

(2019) 08 BOM CK 0132
In the Bombay High Court
Case No : First Appeal No. 01743 Of 2017

Godawari Marathwada Irrigation Development Corporation
And Anr

APPELLANT

Vs

Lalasaheb Dadasaheb Deshmukh (Died) Through L.Rs And
Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 11, 18, 28

Citation : (2019) 08 BOM CK 0132

Hon'ble Judges : Vibha Kankanwadi, J

Bench : Single Bench

Advocate : Kalpalata Patil Bharaswadkar, Ramraje A. Deshmukh

Final Decision : Partly Allowed

Judgement

1. Present appeal has been filed by the acquiring body challenging the compensation given under Section 18 of the Land Acquisition Act, 1894 by the reference Court in L.A.R. No.106 of 1995, dated 03-04-2013.

2. The original claimant was the owner of land Survey No.511/2. Out of the said land, 50 R land which is situated in village Ieet, Taluka Bhoom, District Osmanabad, was acquired for Upper Manjara Medium Project Submergence. The notification under Section 4 of the Land Acquisition Act (hereinafter referred to as "the Act") was published on 28-02- 1991. Thereafter, award under Section 11 came to be passed on 31-12-1992. The Special Land Acquisition Officer had awarded compensation at the rate of Rs.370/- per R. Being dissatisfied with the said award, reference under Section 18 of the Act was filed.

3. The claimants had contended that the Special Land Acquisition Officer had not considered the basic parameters while determining compensation. The acquired land was of black cotton soil of good quality and it was irrigated with the help of water from well as well as river. It was giving annual income around Rs. 30,000/-

per acre. According to the claimants, market price of the acquired land on the date of notification under Section 4 of the Act was Rs. 1,00,000/- per acre and therefore, enhancement was claimed.

4. Written statement was filed by respondent no.01 denying the averments in the reference and supporting the reasons given by Special Land Acquisition Officer while determining the compensation.

5. After the issues were framed, claimants had led oral as well as documentary evidence. No evidence was led on behalf of respondents no.01 and 02. Respondents no.03 to 05 were supporting the reference and they have led evidence to enhance the compensation granted by Special Land Acquisition Officer. Taking into consideration the evidence on record, the reference was partly allowed. Respondents no.01 and 02 were directed to pay sum of Rs. 57,000/- towards additional market value of the acquired land admeasuring 50 R from Survey no.511/2 to the claimants as well as respondents no.03 to 05 and additional amount of Rs. 1,00,000/- was granted for the trees from the acquired land. The acquiring body has filed the appeal challenging the said enhancement.

6. Heard learned Advocate Mrs. Kalpalata Patil Bharaswadkar for the appellants - acquiring body. So also, heard learned Advocate Mr. R.A. Deshmukh for the respondents.

7. It has been submitted on behalf of the appellants, that the learned reference Court has not appreciated the evidence properly. On the basis of well in the other portion of the land, it has been held that the land which was acquired was irrigated and accordingly compensation has been awarded. Thereafter, there was no basis to come to conclusion that the market price of the trees for the acquired land was Rs. 1,00,000/-. Further, interest under Section 28 of the Land Acquisition Act has been awarded from the date of the notification under Section 4 of the Act, which is in contravention of the decision by the Full Bench of this Court in State of Maharashtra Vs. Kailash Shiva Rangari [2016(4) ALL MR 513 (F.B.)].

8. Per contra, learned Advocate appearing for the respondents submitted that in another group of matters i.e. First Appeal No. 1633 of 2014 and companion appeals [The State of Maharashtra & another Vs. Ambadas Wamanrao Deshmukh], decided by this Court on 21st July 2015, this Court had upheld the enhancement in the compensation which was granted by the reference Court at the rate of Rs. 60,000/- per acre. The lands under acquisition under those references were from the same village Ieet and they were under same notification dated 28-02-1991 for the same project. The said decision has achieved finality.

9. At the outset, it can be seen from the impugned judgment, that the learned reference Court had considered that the land which was belonging to claimants and respondents no.03 to 05 was about 58 R and out of the same, 50 R was acquired. The 7/12 extract (Exhibit 45) of the land was perused wherein well as

well as pipeline was mentioned and under such circumstance, the conclusion drawn that the land was irrigated appears to be correct as there is no contrary evidence adduced on behalf of the acquiring body. No doubt, while arriving at the market value, the reference Court had not considered the sale instance which was produced by the claimants, but then relied on the compensation that was determined in other land references by the same Court. Reasons have been given for not considering the sale instance which was the certified copy of Index II. It appears that the certified copy of the sale deed itself was not produced on record but only Index II was produced and therefore, that document was not considered. However, while accepting the price which was determined in another land acquisition reference, what has been considered is that in those matters which were arising out of the same project and situation in the same village, sale deeds which were produced on record in those cases were considered. Therefore, it can be said that there was some basis on which the price was determined. Further, now when this Court had accepted the enhancement in the compensation granted by the reference Court for the same project from the same area and the judgment of this Court has achieved finality, no further deliberation as regards determination of the market value is required in this case. It will have to be confirmed at the enhanced rate granted by the reference Court.

10. Now, as regards trees are concerned, an elaborate reasons have been given by the reference Court. Though the claimants had produced valuation report of the expert as well as said expert was examined, yet, taking into consideration the discrepancy in the number of trees in the measurement report as well as the report of the expert, the valuation given by the expert was not accepted and thereafter considering the number of trees, guess work has been made. In fact, it is in favour of the acquiring body and therefore, no further deliberation is required.

11. Now, as regards interest part is concerned, under Section 28 of the Act, in view of the Full Bench decision of this Court, it has to be from the date of award under Section 11 of the Act and the reference Court has granted it from the date of notification under Section 4 of the Act; that part only deserves correction.

12. Hence, the following order :-

(a) The appeal is hereby partly allowed.

(b) The claim of the appellants to reduce the compensation for the land and the trees is hereby rejected.

(c) However, the judgment and award passed in L.A.R. No. 106 of 1995 by Joint Civil Judge (Senior Division), Osmanabad, on 03-04-2013, is hereby set aside and modified to the extent of interest granted under Section 28 of the Land Acquisition Act, 1894, as follows :-

" Respondents no.01 and 02 to pay solatium at the rate of 30 % of the above

additional market value and 30 % of above Rs. 1,00,000/- on the compensation of the acquired land as well as trees; interest under Section 28 of the Land Acquisition Act at the rate of 9 % per annum of the above additional market value on the compensation of the acquired land as well as trees from 31-12-1994 to 01- 01-1995 and at the rate of 15 % per annum from 02- 01-1995 till the actual realization of the entire amount to the claimants as well as respondents no.03 to 05."

(d) Award be modified accordingly.

(e) It is stated that the amount of compensation is deposited in this Court by the acquiring body. Respondents are allowed to withdraw the said amount, along with interest, as per the modified award as well as the apportionment would be as per the award of the reference Court.