

(2017) 10 BOM CK 0107
In the Bombay High Court
Case No : 83 of 2015

Land Acquisition Officer, & Anr.

APPELLANT

Vs

Shri Kalidas Atmaram Savaikar

RESPONDENT

Date of Decision : 12-10-2017

Acts Referred:

[Land Acquisition Act, 1894](#), [Section 23](#),
[Section 24](#), [Section 18](#), [Section 4\(1\)](#) - Matters to be considered In determining
compensation - Matters to be neglect

Citation : (2017) 10 BOM CK 0107

Hon'ble Judges : Nutan D.Sardessai

Bench : SINGLE BENCH

Advocate : Priyanka Kamat, D. Pangam, L. Fernandes

Final Decision : Dismissed

Judgement

1. This is an appeal at the instance of the Acquiring Department challenging the Judgment and Award dated 21/12/2013 passed by the District Judge-I, North Goa, Panaji in Land Acquisition Case No.2/2007.

2. The Land Acquisition Officer had acquired the land of the respondent for improvement and black topping of the road from Palsari diversion to Tamsuli in Village Panchayat Betki-Candola in Priol Consistency bearing Survey No.92(part) and being an orchard land close to the land lying in the village Candola in an area of 1870 sq.mts. pursuant to the Notification dated 28/01/2002 under Section 4(1) of the Land Acquisition Act (the Act, for short). The Land Acquisition Officer had awarded the total compensation of Rs. 61,002/- for the acquired property by the award dated 15/12/2004 and being aggrieved with the said compensation, the respondent had filed an application under Section 18 of the Act seeking a reference to the District Court and claiming the compensation of Rs. 100/- per sq.mt. The learned Reference Court on an examination of the material before it had fixed the market value of the acquired land on the date of

the Section 4(1) Notification at Rs. 90/-per sq.mt. with all the statutory benefits including interest in terms of the Act giving rise to the appeal at the instance of the Acquiring Department challenging the said quantum in the respondent's favour.

3. The Acquiring Department challenged the impugned Award on grounds that the reference Court had grossly erred in enhancing the compensation of Rs. 3/- per sq.mt. to Rs. 90/-per sq.mt. in the absence of any material evidence brought on record by the respondents for granting such enhancement. The learned Reference Court failed to consider that the acquired land was falling in the orchard zone. The learned reference Court had wrongly relied on the Sale Deeds which were the post Notification Sale Deeds and the Sale Deed pertained to a developed plot admeasuring 252 sq.mts. sold @300/- per sq.mt. even though the acquired land was falling in the orchard zone and had no building potential. The learned reference court completely erred in fixing a higher compensation by ignoring the fact that the acquired land was falling in the orchard zone and was an agricultural and undeveloped land. The learned Reference Court failed to appreciate that the respondent had not produced any evidence in relation to the acquired land viz-a-viz the Sale instances besides the post Notification Sale Deeds. The learned Reference Court failed to appreciate that there was no reliable evidence distinguishing the lands under the post Notification Sale Deeds viz-a-viz the land under acquisition. The impugned Judgment and award was against the well settled principles of law and, therefore, was liable to be quashed and set aside.

4. Ms. P. Kamat, learned Additional Government Advocate came to be heard on behalf of the appellants who reiterated her case that the acquired land fell in the orchard zone being an agricultural land and lacking building potential. The reference Court had relied on the sale instance of the developed plot and ignored the fact that it pertained to an area of 252 sq.mts. which was sold @300/-per sq.mt. The learned reference Court had also ignored the fact that no expert witness had been examined by the respondent in support of his case for the enhanced compensation. She relied in *Chindha Vithal Sonawane v. Special Land Acquisition Officer* [1975 MLJ 468] and submitted that there was no comparability of the sale instance land with the acquired land. She further placed reliance in *P. Ram Reddy and others v/s. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and others* [(1995) 2 SCC 305], *Land Acquisition Officer, Hyderabad and others v. Male Pullamma and others* [(1996) 8 SCC 247] and submitted that it was a fit case to quash and set aside the Judgment.

5. Shri D.J. Pangam, learned Advocate for the respondent adverted to the evidence of the respondent and submitted that the land of Dhupkar was adjacent to that of the respondent and which was developed into plots and sold. He adverted to the sale transaction pertaining to a large property which was subdivided into plots and then sold and being in the proximity of the acquired land.

The reference Court had carried out the necessary deduction considering the Sale Deed being post notification, 40% deduction towards the development and 10% being orchard area and, therefore, there was nothing amiss in the impugned Judgment to warrant interference. The learned reference court had relied upon the judgment in Chindha Vithal Sonawane v/s. Special Land Acquisition Officer [1975 Mh.L.J. 468] in the matter of post notification sale instances and, therefore, no fault could be found with the findings of the reference Court in awarding Rs. 90/-per sq.mt. towards the acquired land. Some amount of guesswork was necessary for fixing the quantum of compensation in such cases and, therefore, no case whatsoever was made out for interference and the appeal had to be dismissed.

6. i have considered the submissions of Ms P. Kamat, learned Additional Government Advocate and Shri D.J. Pangam, learned Advocate for the respondent and besides considered the evidence led on record to better appreciate their submissions and decide the appeal appropriately. Besides, i have also examined the Judgments relied upon by them in the same context and hence, proceed to examine the appeal.

7. The respondent had examined himself reiterating on oath in the affidavit that he was the owner in possession of the acquired property admeasuring 1870 sq.mts. of the Survey No.92 (part) which was acquired for the purpose of road and that there was cultivation such as coconut trees, banana plantation, arecanut and other spice cultivation. There was also a farmhouse and two wells. The acquired land was situated at a distance of 50 mts from Marcela-Savoiverem road, 50 mts from the Village Panchayat of Betqui-Candola and the Primary Health Centre was at a distance of 300 mts from the acquired land apart from the land of Dhupkar being 50 mts away from the acquired land. The plot from the land of Dhupkar was sold @Rs. 300/- per sq.mt. and in that context relied upon the sale transaction of Dhupkar. The village Marcela was at a distance of 1.5 km from the acquired land where the rate of land in Marcela varies from Rs. 1500/- per sq.mt. to Rs. 2200/- per sq.mt. He, therefore, prayed that the market value of the acquired land be enhanced from Rs. 20/- per sq.mt. to Rs. 100/- per sq.mt. He had produced the sale instance of March 2005, August 2004 and December 2005 to substantiate his case. He admitted in fairness that the plots forming the subject matter of the Sale Deeds were sub-divided plots but could not say if any conversion sanad was obtained in respect of the said three plots. He also admitted that basically the acquired land was recorded under the orchard zone which had a width of 4.5 mts. and a total area of Survey No.92 was 29000 sq.mts. There was otherwise no rebuttal of his testimony that the acquired land was situated within the close proximity of the Marcela-Savoiverem road, Village Panchayat of Betqui-Candola and the Primary Health Centre and that it was situated at a distance of barely 50mts from the land of Dhupkar which had been made into plots and sold @Rs. 300/- per sq.mt.

8. The sale transaction of March 2005 was between M/s. Sateri Contractors and

Developers and Chetan Phadte pursuant to which the purchaser had purchased a plot admeasuring Rs. 268 sq.mts. for the total consideration of Rs. 79000 i.e. Rs. 295/- per sq.mt. and which originally belonged to the family of Dhupkar who had entered into Development Agreement with the developers M/s. Sateri Contractors. The Sale Deed of August 2004 was entered into between M/s. Sateri Contractors and Developers on the one hand as the Developers, Mindas Shet as the purchaser and the family of Dhupkar as owners pursuant to which a plot admeasuring 252 sq.mts. was sold @Rs. 302/- per sq.mt. This too was a developed plot like the first. The third sale instance relied by the original applicant of December 2005 was again between M/s. Sateri Contractors and Developers as the developers, Pratap Naik as the purchaser and Dhupkar as the owners whereby a plot admeasuring 306 sq.mts. was sold Rs. 458/- per sq.mt., again being a developed plot.

9. The original applicant had also examined one Pradosh in support of his case who stated that he was familiar with the acquired land in which there was cultivation of coconut trees, babana plantation, arecanut and other spice cultivation and the land was situated at a distance of 10 mts. from the Marcela-Savoiverem road, 25 mts. from the Village Panchayat of Betqui- Candola and 250 mts from the Primary Health Centre while the land of Dhupkar was at 50 mts. distance from the acquired land. Village Marcela was at a distance of 1.5 mts. from the acquired land which had building potential. It is another matter that he could not state the survey numbers of the acquired land nor its boundaries to mention that the applicant's property was close to the property of one Pandurang Gaonkar which too was cultivated like the acquired land and being orchard land.

10. Admittedly, the original applicant had not examined any expert witness in support of his case. Nonetheless, the learned reference Court was seized of the fact that though the acquisition was in the year 2002 and the sale instances were of the subsequent years i.e. 2004-2005 which were post-notification; nonetheless the learned reference Court rightly did not see any justification to disallow such sale instances being considered in computing the market value of the acquired land. In that context the learned reference court was clearly swayed by the judgment of the Bombay High Court in Chindha Sonawane (supra) where the High Court had held that the post notification sale instances were not irrelevant and could not be discarded merely because they were effected two or three years after the relevant date. The learned reference Court also considered another judgment of the Bombay High Court in Special Land Acquisition Officer (N) & another v. Ramesh Mahadev Sinai Mulgaonkar [2005 (4) Bom. C.R. 234] in respect of the post-notification sale transaction and allowed the deduction while computing the compensation in respect of the acquired land. The learned reference Court therefore took into consideration the sale instance of August 2004 being the most proximate in point of time to the Section 4 Notification and after making due concession towards development, fixed the market of the acquired land of Rs. 302/- per sq.mt.

11. In *Chindha Sonawane* (supra), Their Lordships held that there was no general rule that when considering sale instances, post notification transaction are to be ignored altogether. Section 23 and 24 of the Act do not prohibit post-notification sales from being taken into consideration while determining the market value. The distance of time by which a particular transaction is divorced from the date of relevant notification will have a bearing on the probative value and impact of that transaction. It must generally depend upon the purpose of the acquisition. The question whether a particular transaction though post-notification one is relevant and can afford a guide for determining the fair market value of the property acquired as on the date of the Notification will depend on the facts and circumstances of each case. Just as a transaction effected long before the date of notification will be of no value, similarly the transactions long after Notification will have to be ruled out. But merely because the transaction is effected two or three years after the date of Notification, it cannot be rejected as irrelevant.

12. In *Male Pullamma* (supra), the Notification under Section 4 [1] of the Land Acquisition Acts, 1894 acquiring distinct land in Siddanti village of Shamshabad was published on 16/10/1982. The Land Acquisition Officer in his award dated 13/05/1987 determined compensation @20,000/- per acre and awarded Rs. 63,616/- towards the value of the structures constructed on the land in which poultry farms were set up. On reference, the Subordinate Judge, Ranga Reddy District by his award and decree dated 20/02/1991 enhanced the compensation to Rs. 35,000/- per acre and awarded Rs. 50,000/- towards the value of the structures giving rise to an appeal before the Division Bench of the High Court, which enhanced the compensation to Rs. 14/-per square yard working out to Rs. 67,800/- per acre and remitted the case with regard to determination of the value of the structures and finally giving rise to the appeal by Special Leave.

13. In *Male Pullamma* (supra), it was contended on behalf of the respondent that the High Court had accepted the sale instance on 08/09/1982, earlier to the Section 4 Notification and after giving deductions at 53% towards the developmental charges etc. determined the market price at Rs. 14/- per sq.yd. and therefore the fixation of the market value was not vitiated by any error of law. Their lordships of the Apex Court however did not find force in the contention. The respondents themselves had admitted during the cross-examination that the lands were agricultural lands in which the poultry farm was set up. The reference Court and the Land Acquisition Officer had found that the lands were agricultural lands unlike the High Court which had noted in the judgment that some development had already taken place around the area and there was a railway station, hospital and school etc. in the neighborhood and therefore the lands had the potential value for building purposes. In these facts, the Apex Court found that the finding was wholly unsustainable and allowed the appeals. This Judgment with respect is clearly distinguishable inasmuch as though the applicant had stated that it was an agricultural land, it was also stated to be an orchard land and had many facilities in the neighborhood and

hence it could not be said that it lacked building potential.

14. In *P. Ram Reddy (supra)*, the Hon''ble Apex Court held that the fact that the acquired land had been acquired for building purposes, cannot be a sufficient circumstance to regard it as a land with building potentiality. Possibility of user of the acquired land for building purposes can never be wholly a matter of conjecture and surmise or guess. On the other hand, it should be a matter of inference to be drawn based on appreciation of material placed on record to establish such possibility. Material so placed on record or made available must necessarily related to the matters such as :

- (i) the situation of the acquired land vis-a-vis, the city of the town or village which had been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population;

- (ii) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;

- (iii) possibility of obtaining water and electric supply for occupants of buildings to be put up on that land;

- (iv) absence of statutory impediments or the like for using the acquired land for building purposes;

- (v) existence of highways, public roads, layouts of building plots or developed residential extensions in the vicinity or close proximity of the acquired land;

- (vi) benefits or advantages of educational institutions, health care centres, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land; and

- (vii) lands around the acquired land or the acquired land itself being in demand for building purposes, to specify a few.

15. The learned Reference court had deducted more than 20% towards the sale transaction of 2004 since it was subsequent to the Section 4 Notification, more than 40% was deducted towards development and 10% being orchard zone and computed the compensation of the acquired land at Rs. 90/- per sq.mt. Therefore, no fault can be found with the findings of the Reference Court awarding Rs. 90/- per sq.mt. for the acquired land and as rightly submitted by Shri Pangam some amount of guess work was necessary in such type of cases. The contention of Ms. Kamat, learned Additional Government Advocate for the appellant that there was no comparison with the acquired land or there was no cogent evidence on the building potentials of the acquired land, therefore, does not stand the test of scrutiny. Therefore although the applicant had not examined an expert, it cannot be taken as a factor for disbelieving his testimony and when his witness supported his case for the enhance compensation. The learned Reference Court had therefore rightly determined the market value of the acquired land @Rs. 90/- per sq.mt. which does not justify any interference in appeal. i therefore do not find any merit in the appeal and hence pass the

following ORDER

The appeal is dismissed with no order as to costs confirming the Judgment of the Reference Court awarding Rs. 90/- per sq.mt. in favour of the respondents who is also held entitled to all the statutory benefits under the law.