
(2008) 10 BOM CK 0012
In the Bombay High Court
Case No : First Appeal No. 273 of 1993

Maruti Bhagwanrao Patil

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-10-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 6, 9, 9(1)

Citation : (2009) 1 BomCR 875

Hon'ble Judges : Shinde S.S., J

Bench : Single Bench

Advocate : B.N. Patil, for the Appellant; N.N. Jadhav, A.G.P., for the Respondent

Judgement

Shinde S.S., J.—The present appeal is directed against the final judgment and order dated 4.5.1990 passed by the Joint C.J.S.D., Osmanabad.

2. The brief facts of the case are as under:

The case arises out of land acquisition proceedings. The Land Acquisition Officer issued notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") on 25.11.1982, which was published in Maharashtra Government Gazette, Aurangabad supplement on 21st January, 1983. Section 6 notification was issued on 21st January, 1984 and it was published in the local newspaper dated 1.2.1984. Notices as required u/s 9(1) and (2) of the said Act were issued on 1.2.1984 and published at the prominent places in the village concerned. Individual notices as required u/s 9(3) and (4) of the said Act were issued and served on the interested persons. Some of the interested persons submitted their claims as required u/s 9 of the said Act. After collecting and considering all the necessary information, opinion, reports, the Land Acquisition Officer passed award on 19.9.1986. Being dissatisfied with the award dated 19.9.1986, the present appellant filed reference u/s 18 of the said Act. The L.A.R. No. 37 of 1987 was registered in respect of the appellant. His contention is that he is owner and possessor of Land Survey No. 167/1 admeasuring 4 H. 16 R. of

village Bhatangali, Tq. Omerga, Dist. Osmanabad. This land was acquired by the respondent State for lower Terna Project. The claimant states that the quality of his land, irrigation facility, income, situation, market value is same as stated by the claimant in L.A.R. No. 40 of 1987.

3. It is the case of the appellant/claimant that there is well in his acquired land and with the help of said well, he was taking Bagayat crops in his land. There was iron pipeline of 150 feet worth Rs. 4,000/- in his acquired land. No compensation was paid for it. There was one earthen bund, 200 feet in length worth Rs. 2000/- in the acquired land of the claimant. For this also no compensation was paid. There was one well worth Rs. 15,000/- in the acquired land. No compensation was paid for it. Compensation awarded is highly inadequate.

4. Claimant/appellant claims compensation for his acquired land at the rate of Rs. 20,000/- per acre i.e. Rs. 2,08,000/-, Rs. 15,000/- for well, Rs. 4000/- for pipeline, Rs. 2000/- for cattle-shed and Rs. 2000/- for bund. Lastly, he claims amount of Rs. 1,86,860/- as enhanced compensation with the benefits due thereon as per the provisions of Land Acquisition Act.

5. The respondent/State filed written submissions before the Reference Court at Exh. 9 and 10 respectively. It is the contention of the State that the quality, income, cropping pattern, market value etc. as stated by the claimant in his claim petition is not true. The claimant did not withdraw the compensation under protest. The reference petition is not filed within limitation. All other contentions of the claimant are denied by the respondent/State. The State prayed for rejection of the reference petition.

6. The Reference Court after framing issues, partly allowed the claim petition filed by the appellant/claimant. The Reference Court directed to pay Rs. 250/- per R in favour of the appellant.

7. Being aggrieved by the judgment and award of the Reference Court, this appeal is filed by the appellant.

8. The learned Advocate appearing for the appellant submitted that the Reference Court was not correct in allowing the claim petition in part and enhancing compensation @ Rs. 250/- per R. In fact, the findings recorded by the Reference Court are in favour of the appellant and, therefore, the claim of the appellant that he should get Rs. 20,000/- per acre as compensation for his acquired land should have been accepted by the Reference Court. It is further submitted that no separate compensation was awarded for earthen bund, well, pipeline and cattle-shed etc. It is further submitted that in paragraph 20 of the judgment, the Reference Court has recorded positive findings that all the lands were irrigated and were having source and means of irrigation and cash crops were being taken in the lands. It is further submitted that in paragraph 21 of the judgment, the Reference Court has referred the sale deeds. Exh. 20 is the sale deed dated 20th June, 1982 under which, 1 acre of land from village Sastur was

sold for Rs. 14500/-. Village Sastur is at a short distance from village of the appellant and it has come in para 19 of the judgment that village Sastur is at 4 to 5 kms. from the village of the claimant. It is further submitted that Exh. 21 is copy of the sale deed 30.3.1983 under which land from Nagur village to the extent of 96 R was sold for Rs. 27,000/-. The distance between appellant's village and Nagur is one Km. Said findings are recorded by the Reference Court in paragraph 19 of the judgment. It is submitted that in para 22 of the judgment the Reference Court has recorded findings that lands were irrigated with the help of well water and lands are having rich soil and under ground water level is upper compared to other lands and it is also observed that such lands fetch more price. In the same para, the learned Judge has recorded that the lands sold as per the sale deeds at Exh. 20 and 21 were admittedly dry crop lands and those were sold at the rate of more than Rs. 13,000/- per acre and the said lands were at a shorter distance from the land of the appellant. It is also observed that the lands of the claimants like appellant are of high quality, irrigated and well equipped and there were constructed wells in the lands. It is further recorded that laying of pipeline is a costly job and it increases value.

It is further observed that some of the claimants were having fruit bearing trees and it adds to the market value. It was further submitted by the learned Advocate for the appellant that the sale instances from the village of the appellant could not be brought on record because sale transactions were restricted during that period and this position is admitted by the respondent State also.

9. On the basis of the findings recorded by the Reference Court itself the learned Advocate for the appellant submitted that when all these positive findings were recorded in favour of the appellant as stated above, there was no reason for the Reference Court to restrict the claim petition by directing to pay only Rs. 250/- per R, which comes to Rs. 10,000/- per acre. It is further submitted that even according to the findings of the Reference Court, the dry lands were sold for more than Rs. 13,000/- per acre, there is no basis on which the learned Reference Court came to the conclusion to pay compensation at the rate of Rs. 250/- per R to the appellant. The Advocate for the appellant submitted that his claim of Rs. 20,000/- per acre is required to be accepted in view of the findings recorded by the Reference Court in his favour as well as the evidence brought by the appellant on record.

10. The learned A.G.P. appearing for the State submitted that the sale instances which are brought on record are from different villages. Though the Reference Court has recorded findings that the sale instances at Exh. 20 and 21 are from the shorter distance from the land of the appellant, it is not mentioned that how much distance is between the appellant's land and the lands which were sold under the sale instances. It is further submitted that the necessary evidence which was required to be brought on record in support of the contention of the appellant that his land was irrigated is not brought on record and, therefore, the

claim of the appellant is required to be rejected. It is further submitted by the A.G.P. that after proper appreciation of the evidence on record, the Reference Court has come to the correct conclusion and enhanced the compensation and directed the state to pay Rs. 250/- per R in favour of the appellant. There is no infirmity in the judgment of the Reference Court and, therefore, appeal should be rejected.

11. I have heard the learned Advocate for the appellant as well as learned A.G.P. for State/respondent. Perused the evidence on record. In paragraph 19 of the judgment, the Reference Court has dealt with the issue about market value of the claimant's land at the time of issuance of notification u/s 4 of the Act. The Reference Court thought it fit to dispose of the references collectively i.e. L.A.R. Nos. 40/1987, 37.87,38/ 87, 39/87 and 56/87. The present appeal relates to L.A.R. No. 37 of 1987. The Reference Court has dealt with common contention of all the claimants that the acquired lands of the claimants were of black soil and good quality. The Reference Court in para 19 has also dealt with common contentions of the claimants that there were wells in their fields and they were using water from those wells for irrigation purpose. It was the common contention of the claimants that since beginning they cultivated sugar-cane, chilly, paddy, groundnut crops in their fields and they were getting net income of Rs. 5000/- to Rs. 7000/- per acre per year. It was common contention of the claimants that they were shareholders of Killari Sugar Factory which situates at a distance of 10 Kms. from the village of claimants. At the time of notification u/s 4 of the said Act the market value of the acquired land was Rs. 15000/- to Rs. 20,000/- per acre. Due to declaration of the construction of project, from last 25 years, there were no real sale transaction at the village of claimants. Lands from village Nagur, Khed, Sastur, Makni were acquired for Lower Terna Project including lands from the claimant's village. Village Nagur is at a distance of 1 km., Sastur at 4 to 5 kms. from the village of claimants. Land of village Nagur is of low quality than the lands of the claimants. Claimant has produced some copies of sale deeds from village Nagur and Sastur on record. On 30.3. 1983 Krishna Pawar from Nagur sold his land at the rate of Rs. 10,000/- per acre. That land is of low quality than the claimants land. There are 7 to 8 lands between that land and claimants' land. On 2.6.1982 Dhondiram Nimbalkar from village Sastur purchased land at the rate of Rs. 14500/- per acre from one Barkul. Claimant's land is of good quality than that land.

It is the contention of the claimants that no compensation is awarded for the well, pipeline or Bunds etc

12. The appellant is examined at Exh. 59. He stated in his statement that his land is black soil. He adopted the statements of the other witnesses appearing in various references clubbed together so far as quality, income and market value of the acquired land is concerned. In addition to that, he stated in his statement that there was a well, pipeline, farm house, Bunds in his acquired land and no compensation was paid for it.

13. Witness No. 6 Krishna Pawar is examined at Exh. 60. He stated that he is from village Nagur. He sold his 2 acres 15 gunthas land to one Deu Dhangar from the village Nagur before last 5 to 7 years for Rs. 28000/- . He further stated that his land was of low quality than the claimant's land. His land was dry crop land and claimant's land was Bagayat land. He stated that there are four lands between his land and the land of claimant. The witness No. 7 Keshav Barkule is examined at Exh. 61. He stated that in the year, 1982 he sold his 8 acres land from village Sastur to Vijaykumar Diggikar at the rate of Rs. 14500/- per acre. His land was dry crop land and land of claimant was Bagayat

14. At Exh. 48 copy of 7/12 extract was produced by the appellant on record for the year, 1981-82 which shows that there was 96 R sugar-cane crop in the land. Exh. 49 is also produced on record which is 7/12 extract of the same land. In the other rights column there is entry of Budki well.

15. The claimants have also produced some copies of sale deeds. Exh. 20 is the copy of sale deed dated 28th June, 1982. By this sale deed 1 acre land from village Sastur was sold for Rs. 14,500/-. Exh. 21 is a copy of the sale deed dated 30.3.1983 and land to the extent of 96 R was sold for Rs. 27,000/- from village Nagur. Exh. 22 is a copy of the sale deed dated 1.9.1979 about the land from village Kauthala.

16. On the basis of the evidence produced by the respective parties, the Reference Court has recorded findings in paragraph 22 of the judgment that the evidence on record goes to show that the lands of the claimants are irrigated with the help of wells. There were electric motors on those wells. Pipelines were also laid by the claimants for irrigation. Copies of the 7/12 extracts go to show that claimants were growing cash crops in their acquired lands. Some of the claimants are members of the sugar factory. It is further observed that the lands of the claimants admittedly, situate near the river. It is further observed that such lands are more fertile than other lands. Soil of such lands is always rich. Underground water level is generally at upper level. Such sort of lands fetch more price than the lands situated at far distance from river side. It is further observed that the compensation awarded by the State at the rate of Rs. 110/- per R is on the basis of land revenue of the acquired land. It is further observed that the land revenue of lands is fixed at the time of survey which took place before last so many decades. It is further observed that the purpose of fixation of land revenue is different than for compensation. It is further observed that price of land depends on so many factors. It is also noticed by the Reference Court that claimants in their statements have deposed that at the time of notification and before it sale transactions from the village of claimants and adjacent villages were restricted by law and it is not denied by the respondent-State. It is also further observed that in spite of it, the lands of higher quality or well equipped lands are exceptionally sold. So sale instances of such quality of land cannot be easily available.

The Reference Court has taken cognizance of Exhs. 20 and 21 and observed that

those lands were at shorter distance from the claimant's land. It is further observed that lands sold at Exhs. 20 and 21 are admittedly dry lands. These lands are sold for more than Rs. 13000/- per acre. It is further observed that on the other hand, the claimant's land was of high quality, irrigated and well equipped. Construction of well, laying of pipeline is a costly job. It increases market value of the land. There were fruit bearing trees in the lands of some of the claimants. It also adds to market value of the land. There were farm houses in the acquired lands. However, the Reference Court after considering all this evidence, came to the conclusion that all these lands under reference could not have fetched market value less than Rs. 250/- per R i.e. Rs. 10,000/- and above per acre.

17. If the findings of the Reference Court are carefully perused, those are fully in favour of the claimants including present appellant. The Reference Court while considering the sale instances at Exhs. 20 and 21 has observed that these lands are at shorter distance from the claimant's lands. Admittedly, those lands are dry crop lands and these lands are sold at the rate of more than Rs. 13,000/- per acre. There are sale instances on record which show that even lands are sold for Rs. 14,500/- per acre. In paragraph 22 of the judgment, the Reference Court has recorded positive findings that the land which was acquired was of high quality, irrigated and well equipped, compared to the lands sold at Exhs. 20 and 21, which are dry crop lands and sold for more than Rs. 13,000/- per acre. Not only this, the Reference Court has appreciated the entire evidence. It is observed by the Reference Court that there was well in the appellant's land so also pipeline. Laying down pipeline is a costly job and it increases value of the land. There were fruit bearing trees, farm houses, in the acquired lands and considering all these aspects, reference was allowed partly. In my view, when the Reference Court recorded positive findings in favour of the claimants and the sale instances were brought on the record, that too for dry lands, indicate that the dry lands in the vicinity were sold for more than Rs. 13,000/- per acre. It is difficult to understand how the Reference Court came to the conclusion that Rs. 250/- per R would be sufficient enhancement in the compensation. At the rate of Rs. 250/- per R, the compensation comes to Rs. 10,000/- per acre.

18. After taking into consideration the entire evidence on record, the findings recorded by the Reference Court and the arguments advanced by the Advocate for the appellant, I am of the considered opinion that by any stretch of imagination, the Reference Court should not have granted compensation below Rs. 14,500/- per acre for the appellant's land. The evidence brought on record as well as findings recorded by the Reference Court itself support the case of the appellant. Therefore, in my considered opinion, though the claim of the appellant that he should have been paid Rs. 20,000/- per acre as compensation is not accepted, even then certainly he is entitled for Rs. 14,500/- per acre towards compensation alongwith interest and other consequential benefits, as granted by the Reference Court.

19. In the result, appeal is partly allowed. Clause (i) of the operative Order dated 4th March, 1990 passed by the Jt. Civil Judge, Senior Division, Osmanabad so far as it relates to L.A.R. No. 37/1987, is modified and instead of rate of Rs. 250/- per R, the rate of compensation is granted at Rs. 362.5 per R (i.e. Rs. 14,500/- per acre). Rest of the order is maintained.