(2006) 07 BOM CK 0098

In the Bombay High Court

Case No : First Appeal No''s. 92 to 96 of 1992

Hanmanth Sathe APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 04-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Land Acquisition Act, 1894 — Section 11, 12(2), 18, 23, 23(1)
Land Acquisition Act, 1897 — Section 11

Citation : (2006) 6 ALLMR 691 : (2006) 6 MhLj 249

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

Bench : Single Bench

Advocate : R.M. Borde and M.S. Patil, for the Appellant; R.R. Mane, A.G.P., for the Respondent

Judgement

S.B. Deshmukh, J.—The agricultural lands, situated at village Makni, taluka Omerga, district Osmanabad, were acquired by the State for public purpose i.e. of Lower Terna Project. Notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act of 1894" for short), was issued on October 30, 1980. After following the procedure laid down under the provisions of the Act of 1894, undisputably award u/s 11 of the Act of 1894 was passed on February 20, 1982. The compensation was offered by the Special Land Acquisition Officer, by issuing notice u/s 12(2) of the Act of 1894 to the persons interested. The amount of compensation was received under protest by the persons interested, and thereafter had filed applications for enhancement of compensation u/s 18 of the Act of 1894. These applications were transferred by the Special Land Acquisition Officer to the learned District Judge at Osmanabad and in turn, they were made over to the learned Joint Civil Judge, Senior Division, Osmanabad. These were five Land Acquisition References bearing Nos. 240/83, 239/83, 241/83, 243/83 and 242/83. All these Land Acquisition References were heard together and are decided and disposed of by common judgment and award passed by the learned Joint Civil Judge, Senior Division, Osmanabad, on July 13,

1990. All these Reference Applications were partly allowed, holding that the market value, on the date of notification u/s 4(1) of the Act of 1894, was Rs. 5,000/- per acre for dry crop land and Rs. 6,000/- per acre for irrigated land. The petitioners/claimants were held entitled for additional component at 12 per cent per annum as per Section 23(1) of the Act of 1894. The petitioners were also held entitled for solatium at the rate of 30 per cent and interest at 9 per cent per annum over the enhanced amount of compensation. This common judgment and award, passed in above noted Land Acquisition References, was challenged by filing these five first appeals.

First Appeal No. 92 of 1992 is arising out of Land Acquisition Reference No. 242 of 1983, First Appeal No. 93 of 1992 is arising out of Land Acquisition Reference No. 241 of 1983, First Appeal No. 94 of 1992 is arising out of Land Acquisition Reference No. 240 of 1983, First Appeal No. 95 of 1992 is arising out of Land Acquisition Reference No. 243 of 1983 and First Appeal No. 96 of 1992 is arising out of Land Acquisition Reference No. 239 of 1983.

2. The Special Land Acquisition Officer, while passing the award u/s 11 of the Act of 1894, worked out the market price of irrigated land at the rate of Rs. 3,500/- per acre and Rs. 3,000/- per acre for dry crop land and accordingly awarded the compensation.

3. In First Appeal No. 92 of 1992, land to the extent of 3 H. and 20 R. out of land Survey No. 206/A/2, was acquired and being irrigated, compensation at the rate of Rs. 3,500/- was awarded. It was an amount of Rs. 39,374.90 ps. The claim made by the appellant(s) in First Appeal No. 92 of 1992 in trial Court was to the extent of Rs. 1,58,025/-, however, was restricted to Rs. 1,50,000/-. The trial Court has awarded the compensation at the rate of Rs. 6000/- per acre for irrigated land i.e. amount of Rs. 20,000/- was awarded by the trial Court. Here in the High Court in Appeal No. 92 of 1992 the claim made by the appellant is for deficit amount of Rs. 1,30,000/-.

First Appeal No. 93 of 1992, relates to Land Acquisition Reference No. 241 of 1983. Agricultural land bearing S. No. 111/C admeasuring 3H 27R, a dry crop land was acquired along with land to the extent of 0 H 45 R. out of S. No/ 200/2/2 being an irrigated land. An amount of Rs. 28,184.20 Ps. was awarded by the Special Land Acquisition Officer to the appellant. Appellant had filed claim for enhancement to the extent of Rs. 1,06,065.80 Ps. However, had restricted his claim to the extent of Rs. 60,000/- in the trial Court. The trial Court worked out the market value of the irrigated land at the rate of Rs. 6000/- per acre and for dry crop land at the rate of Rs. 5,000/- and awarded an amount of Rs. 19,440/- to the appellant. The appellant had filed this appeal No. 93 of 1992 seeking enhancement to the extent of Rs. 40,560/-.

Appellant in First Appeal No. 94 of 1992 had filed Land Acquisition Reference No. 240 of 1983. S. No. 200/1/3 admeasuring 0 H 44 R. and S. No. 111/B admeasuring 3 H 28 R. was the subject-matter of the acquisition. Special Land

Acquisition Officer had awarded amount of Rs. 29,412/- against the claim of the appellant in the trial Court to the tune of Rs. 82,587.70 Ps. restricted to Rs. 60,000/- only. The trial Court had awarded compensation at the rate of Rs. 6,000/- per acre amounting to Rs. 26,387.70 Ps. Appellant had filed this appeal for enhancement to the extent of deficit amount of Rs. 33,612.30 Ps.

Appellant in First Appeal No. 95 of 1992 had filed Land Acquisition Reference No. 243 of 1983. S. No. 201/1 admeasuring 0 H 29 R. irrigated land and S. No. 111/B admeasuring 3 H 27 R. a dry crop land was the subject-matter of acquisition. Special Land Acquisition Officer had awarded amount of Rs. 27,696.75 Ps. Appellant therefore had claimed amount of Rs. 76,553.25 Ps, however, had restricted his claim to Rs. 50,000/-. The trial Court had awarded amount of Rs. 70,228.25 Ps. Appellant in this Appeal No. 95 of 1992 has claimed deficit amount of compensation to the extent of 32,771.75 Ps.

Appellants in First Appeal No. 96 of 1992 had filed Land Acquisition Reference No. 239 of 1983. Land admeasuring 3 H 89 R. out of S. No. 110 a dry crop land was the subject-matter of acquisition. The Special Land Acquisition Officer had awarded amount of Rs. 33,228.87 Ps. Their claim in Land Acquisition Reference No. 239 of 1983 was for the amount of Rs. 64,021/-however, they restricted their claim to Rs. 49,000/-. The trial Court had awarded amount of Rs. 15,396.13 Ps and this appeal in High Court is filed for deficit amount of Rs. 24,703.87 Ps. Undisputably, the date of passing of award u/s 11 of the Act 1897 is February 20, 1980.

4. The learned Counsel Shri R. M. Borde for the appellants submits that the trial Court in accordance with the pleadings framed as many as 11 issues. Common evidence was led on behalf of appellants. No rebuttal evidence was led on behalf of the State. According to Shri Borde, learned Counsel for the appellants, the Special Land Acquisition Officer had awarded meagre amount of compensation. From the evidence on record it is clear that the amount of compensation was accepted by the appellants under protest. From the material on record it is also explicit that the applications were filed well within the time. I have also perused the findings recorded by the trial Court on these issues i.e. adequacy of the amount of compensation awarded by the Special Land Acquisition Officer, filing of application u/s 18 before the Special Land Acquisition Officer within stipulated period of time and acceptance of amount of compensation by the appellants under protest. In my view, findings recorded by the trial Court on these issues are well founded. I have also perused the findings of the trial Court in respect of market value of the irrigated land at the rate of Rs. 6,000/- per acre and Rs. 5,000/- per acre for dry crop land respectively. Undisputably, in the present case, there is no dispute regarding the character of acquired lands in relation to the appellants. Advocate Shri Borde, for the appellants, has invited my attention to the judgment and award passed by the Joint Civil Judge, Senior Division, Osmanabad in LAR No. 85 of 1988 passed on January 7, 1993. The judgment of Land Acquisition Reference No. 85 of 1988 was filed along with civil application in

this Court and after hearing the parties production of said certified copies of judgment was permitted by this Court under Order XLI, Rule 27 of the Code of Civil Procedure. From the judgment in Land Acquisition Reference No. 85 of 1988 it appears that the petitioners therein, legal heirs of original owner Bhausaheb Patil are also resident of village Makni, Tal. Omerga, District Osmanabad. Along with this judgment, a copy of statement in form "E" is annexed. From this statement, it is clear that reference of all the appellants from First Appeal No. 92 of 1992 to 96 of 1992 is being made. In this tabular information the details in relation to Survey Numbers, area of acquired land, character of the acquired land as to whether it is dry crop or irrigated, the name of the owner and the amount of compensation is shown. In this tabular information in form "E" I found that the name of Bhausaheb Patil original petitioner in Land Acquisition Reference No. 85 of 1988 is also appearing. It is thus clear from statement. "E" that all these lands i.e. agricultural land subject-matter of First Appeal Nos. 92 of 1992 to 96 of 1992 and Land Acquisition Reference No. 85 of 1988 are situated in the same vicinity and were acquired under same award and same notification. Judgment in Land Acquisition Reference No. 85 of 1988 is in relation to seasonally irrigated land which was subject-matter of the said Land Acquisition Reference. After hearing the parties and appreciating the evidence led on record, the learned Joint Civil Judge, Senior Division, Osmanabad, by his judgment dated January 7, 1993, in Land Acquisition Reference No. 85 of 1988 held the market price of seasonally irrigated land at the rate of Rs. 14,000/- per acre.

5. The learned AGP Mrs. Mane, appearing on behalf of the respondent has pointed out that first appeal challenging the judgment and award in Land Acquisition Reference No. 85 of 1988 was filed in this High Court and its Stamp Number was 25758 of 1995. Unfortunately, the registration of this First Appeal Stamp No. 25758 of 1995 was refused by the Registrar of this Court by order passed on August 27, 1996. It seems that thereafter no steps have been taken for restoration and resultantly judgment and award passed in Land Acquisition Reference No. 85 of 1988 dated January 7, 1993 has attained finality. The market price of the acquired land can be worked out by the Court u/s 23 of the Act of 1894 on the basis of oral as well as documentary evidence led on behalf of petitioners. By this time, it is fairly settled that the judgment and award passed by the Reference Court in relation to the land acquired under the same notification and from the vicinity of the land under the judgment can be considered to be evidenced in relation to market value of the land in question. In the present case, as noted above, LAR No. 85 of 1988 was in relation to land S. No. 206/A/l admeasuring 5 H 32 R. Incidentally, it is to be noted that First Appeal No. 92 of 1992 is in relation to land S. No. 206/A/2 i.e. part of the agricultural land of Land Acquisition Reference No. 85 of 1988. In this view of the matter, the submission of the learned Counsel Shri R. M. Borde that the judgment of the Reference Court in Land Acquisition Reference No. 85 of 1988 can be considered to be the evidence in relation to market value of the lands which are subject-matter of First Appeal Nos. 92 of 1992 to 96 of 1992 can be

accepted. In this view of the matter, the market price of the seasonally irrigated land in relation to these first appeals can be accepted to be Rs. 14,000/- per acre on the date of issuance of Notification u/s 4(1) of the Act of 1894.

6. In these appeals some dry crop lands were also acquired and are subject-matter. Special Land Acquisition Officer has awarded amount at the rate of Rs. 3,000/- per acre by way of compensation for dry crop lands. The trial Court has held that the dry crop lands can be valued at Rs. 5,000/- per acre on the date of Notification u/s 4(1) of the Act of 1894. It is to be noted that the trial Court had recorded a finding regarding market value of irrigated agricultural land as Rs. 6,000/- per acre on the basis of the evidence led and therefore, has worked out the market value of dry crop land to the extent of Rs. 5,000/-. In Land Acquisition Reference No. 85 of 1988, the market price is worked out only in relation to seasonally irrigated land at the rate of Rs. 14,000/- per acre. Once the market price of seasonally irrigated land is worked out with little guess-work the market price of dry crop land can be determined. The availability of irrigational facilities play an important role in farming. In the absence of irrigation facilities the agriculturist concerned is left at the mercy of nature. In this view of the matter, the market price of dry crop land can be considered to be half of the seasonally irrigated land in a particular area. In the present case considering this aspect of the matter, it can be held that the market value of the dry crop land on the date of Notification u/s 4(1) of the Act of 1894 can be accepted to be Rs. 7,000/- per acre. The appellants in these appeals therefore, are entitled to seek compensation at the rate of Rs. 14,000/- per acre for irrigated land and Rs. 7,000/- per acre for dry crop land.

7. The learned AGP Mrs. Mane, has referred to the operative part of the judgment and urged that benefit of additional amount of component at the rate of 12 per cent per annum as per Section 23(1A) of Act of 1894 is illegally awarded by the trial Court. Mrs. Mane, learned AGP is justified in her submission especially when the award undisputably was passed by the Special Land Acquisition Officer on February 20, 1982. Before the date of Notification of Bill of Act 61 of 1984 i.e. before 30-4-1982. Obviously, the appellants in all these appeals are not entitled for this benefit u/s 23(1A) of the Act of 1894. The learned Counsel Shri R. M. Borde, for the appellants has also pointed out from the operative part of the common judgment that interest at the rate of 9 per cent per annum for the enhanced amount of compensation only is awarded, however, 15 per cent interest is not awarded in view of Section 28 of the Act of 1894. Mr. Borde, learned Counsel is justified in seeking such interest. Even in the absence of Cross-Objection, I am inclined to quash and set aside the part of the award passed by the trial Court awarding additional component at the rate of 12 per cent as per Section 23(1A) of the Act of 1894 for doing complete justice between the parties.

8. In the result, appeals are partly allowed. The judgment and award passed by the trial Court is modified and substituted as follows:

(a) The appellants/claimants are entitled to receive enhanced compensation at the rate of Rs. 7,000/- per acre for dry crop land and at the rate of Rs. 14,000/- per acre for irrigated lands.

(b) The appellants/claimants are not entitled to get additional amount at the rate of 12 per cent per annum as per Section 23(1A) of the Act of 1894 from the date of declaration till the date of award or taking possession which ever is earlier, as ordered by the trial Court. In case of payment of this amount to the appellants/ claimants u/s 23(1A) of the Act of 1894, they are directed to refund the said amount to the State within a period of six months from today. On their failure, the State shall recover the said amount in accordance with the provisions of law.

(c) The appellants/claimants are entitled for solatium at the rate of 30 per cent as Section 23(2) of the Act of 1894 on such market value assessed by this Court.

(d) The appellants claimants are also entitled to the interest at the rate of 9 per cent per annum from the date of possession till the expiry of one year from that date and thereafter till the date of payment at the rate of 15 per cent per annum on the amount of compensation i.e. total market value plus component plus solatium for their respective cases.

(e) Whatever has already been paid on account of market value, solatium, interest, shall be deducted from the respective claims of the appellants. However, as directed above, the appellants are not entitled for component at the rate of 12 per cent as per Section 23(IA) of the Act of 1894.

(f) Having considered the facts and circumstances in these appeals, parties are directed to bear their own costs.

