(2017) 07 BOM CK 0187

In the Bombay High Court

Case No : 490 of 2005

Maharashtra Industrial Development Corporatin	APPELLANT
Vs	
Ram Saju Rathod, since deceased: Smt Tarabai w/o Ram Rathod, & Ors.	RESPONDENT

Date of Decision : 13-07-2017

Acts Referred:
Maharashtra Industrial Development Act, 1961, Section 23, Section 32(2) - Deposits - Compulsory acquisition

Citation : (2017) 07 BOM CK 0187

Hon'ble Judges : S. B. Shukre

Bench : SINGLE BENCH

Advocate : M. M. Agnihotri, S. U. Nemade, S. B. Bissa

Final Decision : Allowed

Judgement

1. This appeal challenges the legality and correctness of the judgment and order dated 29.8.2003 passed by the Joint Civil Judge, Senior Division, Pusad in Land Acquisition Case No. 34 of 1996.

2. 0.10 hectare of land from survey number 26 situated at village Dhanora (Bk) belonging to respondents no. 1 (a) to 1 (e) was acquired for public purposes under the provisions of the Maharashtra Industrial Development Corporation Act (for short, the "MIDC Act"). Section 32 (2) MIDC Act notification was issued on 30.11.1989 and the Award was passed by the Land Acquisition Officer on 13.11.1995. The rate determined by the Land Acquisition Officer was of Rs. 5668/ per acre or Rs. 14000/per hectare and accordingly, for the acquired land, compensation was determined. A reference application was moved by the respondents as they felt that the compensation so awarded to them by the Land acquisition Officer was inadequate. On merits of the case, the Reference Court found, on the basis of a subsequent sale instance, the rate determined by the Land Acquisition Officer was insufficient and accordingly, the Reference Court

enhanced it to Rs. 80,000/per acre or Rs. 1,97,600/per hectare by the impugned judgment and order. The appellant has questioned such an approach of the Reference Court in the present appeal.

3. I have heard Shri M. M. Agnihotri, learned counsel for the appellant; Shri S. U. Nemade, learned counsel for the claimants and Shri S. B. Bissa, learned Assistant Government Pleader for respondents no. 2 to

4. I have gone through the record and proceedings.

4. The point that falls for my consideration is : Whether the compensation awarded by the Reference Court for the acquired land is on higher side ?

5. Shri Agnihotri, learned counsel for the appellant submits that a postnotification sale instance cannot be considered as a reference point for determination of the market value of the acquired land. He has placed his reliance on General Manager, Oil And Natural Gas Corporation Limited v. Rameshbhai Jivanbhai Patel & anr reported in (2008) 14 SCC 745 and Bhupal Singh & ors v. State of Haryana reported in (2015) 5 SCC 801.

6. Shri Nemade, learned counsel for the claimants submits that there is no complete bar for relying upon the postnotification sale instance and if there is no other material available on record, use of such sale instance can be made by adopting cautious approach. Shri Bissa, learned Assistant Government Pleader submits that the law laid down by the Hon''ble Apex Court is a matter of record.

7. In the case of Rameshbhai (supra), the Hon''ble Apex Court has held that ordinarily the postnotification sale instance should not be used as a reference point and when it becomes inevitable for the Court to make use of such sale instance, the Court should be extremely cautious in doing so and determine market value of the acquired land. Subsequently, in the case of Bhupal Singh (supra), the Apex Court observed that such a practice should be altogether given up as it is not at all provided in the MIDC Act. The relevant observations of the Hon''ble Supreme Court appearing in paragraph 27 are reproduced below :

"27. As rightly argued by the learned counsel for the respondent, the fair market value of the acquired land is required to be determined under Section 23 of the Act on the basis of the market rate of the adjacent lands similarly situated to the acquired lands prevailing on the date of acquisition or/and prior to acquisition but not subsequent to the date of acquisition. In appropriate cases, addition of 10% per annum escalation in the prices specified in the sale deeds (if filed and relied on) in relation to adjacent similarly situated lands for fixing the market value of the acquired land may be permitted. Such is, however, not the case in hand. Here is the case where firstly, no sale deeds were filed by the appellants to prove the fair market value of the acquired land and secondly, what they now want this Court to do is to take into consideration the rate of those lands which were acquired ten years after the date of acquisition in question and then reduce the value of such land by 10% every year so as to determine the fair market value of the acquired land in question. In our view, such procedure for determination is not provided in the Act."

8. It is clear from the law so laid down by the Hon''ble Apex Court that it would not be permissible for the Court to consider postnotification sale instances so as to determine the market value of the acquired land previously. In the instant case, the method adopted by the Reference Court is contrary to the law settled by the Hon''ble Supreme Court and it will have to be said that the determination of the market value made by the Reference Court to be at Rs. 80,000/per acre is illegal and it deserves to be quashed and set aside.

9. Now, the question would be, how the correct market value of the acquired land could be arrived at and the answer to the question, seems difficult to come by, given the gross and vague nature of the evidence tendered by the claimants and it would have to be found out mostly by resorting to guesswork based on reasonable estimation.

10. In the instant case, there is no dispute about the fact that the acquired land was converted into nonagricultural use with the permission for the same having been granted about three years prior to Section 32 (2) Notification. This would show that the acquired land had the nonagriculture potential and some value addition for such nonagriculture potential would be needed. The Award passed by the Land Acquisition Officer, however, does not take into consideration the nonagriculture potential of the acquired land. Then, it would fall upon this Court to undertake this exercise and doing so, I find that it would be just and proper to say that for the nonagriculture potential of the acquired land, to the value determined by the Land Acquisition Officer an equal value would have to be added. The value or the rate determined by the Land Acquisition Officer was of Rs. 5668/per acre and by adding the equal value to this rate on account of nonagriculture potential, the prevalent market value of the acquired land would come to Rs. 11,336/per acre at the relevant time. In my view, this value of the acquired land could be said to be the one which the acquired land could have fetched at its best at the relevant time in the open market. Therefore, I find that the claimants would be entitled to receive compensation for the acquired land @ Rs. 11,336/per acre. The claimants will also be entitled to receive same rate of interest and benefits on this value as given in the impugned Award.

11. At this juncture, learned counsel for the claimants has invited my attention to the market value determined by this Court in a bunch of First Appeals decided on different dates. These are, FA No. 477 of 1995 with FA No. 153 of 1997; FA No. 437 of 1995 with FA No. 600 of 1995; FA No. 603 of 2003 with FA No. 221 of 2007 and FA No. 89 of 1995 decided respectively on 13.7.2012, 18th June 2012, 22nd September 2015 and 3rd April 2009. In these appeals, market values of the different lands have been determined to be @ Rs. 3,75,000/per hectare and Rs. 3.50 per square foot. All these lands are from village Lakh, Mahagaon and Ukhali. Sofar as the market values determined by this Court in all those cases are concerned, there cannot be any dispute about the same. But the difficulty is

about adoption of those market values in the instant case. If those market values are to be followed for determination of the market value of the land acquired in the present case, there has to be present on record some material which would go to show that the land acquired in the instant case is quite similar to the land acquired in those First Appeals. Unfortunately, there is absolutely no clue provided in this regard by the claimants when they tendered evidence before the Reference Court. They have not even made any reference to the lands situated at such villages as Lakh, Mahagaon and Ukhali. Therefore, the judgments referred to above will be of no use to the claimants in the present case.

12. Before parting with this judgment, I deem it necessary to address the argument of learned counsel for the claimants regarding need for remanding this matter back to the Reference Court. He submits that a just and fair opportunity should be given to the claimants to bring on record relevant material to enable the Reference Court to determine the prevalent market value of the acquired land. However, I must say that the ground and prayer relating to remand of the matter has been given up by the appellants and that they have not raised any sort of challenge to the judgment and order impugned herein on account of improper determination of the market value based on reasonable estimation by the claimants. Therefore, such a submission cannot be accepted and it stands rejected.

13. Appeal is partly allowed and the impugned judgment and order stand modified in terms of observations made in paragraph 9 hereinabove. Claimants who have already withdrawn the entire amount deposited in this Court by the appellant, shall deposit the amount which has been withdrawn by them in excess following the final order passed in this appeal, within a period of six months from the date of this order, failing which the appellant may recover the excess amount from them by adopting due process of law.

