
(2008) 07 BOM CK 0119
In the Bombay High Court
Case No : F.A. No. 693 of 1992

Murlidhar Pandharinath Shirsath and Another APPELLANT
Vs
Special Land Acquisition Officer RESPONDENT

Date of Decision : 09-07-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2008) 6 MhLj 274

Hon'ble Judges : D.B. Bhosale, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.M. Gorwadkar, for the Appellant; G.P. Mulekar, AGP, for the Respondent

Judgement

B.H. Marlapalle, J.—This appeal arises from the award passed in Land Acquisition Reference No. 86 of 1984 by the learned Joint District Judge at Nasik thereby enhanced the compensation for the appellant's land acquired from Rs. 6,500/- per hectare to Rs. 15,000/- per hectare. Brief facts leading to this appeal are as under : On or about 30-1-1983 the State Government issued the notification u/s 4 for acquisition of land for requirement of Sinnar Taluka Industrial Area and the notification u/s 6 of the Land Acquisition Act, 1894 ("the Act" for short) was issued on 12-5-1983. Under the said notification land admeasuring 16H and 32R in Gat No. 922 of village Musalgaon was sought to be acquired from ownership of the appellants. The land acquisition officer passed his award on 7-6-1983 and fixed the compensation at the rate of Rs. 6,500/- per hectare for jirayat land and Rs. 200/- per hectare for Potkharaba land. The appellants not being satisfied by the said compensation and on receiving award on 23-9-1983 sought reference for enhancement and, accordingly, Land Reference No. 86 of 1994 came to be allowed by the impugned order.

2. The claimants had examined, claimant No. 1 Murlidhar Pandarinath (C.W.1 Exh.19), Pundlik Kokate (C.W.2 Exh.20) and Hanmanta Shirsat (C.W.3 Exh.25) whereas the State examined Punja Sangale (D.W.1 Exh.33), Vishnu Londhe

(D.W.2 Exh.35), Dasharath Shirsat (D.W.3 Exh.45) and Namakaran Aware (D.W.4 Exh.46). Namakaran Aware was employee of Sinnar Taluka Industrial Co-operative Society. The claimants in support of their case for enhancement of compensation had relied upon some sale instances and those were not relied upon by the Reference Court. Similarly, D.W.1 and D.W. 3 were witnesses, who were owners of adjoining land i.e. Gat Nos. 921, 923 and 924. These witnesses were examined in support of the award passed by the land acquisition officer and so as to find out that the market value of the acquired land in village Musalgaon was about Rs. 2,500/- per acre at the relevant time. Even these sale instances have not been relied upon by the reference Court on the ground and as admitted by the witnesses that they had sold the land to the Cooperative Industrial Estate on concessional rate and with a promise that one member of the family would be employed in the proposed industrial units. The claimants had also placed on record the notice issued by the Tahsildar to one land owner regarding payment of deficit stamp duty on sale transaction of land and as per the said notice, the land value was shown to be Rs. 39,000/- per hectare. This notice has not been relied upon by the reference Court.

3. Mr. Gorwadkar, learned Counsel for the appellants invited our attention to the sale transaction of plot of land admeasuring 1000 sq. mtrs. and the sale value was shown as Rs. 8/- per sq.mtr. This was based on the evidence of C.W. 2 Pundlik Kokate and the sale transaction was dated 10-1-1983. On the basis of the same sale instance, the claimant has claimed that value of the land was Rs. 80,000/- per hectare. The Reference Court did not consider the said sale instance for the reasons that the plot of land was located in Sinnar Town itself whereas the land under acquisition was at the distance of 5 Kms. from Sinnar town, in addition to the fact that it was very small plot of land admeasuring about 1000 sq. mtrs. We have noticed that the reference Court solely relied upon the earlier award passed in Land Reference No. 143 of 1978 in respect of land acquired from village Khopadi on the said Bombay Shirdi road for Khopadi percolation tank. This acquisition was of the year 1975-76 and in the award passed the land value was recommended at Rs. 20,000/- per hectare for Bagait land and Rs. 10,000/- for jirayat land. Though there was evidence of the architect of the proposed industrial estate to the effect that the procured land development was about Rs. 22/- per sq.mtr., the reference Court accepted Rs. 10,000/- per hectare as appropriate compensation amount payable in the year 1975-76 in respect of the jirayat land. The Reference Court proceeded to give appreciation to the extent of 50% and accordingly fixed the compensation amount at Rs. 15,000/- per hectare.

4. The award passed in L.R. No. 143 of 1978 is placed on record at Exh.61 and we have noted that the notification of acquisition u/s 4 of the Act was issued on 4-3-1976 whereas in the instant case the notification is dated 30-1-1983 i.e. after about seven years. In the award at Exhibit 61 the reference Court noted that from the year 1970 onwards the land prices had increased rapidly in the neighbouring area and, therefore, the compensation amount was fixed at Rs. 10,000/- per hectare for jirayat land. On the basis of this finding of rapid

increase in the land value Mr. Gorwadkar, learned Counsel for the appellants submitted that the value increased per annum ought to be more than 12% over and above the land value of Rs. 10,000/- per hectare for jirayat land as prevailing in the year 1976 with reference to suit acquisition of 1983. The increase from Rs. 10,000/-per hectare to Rs. 15,000/- per hectare for jirayat land works out to about 7% per annum, if regards be had to the span of seven years i.e. from 1976 to 1983. Mr. Gorwadkar in support of this contention relied upon decision of the Supreme Court in the case of Om Prakash (D) by Lrs. and Others Vs. Union of India (UOI) and Another, , In that case the High Court had noticed that in several judgments of the Supreme Court escalation at different and varying rates i.e. 6% per annum from 1959 to 1965, @ 10% per annum for every year from 1966 to 1973 and @ 12% per annum from 1975 had been considered to be reasonable increase to arrive at the fair market value, assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards.

5. Mr. Gorwadkar also referred to the decision of this Court in the case of State of Maharashtra Vs. Trimbak Joma Thakur deceased through his legal representatives Dasharath Trimbak Thakur and Others, and for determination of the fair market value of the land following observations made by the Division Bench of this Court could be usefully considered:

21. The Court would have to apply the principle of guess work which is permissible in law, particularly keeping in mind the fact that there are no direct sale instances available on record of the acquired lands or adjacent villages. Thus, the Court would have to essentially apply some guess work to determine the fair market value of the lands.

We have also been shown yet another decision of the Apex Court in the case of Krishni Utpadan Mandi Samiti Sahaswan District Badaun through its Secretary Vs. Bipin Kumar and Another, wherein appreciation at the rate of 15% for every subsequent year was held to be reasonable.

6. We have also noted that the impugned award has not been challenged by the State Government and the Reference Court noted that the award passed in L.A.R. No. 143 of 1978 had reached its finality. This means that the State Government accepted the value of jirayat land at Rs. 10,000/- per hectare in the year 1975-76 in the neighbouring area of village Musalgaon and Khopadi (Bombay-Shirdi Road). We are, therefore, required to consider only the rate of enhancement and as noted earlier the Reference Court accepted increase at the rate of 7% per annum while fixing the land compensation at Rs. 15,000/- per hectare for jirayat land. By following the decision of the Supreme Court in the case of Om Prakash (supra) we deem it appropriate to grant appreciation of 12% for every year at flat rate over and above the rate of Rs. 10,000/- per hectare in 1976 and the suit acquisition being of the year 1983 the land compensation would work out to Rs. 18,400/- per hectare and, therefore, it would be appropriate to round off the said compensation at Rs. 19,000/- per hectare. We

do not find any reason to enhance the compensation for Potkharaba land as has been granted by the Land Reference Court at Rs. 1,000/- per hectare.

7. Hence the appeal succeeds partly. We direct that the appellants shall be paid compensation of acquired land at the rate of Rs. 19,000/- per hectare for jirayat land and there shall be no change in compensation for Potkharaba land. The difference in compensation shall be paid to the appellants as early as possible and in any case within four months from today. The impugned award stands modified accordingly. The Registry to issue fresh decree, as under:

(a) Compensation of land at the rate of Rs. 19,000/- per hectare (15H 82R).

(b) Compensation for Potkharaba land at the rate of Rs. 1,000/- per hectare (50R).

(c) Solatium at the rate of 30% on the enhanced land value.

(d) Interest at 12% per annum from 30-3-1983 to 7-6-1983.

(e) Interest at 9% per annum from 16-6-1983 to 15-6-1984.

(f) Interest at 15% per annum from 16-6-1984 till 31-7-2007.

8. The amount already received by the land owner shall be adjusted and the balance amount shall be paid within four months.