Rs. 50,000/- per Acre.

10. I find that the claimant is entitled to compensation at the rate of Rs. 50,090/- per Acre. No separate compensation was, however, payable to the claimant in respect of the Well, since from the letter (Exh.41) written by the claimant himself he had agreed not to claim any compensation in respect of the Well. In view of this, both the appeals need to be partly allowed. The respondent/State shall pay compensation to the claimant at the rate of Rs. 50,000/- per Acre instead of Rs. 50,000/- per hectare as determined by the reference Court. The respondent/State shall pay solatium and interest as directed by the reference Court on the amount of compensation calculated at the rate of Rs. 50,000/- per acre. It shall pay proportionate costs also. The claim of the claimant with regard to the compensation for Well stands rejected. The State's appeal No. 237 of 1999, therefore, stands allowed to that extent. The claimant shall be entitled to costs of the Appeal No. 475 of 1998 preferred by him. No order as to costs in Appeal No. 237 of 1999.