(2015) 09 BOM CK 0276

In the Bombay High Court

Case No : First Appeal Nos. 588 of 2003 and 191 of 2004

Maharashtra Industrial Development Corporation and Others APPELLANT

Vs

Pradeep Kaniram Jadhao and Others RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 24, 4, 51-A
Maharashtra Industrial Development Act, 1961 — Section 32(2), 34

Citation : (2015) 09 BOM CK 0276

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : M.M. Agnihotri, Advocate, for the Appellant; D.G. Patil, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.—Since both these appeals arise out of challenge to the judgment of the Reference Court dated 29-8-2003 in L.A.C. No. 200/1993 they are being decided by this common judgment.

2. Land admeasuring 2 Hectares 18R of village Asarpend, Taq. Pusad bearing Survey No. 42/2-A was sought to be acquired for development of Growth Center of the Maharashtra Industrial Development Corporation (MIDC for short). Notification under Section 32(2) of the Maharashtra Industrial Development Corporation Act, 1961 (for short the Act of 1961) was published on 2-11-1989. The Special Land Acquisition Officer passed the award on 28-10-1992 and granted a sum of Rs. 12,000/- per hectare. Being aggrieved by the amount of compensation granted, the claimant filed proceedings for seeking enhancement in the amount of compensation under Section 34 of the Act of 1961 along with Section 18 of the Land Acquisition Act, 1894 (for short the said Act). The reference Court by the impugned judgment granted compensation @Rs. 1,20,000/- per acre which comes to Rs. 3,00,000/- per hectare. The MIDC is aggrieved by grant of aforesaid compensation and it has preferred First Appeal

No. 588/2003. The claimant not being satisfied with the amount of compensation granted by the Reference Court has filed First Appeal No. 191 of 2004.

3. Shr M.M. Agnihotri, learned Counsel for the appellant in First Appeal No. 588/2003 submitted that the Reference Court was not justified in granting compensation at the rate of Rs. 1,20,000/- per acre. It was submitted that the evidence on record did not justify aforesaid enhancement in the amount of compensation. Referring to the sale instances on record, it was submitted that Exhibit-23 was in respect of transaction dated 4-1-1985 for a small piece of land of village Vithala. Similarly, the award of the Reference Court in LAC No. 238/1992 at Exhibit-24 was in respect of the land located at Shivanagar which was near the State Highway and, therefore, the Reference Court had granted compensation of Rs. 1,50,000/- per acre. It was submitted that though First Appeal No. 414/1994 challenging aforesaid award was dismissed for want of prosecution, the judgment of the Reference Court did not deserve consideration as said land was not located near the acquired land. It was further urged that the sale instance at Exhibit-114 was in relation to a sale deed executed in favour of the wife of the claimant on 29-6-1989. 2 Hectares 97R land had been purchased for Rs. 35,000/- at village Ghatodi. Relying upon the decision in Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, , it was submitted that the wife of the claimant being the vendee, this sale instance could not be ignored. Similarly, the sale instance at Exhibit-143 was dated 29-3-1989 for land admeasuring 1 Hectare 42 R also at village Ghatodi. The consideration therein was Rs. 24,500/-. It was, therefore, submitted that considering these sale instances, the amount of compensation awarded by the Reference Court deserves to be reduced.

It was then submitted that no comparative assessment of the various sale instances had been made by the Reference Court before taking the same into consideration. Relying upon the judgment of the Division Bench in Smt. Isabela Gama (deceased) represented by legal heirs Shri ShankerJaganath Kuttikar and Others Vs. Special Land Acquisition Officer, , it was submitted that such comparison was necessary. Moreover, the land acquired was large in size and, therefore, sale instances of smaller pieces of land could not be taken into account. Reference was also made to various maps on record to indicate location of the acquired land in comparison with other lands. It was further submitted that non consideration of the sale instance at Exhibit-143 due to non-examination of the Vendor was incorrect in view of the decision of the Supreme Court in Cement Corporation of India Ltd. Vs. Purya and Others, . It was further submitted that agricultural land had been acquired and in view of provisions of Section 24 of the said Act, its future use could not be considered a relevant factor while determining market value. The learned Counsel, therefore, submitted that in absence of sufficient evidence on record, the Reference Court was not justified in enhancing the amount of compensation. Relying upon the judgment of the Division Bench in Shri Bala Atmaram Sahakari, Shri Ashok Atmaram Sahakari, Mrs. Vijaya A. Sahakari and Shri Madhav A. Sahakari Vs. The

Deputy Collector and S.D.O., Ponda Sub Division and The Executive Engineer, Works Division XV P.W.D., , he submitted that the impugned award has resulted in unjust enrichment in so far as the claimant is concerned. He, therefore, sought for setting aside the impugned award.

4. Shir D.G. Patil, learned Counsel for the appellant in First Appeal No. 191 of 2004 on the other hand submitted that considering the evidence on record, it was a case for enhancing the amount of compensation. It was submitted that the acquired land was near Pusad -Yavatmal State Highway. The fact that the land was acquired for setting up a development center of the MIDC itself indicated that it had great non-agricultural potentiality. According to him, the purpose for which acquisition was made could not be ignored and the same was a relevant factor. Relying upon the adjudication in LAC No. 238 of 1992 -Exhibit-24, it was submitted that one acre land acquired at Shivanagar had been granted compensation Rs. 1,50,000/- per acre by the Reference Court. First Appeal No. 414 of 1994 filed by the State had been dismissed and, therefore, said adjudication had attained finality. According to him, the aforesaid land acquired as per Exhibit-24 was inferior in quality than the land of the claimant. Said land was located at Shivanagar which was just beyond the boundary of Asarpend village. It was then submitted that the sale instance at Exhibit-143 was not very relevant considering its location and, therefore, the same was rightly discarded by the Reference Court. He then submitted that the sale instances at Exhibits-23 and 114 were between the villagers and the lands therein had not been purchased for commercial use. He further urged that amongst the sale instances on record, the one having highest value ought to be preferred while determining just and fair compensation. In support of his submissions, the learned Counsel relied on the following judgments:

(a) Digamber and Others Vs. State of Maharashtra and Others, .

(b) Special Land Acquisition Officer and Another Vs. M.K. Rafiq Saheb, .

(c) Spl. L.A.O. City Improvement Trust Board Vs. S.G. Channabasavana Gowda and Another etc., .

(d) Nirmal Singh Vs. State of Haryana, .

(e) State of Maharashtra v. Chandrakant AIR 1991 SC 245.

5. The following points arise for consideration:

(1) Whether the judgment of the Reference Court calls for any interference?

(2) What order?

6. I have heard the respective Counsel for the parties at length and I have also gone through the evidence placed on record. It would first be necessary to refer to the relevant evidence available on record. The claimant examined himself vide Exhibit-20. In his deposition, he stated that village Asarpend was at a distance of about 4 to 4 1/2 kms from Pusad town. Said village was situated by the side of

Nanded -Nagpur State Highway. He then referred to existence of various non-agricultural units on the road from Pusad to Digras. He referred to purchasing plot admeasuring 2500 sq. ft. land on 4-1-1985 at Vithala for Rs. 17,000/- in the name of his wife. He then referred to the adjudication in LAC No. 238/1992 at Exhibit-24 and stated that said land was of inferior quality and was located at Shivanagar near the boundary of village Asarpend. He stated that after Asarpend village towards the direction of Digras, there was Ghatodi village. In his cross examination, he stated that he had purchased land admeasuring 2 Hectares 97 R at village Ghatodi for Rs. 35,000/- in the name of his wife. Said sale index was at Exhibit-114. He stated that he had not maintained any accounts to indicate income received from his agricultural operations.

Another witness examined was Ramadan Jadhav vide Exhibit-31. His land was adjoining the land of the claimant. He stated that he intended to convert his land for non-agricultural use.

7. On behalf of the Acquiring Authority, one Deorao Sawle vide Exhibit-96 who had passed the award was examined. He stated that award was passed on the basis of revenue assessment and sale instances of a particular group of lands in that area. In his cross-examination, he stated that at the time of acquisition, the development of Pusad-Nagpur road was in progress.

A petition writer -Vilas was examined vide Exhibit-141. Said witness had scribed sale deed at Exhibit-143 which was regarding purchase of land by MSEB. Land admeasuring 1 Hectare 42 R from village Ghatodi was purchased for Rs. 24,500/-. Another witness examined was Ramkrushna below Exhibit-144 who was a Revenue Inspector. He stated that the land which was acquired was situated on the right side as well left side of Pusad-Yavatmal State Highway. A village map at Exhibit-145 was referred to. He stated that the acquired land was touching the hilly area of village Asarpend. In his cross-examination, he stated that at a distance of about two agricultural lands from the MIDC area, village Asarpend was located. He admitted that from the MIDC area, the distance of Asarpend was less than the village Ghatodi.

On behalf of the MIDC its Head Surveyor -Sanjay Deshmukh was examined vide Exhibit-163. He stated that being a Surveyor, he had collected village maps and was present at the time of joint measurement. He stated that survey No. 42 was at a distance of 11/2 km from Pusad-Yavatmal State Highway as per map at Exhibit-99. In his cross examination, he stated that the acquired land was at a distance of one land bearing Survey No. 27 from the Highway. Survey No. 27 was a smaller piece of land.

8. On the basis of aforesaid evidence, the learned Judge of the Reference Court held that the rate of land at sale instances at Exhibits 23 & 24 could not be accepted as true market value of the land of the claimant. It was then observed that considering value of the land at Exhibit-23, the rate would about Rs. 2,75,000/- per acre and considering location of said land and reducing the rate

by half, it would come to Rs. 1,37,500/- per acre. It was then observed that as per Exhibit-24 land acquired for cremation ground was at Rs. 1,50,000/- per acre and it was thereafter concluded that in view of the potentiality of the acquired land, the value could be fixed at Rs. 1,20,000/- per acre.

The learned Judge of the Reference Court also recorded a finding on the basis of evidence on record that merely because the acquired land was near the hilly area, the same would not be a disadvantage especially when it was near the State Highway. The sale instance at Exhibit-143 was discarded by observing that neither the purchaser nor the vendor had been examined and that the petition writer would not be an appropriate person to depose about said sale instance.

9. An independent assessment of the evidence on record would be necessary for the purposes of considering correctness of the findings recorded by the Reference Court and also for the purposes of determining the appropriate market value that would result in grant of just and fair compensation. In so far as the location of survey No. 42/2-A is concerned, the evidence of the Head Surveyor of the MIDC vide Exhibit-163 appears to be acceptable. Being a Surveyor, it was his duty to identify appropriate lands considering the purpose of establishing a development center. His evidence can be considered for the purposes of coming to the conclusion that the acquired land was just adjacent to Pusad-Yavatmal State Highway, and between the acquired land and State Highway, only one land at Survey No. 27 was located. The area of Survey No. 27 was smaller than the acquired land. As per deposition of this witness, though in Exhibit-99 said land is shown at a distance of 1 1/2 Km from the State Highway, he admitted that said map was not as per scale and the distance was mentioned through guess work. He denied the suggestion that this distance was of only 100 feet. Considering his deposition and admission that there was only one small piece of land between the State Highway and the acquired land, it can be assumed that the acquired land was quite adjacent to Pusad-Yavatmal State Highway. Similarly, the aforesaid conclusion supported by the deposition of the Revenue Inspector vide Exhibit-144 who after referring to the map at Exhibit-145 has stated that the acquired land was situated on the right side as well as left side of Pusad-Yavatmal State Highway. Thus, from the evidence led by the Acquiring Authority, one gets a fair idea about the location of the acquired land.

10. In so far as the sale instances on record are concerned, there are two sale instances of village Ghatodi. The same are at Exhibits 114 and 143. The Reference Court was not justified in ignoring sale instance at Exhibit143 on the ground that the petition writer had been examined while bringing on record said sale deed. Considering provisions of Section 51-A of the said Act and the law as laid down in Cement Corporation of India (supra), a registered document of sale carries with it a presumption of genuineness which is rebuttable. Said sale instance, therefore, could not have been ignored only on the ground that it was brought on record through its petition writer. The submission in that regard made by Shri Agnihotri, learned Counsel for MIDC deserves to be accepted.

As regards land referred to at Exhibit-114 is concerned, it has been stated by the claimant that Survey No. 4/2 was situated at the extreme end of village Ghatodi in the area called as Jyoti Nagar. It is, therefore, clear that both the aforesaid sale instances are in respect of lands which are situated beyond village Asarpend at village Ghatodi. Shri Agnihotri, learned Counsel by relying upon the judgment of the Supreme Court in Special Tahasildar (supra) submitted that when the wife of the claimant had herself purchased land at Exhibit-114, this sale transaction could not be ignored. In aforesaid decision, it has been held by the Supreme Court that a bonafide and genuine sale transaction in respect of the same land under acquisition could not be excluded. Aforesaid observations would not apply to the facts of the present case considering the location of the land at Ghatodi which was at an interior place and at a distance from the acquired land which was situated near the State Highway. Thus, though the sale instances at Exhibits-114 and 143 can be taken into consideration, they are not very helpful for the purpose of determining appropriate market value of the acquired land from the aspect of their location.

11. As regards location of Asarpend, Shivanagar and Ghatodi is concerned, the same can be gathered from the maps on record. While proceeding from Pusad to Digras, one approaches Asarpend village first and thereafter village Ghatodi. This is clear from the deposition of the Revenue Inspector vide Exhibit-144. The map at Exhibit 145 gives a clear idea about the location of Asarpend, Shivanagar and Ghatodi. While Asarpend is at the left side of the State highway, Shivanagar is at the right side. Both are approximately equidistant from the State highway. However, Ghatodi is further away from Asarpend and Shivanagar. The distance between Pusad to Asarpend is shown to be 8.5 kms while that between Pusad to Ghatodi is shown to be 12 kms.

12. As regards LAC No. 238 of 1992 - Exhibit 24, the notification under Section 4 of the said Act therein is dated 7-6-1990 which is about seven months after notification under Section 4 of the said Act in the present case. The same relates to acquisition of one acre land at Shivnagar for the purposes of Hindu Cremation Ground. The Reference Court therein has referred to location of said land and has held that it had great non-agricultural potentiality as it was located near the MIDC, milk dairy and technology college as well as near Nanded-Nagpur State Highway. A finding is also recorded that the acquired land therein was at a distance of one field from Ashwinpur. It is to be noted that second witness examined on behalf of the claimant vide Exhibit-31 has specifically stated that his land which was on the southern side of the land of the claimant was in village Warud which was also named as Ashwinpur. It is on that basis that the Reference Court in aforesaid reference proceedings granted compensation @ Rs. 1,50,000/- per acre for one acre land. While doing so, the Reference Court deducted area to the extent of 25% land for road as noted in para 15 of its judgment.

The aforesaid judgment had been challenged by the State in First Appeal No. 414/1994, but aforesaid appeal was dismissed for want of prosecution on

13-11-2006. The adjudication, therefore, in LAC No. 238/1992 has attained finality. Though it was urged on behalf of MIDC that said first appeal was not decided on merits, for all purposes, the adjudication in LAC No. 238/1992 has attained finality. Considering location of village Shivanagar vis-a-vis the acquired land, said adjudication would have to be given due consideration. The land in question admeasured one acre and considering observations of the Supreme Court in M.K. Rifiq Saheb (supra), same can be taken into consideration.

13. The sale transaction at Exhibit-23 is in respect of the land admeasuring 2500 sq.ft. The sale deed is dated 4-1-1985 as a land therein is situated at Vithala. Village Vithala is located nearer to village Aserpend as can be seen from the map at Exhibit-145.

From the aforesaid, therefore, out of 4 transactions referred to herein above, those at Exhibits-23 & 24 can be considered as guiding factors considering their location as compared with the acquired land in preference to the instances at Exhibits-114 and 143 which are at a greater distance. This is after taking into consideration the observations of the Division Bench in Isabela Gama (supra).

14. As regards potentiality of the acquired land is concerned, it is to be noted that the acquisition was for the purpose of establishing a Growth Center of the MIDC. As held by the Supreme Court in Digamber and others (supra), when acquisition is being made for industrial development, such purpose cannot be ignored. In said case, the acquisition was by the MIDC itself for the purposes of formation of industrial estate and sale of plots for commercial purposes. Similarly, in Special Land Acquisition Officer (supra), it was observed that the purpose of acquisition cannot be ignored. On the same lines are the observations of the Supreme Court in Nirmalsingh (supra). In State of Maharashtra and another (supra), the acquisition was for establishment of industrial estate of the MIDC. The Division Bench of this Court observed that when various adjoining lands had been converted for non-agriculture user, the aspect of potentiality of the acquired land cannot be ignored. As noted herein above, the witness examined on behalf of MIDC had surveyed the area after which the suitable lands were identified for acquisition. Considering the purpose of acquisition coupled with its location, it is clear that the land in question had good non-agricultural potentiality.

15. Thus, considering the adjudication of LAC No. 238/1992 vide Exhibit-24 wherein notification under Section 4 of the said Act was dated 7-6-1990 and compensation @ Rs. 1,50,000/- per acre came to be awarded, in the present case, the amount of Rs. 1,20,000/- per acre appears to be just and reasonable compensation. Though the learned Judge of the Reference Court considered the sale instance at Exhibit-23 which was a smaller piece of land while determining the compensation by taking the market value at Rs. 2,75,000/- per acre and then reducing it by half on account of its small size, it was found that the rate of said land would come to Rs. 1,37,500/- per acre. Hence, without undertaking said exercise of taking into consideration the market value after conversion into

square feet and by accepting the market value at Rs. 1,50,000/- per acre as per Exhibit-24, just compensation can be determined. Thus, considering the fact that the notification that was under consideration in LAC No. 238/92 was about 7 months after the notification in the present case and considering the area acquired, amount of Rs. 1,20,000/- per acre appears to be just and reasonable. Thus, for reasons other than those assigned by the Reference Court, the amount of compensation awarded by it is maintained.

16. In view of aforesaid discussion, both the appeals are dismissed and the judgment of the Reference Court awarding amount of Rs. 1,20,000/- per acre stands confirmed. There would be no order as to costs.