
(2014) 02 BOM CK 0293
In the Bombay High Court
Case No : F.A. No. 532 of 1997

Goroba

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(2), 4

Citation : (2014) 6 MhLj 391

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : S.S. Choudhari, Advocate for the Appellant; S.R. Palnitkar, AGP, Advocate for the Respondent

Judgement

K.U. Chandiwal, J.—Heard. The appeal is admitted on 16-9-1997.

The original claimants/appellants feel aggrieved by inadequate enhancement effected by the learned second Joint Civil Judge, Senior Division, Osmanabad, in LAR No. 141/1991 by order dated 7-7-1997, thereby awarding Rs. 6,000/- per acre.

There is no controversy that agricultural property of the appellants 1 H. 96 R. forming small pieces situate at village Masla (Khurd) was subject of notification under section 4 dated 22-9-1983 possession of which was taken on 25th April, 1985, and the Special Land Acquisition Officer declared the award on 30-12-1985, at the rate of Rs. 2,000/- per acre.

2. Before the learned Judge, there were two land References; one of the appellants No. 141/1991 and another No. 146/1991.

3. Feeling aggrieved by the award of Special Land Acquisition Officer Reference under section 18 was moved to the learned Collector who transmitted it to the Court and the learned Reference Court awarded Rs. 6,000/- per acre.

4. Mr. Choudhari, learned Counsel for the appellant land holder says, the

appellant has set up a claim of Rs. 30,000/- per acre. Two sale instances at Exhs. 23 and 24 were produced. The sale deed at Exh. 24 was for 1 acre 14 gunthas of land sold for Rs. 45,500/- on 10th April, 1984, from part of Survey No. 57 of the same village Masia.

5. Grievance of learned Counsel is, out of the same acquisition proceedings; one Dnyandeo Ingale had preferred LAR No. 143/1991 and Dnyandeo Narwade had preferred LAR No. 148/1991 before the learned Civil Judge, Senior Division, Osmanabad. In those proceedings, indeed, the sale deed Exh. 24 referred to above was also considered and said Court granted compensation at the rate of Rs. 24,000/- per acre. The grievance is, the transaction of sale deed Exh. 24 was a bona fide transaction. The award under LAR No. 143/1991 or 148/1991 is not questioned by the State as to its excessive character.

6. Learned A.G.P. says, no interference warrants in the award as the sale instances and grouping is properly considered by the Reference Court.

7. I have gone through original record, including evidence of claimants Mahadeo Balbhim Bhalekar, the attesting witness Shri Suresh Balbhim Shinde to sale deed Exh. 24. The evidence on behalf of the Government was from the Special Land Acquisition Officer Shri Y.E. Suryawanshi. He says that the compensation was proper and adequately paid to the respective claimants in the light of the quality of the land. Proper sale deeds were analyzed at the time of declaring the award.

8. Mahadeo has described details of his agricultural properties; additionally, stated that it was fully irrigated with well water and 5 H.P. motor was installed. He was taking cash crop; sugarcane was transported to sugar factory at a distance of 15 kms from his village; some yield was sold at Sholapur, which is at a distance of 45 kms from his village. There were mango trees in the field. According to him, when the lands were acquired prior thereto, at the relevant time, market price was Rs. 30,000/- to Rs. 35,000/- per acre. One Viju Salve sold his land to Uddhav Jagtap for consideration of Rs. 35,000/- per acre. Sale deed was executed. Another land of Sham Patil was sold to Waghade admeasuring 4 acres at the rate of Rs. 30,000/- per acre. He has stated that these lands were situated at 300 ft. to 400 ft. from the acquired lands. The land of Dnyanoba Sheshrao Jadhav was also acquired for which Reference Court awarded Rs. 24,000/-. He has stated that those lands were situate at a distance of 200 ft. from his land. The witness was subjected to cross examination by learned District Government Pleader. He did not distort the witness about proximity of the land subject of land Reference No. 143/1991 or Exh. 24.

9. It is pertinent that before the learned Judge, judgment in LAR No. 143/1991 was tendered, however, learned Judge has ignored it only on the ground that it is not binding or that the quality of the said land was high. These observations of the learned Reference Court are contrary to the record as evidence of Mahadeo discussed above illustrate that land subject of Land Reference No. 143/1991 is close by, acquired for the same project. When the competent Court awarded Rs.

24,000/- per acre for similarly placed agricultural property, there could not have been any injunction for the learned Reference Court to act in tune thereof. Judgment in LAR No. 143/1991 was not a surmise or guess work but evidence was discussed in said judgment. Again, sale instances were placed before the Reference Court, however, they are not taken up in tune with the price fetched by the legitimate sellers of the property situate in same village.

10. Apex Court in the matter of Mehrawal Khewaji Trust (Regd.), Faridkot and Others Vs. State of Punjab and Others, dealt with a situation in respect of land References under section 18 of the Land Acquisition Act. The Apex Court has observed,

"It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted."

Hon"ble Supreme Court further observed,

"In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/Court for fixing fair compensation."

In the matter of Sunder Vs. Union of India (UOI) answered about liability of the State acquiring body to pay interest. It was observed, solatium paid on account of compulsory acquisition under section 23(2) forms part of compensation awarded and the State is liable to pay interest at the rate of 9 per cent on solatium.

In (2002) 10 SCC 570, in the matter of Land Acquisition Officer v. Morisetty Satyanarayana and others, Apex Court indicated in paragraph No. 6 that the appreciation for effecting market value and its determination, in normal circumstances, is by comparable sales method.

In Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others, , Hon"ble Lordships of the Supreme Court reiterated, evaluation of evidence in respect of compensation and factors to be considered for assessing. Apex Court has also observed that the purpose of acquisition is also one of the factor to be considered.

In Thakur Kamta Prasad Singh (Dead) by Lrs. Vs. The State of Bihar, , Supreme Court explained meaning of the term "market value" to mean 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 laid out in the most advantageous manner excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired.

11. Taking conspectus of the reported judgments of the Apex Court, the picture that has been painted before this Court demonstrates that Mahadeo Bhalekar, the land holder, has unerringly established proximity of the land, which was subject of Land Reference No. 143/1991 (Judgment Exh. 29) and also established the proximity of land subject of Exh. 24, Survey No. 57. The sale deed of Exh. 24 was, indeed, proved by examination of attesting witness Suresh Shinde. He has stated that the distance of the land under sale deed Exh. 24 and the land acquired is around 600 to 700 ft. Thus, there is little variance in the narration of Suresh and Mahadeo about situation of the two lands. But fact remains, both properties situate at Masla and were acquired for same project. It does not reflect, the Reference Court in LAR No. 143/1991 (Exh. 29) made award overreach to reality.

12. The agricultural property acquired belonging to the appellants, from the record was irrigated, though no receipts for selling sugarcane was tendered. However, it had a well, indicated by the Special Land Acquisition Officer, and the learned Judge. In the situation, the award calls for modification. The appellants in LAR No. 141/1991 are entitled to receive enhanced compensation at the rate of Rs. 24,000/- per acre for the acquired land totally admeasuring 1 H. 96 R. from Block Nos. 71-1/2, 72/2, 73/2, 74/2, 74/6 of village Masla (Kd.). The appellants are also entitled for other statutory benefits under Land Acquisition Act.

The appeal partly allowed with costs.

Deficit Court fees be deposited.