
(2008) 01 BOM CK 0023

In the Bombay High Court

Case No : First Appeal No. 1377 of 2007, 2526 to 2534, 2537 to 2539, 2541, 2545, 2547 to 2554 to 2568, 2570, 2572 to 2576, 2578, 2580 to 2587, 2589 to 2601, 2603 to 2605, 2607 to 2608, 2610 to 2615, 2618, 2619, 2622, 2625 to 2626 OF 2006, 2462 to 2525, 2535 , 2542 t

Genu Bhivaji Rao

APPELLANT

Vs

The Special Land Acquisition Officer and Executive Engineer,
Nandur Madhmeshwar Project, Nashik Division

RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23, 23(1A), 25

Citation : (2008) 2 ALLMR 419 : (2008) 3 MhLj 772

Hon'ble Judges : Swatanter Kumar, C.J.;J.P. Devadhar, J

Bench : Division Bench

Advocate : K.K. Tated, Assistant Government Pleader, for the Appellant; P.N. Joshi, instructed by S.S. Gite, S.M. Gorwadkar, S.S. Kotwal, in C.A. Nos. 6320 to 6492 of 2007 in F.A. No. 2462 of 2006 to 2626 of 2006, K.B. Sonwalkar in First Appeals and Applicants in C.A. Nos. 6320 to 6492 of 2007 in F.A. No. 2462 of 2006 to 2626 of 2006, for the Respondent

Judgement

Swatanter Kumar, C.J.—By this common judgment, we will dispose of 165 appeals filed by the State, 80 appeals filed by the claimants, 45 Cross objections filed by the claimants in State Appeals and 330 connected Civil Applications.

2. The Special Land Acquisition Officer (hereinafter referred to as "the SLAO"), while exercising his power as Collector, published a notification on 5th May, 1994, u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"), clearly stating the intention of the Government to acquire the land from the revenue estate of village Mukane, Tal. Igatpuri, District Nashik, for a public purpose viz. Mukane Dam Project. In furtherance to this, declaration u/s 6 of the Act was issued on 7th July, 1994, which was published in the official gazette on the same day. The SLAO, after complying with the requirements of the provisions

of the Act, published his award dated 20th October, 1995, u/s 11 of the Act. The SLAO classified the lands in different groups and based upon the assessment, gave compensation varying from Rs. 37,000/per hectare to Rs. 1,17,000/per hectare. The total land acquired was 349 hectares 59.3 ares. It has been noticed in the award that an enquiry u/s 11 of the Act was carried out but no objections were received. The claimants had filed their claims claiming different compensation for lands varying from Rs. 3 lakhs to Rs. 7 lakhs. The land ownersclaimants felt dissatisfied from the award of the Collector made applications u/s 18 of the Act. These applications were referred by the Collector to the Court of competent jurisdiction and the Reference Court vide its judgment and award dated 14th February, 2006, after considering the oral and documentary evidence on record, fixed the compensation as follows:

Rs. 2,12,500/per hectare for jirayat land.

Rs. 1,06,250/per hectare for potkharaba land.

In other words, the Court classified the entire acquired land into two sections and awarded the fair compensation, while referring to various sale instances.

3. Still the claimants felt aggrieved from the judgment of the reference Court preferred appeals before this Court praying for further enhancement of the awarded compensation. They have challenged the correctness and legality of the judgment of the Reference Court. According to them, the Court has ignored relevant piece of evidence and has not given the appropriate compensation to the claimants. We may also notice here that during the pendency of this appeal, an application being Civil Application No. 6581 of 2007 was filed by the claimants in First Appeal No. 1377 of 2007. It was prayed by the applicant that the additional evidence be permitted to be led in the First Appeal by taking on record the map Exhibit1 and 7/12 extracts annexed to that application. When this application came up for hearing, the same was disposed of by us vide our order dated 22nd January, 2008, which reads as under.

Prayer made by the applicant in this application is not opposed. The map in question has been prepared by the Development Authority which itself is a party in the present appeal and has been permitted to intervene in this appeal. Consequently, this application is allowed subject to just exceptions. The map annexed to this application is taken on record with the consent of the learned Counsel appearing for the parties and the same is marked as "C1". Application is accordingly disposed of.

4. The Authority i.e. The Godawari Marathwada Irrigation Development Corporation, for whose benefit the land had been acquired, had also filed applications for becoming parties to the present appeals. These applications are 165 in number. To these applications, there was no opposition. We also heard the arguments on behalf of the said authority. Having heard the learned Counsel appearing for the parties and the fact that there was no opposition to these applications, all these applications for impleadment are also allowed and are

accordingly disposed of.

5. 165 Civil Applications have been filed on behalf of the State in their Appeals praying for stay of the judgment and award of the Reference Court dated 14th February, 2006. All these applications have been rendered infructuous inasmuch as by this judgment we are disposing of all the appeals i.e. 165 appeals filed by the State, 80 appeals filed by the claimants and 45 Cross Objections filed by the Claimants in State appeals.

6. Before the Reference Court, the claimants, besides leading oral evidence, produced and proved on record sale deeds at Exhibits 20, 24, 27, 37, 39, 46, 55 and 57. Exhibit 18 was the judgment passed by the Reference Court in another connected Reference being L.R. Nos. 168 to 170 of 1995 decided on 6th September, 2002 where the land was acquired for Mukane Dam Project from the same village, by notification u/s 4 of the Act which was published on 5th May, 1994 and wherein the trial Court awarded compensation at the rate of Rs. 2,12,500/per hectare. The State only produced and proved on record two sale instances, Exhibits 51 and 54. No. oral evidence was led by the State regarding these sale deeds.

7. As far as the two sale instances, Exhibits 51 and 54 proved by the State are concerned, these are the sale deeds dated 27th November, 1991 and 19th November, 1993 respectively wherein nearly an area of 1.37 hectare was sold for a sum of Rs. 51,375 and an area of 71 ares was sold for a sum of Rs. 38,000/per acre. Calculating the rate on the basis of these sale instances, the market value of the land would be Rs. 37,500 and 53,221/per hectare respectively. Both these sale instances cannot be looked into by the Court as they hardly would have any evidentiary value for determining the fair market value of the land as the market value indicated is even below the rate awarded by the SLAO in his award. The sale consideration indicated in the sale deeds being below the valuation given by the Collector, these documents are hardly of any consequence in view of Section 25 of the Act. Even otherwise, it is not reflected in the sale deeds relied by the State that a willing buyer was prepared to pay the market price to a willing seller of the property free from encumbrances and restrictions.

8. Out of the entire sale instances produced and proved by the claimants, Exhibit 27 needs to be dealt with at the very threshold. This is a sale deed dated 3rd April, 1992 from village Mukane where the land admeasuring about 9.1 ares was sold for a consideration of Rs. 50,000 i.e. at the rate of Rs. 5,49,450/per hectare. Though the sale deed had been produced which is somewhat prior to the date of notification u/s 4 of the Act i.e. 5th May, 1994, on the face of it, it does not appear to be a genuine transaction. Firstly, an area of 9.1 ares stated to have been sold under this sale deed is a very small area and cannot be a guide for determining the fair market value of the land in question. Secondly, this sale deed is stated to have been executed on 3rd April, 1992, while number of other sale instances have been produced by the claimants of Mukane village wherein in the year 1993, the land was sold at the rate of Rs. 2,12,500/per hectare. Prima

facie, this document lacks bona fides and in any case cannot be a safe criteria to be adopted by the Court in consonance with the provisions of Section 23 of the Act. We may also notice here that during the course of arguments, the learned Counsel appearing for the claimants really did not press for grant of compensation on the basis of this particular document.

9. Similarly, Exhibits 39, 46 and 55 again are not relevant piece of evidence. They are the sale deeds relating to village Wadivarhe and not village Mukane. We may appropriately refer at this stage the findings recorded by a Division Bench in the case of *The State of Maharashtra v. Smt. Fulyabai Kisan Govardhane and Ors.* (First Appeal No. 1171 of 2007), which reads as under:

The claimants cannot take advantage of a judgment awarding compensation for acquired land of an adjacent village. Even if it is so assumed that Village Mukane is an adjacent village, the compensation was awarded on the basis of the evidence recorded in those cases. It is not necessary for the Court to grant similar or higher compensation. In fact, some times it may be difficult even to take into account the judgments of the Reference Court in the case of adjacent villages because they may not be comparable instances in their true perspective. Reference in this regard can be made to the decisions of the Apex Court in (i) *Pal Singh and others Vs. Union Territory of Chandigarh*, and (ii) *Karan Singh and others etc. Vs. Union of India*, . In *Pal Singh (supra)*, the Supreme Court held as under:

No. doubt, a judgment of a court in a land acquisition case determining the market value of a land in the vicinity of the acquired lands, even though not inter parties, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred as has been held by the Calcutta High Court in *Hemanta Kumar Mallick and Others Vs. State of West Bengal*, based on the authority of the Judicial Committee of the Privy Council in *Secretary of State for India in Council v. Indian General Steam Navigation and Railway Co. Ltd.* ILR 36 Cal 967, where the Judicial Committee did refuse to interfere with the High Court judgment in a land acquisition case based on previous awards, holding that no question of principle was involved in it. But what cannot be overlooked is, that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, it must have been a previous judgment of court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land. In the cases on hand, the petitioners who are claimants claiming enhanced compensation for their acquired land have not produced the judgment of the High Court on which they propose to rely for finding the market value of their acquired lands as evidence in their cases, in that they could not have done so for the reason that it was not a judgment then available to them as a previous judgment relating to

market value of land in the vicinity.

It is a settled principle of law that where sale instances from the revenue estate of the same village from where the land has been acquired are available and they are otherwise relevant and comparable sale instances, it is not required of the Court to look into the sale instances of the adjacent villages. Exhibits 37, 39 and 46 even otherwise should not be looked into inasmuch as they are the sale deeds of No. vember/December, 1994, nearly six months after the date of the notification u/s 4 of the Act issued on 5th May, 1994.

10. Having discarded this evidence, let us examine the admissible and comparable instances which could provide legal precept for determination of the controversy.

11. The reference Court relied upon Exhibit 20 which was the sale instance of the year 1990 wherein jirayat land admeasuring about 60 Ares was sold at the rate of Rs. 2 lakhs per hectare which was a result of the agreement to sale Exhibit 23 executed in the year 1989. No. w, we may proceed to refer to Exhibit 24, which is a sale deed dated 31st March, 1993 from the same village wherein 60 Ares of land was sold for Rs. 1,27,500/i. e. at the rate of Rs. 2,12,500/per hectare. This, in our opinion, would be the most relevant and material piece of evidence which can be considered by the Court. The reference Court held as under:

The claimants have relied on the previous judgment at Exh. 18. The farmers of village mukane whose lands were acquired for mukane dam have received the enhanced compensation by the said judgment. The market rate of the fields at village was determined by the said Judgment at Rs. 2,12,500/per hector. The rate per hector derived from the sale instance also comes to Rs. 2,12,500/. I, therefore, come to the conclusion that the market value of the acquired fields at village Mukane at the time of aquiswition comes to Rs. 2,12,500/per hector.

24. Portions of the acquired lands consists of Potkharaba land. In the case of State of Maharashtra v. Pralhad 1996 (1) BCJ, 247, Hon"ble Apex Court held that Potkharaba land cannot be equated with the Jirayat land and it may be valued at the 50% of the market value given to Jirayat lands. Considering this proposition, the market value of the Jirayat land at Village Mukane, on the date of notification is determined as Rs. 2,12,500/per hector, 50% of the market value determined for the Jirayat land is to be provided to the Potkharaba portions of the acquired lands which comes to Rs. 1,06,250/per hector". Exhibit 24 thus is closest to the date of the notification u/s 4 of the Act which has been duly proved in accordance with law by P.W. 2 Sitaram. This sale instance cannot be termed as a sale deed relating to a very small piece of land. 40 areas are equivalent to an acre and 100 ares make a hectare. Thus, Exhibit 24 relates to sale of a land of nearly 1.5 acres which is a reasonable size of land to be considered by the Court. Sitaram Nabha Rao (P.W.2) whose statement is at Exhibit 19 stated that the land in question was sold under an agreement to sale (Exhibit 23) which was entered into nearly a year back and the sale deed was registered subsequently.

In his crossexamination he also stated that there was a water stream at the south of the land sold and it was continuously flowing. Kachru

Gabaji Shinde (P.W. 1) who was examined at Exhibit17 while deposing on behalf of himself and other claimants stated that they had received the compensation at the rate of Rs. 44,000/to Rs. 1,17,000/per hectare but was inadequate and they were entitled to get compensation at the rate of Rs. 6 to 7 lakhs per hectare. The possession of the lands were taken in the year 1992. Describing the location and potential of this land, this witness stated as under.

5. Village Mukane is at a distance of one K.M. From Mumbai Agra Road to its west side. At the east of the road, there is Railway Station at Padali. Village Padali is adjacent to the village arera of Mukane to the east side. At the north of village Mukane, there is village area of Wadivarhe. To the south there is village area of Mundhe and to the west Chandegaon. The project is at the western side of all these villages and therefore many agricultural lands of these villages are covered by the catchment area. Village Mukane is at a distance of about 22 K.Ms. and from the boundaries of Nashik Corporation, it is at a distance of 14 to 15 K.Ms.

No. thing material came out in his cross examination relevant for the purpose of determining compensation.

12. In the present case, while making reference to the above sale instances, the reference Court has mainly relied upon the earlier judgment of the Court dated 6th September, 2002, Exhibit18 relating to the same notification u/s 4 of the Act dated 5th May, 1994. Giving compensation of Rs. 2,12,500/to the jirayat land, the Court calculated the compensation payable for the pot kharaba portion at Rs. 1,06,250/. Exhibit18 itself is subject matter of first appeals before us being First Appeal No. 1717 of 2003 and other connected appeals. These appeals have also been listed for hearing. Thus, the correctness and legality of Exhibit18 is also in question before the Court. According to the claimants, they are entitled to higher compensation while in the appeals filed by the State they have prayed for withdrawing the enhancement given by the reference Court in favour of the claimants. The reference Court noticed that compensation either computed on the basis of the sale instances or with reference to the judgments of the Court awardable to the claimants would be similar. We have already noticed that it was not appropriate for the reference Court to rely upon Exhibit20 particularly when the sale instances of relevant period were available and were comparable.

13. In the considered view of the Court, Exhibit24 can safely be relied upon by the Court while determining the fair market value of the land on the date of the notification issued u/s 4 of the Act. The location of the land has been clearly described by the claimants who appeared as witnesses as well as from the map Exhibit C1 produced before this Court. In Exhibit C1, the acquired land has been shown in green colour and the boundary of village Mukane has been described in blue colour. The revenue estate of village Mukane abuts the boundary of village

Wadiwarhe and part of Mukane Dam falls in the revenue estate of both these villages. Mumbai Agra Highway is at some distance and passes through village near Raymond Company. The oral and documentary evidence shows that the land of these villages is more or less similar from its location and potential point of view, of course, the land of the other two villages is closer to the Highway. The learned Counsel appearing for the claimants argued that no deduction should be made either on account of development charges or on account of smallness of the plots. According to them, the entire land has been acquired for Mukane dam and resultantly the entire land would be submerged under the water and no development activity could be carried out and, therefore, the deduction on account of development charges would be unfair. It is also the contention that Exhibit 24 is a sale instance of one and half acres of land and thus no deduction from the sale price would be called for in the facts and circumstances of the case. This argument raised on behalf of the claimants certainly has some merit. We have already discussed at some length that for sale instances of small pieces of land, permissible deduction would not be applicable in the facts of the present case. Similarly, no deduction need be made on account of development charges. The entire land is being used for agricultural activity, part of which is jirayat land while the other is potkharaba land. The entire land has been acquired for a common purpose i.e. Mukane dam. The potential of the entire land thus would be similar. Applying deduction on any of the above two counts would vest the claimants without fair results. The statutory provisions of Section 23 of the Act require that the Court has to determine the amount of compensation payable to the claimants while taking into consideration the criteria specified in the Section. The Court has to determine the compensation payable to the claimants which, besides being just and fair in terms of the market value, is also equitable as these are cases of compulsory acquisition.

14. While relying upon the judgment of the Supreme Court in the case of Om Prakash (D) by Lrs. and Others Vs. Union of India (UOI) and Another, , it was also contended on behalf of the claimants that this being an agricultural land and keeping in view the increasing market value of the land, the appreciation at the rate of 12% should be allowed to the claimants. The Supreme Court in that case held as under:

In the circumstances, the High Court was justified in working out the fair market value of the lands in question on the basis of Rs. 16,750 per bigha as on 30/10/1963. The High Court noticed that in several judgments of this Court escalation at different and varying rates i.e. 6% per annum from 1959 to 1965, @ 10% per annum for every year from 1966 to 1973 and @ 12% per annum from 1975 had been considered to be reasonable increase to arrive at the fair market value, assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards. Since no material was placed on record to show that there was any abnormality during the period, the High Court applied the same principle to the facts and circumstances before it, and accepted increase of 10% every year progressively from 1963 to 1973 and thereafter @

12% every year progressively up to the date of acquisition. The High Court noticed in the judgment that if escalation is allowed on this basis, the fair market value would be Rs. 1,28,889 per bigha. In case progressive increase is allowed @ 10% for the entire period, the amount will work out to Rs. 1,08,397 per bigha. Allowing appreciation @ 12% for every year, not cumulatively, but at a flat rate of 12% per annum from 1963 to 1983, the amount would work out to rs. 56,112 per bigha. The High Court in its judgment under appeal pointed out that the market value of Rs. 16,750 per bigha fixed in the case of Dharambir v. Union of India was not in respect of commercial land but only of agricultural land. That the market value of agricultural land is much lower than that of land suitable for commercial purposes, is trite. After having worked out the market value of the lands on various bases and keeping in view the fact that between 1982 and 1983, the lands in question had at least some commercial potentiality, the High Court decided that the fair market value of all categories of lands situated in the villages in question as on the date of acquisition should be fixed at Rs. 82,255 per bigha.

15. The claimants cannot claim appreciation on the basis of the market value of the land at the rate of 12 per cent per annum in the facts of the present case, as the land in question is an agricultural land and not commercial lands. On the own showing of the claimants also, the lands do not have commercial potential inasmuch as the entire lands were being acquired not only of this village but even of the surrounding villages for the project of Mukane dam. Witness No. 2 whose statement is on record at Exhibit 17 also does not indicate that the surrounding lands to the acquired land were developed or had any commercial potential. On the contrary, in his cross examination, he admitted that the acquired land was 10 to 12 feet away from the land to which the sale transaction related. Similarly, witness No. 3, whose statement is on record at Exhibit 26, also does not indicate anything more than the fact that the lands were agricultural. It, therefore, necessarily follows that the acquired lands were agricultural lands consisting of jirayat or pot kharaba lands. Grant of 10 per cent annual increase on account of appreciation in the value of the land for the intervening period would be quite justifiable in the facts and circumstances of the case. Exhibits 20 and 24 relating to the village Mukane and Exhibits 37, 39, 46 and 57 in relation to village Wadivare clearly show that there was an increasing trend in the sale price of the lands in question. Once there is an increasing trend, the Court would be justified in granting additional benefit on appreciation of sale price. The cumulative effect of the above evidence on record would show that appreciation at the rate of 10 per cent annually would be just and fair. The increasing trend would justify such an appreciation. Thus the claimants would get proportionate benefit at this rate.

16. It will be useful to refer to another judgment of the Supreme Court in the case of Kanwar Singh and Ors. v. Union of India 1988 (8) SCC 136 where the Court clearly stated that unless the situation and potential of the land situated in two different villages was identical, the Court would not be justified in relying

upon sale instances of other villages. The relevancy of the price fetched in the adjoining villages for sale of land would not be of much help and assistance in the present case.

17. In view of the above discussion, we have no hesitation in coming to the conclusion that the claimants are entitled to receive higher compensation than that awarded by the reference Court. Exhibit24 being a relevant and comparable sale instance can be the foundation for such determination. Vide that exhibit, the land was sold at the rate of Rs. 2,12,500/on 31st March, 1993. The notification in the present case u/s 4 of the Act was issued on 5th May, 1994. Thus, appreciation in sale consideration at the rate of 10 per cent annually can be granted to the claimants. This would roughly give them compensation at the rate of Rs. 2,33,750/, though, strictly speaking, they would be entitled to more compensation as the difference in the period involved in Exhibit24 and the present case is one year and one month, but keeping in view the fact that it is a case of large acquisition, we find it just and reasonable to award compensation to the claimants at the rate of Rs. 2,33,750/per hectare for jirayat land.

18. We would also accept the finding of the trial Court that the owners of the pot kharaba land would be entitled to 50 per cent less compensation than that granted to the claimants of jirayat land. We may also make a reference to the judgment of this Court in the case of *The State of Maharashtra v. Smt. Fulyabai Kisan Govardhane* (First Appeal No. 1171 of 2007) decided on 23rd September, 2007, where such differentiation/classification between the two kinds of land was found to be reasonable. Considered from any angle, the claimants of jirayat land have to receive higher compensation than compensation payable to the pot kharaba land. The Court also has to rely upon certain guess work while computing the compensation payable to the claimants. Taking the cumulative effect of documentary and oral evidence led by the parties in the present case, the location and potential of the acquired land, the earlier judgments and the public purpose for which the lands were acquired, we would enhance the compensation payable to the claimants as follows:

(i) Jirayat land at the rate of Rs. 2,33,750/per hectare.

(ii) Pot kharaba land at the rate of Rs. 1,16,875/per hectare. 19. In addition to the above, the claimants would be entitled to receive statutory benefits of Section 23(1A) of the Act with effect from 5th May, 1994 till the date of the award i.e. 20th October, 1995 and benefit of Section 28 of the Act for the period admissible in accordance with law.

19. In the result, the appeals and the cross objections preferred by the claimants are partially allowed in the terms aforeindicated while the appeals filed by the State are dismissed. All the applications seeking stay of execution of Award of the Reference Court are disposed of being infructuous. All the Civil Applications filed by the acquiring body are allowed. In the facts and circumstances of the case, we leave the parties to bear their own costs.