(2015) 04 BOM CK 0055

In the Bombay High Court

Case No : First Appeal No. 277 of 2003

Gunwant — APPELLANT

Vs

The State of Maharashtra and Others — RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 54

Citation : (2015) 04 BOM CK 0055

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : V.P. Thakre, for the Appellant; H.D. Dubey, Assistant Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.S. Chandurkar, J.—This appeal filed by the original claimants under Section 54 of the Land Acquisition Act, 1894 (for short the said Act) seeks enhancement in the amount of compensation for the land acquired in proceedings under the provisions of the said Act.

2. Land admeasuring 1H 72 R situated at Navargaon, Taluka and District Yavatmal is subject matter of acquisition. Notification under Section 4 of the said Act came to be published on 01/10/1987. The award in question is dated 12/12/1991. The Land Acquisition Officer granted an amount of Rs. 10,462/-per hectare for said land. Being aggrieved, the claimants filed reference under Section 18 of the said Act. The Reference Court partly enhanced the compensation to Rs. 20,000/-per hectare. Not being satisfied by the amount of enhancement, the claimants have filed the present appeal.

3. Smt. V.P. Thakre, learned counsel appearing for the appellant submitted that there was sufficient evidence on record to grant appropriate enhancement in the amount of compensation. It was submitted that sale instances were filed at Exhibits-43 and 44. Similarly copies of awards at Exhibits-49 and 52 in relation

to acquisition of land in adjoining villages were also filed. A number of witnesses were examined to support the prayer for enhancement. It was therefore submitted that the appellants were entitled for enhancement in the amount of compensation @ Rs. 1,15,000/-per hectare. Reliance was placed on the decisions in Collector, Land Acquisition Vs. Ganaram Dhoba, (1995) 7 SCALE 365 : (1996) 1 SCC 631 : (1995) 6 SCR 148 Supp : (1996) 1 UJ 196 and Anar Singh Vs. Union of India, AIR 1985 Delhi 298 : (1984) 26 DLT 367 : (1984) 2 ILR Delhi 863 : (1984) RLR 571 .

4. Shri H.D. Dubey, learned Assistant Government Pleader appearing for the respondent opposed aforesaid submissions. According to him, the Reference Court had granted appropriate compensation considering the evidence on record. He submitted that the agreement at Exhibit-43 was rightly discarded by the Reference Court and the awards filed on record were in respect of lands from some other village. He therefore submitted that there was no reason to interfere with the impugned judgment.

5. The following point arises for consideration : Whether any case is made out to enhance the amount of compensation in the present appeal ?

6. I have considered the respective submissions and I have also gone through records of the case. In support of the claim for enhancement, the claimants examined about four witnesses. An agreement of sale dated 15/09/1987 was sought to be relied upon. Similarly vide Exhibit-44, a sale deed dated 09/01/1991 was also placed on record. Said sale deed is for land admeasuring 1H 96 R and the consideration therein is approximately Rs. 22,500/- per acre. The Reference Court after considering the sale instance at Exhibit-44, proceeded to grant compensation @ Rs. 20,000/-per hectare. The agreement dated 15/09/1987 at Exhibit-43 was not considered relevant by the Reference Court as it was executed between two brothers. The widow of the original land owner examined herself at Exhibit-37 in which she referred to these sale instances. She further stated that she was taking various crops from the land in question and was getting net profit of Rs. 5000-6000 per acre. The 7/12 extracts at Exhibit-41 were also filed on record in her cross examination. She denied the suggestion that her land was not irrigated. She however admitted that there was no well in her land. Other witnesses examined is the purchaser of the land vide sale deed dated 29/12/1997. Other witnesses have also stated about purchase of agricultural land in the vicinity of the acquired land. P.W.4 at Exhibit-64 in his deposition admitted that the sale instance at Exhibit-44 was near his village and was having non-agricultural potentiality. Admittedly there is no sale instance of village Navargaon where the acquired land is situated. In absence of any such transaction, sale instances of adjoining village can be taken as guide for determining the approximate market value. Reference in that regard can be made to the decision of Delhi High Court in Anar Singh (supra).

7. As regards claim for compensation on the basis of income capitalisation method is concerned, said method has not been applied by the Reference Court

as there is no sufficient evidence regarding income earned from the acquired land. Except oral statement on behalf of the claimant and the 7/12 extract, there is no other evidence to indicate the income earned from the acquired land. Hence compensation will have to be determined on the basis of sale instances available on record.

8. The sale deed dated 09/01/1991 at Exhibit-44 pertains to land situated at Karanwadi. As per map at Exhibit-48 said village is proximate to the acquired land. The land of the claimant has been marked as Exhibit-60 in the map at Exhibit-48. Considering the fact that in the year 1991 said land was sold at Rs. 56,000/-per hectare, some deduction will have to be made as notification under Section 4 of the said Act was issued on 01/10/1987. Considering these aspects, compensation @ Rs. 30,000/-per hectare appears to be just and reasonable in the facts of the present case. The point as framed is accordingly answered that the appellants are entitled for compensation @ Rs. 30,000/-per hectare.

9. In view of aforesaid discussion, the following order is passed :

(i) It is held that the claimants are entitled to compensation @ Rs. 30,000/-per hectare with all statutory benefits.

(ii) The award dated 12/02/2000 passed by the Reference Court stands modified accordingly.

(iii) The First Appeal is allowed in aforesaid terms with no order as to costs.