
(2015) 11 BOM CK 0015

In the Bombay High Court

Case No : First Appeal No. 253 of 2001 and Cross Objection No. 3 of 2007

Maharashtra Industrial Development Corporation	APPELLANT
Vs	
Prabhakar Nanaji Diwase and Others	RESPONDENT

Date of Decision : 21-11-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 24, 4, 6
Maharashtra Industrial Development Act, 1961 — Section 23, 24, 25, 32, 32(1)

Citation : (2015) 11 BOM CK 0015

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

Bench : Single Bench

Advocate : M.M. Agnihotri, for the Appellant; Anjan De, for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—This appeal has been preferred by the Maharashtra Industrial Development Corporation, Nagpur, the acquiring body, challenging the judgment and order dated 22.12.2000, passed by the learned Civil Judge, Senior Division, Chandrapur, in Land Acquisition Case No. 113 of 1995, enhancing the compensation for acquisition of the land i.e. Survey No. 288, admeasuring 3.15 HR from Rs. 55,000/- per hectare to Rs. 3,00,000/- per hectare. The claimants have also filed Cross Objection No. 3 of 2007 for claiming further enhancement of compensation at the rate of Rs. 100/- per sq.mtr. Hence, both the matters are heard together.

2. The facts of the case are as under;

The notification under Section 32(2) of the Maharashtra Industrial Development Act, 1961 (hereinafter referred to as "the said Act"), which is equivalent to Section 4 of the Land Acquisition Act was issued on 04.02.1992 for acquisition of Survey No. 288, admeasuring 3.15 HR owned by the claimants. The notification under Section 32(1) of the said Act which is equivalent to Section 6 notification under the Land Acquisition Act was issued on 27.03.1993. The Land Acquisition

Officer passed an award on 10.01.1995 offering market price of Rs. 55,000/- per hectare. The claimants not being satisfied with it, preferred reference under Section 34 of the said Act read with Section 18 of the Land Acquisition Act on 31.07.1995 claiming enhancement of compensation on the basis of the Government Resolution dated 31.10.1994 at Exh.26 and the Ready Reckoner at Exh.25, the market price at the rate of Rs. 100/- per sq.mtr as fixed by the Government for the purposes of imposition of stamp duty under the Stamps Act.

3. In support of the claim, one of the claimants namely Bhaskar Nanaji Diwase has entered the witness-box and deposed. He was cross examined by the learned District Government Pleader appearing for and on behalf of the State Government. After his cross examination was over, the appellant -acquiring body was joined as party respondent in the said reference. Apart from the Government Resolution at Exh. 26 dated 31.10.1994, 7/12 extract was produced on record at Exh.41; Ready-reckoner relied upon was produced at Exh. 25 and the revenue maps prepared by Patwari were placed on record as Exhs. 29 to 31. No other witness was examined by the claimants and the State Government also did not lead any evidence. The appellant -acquiring body claims that no opportunity was given to it either for filing written statement or to cross examine the claimants and to produce the other witnesses.

4. The reference Court recorded the finding that though the contention of the claimant is that, the land in question was having non-agricultural potentiality, there are no documents placed on record to support this contention. It is the finding recorded that Exh. 30 which is the revenue map showing location of the suit land clearly shows that the suit land is not abutting Nagpur-Chandrapur Road and it is located in interior. The reference Court further recorded the finding that from the oral evidence of the claimants, it is apparent that the suit land is having non-agricultural potentiality, though it is an agricultural land. The reference Court further recorded the finding that not even a single sale instance is produced on record in respect of any land adjacent to the suit land, but the sole reliance is upon the Ready-reckoner at Exh. 25. Though the Ready-reckoner reflects the market value of the land at the rate of Rs. 100/- per sq.mtr, the reference Court has not granted the said rate and it has held that the Ready-reckoner at Exh.25 cannot taken into consideration while deciding the market value.

5. The point for determination which arises in the present case are;

(I) Whether the reference Court was justified in enhancing the compensation for acquisition of the land in question from Rs. 55,000/- per hectare to Rs. 3,00,000/- per hectare? And

(II) Whether the claimants are entitled to further enhancement of compensation at the rate of Rs. 100/- per sq.mtr in terms of the Government Resolution dated 31.10.1994 at Exh. 26 along with the Ready-reckoner at Exh. 25?

6. Before dealing with the points for determination, a preliminary objection

raised by Dr. Anjan De, the learned counsel appearing for the claimants need to be decided. Dr. Anjan De, the learned counsel has invited my attention to sub-section (5) of Section 32 of the said Act, which is reproduced below.

32(5) - Where any land is vested in the State Government under sub-section (4), the State Government may by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the service of the notice.

He submits that unless there is a transfer of the land by the State Government in favour of the acquiring Body i.e. M.I.D.C in terms of sub-section (5) of Section 32 reproduced above, the appellant M.I.D.C has no locus either to prefer an appeal or to be a party in the reference proceedings under Section 34 of the said Act, as there is nothing to show such transfer. He submits that the entire amount of compensation has been paid or is to be paid by the State Government. He further submits that even if the acquisition is for the purposes of the appellant M.I.D.C, the payment is to be made by the State Government and therefore, the appellant cannot be said to be a person aggrieved.

7. The learned Single Judge of this Court (Shri Z.A. Haq, J), has dealt with this question in First Appeal No. 177 of 2000, decided on 12.03.2015 (The Deputy Chief Executive Officer, M.I.D.C vrs. Ms. Modern Pottery Industries and two others). It is held in the said decision that in terms of sub-section (2) of Section 25 of the said Act, the Corporation may contribute such sum as it thinks fit towards the expenses incurred or to be incurred by any local authority or statutory public undertaking in the performance, in relation to any of its industrial estates or industrial areas, of any of the statutory functions of such authority or undertaking, including expenditure incurred in the acquisition of the land. The acquisition, in the present case is at the instance of the appellant Corporation and the amount of compensation is required to be paid by the appellant Corporation. In response to the order dated 17.10.2001, the appellant Corporation has deposited 100% of the amount of award passed by the reference Court, which is to the tune of Rs. 18,48,690/-. In such a situation, the judgment cited supra holds that the appeal is maintainable at the instance of the appellant M.I.D.C. It cannot, therefore, be said that the appellant Corporation is not a person aggrieved by enhancement of the award. The preliminary objection is, therefore, rejected.

8. Section 33 of the said Act deals with the compensation and sub-section (5) therein being relevant, are reproduced below;

33(5) -In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24 and other relevant provisions of the Land Acquisition Act, 1894, subject to the modifications that the references in the said sections 23 and 24 to the date of the publication of the notification under section 4 , sub-section (1), were references to the date of the

service or publication of the notice under sub-section (2) of section 32 of this Act in the manner for the time being laid down under this Act, and the references to the time or date of the publication of the declaration under section 6 were references to the date of the publication of the notice under sub-section (1) of section 32 of this Act in the Official Gazette.

[Explanation -For the purpose of this sub-section the date of the service of a notice under sub-section (2) of section 32 of this Act shall before the 8th day of June 1967 mean the date on which the notice is served in the manner laid down in section 52 of this Act, and on and after the 8th day of June 1967 the date of the publication of a notice under the said sub-section (2) of section 32 shall be the date on which the notice is published in the Official Gazette.

It is thus apparent that in determining the amount of compensation under the provisions of the said Act, the Collector has to be guided by the provisions contained in sections 23 and 24 of the Land Acquisition Act, subject to the modifications that the references in the said sections 23 and 24 to the date of the publication of the notification under section 4 , sub-section (1), were references to the date of the service or publication of the notice under sub-section (2) of Section 32 of the said Act. It is, therefore, apparent that the reference Court has to determine the market value of the land under acquisition as contemplated by sub-section (1) of Section 23 of the Land Acquisition Act.

9. Undisputedly, in the present case, it is neither the method of capitalization of income nor the method of sale instances has been adopted for determining the market value of the land in question. It is also not the acquisition by way of agreement between the State Government or the owner/claimants. Except the bare statement of the sole witness examined by the claimants, there is nothing on record to show that the land in question bears potentiality of non-agricultural land and this is the finding recorded by the reference Court in the judgment impugned. I have gone through the revenue map at Exh. 30 produced by the claimants. The map does not show any development surrounding the land in question which is Survey No. 288. The finding of the reference Court that Survey No. 288 is not abutting Nagpur-Chandrapur road and it is located in interior area has not been challenged. The persons who have prepared the revenue maps placed on record have not been examined. The witness examined by the claimants clearly states that the land in question was a fertile land having reach potentiality to produce cotton, tilli, udid, mug, wheat and other crops. The statement in the deposition of this witness that there is a Depot of India Oil Corporation and a Cement Plant known as Vidarbha Product, Railway Station Morba, Urja Gram, W.C.L. and Shivaji Soyabin Plant, is not at all corroborated by any documentary or oral evidence on record. The reference Court has, therefore, committed an error in holding that the oral evidence of the claimant shows that the suit land is having non-agricultural potentiality, though it is an agricultural land not converted for non-agriculture purpose.

10. Dr. Anjan De, the learned counsel appearing for the claimant has relied upon

the decision of the Apex Court in the case of Lal Chand Vs. Union of India (UOI) and Another, . The appellant in the said decision relied upon the notification dated 21.01.1981 issued by the Land Division of Government of India, Ministry of Works and Housing, notifying the Schedule of Market Rates of land in different parts of Delhi and various outlying areas, showing the minimum rates of Rs. 400 per sq. yard for residential and Rs. 800 per sq. yard for non-residential plots.

11. The question involved in the aforesaid decision was whether the said notification could be relied upon for determining the market value in regard to the acquisition of land. The Court also noted that there is some confusion as to whether such basic rates / guideline value / minimum registration value rates could form the basis for determining the market value. The Court proceeds to deal with this aspect of the matter in paras 16 and 17 of the judgment, which are reproduced below;

"16. It should however be noted that as contrasted from the assessment of market value contained in non-statutory Basic Value Registers, the position may be different, where the guideline market values are determined by Expert Committees constituted under the State Stamp Law, by following the detailed procedure laid down under the relevant rules, and are published in the State Gazette. Such state stamp Acts and the Rules thereunder, provide for scientific and methodical assessment of market value in different areas by Expert Committees. These statutes provide that such committees will be constituted with officers from the Department of Revenue, Public Works, Survey & Settlement, Local Authority and an expert in the field of valuation of properties, with the sub-registrar of the sub-registration district as the member secretary. They also provide for different methods of valuation for lands, plots, houses and other buildings. They require determination of the market value of agricultural lands by classifying them with reference to soil, rate of revenue assessment, value of lands in the vicinity and locality, nature of crop yield for specified number of years, and situation (with reference to roads, markets etc.). The rates assessed by the committee are required to be published inviting objections/suggestions from the members of public. After considering such objections/suggestions, the final rates are published in the Gazette. Such published rates are revised and updated periodically. When the guideline market values, that is, minimum rates for registration of properties, are so evaluated and determined by expert committees as per statutory procedure, there is no reason why such rates should not be a relevant piece of evidence for determination of market value. One of the recognized methods for determination of market value is with reference to opinion of experts. The estimation of market value by such statutorily constituted expert committees, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We however hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed

Expert Committees, in accordance with the prescribed assessment procedure (either street-wise, or road-wise, or area-wise, or village-wise) and finalized after inviting objections and published in the Gazette. Be that as it may. We have referred to this aspect only to show that there are different categories of Basic Valuation Registers in different states and what is stated with reference to the stamp law in Andhra Pradesh or Uttar Pradesh, may not apply with reference to other states where state stamp laws have prescribed the procedure for determination of market value, referred to above.

17. In this case, there is nothing to show the circle rates have been determined by any statutorily appointed committee by adopting scientific basis. Hence, the principle in *Jawajee Naganatham* will apply and they will not be of any assistance for determining the market value. Further, they do not purport to be the market value for lands in rural areas on the outskirts of Delhi, nor the market values relating to Rithala village. The circle rates relate to urban/city areas in Delhi and are wholly irrelevant. Whether the award relating to acquisition on 24.10.1961 is relevant".

12. In terms of the aforesaid decision of the Apex Court, the estimation of market value by statutorily constituted expert committees, as expert evidence can only to form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It is made further clear in the said decision that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either street-wise, or road-wise, or area-wise, or village-wise) and finalized after inviting objections and published in the Gazette. The Apex Court has further held in the facts of the case before it, that there is nothing to show that the circle rates have been determined by any statutorily appointed committee by adopting scientific basis and therefore, it is held that the said guidelines will not be of any assistance for determining the market value.

13. In the present case, the burden was upon the claimants to establish that the compensation claimed by them at the rate of Rs. 100/- per sq.mtr represents the true and correct market value. There is absolutely no evidence brought on record to show that the Ready-reckoner at Exh.25 was prepared by a statutorily constituted expert committee in accordance with the procedure prescribed under any statute after inviting the objections. It is also not the averment either in the reference under Section 34 of the said Act or under Section 18 of the Land Acquisition Act that the rate of Rs. 100/- per sq.mtr prescribed under the Ready-reckoner at Exh.25 represents the true, correct and bonafide market value in respect of land Survey No. 288 in question.

14. Dr. Anjan De, the learned counsel appearing for the claimants has invited my attention to the copy of the order dated 09.08.1986 passed by the Tahsildar, Chandrapur, at Exh. 32 to urge that Survey No. 291/2 adjacent to the land in question was converted for non-agricultural purpose. There is evidence brought

on record to show that Survey No. 291/2 is located at village Tadali and it is located on Nagpur-Chandrapur Highway, whereas the land in question, which is survey No. 288 is located at the distance of 1 Km., in interior from the Highway. The reference Court has also not relied upon this instance of land Survey No. 291/2 for the purposes of enhancement of compensation.

15. The claimants have failed to establish that the price of the land at Rs. 100/- per sq. mtr specified in Ready-reckoner at Exh. 25 represents the true and correct market value of the land. There is no evidence on record in the form of sale instances to substantiate the claim for enhancement of compensation from Rs. 55,000/- per hectare to Rs. 3,00,000/- per hectare. There is no evidence brought on record to show that the land in question bears non-agricultural potentiality. On the contrary, the evidence on record shows that it is a fertile land under cultivation. The finding recorded by the reference Court that the claimants are entitled to enhancement of compensation at the rate of Rs. 3,00,000/- per hectare is not based upon any evidence. The reference Court ought to have rejected the claim for enhancement of compensation. In view of this, there is no question of claimants being entitled to enhancement of compensation.

16. In the result, the first appeal is allowed. The judgment and order dated 22.12.2000 passed by the Civil Judge, Senior Division, Chandrapur, in Land Acquisition Case No. 113 of 1995 is hereby quashed and set aside. The Reference is dismissed. Consequently, the Cross Objection No. 3 of 2007 filed by the claimants does not survive and it is rejected. No orders as to cost.

The appellant has deposited the amount in this Court, which is permitted to be withdrawn along with the interest accrued thereon.