(2017) 11 BOM CK 0138

In the Bombay High Court

Case No : 745 of 2006?AND?CROSS OBJECTION No 10 of 2008

Maharashtra Industrial Development Corporation APPELLANT

Vs

Sau Saraswatibai & Ors RESPONDENT

Date of Decision : 29-11-2017

Acts Referred:

Land Acquisition Act, 1894, Section 18 - Reference to Court
Maharashtra Industrial Development Act, 1961, Section 1(3), Section 34, <a href=5898-32>Sec

Citation : (2017) 11 BOM CK 0138

Hon'ble Judges : S.B. Shukre

Bench : SINGLE BENCH

Advocate : M.M. Agnihotri, Anand Parchure, H.N. Jaipurkar

Judgement

1. This appeal and the crossobjection dispute grant of enhanced compensation by the Reference Court in an application filed under Section 34 of the Maharashtra Industrial Development Act, 1961 (in short, "MID Act") by the Court of 2nd Joint Civil Judge, Senior Division, Nagpur, in Land Acquisition Case No.88/1993, by the judgment and order dated 29th April, 2006, on the respective grounds that it is on the higher side for the appellant beneficiary and on the lower side for the claimants/crossobjectors.

2. The land of the original claimants, one of whom (respondent No.2) is now dead, bearing Survey No.52, admeasuring 1.66 HR, situated at mouza Rengapar, Tahsil Hingna, District Nagpur was acquired by the State(respondent No.3) for the purpose of development of industrial area by the appellant. Parties to the appeal and the crossobjection are hereinafter referred to as the "Beneficiary" (appellant), claimants (crossobjectors) and the State (Respondent No.3), for the sake of clarity.

3. Notification under Section 1(3) of the MID Act was published by the State in

the Government Gazette on 27th October, 1988 and it was given effect from 28th February, 1988. Notification under Section 32(2) of the MID Act was published in the Government Gazette on 22nd February, 1990. The claimants were called upon to deliver possession of the acquired land on 20th June, 1992 on payment of compensation. The award granting compensation was passed by the Special Land Acquisition Officer on 2531991 and as the claimants were not satisfied with the compensation so granted, they moved an application under Section 34 of the MID Act read with Section 18 of the Land Acquisition Act, which was referred for adjudication to the 2nd Joint Civil Judge, Senior Division, Nagpur.

4. The application was contested on merits by the Beneficiary. The Reference Court, however, found that the compensation awarded by the Special Land Acquisition Officer was inadequate and therefore, enhancing the same, the Reference Court granted compensation by fixing the market value of the acquired land to be at Rs.1,25,000/- per hectare. The Reference Court also granted some additional compensation on account of dura, mango trees, jambhul trees and other trees. The judgment and order in this regard were passed on 29.4.2006. Not being satisfied with the same, the appellant and the claimants are before this Court in the present appeal and the crossobjection.

5. I have heard Shri M.M. Agnihotri, learned counsel for the Beneficiary and Shri Anand Parchure, learned counsel for the claimants/crossobjectors and Ms. H.N. Jaipurkar, learned Assistant Government Pleader for the State. I have also gone through the record of the case including the impugned judgment and order.

6. Now, the only point which arises for my determination is : Whether the compensation granted by the Reference Court is just and proper ?

7. Shri M.M. Agnihotri, learned counsel for the Beneficiary submits that the Reference Court has wrongly relied upon the sale instances vide Exhs.59 and 72 while fixing the market value of the acquired land. He submits that the evidence available on record indicated that these were not the comparable sale instances and therefore, ought not to have been considered by the Reference Court. He also submits that the Reference Court while fixing the market value of the acquired land to be at Rs.1,25,000/- per hectare and of the trees, adopted the reasoning not supported by any evidence on record. Thus, he would submit that this is a fit case for making interference with the impugned judgment and order.

8. Learned counsel for the claimants submits that the Reference Court has appropriately considered the evidence available on record and granted the compensation, albeit on a lower side. According to him, the sale instances vide Exh.59 and 72 were of comparable lands because lands involved in these sale instances were situated within a radius of 1 Km. of the acquired land and there is evidence to show that in terms of soil quality, and the irrigation facilities the acquired land stood on much higher footing than the lands involved in those sale instances. Thus, he submits that the interference, if made, with the impugned judgment and order be made for enhancing the compensation appropriately. He,

however, supports the valuation carried out by the Reference Court in respect of dhura and trees.

9. It is seen from the impugned award that even though the Reference Court has found the land involved in the sale instance vide Exh.59, was of inferior quality, it was comparable in all other respects with the acquired land and therefore, it was thought fit by the Reference Court to place its reliance to some extent on this sale instance. It is further seen that similar was the treatment given by the Reference Court to another sale instance vide Exh.72. The Reference Court, however, rejected the evidence of the Beneficiary''s witness, one Ashok Ramkrishna Nimkarde , Surveyor (Exh.85) on the ground that he did not file any report or notes about the plantation existing on the acquired land and that he had exceeded his brief which was confined only to measuring the land being a Surveyor and not extending to giving an opinion about the quality and potentiality of the land. Thus, the Reference Court considered that the acquired land, which was in the vicinity of the National Highway and which was not far away from the lands involved in the sale instances had a commercial and industrial potential and therefore, it deserved the assessment of a higher value. While evaluating the market price that the acquired land was likely to fetch, the Reference Court considered that rate of Rs.50,000/- per acre which comes to about Rs.1,25,000/- per hectare as the proper rate, as against the rate of land involved in sale instance vide Exh.59 which was of about Rs.1,95,000/- per hectare and the rate of land in another sale instance vide Exh.72 which was of about Rs.90,000/- per hectare. The Reference Court gave no reasons as to how the rate of Rs.1,25,000/- per hectare was fixed by it. The only reason, if it is to be called so, I could notice is that the Reference Court in its mind did some "(+) and ()" calculations in order to arrive at such market value of the land, as observed in paragraph 22 of the impugned judgment and order. So, now it would be the job of this Court to make an attempt to assess the market value of the acquired land in a just and fair manner by screening the evidence available on record.

10. The claimants have placed heavy reliance upon the sale instances and Exhs.59 and 72. The saledeed at Exh.59 is of 7.9.1989 and its agreement to sale was executed between the parties on 5.12.1988 which is at Exh.62. In this agreement to sale itself the consideration or price of the land agreed to be purchased has been indicated and when converted into per hectare value, it comes to about Rs.1,95,000/- per hectare. Notification under Section 1(3) was published in Government Gazette on 27.10.1988 and its effect was given from 28th February, 1988. So, from 27.10.1988 and onwards, it was well known that the land involved in this appeal and the surrounding lands were under acquisition for the public purpose. Possession of such knowledge on the part of the buyer of the land in Exh.59 has been admitted by the claimants'' second witness Deorao Doifode, who was the Secretary of Shikshak Gruhanirman Sahakari Sanstha Limited, which purchased Exh.59 land. So, the sale instance vide Exh.59 would have to be taken as a post notification sale instance and therefore, its relevance

would have to be determined by considering whether or not the rate reflected in this saledeed is true and genuine, uninfluenced in any manner by publication of Section 1(3) of MID Act notification. Then, situation of this land, having been admittedly situated about 1 Km. away from the acquired land and surrounded by residential houses, unlike the acquired land would also have to be examined from the view point of its comparability with the acquired land.

11. In the case of Goa Industrial Development Corporation vs. Maria Tereza N. Quadros e Cruz Carvotta and another, reported in 2016(3) ALL MR 810, learned Single Judge of this Court has held that even a post notification sale instance could be found to be relevant, in a given case if the facts and circumstances brought on record show that there has been a very small gap of a five months between publication of the notification and the sale transaction and there are no circumstances present on record showing that the purchaser was motivated to pay higher price due to its development prospects. Relying on this judgment and the evidence available on record, learned counsel for the claimants would submit that in the present case, there being no evidence to show that the consideration of the saledeed at Exh.59 was influenced by the development prospects of the land, and the gap between the notification and the agreement to sale being of just about a month or so, the sale instance of Exh.59 must form the basis for evaluating the market value of the acquired land. He also submits that in any case, the sale deed at Exh.72 being of the date of 16.3.1988 was a prenotification sale instance and would hold out as a reasonable guide for assessing the true market value of the acquired land. Shri M.M. Agnihotri, learned counsel, however, has expressed his disagreement in this regard and in order to substantiate the same, he has taken me through the admissions given by the witnesses of the claimants.

12. On going through the evidence available on record, I do not find any admission or any circumstance reasonably indicating that the consideration for sale of the land in Exh.59 was agreed between the parties quite on the higher side because of the development prospects that the land showed following publication of Section 1(3) of MID Act notification on 27.10.1988 and so I find substance in the argument of learned counsel for the claimants made in this regard. But, that would not solve our difficulty. We also have to see that the land of Exh.59 sale instance is a comparable land, offering reliable guidance for determining the market value of the acquired land. On this score, I must say, the evidence brought on record by the claimants fails, as rightly submitted by the learned counsel for the Beneficiary.

13. Deceased claimant Daulat Warghane, in his evidence has admitted that the acquired land was situated about 1 Km. away from the land involved in the sale instance at Exh.59. The claimants'' second witness, Deorao Doifode, Secretary of the Society which purchased the land in Exh.59, has admitted in his crossexamination taken on behalf of the appellant that before agreeing to purchase the land, he had surveyed the entire area of village Rengapar and

having been satisfied about better location of the land that his Society preferred to purchase that land only. He also admits that there were some houses already in existence surrounding the land of Exh.59 sale instance. As against this evidence, there is no evidence adduced by the claimants that surrounding the acquired land there were in existence some houses also, and that their land had a better prospect of being developed into a residential zone. The cumulative effect of these admissions and such evidence would be that the land involved in sale instance vide Exh.59 is not the land comparable in any respect with the acquired land. The land involved in Exh.59 had a better location as well as better potential for there were already in existence some houses surrounding it. Then, the map of village Rengapar filed on record by the appellant also does not show that the acquired land was abutting or just adjacent to National Highway No.7 and very near to Butibori Railway Station. This would only fortify the conclusion made by me that the acquired land promised no development or commercial potential, unlike the land involved in the sale instance at Exh.59. So, the sale instance Exh.,59 could be of no assistance to us in the present case.

14. Now, coming to the sale instance vide Exh.72, a prenotification one, having been executed about 7 and 1/2 months prior to Section 1(3) of MID Act notification, I would say that this is the only sale instance available in this record, which could be put to use substantially, if not fully for determining the true market value of the land. This saledeed is regarding the sale of an agricultural land, which has been stated by another witness, Namdeo Narayan Bhandakkar, purchaser of this land, to be a dry crop land of inferior quality. On the other hand, the acquired land had irrigation facilities and had a better soil quality. There were no houses surrounding the land involved in Exh.72 just as the acquired land. The land in Exh.72 was also not situated adjacent to the National Highway. There being no other evidence available on record and there being many similarities between the acquired land and the land in the saledeed vide Exh.72, this sale instance could be taken as a reference point for determining the true market value of the land. Added to this is the evidentiary value of evidence of the Surveyor (Exh.85) examined by the Beneficiary which offers no guidance worth mentioning and has been rightly rejected by the Reference Court. So, Exh.72 sale instance can be taken as the sole indicator of market price of the lands in it''s vicinity.

15. The per hectare price reflected in the sale deed at Exh.72 was of Rs.90,000/- . Considering the fact that admittedly this land was situated about 1/2 Km. away from the acquired land and also considering the fact that the acquired land was of better quality, I am of the view that the rate reflected in the sale instance vide Exh.72 could be safely taken to be the rate a land with better quality but situated about half a kilometer away from it, which is the acquired land, could have fetched in a reasonable manner at the time of publication of Section 1(3) of MID Act notification. Had the acquired land been situated adjacent to the Exh.72 land, I would have added about 10% more to the rate of Exh.72 land on account of better quality of the acquired land, which is not the

case here.

16. At this juncture, I would like to deal with the submission of the learned counsel for the claimants that while determining the market value of the lands having commercial potential 1/3rd , deduction must be made towards the area to be used for roads, drains and other facilities, subject to certain variations depending upon its nature, location, extent and development around the area, which is the law laid down by the Hon''ble Apex Court in the case of Major Gen. Kapil Mehra and others vs. Union of India and another, reported in 2014 ALL SCR 3728. In my humble opinion, this principle of law would have no application to the facts of the present case for the reason that the acquired land was an agricultural land and based upon the evidence available on record, has not been treated to be a land having immense commercial potential. Then, the comparable sale instance (Exh.72) was not of small developed plot but was of agricultural land. The argument of learned counsel for the claimants is, therefore, rejected.

17. Thus, I find that the true market value of the acquired land in the present case could not have been of Rs.1,25,000/- per hectare but could have been at the most of Rs.90,000/- per hectare. I further find that this is the rate i.e. rate of Rs.90,000/- per hectare, at which compensation must be given to the claimants for their acquired land. In addition to above, I am also of the opinion that there being available on record evidence regarding existence of mango trees, jambhul trees and other trees and no evidence about incurring of special cost on construction or maintenance of dhura, I am of the view that compensation granted by the Reference Court of Rs.7,000/- , Rs.3,000/- and Rs.3,000/- for mango, jambhul and other trees respectively deserves to be confirmed and the compensation granted for dhura at Rs.5,000/- deserves to be quashed and set aside.

18. So calculated, the claimants would be entitled to receive compensation of Rs.90,000/- per hectare for their acquired land and further compensation of Rs.13,000/- for mango trees, jambhul trees and other trees only and not for dhura etc. together with all statutory benefits at same rate as are granted by the Reference Court, but on the amount of compensation so determined here under. The point is answered accordingly.

19. The appeal is partly allowed.

20. The Crossobjection is dismissed.

21. It is declared that the claimants are entitled to receive compensation at the rate of Rs.90,000/- per hectare for their acquired land and also compensation of Rs.13,000/- for the mango, jambhul and other trees and same shall be paid to them together with all statutory benefits at same rates as are granted by the Reference Court, by the appellant.

22. The impugned judgment and order stand modified in the above terms.

23. Parties to bear their own costs.