

(2016) 02 BOM CK 0039

In the Bombay High Court

Case No : First Appeal No. 265 of 2004 and Cross Objection St. No. 18482 of 2004

Maharashtra Industrial Development Corporation

APPELLANT

Vs

Bhagatdasi and Others

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

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

Citation : (2016) 2 AIRBomR 271 : (2016) 2 ALLMR 397 : (2016) 4 BCR 434 : (2016) 3 MhLJ 252

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : M.M. Agnihotri, Advocate, for the Appellant; Maheshwari, h/f Anand Parchure, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

R.K. Deshpande, J.—1. By notification issued under Section 32(2) of the Maharashtra Industrial Development Act, which is equivalent to Section 4 of the Land Acquisition Act on 04.01.1992, the land admeasuring 2.75 HR from Survey No. 185 situated at Mouza Tadali, Tq. And District: Chandrapur, was acquired for industrial purpose by the Maharashtra Industrial Development Corporation (in short "the M.I.D.C."). The award was passed on 04.05.1995 and the Land Acquisition Officer awarded compensation at the rate of Rs. 26,500/- per hectare, working out the total compensation payable as Rs. 4,18,028/-. In the reference preferred under Section 34 of the Maharashtra Industrial Development Act read with Section 18 of the Land Acquisition Act, registered as Land Acquisition Reference Case No. 3 of 1996, the learned Judge of the Reference Court by its judgment and award dated 20.12.2003 enhanced the compensation at the rate of Rs. 50,000/- per acre, which is equivalent to Rs. 1,25,000/- per hectare, along with all statutory benefits. The acquiring body i.e. the M.I.D.C., is before this Court in this first appeal challenging the enhancement of the

compensation, whereas the cross objection has been filed by the claimant to claim further enhancement of compensation at the rate of Rs. 3,00,000/- per hectare.

2. The point for determination is as under;

Whether the enhancement granted by the Reference Court is based upon evidence available on record?

3. The only consideration by the Reference Court is in paragraph 17 which is reproduced below;

"[17].....As such, we have to determine the market value of the applicant's field by applying pragmatic test. We have, therefore, to apply the test as to at what price the willing vendor will prepare to purchase the applicant's land and at what price, the willing vendor would prepare to sell such land in the open market. I have already observed about that, since the field of applicant comes under industrial area, it has got Non-agricultural potentiality. Therefore, the market value of the land would not be as the market value of the dry crop land. The market value of the Non-agricultural land is always more than that of the agricultural land. In absence of any other evidence on record, I find that, if a prudent man wants to purchase the land of the applicant, then he would purchase it at the rate of Rs. 50,000/- per acre, considering in mind that the field is within the industrial area and has got non-agricultural potentiality. Therefore, in my humble opinion, Rs. 50,000/- per acre would be the proper and reasonable market value of the applicant's land. I, therefore, hold that the applicant is entitled for the market value of the field at the rate of Rs. 50,000/-. As such, deducting the amount of per acre market value already awarded from Rs. 50,000/-, the applicant is entitled for the balance market value per acre. I, therefore, answer issue No. 2 accordingly."

The enhancement is only on the ground that it is an industrial area, having non-agricultural potentiality and therefore, the market value of the land would not be as the market value of the dry crop land. The Reference Court holds that the market value of the non-agricultural land is always more than that of the agricultural land and therefore, it would be proper and reasonable to fix the market value at Rs. 50,000/- per acre. The findings are not supported by any sale instances produced by the claimants. The Reference Court has also rejected the claim based upon the rates mentioned in the ready-recknor published after the Government Resolution was issued on 31.10.1994, to determine the market value of the land on the basis of value recorded in such ready-recknor. There is absolutely no evidence on record to grant enhancement of compensation. If the land is to be treated as non-agricultural land, then appropriate deductions are also required to be considered on account of development. That has also not been done.

4. The learned counsel for the respondent No. 1 submits that the State Government had directed the Collector to redetermine the price of the field on

the basis of the rates given in the ready-recknor and accordingly the report was prepared and sent to the Town Planning Officer for verification. The Collector has thereafter submitted the proposal to the Government and the action of the Government is awaited on such report.

5. There is absolutely no evidence laid by the respondents-claimants to establish all these facts. The persons from the concerned department have not been called as witnesses. The rates mentioned in the ready-recknor have not been placed on record. In terms of Section 24 of the Land Acquisition Act, the Court is prohibited from taking into consideration any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired. Hence, the future development and potential prospective use of the acquisition are not the relevant circumstances to be taken into consideration by the Court to determine the market value of the land as has been held by the Apex Court in its decision in the case of Tarlochan Singh and another vrs. State of Punjab and others reported in , (1995) 2 SCC 424.

6. In view of above, the Reference Court has committed an error in holding that the claimant is entitled to enhancement of compensation from Rs. 26,500/- per hectare to Rs. 1,25,000/- per hectare (Rs. 50,000/- per acre). The enhancement granted is without any basis and cannot, therefore, be sustained.

7. In the result, first appeal is allowed. The judgment and award dated 20.12.2003 passed by the learned 3rd Ad hoc Additional District Judge, Chandrapur, in Land Acquisition Reference Case No. 3 of 1996 is hereby quashed and set aside. The Cross Objection filed by the Respondent No. 1/claimant is dismissed. The reference under Section 34 of the Maharashtra Industrial Development Act, registered as Land Acquisition Reference Case No. 3 of 1996 is also dismissed. No order as to costs. On 20.07.2004, this Court had directed the appellant to deposit 50% of the amount of enhanced compensation awarded by the Reference Court. Accordingly, the Respondent No. 1/claimant has withdrawn the amount of Rs. 1,62,208/-, and as per the order passed by this Court on 6.12.2004, the claimant is required to refund the amount so withdrawn with interest from the date of withdrawal till its payment. The respondent No. 1/claimant is, therefore, directed to redeposit the amount so withdrawn along with 6% interest per annum as per order passed by this Court within a period of eight weeks from today and the appellant shall be permitted to withdraw the said amount upon such deposit. If the respondent No. 1/claimants fails to redeposit the amount along with interest then the appellant shall be at liberty to execute this order as a decree of the Court.