
(2014) 02 BOM CK 0288

In the Bombay High Court

Case No : First Appeal No. 1035 of 2007 with Cross-Objection No. 51 of 2013

Nana

APPELLANT

Vs

Vidarbha Irrigation Development Corporation

Vidarbha Irrigation Development Corporation Vs Nana

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

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

Citation : (2014) 02 BOM CK 0288

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : A.B. Patil, Advocate for the Appellant; A.B. Patil, A.B. Nakshane, Advocates and Hiwase, AGP, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J.—Both, this appeal and cross-objection are directed against the judgment and Award passed on 03.2.2007 in Land Acquisition Case No. 220 of 2005 by Ad hoc District Judge 1, Yavatmal. The facts leading to the filing of this appeal and cross-objection are briefly stated as under:

2. Respondent no. 3, Special Land Acquisition Officer, acquired agricultural land bearing survey no. 43, admeasuring 3.64 hectares and another land bearing survey no. 93, admeasuring 2.84 hectares belonging to respondent no. 1 (Cross-objector) for submergence of these lands under Bembla Irrigation Project. The lands were situated in village Bhatmarg, Tq. Babhulgaon, District Yavatmal. Notification u/s 4(1) of Land Acquisition Act was published on 17.12.1998. The Special Land acquisition Officer, after completing the necessary formalities and following the procedure, passed the Award on 16.6.2001 granting compensation at the rate of Rs. 58,464/- per hectare for Gat No. 43 and Rs. 58,164/- per hectare for Gat No. 93 for the land admeasuring 2.79 hectares and at the rate of Rs. 1,500/- per hectare for the land admeasuring 0.05 hectare, left out of Gat No. 93. The Special Land Acquisition Officer also fixed the value of 11 Berry trees

at Rs. 440/- and Two Bel trees at Rs. 3,074/-. Since respondent no. 1 was not satisfied with the fixation of these rates of compensation by the Special Land Acquisition Officer, he preferred Reference u/s 18 of the Land Acquisition Act. The Reference Court after considering the evidence available on record and hearing the rival parties, enhanced the rates of compensation so determined by the Special Land Acquisition Officer. He enhanced the rate to Rs. 1,20,000/- per Hectare for all the lands in these Gat Nos. and also enhanced the compensation rate for berry trees to Rs. 200/- per tree and the rate of compensation granted for the Bel trees was confirmed. Not satisfied with the said judgment and Award the present First Appeal and Cross-objection have been filed.

3. I have heard Shri Patil, learned counsel for the appellant, Shri Nakshane, learned counsel for respondent no. 1/Cross-objector and Smt. Hiwase, learned AGP for respondents 2 and 3. Now the following points arise for my determination:

(i) Whether the Reference Court has committed a serious error in fixing the rate of compensation for the acquired land to be at Rs. 1,20,000/- per hectare?

(ii) What order?

4. Shri Patil has taken me through the evidence available on record and argued that this evidence would show that the sale instance of village Panas upon which reliance has been placed by the Reference Court in recording a finding that it was a comparable sale instance warranting enhancement in compensation granted by the Special Land Acquisition Officer is absolutely not justified. He submits that the map filed on record vide Ex. 29 in respect of various villages situated in Taluka Babhulgaon would show that village Panas is not only separated by two villages from Bhatmarg but also had different characteristics in the sense that on the two sides of village Panas, a river was flowing which was not the geological feature of village Bhatmarg. He submits that these features distinguish the lands situated in village Bhatmarg from those lands of village Panas and, therefore, the sale instance of a land situated in village Panas vide ex. 32 was of no use so as to determine the appropriate rate of compensation for acquisition of the land in village Bhatmarg. He further submits that no evidence has been adduced by respondent no. 1 in a specific manner establishing the fact that the lands situated in village Bhatmarg were similar in nature, grade and fertility with the lands situated at village Panas in respect of which sale instance was produced in evidence by respondent no. 1. He also submits that respondent no. 1 has admitted in his cross-examination that he did not adduce any evidence of expert so as to prove his contention that there was similarity of lands between the lands from village Bhatmarg and land from other villages, of which sale instances were produced in evidence. He, therefore, submits that in such a situation, the Reference Court should not have interfered with the rates of compensation granted by the Special Land Acquisition Officer.

5. Shri Nakshane, learned counsel for respondent no. 1/cross-objector, submits

that respondent no. 1 has specifically stated in his evidence about the similarity of lands situated at village Panas, Kapra (Barad) and Kolhi in respect of which sale instances were produced in evidence by respondent no. 1. He submits that this evidence of respondent no. 1 has not been controverted in any manner by the appellant and this can be seen from the manner in which cross-examination of respondent no. 1 has taken place. He submits that in such a situation, the Reference Court should have held that the sale instances of lands from villages Kopra (Barad), Panas, Kolhi and Panas were comparable with the lands situated in village Bhatmarg and, therefore, that sale instance which indicated highest market price of the land which should have been taken into account by the Reference Court. He submits that the highest sale instance was of villages Nagargaon and Kopra (Barad) and by taking into consideration the same, the Reference Court ought to have granted compensation at the rate of Rs. 1,80,000/- per hectare.

6. Upon going through the evidence available on record as well as the impugned judgment and Award, I find that the Reference Court has rightly rejected the sale instance of village Nagargaon and Kopra (Barad).

7. In the sale instance of village Nagargaon, the sale-deed has been executed on 16.3.2000, much after issuance of notification u/s 4(1) of Land Acquisition Act in the year 1998. Learned counsel for respondent no. 1 and Cross-objector has submitted that the agreement to sell of this transaction was of the year 1995 and, therefore, this sale-deed could not have been said to be of the year 2000 and should have been considered as actually having been entered into between the parties way back in the year 1995. He points out from the sale-deed of village Nagargaon, which is available on record that this document itself refers to the agreement of sale of the year 1995 and, therefore, in reality, it should be taken to be a transaction not of the year 2000, but of the year 1995. From perusal of recitals of this sale-deed, it cannot be gathered as to what was the agreed consideration between the parties in the year 1995 and, therefore, it was necessary for respondent no. 1 to produce in evidence the said agreement to sell also. Since it has not been tendered in evidence, the contention that the sale-deed of village Nagargaon should be taken as evidence of transaction of 1995, cannot be accepted. The Reference Court was right in not accepting this sale instance.

8. The learned Judge has also rejected the sale instance of village Kopra (Barad) vide Ex. 31, although the sale-deed has been executed on 18.1.1994 and the consideration for sale of land admeasuring 1.21 hectares has been shown to be of Rs. 1,50,000/-, i.e. Rs. 1240/- per Are. The reason given by the learned Judge for ignoring the sale instance is that village Kopra Barad is situated at a distance of 2 kms. from the acquired land. The reason so given by the learned Judge is inadequate. The learned counsel has placed reliance on the decision in the case of *Thakarsibhai Devjibhai and Others Vs. Executive Engineer, Gujarat and Another*, In this case, the Hon''ble Supreme Court has held that the distance

between two classes of land cannot by itself derogate the claim of the appellant unless there is some other material to show that quality and potentiality of such land is inferior. Therefore, I find that the learned Judge has committed an error of judgment in solely relying upon the distance of 2 kms. between the acquired land and the land situated at village Kopra (Barad) for rejecting the sale instance from village Kopra (Barad). What should have been seen, and that is more important, whether the land in the sale instance vide Ex. 31 3 was similar in nature, grade, fertility and potentiality with the acquired land or not. The map of Taluka Babhulgaon is relevant in this regard. From this map, it can very well be seen that apart from the distance between the lands in village Kopra (Barad) and lands in village Bhatmarg, there is a glaring distinction between these two classes of land. The map shows that Kopra Barad lands are situated on the banks of river Bembla and lands of village Bhatmarg are not. This feature should distinguish village Kopra (Barad) lands in terms of their potentiality, grade of soil and fertility from the lands of village Bhatmarg, for the lands situated on the banks of a big river like Bembla would be geologically on a different plain and would be presumed to have greater fertility due to presence of alluvial soil. Unless this impression is erased by respondent no. 1 by producing some cogent evidence on record showing similarity in terms of grade, nature, fertility and potentiality, it cannot be said that both these classes of land must be similar in nature. Such material is not to be seen in the evidence adduced on behalf of respondent no. 1. He only makes a general statement in his examination-in-chief that the lands are similar in nature. This general statement, in the light of the afore-stated distinguishing features between these two classes of land leads us nowhere. Therefore, in my view, the learned Judge has rightly not considered the sale instance of land of village Kopra (Barad) as comparable with the lands in village Bhatmarg, although the reasons stated for the same may not have been adequate.

9. Learned counsel for respondent no. 1/Cross-Objector has also submitted that the lands from village Kolhi should have been taken into consideration by the Reference Court. However, I find that no sale-deed of village Kolhi has been produced in evidence on record by respondent no. 1 and whatever was available on record was only an Index-II entry as regards transfer of the land by way of a sale-deed. The entry would not be sufficient in making a proper comparison between the two classes of land by ascertaining similarities and dissimilarities between them. Therefore, the learned Judge has rightly not considered the sale instance of village Kolhi.

10. It is seen that the Reference Court has adopted the sole criterion of one comparable sale instance for enhancing the compensation in this case. This sale instance is from village Panas and the learned Judge has held that if the land from village Panas could fetch Rs. one lac, i.e. Rs. 1010/- per Are in the year 1996, there is no way the land at Bhatmarg would not fetch at least Rs. 1200/- per Are in December, 1998 and accordingly the learned Judge went on determining the compensation to be at Rs. 1,20,000/- per hectare.

11. Learned counsel for the appellant has serious objection about the approach so adopted by the learned Judge. He submits that there is no evidence available on record which would show that the lands of village Panas could be compared in any manner with the lands of village Bhatmarg. He submits that the sale-deed vide Ex. 32 of the land situated at village Panas itself shows that Panas land could not be compared with the lands of Bhatmarg for enhancing the rates of compensation. He points out from this sale-deed that land therein was bound on its two sides by a river and whereas the map Ex. 29 of Taluka Babhulgaon does not show that there is any river on the side of village Bhatmarg. Learned counsel for respondent no. 1, however, submits that although the map does not show that there is any river flowing from or by the side of village Bhatmarg, the fact is that there is a river, though evidence about this fact has not appeared in the examination-in-chief of respondent no. 1. He further submits that in spite of that, fact remains that there is a river flowing by the side of village Bhatmarg. He further submits that apart from the rivers, in terms of distance as well as nature, grade, quality of soil and potentiality, there is no difference between the lands in village Bhatmarg and Panas and this can be seen from the geological locations of both the villages, as shown in the map Ex. 29.

12. Upon perusal of map, Ex. 29, I find that learned counsel for respondent no. 1 is right. Geologically both these villages-Bhatmarg and Panas, could be found to be located on the same plain and, therefore, there is a reason to believe that the lands of both these villages must be comparable and similar in terms of grade, quality, fertility and potentiality. Even though there is a small river shown in the map as well as in the sale-deed as flowing from the side of village Panas, and no river, as per evidence, flows by village Bhatmarg, the fact that both these villages are on same plain, there is a great possibility of lands from both villages being similar to each other. Size of Panas river also does not appear to be as large as river Bembla to draw presumption about wide presence of alluvial soil around the river. Therefore, having regard to the same geological situation, no error could be found in the finding recorded by the learned Reference Court as regards similarity of lands in villages Bhatmarg and Panas. Thus, I find that the comparison of these two classes of land was always possible and the Reference Court has rightly held that the value of the land from village Bhatmarg could possibly be not less than Rs. 1200/- per Area in December, 1998. In the circumstances, I find that no serious error has been committed by the learned Judge of the Reference Court in determining the rate of compensation of the acquired land to be at Rs. 1,20,000/- per hectare. The point is answered accordingly.

13. There is no merit in the appeal as well as in the cross-objection. The rate of compensation so adopted is just and proper. The appeal as well as cross-objection both deserve to be dismissed.

14. The appeal and cross-objection both stand dismissed. However, in the circumstances of the case, there shall be no order as to costs.