
(2014) 02 BOM CK 0060
In the Bombay High Court
Case No : First Appeal No. 43 of 2011

Gopalrao

APPELLANT

Vs

The Land Acquisition Officer

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2014) 02 BOM CK 0060

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : S.A. Mohta, Advocate for the Appellant; M.N. Hiwase, A.G.P,
Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J.—This appeal is directed against the judgment and award passed on 3rd May, 2008 in Land Acquisition Case No. 50 of 1995 by 2nd Joint Civil Judge, Senior Division, Buldana. The appellants' land bearing Survey No. 1442, admeasuring about 5.44 hectare was acquired for public purpose i.e. construction of irrigation tank at Brahmanwada, Amdapur. The Land Acquisition Officer granted compensation of Rs. 18,000/- per hectare to the appellants and award for total amount of Rs. 62,498/- as compensation for acquisition of the land was passed by the Land Acquisition Officer. The appellants felt that the compensation so granted was inadequate and, therefore, they preferred reference through the Collector u/s 18 of the Land Acquisition Act, 1894 before the Court of 2nd Joint Civil Judge, Senior Division, Buldana. The reference Court, after considering material available on record, enhanced the compensation from Rs. 18,000/- per hectare to Rs. 23,000/- per hectare by it's judgment and award passed on 3.5.2008. According to the appellants, the compensation should have been granted at least at the rate of Rs. 55,000/- per hectare as there were comparable sale instances establishing the fact that market price of the land of the appellants was not less than Rs. 55,000/- per hectare. Therefore, the

appellants have preferred this appeal against the said judgment and award.

2. I have heard Mr. S.A. Mohta, learned counsel for the appellants, Mrs. M.N. Hiwase, learned A.G.P. for the respondent.

3. With the assistance of learned counsel for the appellants and learned A.G.P., I have gone through the impugned judgment and award and also the record of the Court below.

4. Now, the points which arise for my consideration are:

1) Whether the appellants have made out a case for remand of the matter to the reference Court for a decision afresh ?

2) Whether any interference with the impugned judgment and award is warranted ?

5. Learned counsel for the appellants has vehemently argued that the appellants were not at all informed by their learned counsel regarding the need for adducing of evidence in the matter and the result was that the case was decided by the reference Court without any oral or documentary evidence having been adduced by the appellants. He submits that the appellants are the poor agriculturists, not aware of any intricacies of law and, therefore, they never realized that there was any need for them to take active steps regarding production of evidence. He submits that although the appellants should not have placed so much confidence in their lawyer before the reference Court, the appellants now, should not be penalized for the lapses and mistakes committed by their counsel before the reference Court and one opportunity should be given to them to lead their evidence and prove their case. He also submits that in other cases, the reference Court has granted higher amounts of compensation upto Rs. 50,000/- per hectare and the lands in those cases being similar to the land of the appellants, the appellants now should also be given an opportunity to prove their case.

6. Mrs. M.N. Hiwase, learned A.G.P. for the respondent submits that the roznama of the reference Court would amply demonstrate that more than sufficient opportunity has been given to the appellants and if the appellants did not avail of that opportunity, now they would be estopped from making a complaint that no opportunity was given to them. Therefore, this is not a fit case, according to her, for being remanded to the reference Court for trial afresh. She also submits that even otherwise no fault could be found with impugned judgment and award.

7. A close look at the roznama would show that there is much substance in the argument canvassed before me on behalf of the respondent and no merit in the argument advanced on behalf of the appellants. The reference Court has passed a very specific order below Exhibit-1 on 8.10.1997. The order shows a very disappointing state of affairs before the reference Court. It discloses that neither the petitioner nor his advocate had taken care to remain present before the reference Court. The reference Court ultimately was compelled to close the evidence of the petitioner's side and fix the case for evidence of the respondent.

The roznama shows that on 4th November, 1997 a Pursis came to be filed on behalf of the respondent informing the Court that the respondent did not wish to adduce any evidence in the matter. Therefore, the case was closed for arguments. The reference Court thereafter passed another order, below Exhibit-1, on 14th November, 1997 directing that the case be fixed for judgment, as either of the sides did not choose to submit any arguments. Thereafter, the record further shows, an application was moved by the appellants on 27.11.1997 seeking permission of the Court to adduce their evidence. The reference Court, by a detailed order passed below this application (Exhibit-19), allowed the application and re-fixed the case for evidence of the appellants. Even, this opportunity was not availed of by the appellants. The record shows that from February, 1998 till October, 2007, the case had been kept from time to time for evidence of the appellants and yet, no evidence was adduced by the appellants. Ultimately, on 17th October, 2007, the Court closed the evidence of the appellants and fixed the matter for evidence of the respondent. The respondent also did not adduce any evidence and ultimately on 21st April, 2008 the case was closed for judgment.

8. From this record, it can be seen that that ample opportunities have been given to the appellants and these opportunities spanned a period of more than 10 years. If the appellants have not taken benefit of these opportunities for 10 years, the appellants would themselves have to blame for that and now, after so many years, almost 20 years, cannot seek to re-open the case on the spacious ground that their advocate did not keep them sufficiently informed and literate about the role that they were supposed to play in the matter. If the appellants could file a reference u/s 18 of the Land Acquisition Act, 1894 the appellants could also have taken steps for prosecuting the same in an effective manner. The appellants cannot, in the same breath, say that they were literate enough to file a reference and ignorant enough to not raise even an eye-brow when the case was languishing at a stand still in the Court. In fact, after seeing for some period of time that nothing fruitful was happening in their case, appellants could have and should have personally visited the Court and seen the record of the case. They could have and ought to have contacted some other lawyer as well. They did not do any such thing and, therefore, I do not think that now the appellants could be justifiably given another opportunity to make up for the mistakes, which they have apparently committed her with full knowledge and understanding of their consequence. Therefore, I do not find that this is a fit case for remand to the reference Court. First point is answered accordingly as in the negative.

9. Learned counsel for the appellants has submitted that the Land Acquisition Officer has not taken into account comparable sale instances, particularly those pertaining to Survey No. 777 and 363 from the same village, which were most relevant for the purpose of determining just and proper compensation to be awarded in this case. He submits that the sale-deed of these two lands were of the year 1990 and thus relevant for determination of proper compensation in this case as the Notification u/s 4 of the Land Acquisition Act, 1894 had been issued

after these sale instances. He further submits that the Land Acquisition Officer did refer to these sale instances, but refused to consider them as relevant and this decision of the Land Acquisition Officer has been endorsed by the reference Court without giving any cogent reasons. Therefore, according to him, this is a case which would require interference with the impugned judgment and award and direction from this Court for grant of enhanced compensation by considering the sale instances in respect of said two lands would be required.

10. Learned A.G.P. has submitted that these sale instances relate to different lands in different situations and, therefore, no parity or comparison can be drawn between the situation and the market price of the land acquired in this case and those bearing is Survey Nos. 777 and 363. She has invited my attention to the reasons stated by the Land Acquisition Officer in the award for discarding those sale-instances to support her contentions.

11. In paragraph 22 of the impugned judgment and award, the reference Court has placed reliance upon the law laid down by the Madras High Court in the case of *The State of Madras Vs. P. Seetharamammal and Another*, to record a finding that ordinarily the Land Acquisition Officer should give priority consideration to the sale instances indicating higher prices for determining the compensation to be awarded to the persons whose lands are acquired. After referring to the said judgment, the learned Civil Judge has only observed that the Land Acquisition Officer has not considered appropriately sale instances relating to period from the year 1990 to 1992 and, therefore, it was necessary for him to accord due consideration to them. Learned Civil Judge has not given any reason as to why the sale instances pertaining to field Survey Nos. 777 and 363 should not be taken into consideration. But, the Land Acquisition Officer has done it in the award passed by him. These reasons are to be found in last para of internal Page 9 of his award. It can be seen there from that the Land Acquisition Officer has made a distinction between the land involved in this case and the land bearing Survey No. 777 by holding that the land Survey No. 777 was an irrigated land. For same reason, the land Survey No. 363 has also been distinguished from the situation of the land involved in this case. In other words, the reason for discarding of the sale instances pertaining to field Survey Nos. 777 and 363 by the Land Acquisition Officer was that those were irrigated lands and whereas the present land was non-irrigated one. In such a situation, it fell upon the appellants to produce on record some evidence or some material to show that their land was also an irrigated one. However, unfortunately the appellants have not adduced any evidence absolutely in this regard. The Land Acquisition Officer had, together with his award, filed on record 7/12 extracts of the land involved in this case. The 7/12 extracts have been exhibited and they are at Exhibits Nos. 35, 36, 37, 38 and 39. They relate to the years 1979-80, 1995-96 and 1994-95 respectively. In none of these 7/12 extracts, one can see that the land acquired in this case was under irrigation at any point of time. There is one crop of chilli (Mirchi), which has been shown to have been cultivated by the appellants. Learned counsel for the appellants submits that chilli crop is usually taken

through irrigation and so it can be presumed that the land was under irrigation. I am not inclined to accept this contention for the simple reason that there is a specific column regarding irrigation facilities in the 7/12 extracts and this column is left blank and nothing is mentioned therein. Besides, the Mirchi or chilli crop has been shown in it as taken by the appellants not in rabbi season, but in kharip season, which ordinarily does not require any special irrigation. So, from these 7/12 extracts no conclusion about existence of irrigation facilities on the land in question can be drawn. If this is so, I do not think that any error in the reasons given by the Land Acquisition Officer for discarding sale instances in respect of field Survey Nos. 777 and 363 can be found.

12. Apart from 7/12 extracts, there is absolutely no other evidence available on record to enable this Court to consider the submission that the land acquired in this case could have fetched higher prices and, therefore, some more compensation should be given to the appellants. The learned counsel for the appellants has invited my attention to the award passed in another case bearing Land Acquisition Case No. 35 of 1995 on 5th December, 2009 in which, the reference Court has considered sale instances in respect of Survey Nos. 777 and 363 for granting compensation at the rate of Rs. 50,000/- per hectare. By relying upon this judgment and award, learned counsel for the appellants submits that since the land of the appellants is also similarly situated and in the same area and has also been acquired for the same project, the benefit of enhanced compensation granted in the said case should also be made available to the appellants on the principle of parity. A xerox copy of the judgment and award passed on 5th December, 2009 in the said case is placed on record by the learned counsel for the appellants and which is marked as "X" for identification. It is seen from the judgment in that case that oral as well as documentary evidence had been adduced by the claimants therein and on that basis, learned Civil Judge could find that there was similarity in situations of the land involved in that case and the lands in respect of which sale instances were cited to claim higher compensation. These facts obviously distinguish themselves from the present case as in the case in hand, it has already been noted, there is absolutely no evidence adduced by the appellants to establish the quality and grade of their land and it's similarity with the lands bearing Survey Nos. 777 and 383. Therefore, no benefit on the basis of parity principle can be given to the appellants.

13. In the circumstances, I find that the impugned judgment and award have been appropriately passed by the learned Civil Judge, Senior Division by properly taking into consideration the material available on record in its entirety. No interference with the same is warranted. Second point is answered accordingly.

14. The appeal is dismissed with costs.