

(2017) 07 BOM CK 0186
In the Bombay High Court
Case No : 900 of 2008

Maharashtra Industrial Development Corporation, Through its Chief Executive Officer APPELLANT

Vs

Champat Ganpat Khade (since Deceased Thr. LR), & Ors. RESPONDENT

Date of Decision : 14-07-2017

Acts Referred:

Land Acquisition Act, 1894, Section 54 - Appeals in proceedings before Court
Maharashtra Industrial Development Act, 1961, Section 33, Section 34 - Co

Citation : (2017) 07 BOM CK 0186

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : M. M. Agnihotri, M. A. Kadu

Final Decision : Dismissed

Judgement

1. This appeal under Section 54 of the Land Acquisition Act, 1894, is preferred by the the M.I.D.C. an acquiring body, challenging the judgment and order of 5th Adhoc Additional District Judge, Amravati delivered on 19/09/2005 in L.A.C. No.604 of 1999, granting additional amount of compensation of Rs.81,180/to respondents/claimants.

2. Brief facts of the appeal can be stated as follows : Respondent Nos.1 to 3 are the legal heirs of the original claimant who was the owner of the agricultural lands bearing Gat No.92 admeasuring 3. 8 hectare and Gat No.127 admeasuring 1.6 hectare situate at village Wagholi. The said land was acquired by the appellant as per provisions of Sections 33 and 34 of the Maharashtra Industrial Development Act, 1961 and the award was passed in L.A.C. No.1/1 to 12/47/9394 by respondent No.2 on 20/03/1997. By the said award, the LAO has granted compensation at the rate of Rs.31,678/per hectare to Gat No.127 and Rs.37,900 per hectare to Gat No.92. He had Therefore he claimed Rs.6,51,000/for Gat No.127 and Rs.1,62,000/for Gat No.92. Thus his total claim was for the

amount of Rs.8,13,000/. As a result of award passed by the LAO, he received on the amount of Rs.1,79,044/as total compensation and therefore being not satisfied with the said award, he has preferred reference seeking difference of Rs.6,33,956/towards enhanced amount of compensation. However, he restricted his claim for Rs.1,50,000/. 3. This claim came to be resisted by the present respondent Nos.4 and 5 by filing written statement Exhibit16, interalia stating that while determining the amount of compensation, the LAO has taken into consideration sale transactions of respective villages for the period from 1989 to 1994 and on the basis of the same, he has determined market value at the rate of Rs.31,678/per hectare which is just, reasonable and adequate. It was submitted that the land of the claimant consists of major portion as Potkharab land which was valued by the LAO separately. The amount of compensation claimed by the petitioner/claimant was exorbitant. The LAO has considered the potential value of the acquired land and hence it was requested that the reference of the petitioner be dismissed.

4. In support of his plea, the original claimant examined himself; whereas on behalf of the appellant, Dy. Commissioner Shri Uddhav S. Garkan led his own evidence. He relied upon the Government Notification dated 08/02/1996 indicating that for Potkharab land the amount of compensation was fixed at the rate of Rs.1500/per hectare. He has therefore justified the amount of compensation which was awarded to the claimant.

5. On appreciation of this evidence, the learned Reference Court was pleased to hold that the compensation amount awarded by the LAO was not just and adequate and thus granted additional compensation of Rs.81,180/. Being aggrieved thereby, this appeal is preferred.

6. On the submissions made before me by the learned counsel for the parties, the only point which arises for my consideration is whether the Reference Court was justified in enhancing and granting additional amount of compensation of Rs.81,180/?

7. The main grievance of the claimant before Reference Court was in respect of the classification done by the LAO for awarding different amount of compensation for Potkharab land, which is according to LAO based on the Government Notification dated 08/02/1996. According to that notification, compensation amount for Potkharab land was fixed at the rate of Rs.1500/per hectare. However, as rightly observed by the Reference Court, 2.71 hectare of the acquired land was not Potkharab land as assessed by the LAO but for the time being only, it was lying uncultivated (padit). It is admitted by the Dy. Commissioner also that there is difference between padit land and Potkharab land. He has also admitted that in 7/12 extract of the acquired land, it is stated that some land is chalu padit or Potkharab land. According to him, the word "chalu padit" and word "padit" are having the same meaning. As against it, according to the claimant, only 2 R land out of Gat No.127 was Potkharab land whereas remaining land was cultivable and not Potkharab land. The learned

Reference Court has considered this aspect in paragraph 8 of its judgment and held that the entire land of the claimant was not at all Potkharab but only 2 R land, as can be seen from 7/12 extract of Gat No.127, was Potkharab land. Merely because some portion of the land was not cultivated during the year or was not cultivated for temporary period, the entire land cannot be held as Potkharab land. Therefore the finding given by the Reference court in this respect holding that claimant is entitled to get compensation at the rate of Rs.31,678/per hectare to 2 H 69 R land out of Gat No.127 being based on the evidence on record, need not be disturbed. Claimant has not raised any grievance in respect of the compensation for the land bearing Gat No.92.

8. Even as regard the market value of the land, the Reference Court has considered the fact that though the claimant has claimed the compensation at the rate of Rs.1,00,000/per hectare, having regard to the admission given by him in cross-examination that the village where the land was situated is a small village and he has not produced any document to show that his land was adjoining the road, Reference Court rightly held that the market value of the acquired land claimed by the claimant at the rate of Rs.1,00,000/per hectare was on higher side and hence having regard to all the factors on record, the learned Reference Court has enhanced the compensation amount by granting additional amount of Rs.81,180/. The enhanced amount being just, reasonable, fair and adequate, in my considered opinion, no interference is warranted in the impugned judgment and order of the Reference Court. The appeal holds no merit and the same is dismissed with no order as to costs.