
(2005) 02 BOM CK 0123
In the Bombay High Court
Case No : First Appeal No. 206 of 1992

Maharashtra State Electricity Board	APPELLANT
Vs	
Bahira Gunjal (Since Deceased through L. Rs.) and Others	RESPONDENT

Date of Decision : 18-02-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 12, 18, 4, 50

Citation : (2005) 107 BOMLR 932

Hon'ble Judges : V.C. Daga, J; M.G. Gaikwad, J

Bench : Division Bench

Judgement

M.G. Gaikwad, J.—This appeal is directed against the Award passed by Joint Civil Judge, Senior Division, Ahmednagar (Reference Court) In L.A.C. No. 213/1989, whereby the Reference Court enhanced the amount of compensation to Rs. 7,52,700/- from Rs. 2,81,400/- granted by Special Land Acquisition Officer with other benefits like solatium and interest on the enhanced compensation.

The Award is not challenged by the State by preferring an appeal, hence, the Local Authority, for whom the land in question was sought to be acquired, preferred this appeal, challenging the said Award, obtaining the leave of this Court.

2. Respondent No. 1 deceased Bahlra Gunjal was the owner of an agricultural land Cat No. 287 to the extent of 7 hectares and 66 Ares, situated at village Kedgaon, Tq. Ahmednagar. Respondent No. 2 the State of Maharashtra proposed to acquire the said land for the purpose of constructing 220 KV substation. Present appellant has forwarded the proposal to the Collector, Ahmednagar for acquisition of this land. A notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred as "the Act" for short) was published in the Government Gazette dated 26.4.1974. The Special Land Acquisition Officer No. 2 Ahmednagar, declared the Award on 16.9.1986 and awarded compensation(r) Rs. 40.000/ per hectare for first .belt and Rs. 30.000/- per hectare for 2nd belt. Notice u/s 12(2) under the Act was issued and served on the petitioner/ claimant

on 9.10.1986. Respondent No. 1 herein/claimant accepted the amount of compensation under protest and had filed a reference u/s 18 of the Act on 17.11.1986, claiming compensation of Rs. 19.000/- per acre. According to the claimant, Land Acquisition Officer did not consider the sale instances and potentiality of the land and on this count, challenged the rate of compensation awarded by the Special Land Acquisition Officer.

3. On behalf of the respondent No. 2 State, written statement was filed before the Reference Court. According to them, the land was rightly classified on the basis of transaction. They also come up with the case that compensation granted by the Land Acquisition Officer is adequate as the Land Acquisition Officer has taken into consideration the evidence led before him about the sale instances of the neighboring lands.

4. The land owner/claimant examined himself and also relied upon the sale instance under Sale Deed Exhs. 9, 12 and 13. Witness Bhanudas stated that he had sold his 1 hectare and 56 Ares land out of Block No. 438 to Maharashtra State Warehousing Corporation " Rs. 70.000/- per acre. Considering the evidence led, the Reference Court came to the conclusion that the compensation granted by Land Acquisition Officer is grossly inadequate and recorded a finding that as per the market rates, reasonable compensation of the land to be granted to the claimants is " Rs. 1.35.000/ - per hectare. By this rate, the Reference Court enhanced total compensation amount from Rs. 2,81,400/- to Rs. 10,34,100/- and passed the Award and directed the respondent No. 2 to pay enhanced compensation of Rs. 7,52,700/- excluding the compensation amount already granted disbursed with other statutory benefits. The respondent State did not challenge the said Award by preferring an appeal. However, the present appellant preferred this appeal, obtaining leave of this Court.

5. Learned Counsel Shri Joshi, appearing on behalf of the appellant, submitted that the land has been acquired for the present appellant. However, appellant was not impleaded as a party before the Reference Court and an opportunity of being heard was not given to it and right conferred on the appellant u/s 50(2) of the Act being denied to it, the matter needs to be remanded to the Reference Court by setting aside the Award passed by the Reference Court. In support of his submission, he has placed reliance on the decision of the Apex Court in the case of Abdul Rasak and Others Vs. Kerala Water Authority and Others, .

6. On behalf of the respondent Nos. 1-1 to 1-7, who are the legal representatives of the original claimant, relying on the very same judgment of the Apex Court, submission has been made that this Court should give directions to the Reference Court to consider the evidence which was already adduced before the Reference Court as the original claimant is dead and other witnesses are not available.

7. The facts are not disputed that the present appellant Local Authority, at whose instance, the acquisition proceedings was initiated, was not a party before the

Reference Court. Provisions of Section 50(2) of the Act confer a right in favour of a Local Authority or a company, at whose instance, the acquisition proceedings are proposed and land is acquired to appear and adduce evidence for the purpose of determining the amount of compensation before the Collector as well as before the Court. The Apex Court in the above referred judgment and also in view of the another judgment of the Apex Court in the case of U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., upheld the right of the Local Authority to appear and adduce evidence before the Reference Court for the purpose of determining the amount of compensation. The order of the High Court, remitting the case to Civil Court for retrial, is upheld. Admittedly, the appellant was not a party before the Reference Court. The Reference Court did not give notice to the appellant though the acquisition was for this appellant. The present case is therefore covered by the decision of the Apex Court (cited supra). The appeal needs to be allowed and matter needs to be remitted back to the Civil Court for fresh trial.

8. On behalf of the respondents, the legal representatives of the original claimant, only submission made is that as the original claimant is dead and other witnesses may not be available therefore, directions may be issued to the Reference Court to consider the evidence of such witnesses. This point is also covered by the above referred judgment of the Apex Court, as in that case also, similar type of submission was made and the protection was given to them so that, no injustice will be caused to them. So, while remanding the matter, protection needs to be extended to the respondent/ claimant, directing the Reference Court that the evidence of the witnesses who will not be available, shall not be excluded from consideration, but that evidence should be read in evidence.

9. In view of the above referred facts, we are of the considered opinion that the appeal needs to be allowed and the impugned Award of the Court below needs to be set aside and matter needs to be remanded to the Reference Court.

10. In the result, the appeal is allowed. The impugned Award of the Court below is set aside. The present appellant/M.S.E.B. shall be deemed to have brought on record in original Reference Case as a defendant. The cause title of the Reference Case shall be amended accordingly. The matter is remanded back to the Trial Court with a direction to decide the same afresh as expeditiously as possible. The statements of the witnesses which were recorded earlier on behalf of the claimants need not be recorded afresh. The present appellant/M.S.E.B. shall be at liberty to cross-examine the witnesses, which have been already examined. However, if such witnesses are not available and unable to appear before the Court below, their statements shall not be excluded from consideration, but their evidence shall be read in evidence.

The claimants may adduce such other evidence as they may propose and the respondents shall have liberty to cross-examine those witnesses. The defendants shall have an opportunity of adducing evidence as it may propose.

The parties are directed to appear before the Reference Court on 7th March, 2005.

The appeal stands disposed of in terms of the aforesaid directions with no order as to costs.