

(2011) 04 SC CK 0018
In the Supreme Court Of India
Case No : Civil Appeal No. 2432 of 2005

Gajanan and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 18, 23, 23(1), 24, 54

Citation : (2011) 12 SCC 286 : (2011) 11 JT 81 : (2012) 1 AWC 1071 :
(2012) 3 RCR(Civil) 618

Hon'ble Judges : K.S. Panicker Radhakrishnan, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Shekhar Naphade and Manish Pitale, for the Appellant; Uday B. Dube, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment of the Bombay High Court whereby the appeal preferred by the Respondents u/s 54 of the Land Acquisition Act, 1894 (for short, 'the Act') was partly allowed and the amount of compensation determined by Civil Judge, Senior Division, Aurangabad (hereinafter described as, 'the Reference Court') was substantially reduced.

2. The Appellants' land comprised in Gat No. 85 measuring 6 acres situated in Mhasekot village, Aurangabad district was acquired by the State Government in 1982 for Hivra Medium Project. By an award dated 1.9.1986, the Special Land Acquisition Officer directed the Respondents to pay compensation amounting to Rs. 36,00,385.50/- to the Appellants under the following heads:

1

True area of the land acquisition. 133.42 H.R.

2

The compensation of dry land

Rs. 13,36,440.00

3

Valuation of trees

Rs. 83,071.25

4

Valuation of wells

Rs. 2,00,811.00

5

a) Agril. Lands of S.No.85@ Rs. 9500/- H.R. 1-60

Rs. 15,200.00

b) N.A.Land of S.No. 85 O-80 @ Rs. 20,000/-

Rs. 16,000.00

c) Building valuation

Rs. 3,67,100.00

d) Damaged & Shifting charges

Rs. 2,11,000.00

6

Total Compensation

Rs. 1,65,522.25

7

30% Solatium

Rs. 5,95,456.70

8

12% enhancement of compensation on market

value w.e.f. notification u/s 4

Rs. 8,75,306.50

9

Total Compensation of Amount

Rs. 36,00,385.50

3. Feeling dissatisfied with the quantum of compensation, the Appellants filed an

application u/s 18 of Act and claimed that market value of the acquired land is Rs. 150 per square meter. They also claimed higher compensation for the civil structure, machinery, electrical and mechanical installations of the Khandsari factory which they had established on a portion of the land. The Respondents filed reply to contest the Appellants' claim for higher compensation and pleaded that the award made by the Special Land Acquisition Officer was legally correct and justified.

4. On the pleadings of the parties, the Reference Court framed the following issues:

1. Whether the claimant proves that the valuation made by L.A.O. is improper inadequate and not as per the market value?

2. Whether the claim petition is in limitation?

3. Whether the claimant proves that he accepted compensation amount under protest? If not, what is its effect?

4. Whether the claimant is entitled to additional amount of compensation claimed?

5. What order?

5. After considering the pleadings of the parties and evidence produced by them, the Reference Court passed order dated 24.4.1996 and determined the amount of compensation as under:

(i) Market value of the acquired land (total measuring) at the rate of Rs. 6/- per square feet.

(ii) Rs. 3,86,867/- towards demolition and dismantling of electrical, mechanical and other installations.

(iii) Rs. 5,00,000/- towards loss of earning for the period from 1981 to 1986.

(iv) Rs. 91,000/- towards damages and dismantling charges.

(v) Rs. 15,000/- towards transportation charges.

The Reference Court also declared that the Appellants are entitled to solatium, interest etc.

6. The Division Bench of the High Court partly allowed the appeal preferred by the Respondents, set aside the determination of market value made by the Reference Court and restored the one made by the Special Land Acquisition Collector. The High Court also quashed the compensation awarded by the Reference Court towards demolition and dismantling charges, damages to the structure and machinery of the factory and transportation charges. As regards the loss of earning, the High Court held that the Appellants are entitled to Rs. 1,00,000/- for the loss of earning for one year instead of Rs. 5,00,000/-.

7. We have heard learned Counsel for the parties and carefully perused the record. It is borne out from the record that out of the total acquired land, the Appellants had utilised 0.80 hectares in 1976 for establishing Khandsari factory. As a sequel to initiation of the acquisition proceedings, the Appellants had to close the factory. The Reference Court referred to the statement of PW-2 Mukund Dharashivkar, a consulting engineer-cum-approved valuer and held that while the Appellants had been able to prove that as a result of the acquisition of land, they had to close the Khandsari factory and suffered huge financial loss, the State did not adduce any evidence on the issue of loss of business and damage to the structure, machinery and electric and mechanical installation and that the statement made by DW-1 Nilkanth Tukaram Bhosale was not at all relevant. The discussion on this issue is contained in paragraphs 19 to 41 of the order of the Reference Court.

8. The Reference Court then referred to the sale instance Exhibit 23 by which land measuring 30' x 32' feet was sold in 1976 for a sum of Rs. 3,000/and another sale instance Exhibit 35 by which 5023 square feet land was sold in 1982 for a sum of Rs. 35,000/- and observed:

46. The certified copy of sale instance produced at Exh.23 is in respect of mauza Gondegaon which is of the year, 1976 and does have evidentiary value which was in respect of land admeasuring 32'x30' for a consideration of Rs. 3,000/-. It is contended that the price of gut No. 85 is decided on the basis of agricultural land in respect of 80 R which was used for construction of Khandsari sugar mill in respect of which Petitioner obtained nonagricultural permission from the concerned authority. The remaining portion of 1 Hecter 60 R with also used as nonagricultural land. As per valuation of PW-2 Dharashivkar, 5 to 6 acres of land is required for Khandsari Sugar mill in order to store fuels, sugarcane and other allied purposes. This fact also has been admitted on behalf of the State, hence, there is no manner of doubt that 1 Hecter 60 R of land would also fetched more value at the rate of N.A. assessment. But the learned S.L.A.O. has given the price on the basis of agricultural land in respect of sale in view of the fact that no actual permission was obtained by the Petitioner, in respect of 1 Hecter 60 R of land which as per the learned Counsel for the Petitioner should have been considered nonagricultural land because of its long use and not taking of crops on the said field.

47. The Petitioner in order to prove the price of nonagricultural open plot, placed reliance of the sale deed Exh.35 in which 5023 square feet of land was sold at Rs. 35,000/- in year, 1982 in respect of land situated at Jargaon which is at a distance of 2 km. from Mhasekote. However nothing was but the Petitioner in his cross examination regarding the non-consideration of this land for the purpose of determining the valuation or compensation. Thus, the entire gut No. 85 having be used by the Petitioner for the production of sugar and its allied purposes, the entire land was utilized for nonagricultural purpose.

48. There is nothing on the record to show that the rest of the land of 1 Hecter

60 R was used for agricultural purpose. This fact appears to have been not considered by the S.L.A.O. Moreover, the factory was situated on State Highway going from Pachora to Sillod and Railway Station of Pachora is at a distance of just 11 kMs. from the factory. Hence looking into its use and situation of the factory on the suit alongwith other vital factors, the S.L.A.O. was duty bound to consider the value of the suit land in respect of its nonagricultural use.

51. Thus, if gut No. 85 admeasuring 2 Hectors 40 R i.e., 6 acres if converted into gunthas, it comes to 240 gunthas. One guntha come to 1089 square feet. If this 1089 square feet is multiplied by 240 gunthas, then it comes to 2,61,360 square feet and by deducting 10% of the land from the above area, it comes to 2352224 square feet. Thus, the value at the rate of Rs. 6/- per square feet for 235224 square feet comes to Rs. 14,11,344/-.

52. In the instant case, the notification appears to be of the year, 1981 and the award came to be passed in the year, 1986. Thus, after six years from the passing of the notification, the award was passed. The land of 960 square feet of village Gondegaon as per Exh.23 was sold at Rs. 3000/-. Thus, the rate was nearly between Rs. 3 to 4 per square feet. Taking this rate into consideration from Rs. 3/- per square feet, the rate of Rs. 6/per square feet in the instant case would not be exorbitant in light of the submissions made in that behalf accompanied by the report of the valuer Exh.21 as laid down in 1993 BCJ 27 even though no formal permission for N.A. purpose was granted by the concerned authority.

9. On the issue of valuation of the structure of the factory, plant and machinery and loss of business, the Reference Court observed:

55. During the course of cross-examination of Mr. Gulwe, it admitted by him that the valuation which has been shown to him in respect of electrical and mechanical establishments were taken into consideration by him in the valuation report given by the Petitioner himself to the Government approved valuer. It is further admitted by him that dismantling charges were granted by him on the valuation report of Mr. Dharashivkar. It is further admitted by him that the executive engineer had come alongwith him on the site for inspection. The entire report was based on the valuation given by the Petitioner but he had not specifically given the valuation of the machinery on the premises of the factory. It is further admitted by him that the valuation of the machinery cannot be given by the State but the valuation of dismantling charges is sustainable. It is further admitted by him that he had only given the valuation in respect of civil and no valuation in respect of electrical and mechanical was done.

56. The valuation certificate given by PW-2 Dharashivkar is placed at Exh.21. Thus, it appears from the record that as per the project report that was initially prepared in the year, 1976 the cost of factory installation was given at Rs. 6,98,677/- and as per the award it has been given Rs. 5,78,100/-. The Plaintiff-Petitioner has claimed Rs. 91,000/-towards dismantling costs and damages and

Rs. 15000/- towards transportation and loading and unloading. Even though the costs of Rs. 6,98,677/- was initially claimed in the project report, the project report is dated 1974-75. Thus, by the time the award was pronounced, there would have been depreciation of 10% in the valuation of the machineries. Thus, the value record by the S.L.A.O. regarding these machineries to the tune of Rs. 5,78,100/- which has also been admitted by the executive engineer needs to be accepted as there was no vital dispute on this point. As a matter of fact, whatever entire claim made by the Petitioner on the basis of purchase made by him does not sustain in law, the same was properly assessed by the State as per project report but it only mentions about the building valuation and damages and shifting charges, but does not mention about the demolition and dismantling charges in respect of electrical mechanical and machinery installation which comes to Rs. 1,29,267/-, 1,25,300/- and 1,32,300/- respectively. Thus, cumulatively, the Petitioner is entitled to get Rs. 3,86,867/-.

57. As regards the loss in business sustained by the Petitioner due to acquisition by the Respondent has been requisitioned at Rs. 2 lacs per year as net income for a period of 20 to 25 years. As per the expert, who is a Government approved valuer, evidence PW-2 Dharashivkar whose evidence has not been completely shattered on the point of valuation of the factory, and so also as regards the valuation of structure and machinery, so also the valuation of executive engineer DW-3 Gulwe to some extent admitted the report given by Dahrashivkar. Hence in order to support the factum that the evidence given by the assessor and valuer as per Exh.21 needs to be taken into consideration.

10. The Division Bench of the High Court did not make an in-depth evaluation of the pleadings and evidence produced by the parties and rejected two sale instances by making a cryptic observation that the lands were situated at considerable distance. While doing so, the High Court ignored the law laid down by this Court in Thakarsibhai Devjibhai and Others Vs. Executive Engineer, Gujarat and Another, the relevant portions of which are extracted below:

So far as the other question of distance between the two classes of lands is concerned, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ext. 16 and the present land, even if they are 5 km apart, would not be relevant, the relevancy could be, their distances from Viramgam town. We find, as per the map produced by the State, the present acquired land is about 3 km away from it, while the land under Ext. 16 is about 2 km away from it. This difference is not such as to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Ext. 16 and the present one are similar. No evidence has been led on behalf of the State to find any difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs 10 per sq m cannot be sustained.

Indeed, the Respondents had not adduced any other evidence which could be relied upon by the Reference Court for approving the determination of market value made by the Special Land Acquisition Officer.

11. We are further of the view that the judgment of the High Court runs contrary to the law laid down by this Court in recent judgments including *Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat, Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another*, *Subh Ram and Others Vs. Haryana State and Another*, and *A.P. Housing Board Vs. K. Manohar Reddy and Others*, . In *Viluben Jhalejar Contractor v. State of Gujarat (supra)*, this Court laid down the following principles for determination of market value of the acquired land:

Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under Sub-section 1 of Section 4.

One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification u/s 4 or otherwise, other sale instances as well as other evidences have to be considered.

The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-?-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors

Negative factors

(i) smallness of size

(i) largeness of area

(ii) proximity to a road

(ii) situation in the interior at a

distance from the road

(iii) frontage on a road
(iii) narrow strip of land with
very small frontage compared
to depth
(iv) nearness to developed
area
(iv) lower level requiring the
depressed portion to be filled
up
(v) regular shape
(v) remoteness from developed
locality
(vi) level vis-à-vis land
under acquisition
(vi) some special
disadvantageous factors which
would deter a purchaser
(vii) special value for an
owner of an adjoining
property to whom it may have some very special
advantage

Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price.

12. In *Atma Singh v. State of Haryana* (supra), the Court held:

In order to determine the compensation which the tenure-holders are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. Section 23 of the Act lays down what the court has to take into consideration while Section 24 lays down what the court shall not take into consideration and have to be neglected. The main object of the enquiry before the court is to determine the market value of the land

acquired. The expression "market value" has been the subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities.

13. Another error committed by the High Court is that while reducing the amount of compensation, it did not keep in view the rules evolved by this Court for giving benefit of escalation in land prices to the landowners and making appropriate deduction towards development cost whenever it is pleaded by the acquiring authority or the beneficiary that it will have to spend substantial amount for making the land useful for the purpose for which it is acquired. Yet another error committed by the High Court is that it did not assign any cogent reasons for reducing the amount of compensation in lieu of the loss of business and in lieu of the damage to structure, plant and machinery etc.

14. In the premise aforesaid, we feel that ends of justice will be served by remitting the matter to the High Court for fresh disposal of the appeal filed by the Respondents.

15. In the result, the appeal is allowed. The impugned judgment is set aside and the matter is remitted to the High Court for fresh disposal of the appeal filed by the Respondents. It is needless to say that while deciding the appeal afresh, the High Court will take into consideration the law laid down by this Court in recent judgments including those referred to hereinabove.