

(2023) 01 BOM CK 0004
In the Bombay High Court
Case No : First Appeal No. 83 Of 2004

Madhavrao Venkabo Hulnabade

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 03-01-2023

Acts Referred:

Citation : (2023) 01 BOM CK 0004

Hon'ble Judges : Sandipkumar C. More, J

Bench : Single Bench

Advocate : K.P. Rodge, P.M. Kulkarni

Final Decision : Dismissed

Judgement

Sandipkumar C. More, J

1. The appellant i.e. the original claimant has challenged the judgment and award dated 12.12.2001 passed by the learned Civil Judge (Senior Division), Ahmedpur (hereinafter referred to as "the learned Reference Court") in L.A.R. No. 1887/2001 (old L.A.R. No. 953/1990). Under the said Land Reference, the appellant had sought enhancement of the compensation awarded by Special Land Acquisition Officer (S.L.A.O.), but it was rejected by the learned Reference Court.

2. The background facts are as under :

The respondent State acquired land admeasuring 81 R owned by the appellant out of Survey No. 117 of village Shambhu Omerga, Taluka Udgir, District Latur for Sakol Medium Project. According to the appellant, the market value of his acquired land, at the relevant time, was Rs. 25,000/-per Acre, and therefore, he was entitled for an amount of Rs. 50,500/-. The S.L.A.O. granted compensation of Rs.14,170/-, that means, around Rs. 7000/- per Acre. As such, the appellant had filed the aforesaid Land Reference, but it was dismissed by the learned Reference Court. Hence, this appeal.

3. The learned Counsel for the appellant vehemently argued that despite the claim of the appellant of Rs. 25,000/-per Acre, the S.L.A.O. granted meager compensation and the Reference Court, despite adducing evidence by the appellant, failed to consider the same and erred in rejecting the Land Reference. He submits that the appellant had in fact produced on record the sale instances at Exhs. 15 and 42 showing that the market rate of the lands under the acquisition was Rs. 40,000/- per Acre, but those sale deeds were also disbelieved by the Reference Court by observing that the witnesses examined in respect of the same were only attesting witnesses and neither vendor nor the vendee were examined. He pointed out that the State Acquiring Body though examined Registrar, but his rates were based on ready reckoner only and not on the market price. He also submitted that two Land References, filed by other villagers for the same project or acquisition, were allowed by the learned Reference Court by granting rate to the tune of Rs. 35,000/- per Acre, but that was also not considered by the Reference Court. Thus, he prayed for enhancement of compensation by setting aside the impugned judgment and award passed by the learned Reference Court.

4. On the contrary, learned A.G.P. supported the impugned judgment and pointed out that the Sub-Registrar, who was examined by the State before the learned Reference Court, had brought on record the sale instances for villages Shend and Daithna showing the market price of the lands situated there from the year 1981 to 1983, and therefore the rate granted by S.L.A.O. was proper. He submits that the appellant could not produce before the learned Reference Court any sale instance of his village of the relevant time. As such, he prayed for dismissal of the appeal.

5. Heard rival submissions and also perused the impugned judgment alongwith record and proceeding of the original Land Reference. It appears that evidence on record is not available in the said record and proceeding. However, it can be observed from the findings given by the learned Reference Court as to what type of evidence was adduced by the rival parties.

6. It is significant to note that the appellant has challenged the impugned judgment and award on three grounds that the sale instances showing the market price of the lands under acquisition as Rs. 40,000/- per Acre at Exhs. 15 and 42 were not considered by the Reference Court and that the Reference Court did not believe the witnesses on the aforesaid sale instances merely because they were attesting witnesses and that the learned Reference Court also discarded the judgments in two Land Acquisition References arising out of the same acquisition filed by other villagers wherein rate of Rs. 35,000/- per Acre was granted by the Reference Court.

7. So far as the aforesaid sale deed at Exhs.15 is concerned, it is in respect of the land situated in Borol village wherein 16 Gunthas land was sold for Rs. 15,000/-. Further, the second sale deed (Exh.42) is in respect of the land at village Dhangarwadi and in the same, area of 22 R was sold for Rs. 17,000/-.

These sale deeds appear to be of the year 1983. However, in the first sale deed it was found from the evidence of attesting witness that there was river by the southern side of village Borol. Moreover, in case of second sale deed, there was tamarind tree and a well. However, it is extremely important to note that both the sale instances are from different village namely Borol and Dhangarwadi, which are situated at the distance of 3 kms. from the present land under acquisition. It is significant to note that the appellant did not produce any sale instance in respect of the lands situated at village Shambhu Omerga. It further appears that the lands at village Shend, Daithna and Shambhu Omerga are situated in the close vicinity, but the aforesaid sale instances being from different villages situated distantly to village Shambhu Omerga, therefore cannot be considered as comparable sale instances. Thus, the submission that the learned Reference Court did not consider the aforesaid sale instances does not have any force.

8. So far as the two Land Acquisition References filed by the other villages in respect of the same acquisition wherein rate of Rs. 35,000/- per Acre was granted by the learned Reference Court, are concerned, the learned Reference Court have discarded the same as there was no contest by the State in true sense. A perusal of the impugned judgment indicates that the learned Reference Court granted higher rate for the lands involved therein only because the State did not adduce any evidence as to what was the prevailing rate at the relevant time in respect of the lands involved therein. However, in the present case, the State has examined Sub-Registrar who has produced various sale instances from village Daithna and Shend showing the rates at the relevant time. As such, the observation in the judgments in aforesaid Land Acquisition References, are not helpful to the appellant as it appears that the learned Reference Court, after appreciating the entire evidence on record, has decided the instant matter.

9. It is extremely important to note that the present respondent State had in fact examined concerned Sub-Registrar as it's witness, who produced copies of Index No.II as well as the sale instances which are on record from Exhs.51 to 73 in respect of the lands situated at Shend Village and Daithna Village. On perusal of the impugned judgment it is evident that the learned Reference Court has mentioned the rates prevailing in the period from 1981 to 1983 therein at Para-21 as well as Para-24. From the aforesaid Index No.II extracts and the transactions it transpired that the lands at village Shend were having market value of Rs. 2,000 to Rs. 3,500/- per Acre, whereas the lands at village Daithna were having market value of Rs. 1,000/- to Rs. 3,500/- per Acre during the period from 1981 to 1983. Therefore, the rate awarded by the S.L.A.O. of Rs. 7,000/- per Acre for the land in the instant matter, appears proper. Thus, considering all these aspects, I am of the opinion that the learned Reference Court rightly dismissed L.A.R. No. 1887/2001 filed by the present appellant observing that the appellant failed to prove that the compensation awarded by S.L.A.O. was inadequate. Therefore, no interference is required in the impugned judgment and award. Resultantly, the appeal fails and accordingly dismissed.