
(1982) 02 BOM CK 0043
In the Bombay High Court
Case No : First Appeal No. 634 of 1975

L.Y. Lagoo

APPELLANT

Vs

The Special Land Acquisition Officer (2), Pune and Another

RESPONDENT

Date of Decision : 06-02-1982

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 35

Citation : AIR 1982 Bom 440

Hon'ble Judges : Masodkar, J;Bharucha, J

Bench : Division Bench

Advocate : K.J. Abhyankar, for the Appellant; M.R. Kotwal, Govt. Pleader and N.P. Hombalkar, Asstt. Govt. Pleader, for the Respondent

Judgement

Masodkar, J.—This appeal questions the order made by the Land Acquisition Court i.e. the Court of the Joint Judge, Pune, i.e. the Court of the Joint Judge, Pune, u/s 18 of the Land Acquisition Act, 1894, deciding the compensation mentioned, at the outset, that the Land Acquisition Officer granted the rate of Rs. 8/- Per sq. It on the basis of the instances cited on behalf of the appellant as well as the enquiry. He awarded the compensation at the flat rate, the area being 16,839 sq. It, There existed a structure, which is valued at Rs 6,000/- as compensation. In the compensation reference under S. 18 of the Land Acquisition Act. 1984, the learned trial Judge, by the impugned judgment, found against the appellant, holding that the land should be valued by applying belt system and he granted three rates of compensation. It is surprising to observe that, for the third block or belt the learned trial Judge was pleased to even reduce the rate and fix it at Rs. 5/- per sq. Ft, even much lower than the one granted by the Land Acquisition Officer. In the view of the learned trial Judge, this method of belting indicated that the market value of the land in belt No. 1 in Block No. 2 was Rs. 11/- per sq. Ft., while that in belt No. 2 was Rs. 7/- per sq. Ft, and the value of the land in belt No. 1 in Block No. 2 was Rs. 11/- per sq. Ft., while that in belt No. 2 was Rs. 7/- per sq. It and the value of the land in block No. 1 was Rs. 5/- per sq. Ft. We were at pains to understand to how the learned

trial Judge reduced the compensation awarded at a flat rate by the Land Acquisition Officer, being Rs. 8/- per sq. Ft., and then, calculating the totals at the lower rates, came to the conclusion that nothing was payable to the appellant. Suffice it to observe that unless the rate of compensation granted by the Land Acquisition Officer was challenged by the State or the acquiring body, in any manner, such a recourse was not available. The trial Court was bound to proceed on the basis that the rate offered was the minimum to which the appellant was entitled and that the only issue that arose concerned with its inadequacy. Unless this salutary position and principle is kept in view, it is likely to work unfair results in references seeking orders for enhanced compensation. The right conferred by S. 18 is in favour of an aggrieved party so as to seek enhancement and not to have the appellate adjudication with regard to the rate which has been already awarded. If, in a given case, the claimant does not establish the inadequacy, he fails, but that is no reason for the Court to hold that the Land Acquisition Officer should have awarded lesser rate for a piece and then by working out totals to reject additional fair compensation. As we see, the dispute related to the rate at which fair compensation was required to be worked out and there arose no other question for consideration.

2. In fact, in the present case by following belting system, for one half the Court considered higher rate as would be adequate and for others lower rates than given by the Award. In such case, the claimant would be entitled to additional compensation for the first half along with whatever awarded for other. Surely, the claimant seeks the fair value for each part and parcel as makes the entirety of the land. Belting, if permissible, is a method of parceling for valuation and that cannot lead to the result of refusing additional compensation by totaling the belts. On the other hand, each belt, by very nature would be specific parcel to be valued as such. The error thus is apparent on the face of record.

3. On merits. Mr. Abhyankar, the learned Counsel for the appellant submitted that because of erroneous approach even the eventual result is affected. He took us through the evidence that consists of oral statements of the witnesses, being Vishnu Vinayak Deshpande (C.W. 1) Sadu Genu Chavan (C. W 2), Vishwanath Waman Agashe (C. W. 3) and Babulal Tulshiram Gunta (C. W. 4) and so also the evidence of Gangadhar Datratraya Karkare (C. W. 1) examined for the State. Apart from the oral evidence, there are statements showing the sale instances relied upon by the appellant and also by the acquiring body.

4. Mr. Hombalkar, Asstt, Govt, Pleader, on the contrary submitted that there was no cause for interference, firstly contending that the learned trial Judge was entitled to apply belting method and, secondly, that the area being large, the sale instances for smaller areas should not be treated as comparable for determining the reasonable rate payable to the appellant.

5. After considering the evidence and the submissions of both the learned Counsel, we are of the view that it is not possible to apply belting system for the purpose of valuation of the market rate in the present case. It is undisputed that

the acquired property lies in the heart of Puna city. It is a commercial as well as residential locality and has a potentiality for both commercial as well as residential purposes. It is a compact parcel of land surrounded by roads and sub-roads that meet the main busy street called "Llama Road". In such a situation there is no possibility that any area could be evaluated by reason of its location or any of its particular features or property. In such matters the central consideration is the willing purchaser notionally conceived ready to pay a price in the context of the market rate. Belting may be useful only from that angle when depth and remoteness of areas affect economic considerations and indicate possible variations in prices. Though, therefore, the area is large, being 16,829 sq. ft., the effort to divide it in parcels of belts for different rates by the Assessing Valuers to us that belting system if applied would not further the ends of justice so as to afford relief of just and equitable compensation. The evidence of the valuers proceeds on the assumption and not on any good reason. We are not impressed by the evidence of witness Karkare that the area should be divided into two blocks for the purpose of evaluation. It is significant to observe here that even the Land Acquisition Officer, who made the Award, eventually offered a flat rate or average rate of Rs. 8/- per sq. ft. We, therefore, reject the purpose of working out the compensation in the present case.

6. Once this aspect is so decided then the narrow controversy is, what should be the reasonable rate of compensation? Section 4 notification has been issued, in the present case, on Nov. 18, 1965. The admitted evidence shows that in this area the property fetches in the open market quite a higher rate than the one granted to the appellant. At Appendix "A" which is not in dispute a higher rate than the one granted to the appellant. At Appendix "A" which is not in dispute, the instances are granted in two parts and consists of statement of sale instances collected by the appellant as well as the sole instances available on the office record of the Land Acquisition Officer. There is an instance of previous acquisition having reference to the date Apr., 23, 1964, These instances, for the purpose of the present appeal, are not seriously in dispute. In fact, they were not in dispute even before the Land Acquisition Officer. The oral evidence of the Vishnu Deshpande shows that he seeks to have Rs. 15/- per sq. ft. The evidence of Sadu Chavan shows that he purchased CTS No. 371 from Sadashiv Petn. Pune, for a sum of Rs. 29,100/- for the purpose of starting a flour mill. His Cross-examination shows that he was in need of the land as he wanted to shift his flour mill to the plot so purchased by him. Vishwanath Agashe, who is Engineer and Valuer, has spoken how he worked out the Valuer, has spoken how he worked out the value of the front area at Rs. 15/- per sq. ft., and the land under structure at Rs. 10/- per sq. ft. The evidence of Babulal Gupta is with regard to plot No. 362-C of Sadashiv Petn. Poona, which is purchased in 1964 for Rs. 25,000/- and he has spoken of the bidding, in the cross-examination, that was given before the Court of Wards and the lowest being Rs. 11,250/-. The evidence of expert Gangadhar Karkare, examined by the Land Acquisition Authority, is on the basis that the land could be divided in blocks and belts.

7. The oral evidence, therefore is not that much satisfactory, but as we have stated above, the undisputed sale instances clearly go to indicate the position of the market rates at which available properties were sold and purchased during the relevant time and even before 1965. Turning to Appendix "A" and the instances therein, we have the instance of first of May 30, 1960, involving 702 sq. Ft, which fetched Rs. 17,000/- at the rate of Rs. 24,22 per sq. Ft. Then we have the instance of Sept. 14, 1962 of CTS No. 773 (old) where the rate works out to Rs. 6-56 per sq ft. Then, there is land acquisition compensation paid for portions CTS Nos. 894 to 897 vide notification u/s 4 of the Land Acquisition Act, 1894, of April 23, 1964 and the compensation awarded ranged from Rs. 13/- per sq. Ft. To Rs. 15/- per sq. Ft. Those lands were situated at Bajirao Road and Tulsibag Road, and it appears that from portions were acquired. Then the two places of 1914 sq. Ft. Being CTS No. 361/1 (old) and CTS No.361/B (old) appear to have been sold on Oct.16, 1964 and Dec. 21, 1964 respectively, and the rates paid by the purchaser were Rs. 13/- per sq. Ft, and Rs. 15-20 per sq. Ft. The instances, which were collected during the enquiry, are four and they show that for a piece of 505 sq. Ft. (CTS No. 346) (old) sold the rate paid on Mar., 28, 1963 worked out to Rs. 12.77 per sq ft (CTS No. 729/B) (old) purchased on Oct., 8, 1964, the rate worked out to Rs. 11-18 per sq. Ft. It may be mentioned that along with the structures these rates were paid and for the land the rates worked out, even according to the official calculation, between Rs. 9 10/- per sq. Ft.

8. These sale instances cannot be brushed aside by observing that they relate to smaller areas. Suffice it to say that, in the heart of city like Pune and particularly when the area is being used for commercial and residential purposes, even such smaller places, unless there are some special distinguishing features, may be indicative of the ruling market rate. It is not as if that all these sales were not voluntary or that they were the result of some compulsive circumstances. On the other hand, the transactions indicate that they were bona fide purchase transactions with regard to areas as were available in Sadashiv Peth in Pune town. We do not accept the approach that all these sale instances should be rejected only because the area in each case happens to be smaller area and the area under acquisition is large one. We can only keep this factor in mind while assessing the fair valuation.

9. Therefore, these instances unmistakably show that a willing purchaser wanting to purchase land in the year 1964, was willing to pay not less than Rs. 10/- per sq. Ft. For the land and, if it had any structure, the rate could even rise to Rs. 15/- or Rs. 18/- per sq. Ft.

10. Once this position is available, we have to work out reasonable rate that should be made available by way of compensation in the year 1965. After considering the evidence, the potentiality of the area and the location, we think that the rate of Rs. 12/- per sq. Ft, would be a fair compensation of the value of the land.

11. There is a structure and that has been valued at Rs. 6,000/- For the

appellant, no serious grievance is made with regard to that valuation.

12. In the result, therefore, the present appeal is allowed. The impugned judgment is set aside and it is adjudged that, apart from the compensation of Rs. 6,000/- for the structure, the appellant was entitled to compensation for the land at the rate of Rs. 12/- per sq. Ft. Respondent No. 1 therefore, is directed to pay additional compensation of Rs. 67,356/- and the solarium of Rs. 10,103-50 and the solatium of Rs and the interest at 4% p.a. from the date of taking possession till payment. Though the appeal thus succeeds. There would be no order as to costs in the appeal.

13. Appeal allowed.