
(2014) 12 BOM CK 0152

In the Bombay High Court

Case No : First Appeal Nos. 67 of 2005 and 414 of 2007

Nirmalabai Pratapsingh Ade

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 8, 9
Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 89
Land Acquisition Act, 1894 — Section 18, 4, 6, 9

Citation : (2014) 12 BOM CK 0152

Hon'ble Judges : R.K. Deshpande, J; P.N. Deshmukh, J

Bench : Division Bench

Advocate : B.D. Vora, Advocate for the Appellant; T.R. Kankale, Advocate for the Respondent

Judgement

R.K. Deshpande, J.—In Land Acquisition Case No. 18/1997, the Reference Court has delivered the judgment and order dated 2nd January, 2004, granting compensation of Rs.3,75,67,985/along with the other statutory benefits payable in respect of acquisition of land of 1.21 HR equivalent to 1,29,345 sq.ft, out of Survey No. 118/3, situated at Digras. First Appeal No. 67 of 2005 has been preferred by the claimant seeking enhancement of compensation at the rate of Rs. 159/per sq.ft., as against the rate of Rs.100/per sq.ft granted by the reference Court. First Appeal No. 414 of 2007 is preferred by the State challenging the enhancement of total compensation from Rs.4,84,000/to Rs. 3,75,67,985/granted by the Reference Court.

2. Both these appeals pertain to the acquisition made at Digras, Distt. Yavatmal, for construction of Court buildings and the quarters for the judges and were heard and the judgment was dictated in the open court on 8th December, 2014, allowing the appeal for enhancement of compensation filed by the claimant and dismissing the appeal challenging the enhancement filed by the State Government. On the next date i.e. on 9th December, 2014, we heard another

four appeals being First Appeal Nos. 198/2005, 185/2005, 212/2005 and 519/2004 involving the acquisitions made for the resettlement of the persons affected by Arunavati Project at the same place of Digras, Distt. Yavatmal. After hearing the counsel for the claimants and the learned AGP for State Government, we dismissed two First Appeal Nos. 198/2005 and 212/2005 preferred by the claimants for enhancement of compensation and allowed two First Appeal Nos. 185/2005 and 519/2004 preferred by the State Government, setting aside the enhancement granted by the Reference Court.

3. At the time of correction of the judgment delivered in both these appeals and before signing, it was noticed that the facts are almost the same and the sale transaction dated 03.09.1992 at Exh. 29 therein was also relied upon by the claimant in these appeals at Exh. 26. Hence, we called upon the learned counsels to argue the matter afresh.

4. Accordingly, the matters were reheard on 15.12.2014 and we passed an order as under;

"These matters were heard on 08.12.2014 and the judgment was delivered in the open court allowing the First Appeal No. 67/2005 filed by the claimant and dismissing the First Appeal No. 414/2007 filed by the State Government. AT the time of correction of the judgment and before signing it, it transpired that two sale deed relied upon by the claimants in these appeals were also the subject matter of four appeal which were heard on 09.12.2014 and dismissed by a judgment dictated in open court.

In order to seek further clarification in the matter, we though it fit to place the matters for hearing afresh. Accordingly, the learned counsels appearing for the parties addressed us on merits. We posted these matters on 22.12.2014 with direction to the learned Assistant Government Pleader to call for the record in respect of conversion of land in question for non agricultural purpose along with the order of conversion, if any, passed in 1981.

Steno copy of the order be supplied to the learned AGP to act upon"

5. We again heard the learned counsels on merits of the matter on 22.12.2014 and 23.12.2014. In response to the aforesaid order, the State Government filed an affidavit dated 23.12.2014 of the Naib Tahsildar from the office of the Sub Divisional Officer at Digras.

6. The facts of the case are that the land admeasuring 1.21 HR out of field Survey No. 118/3 of Digras, Distt. Yavatmal, was acquired for construction of Civil and Criminal Court Building and the Judges' Quarters vide Land Acquisition Case No. 8/47/9596 of Digras, by issuing notification under Section 4 of the Land Acquisition Act on 07.01.1995. The declaration under Section 6 of the Land Acquisition Act was published on 19.08.1995 and the notice to lodge a claim under Section 9 of the said Act was issued on 29.12.1995. The claimant filed statement of claim on 22.01.1996, demanding the rate of Rs.250/per sq.ft along

with all statutory benefits. The Land Acquisition Officer passed an award on 07.01.1996 granting the rate of Rs.4 lakh per hectare and offered the total compensation of Rs.4,84,000/to the claimants.

7. In the Reference under Section 18 of the Land Acquisition Act preferred by the claimant, the reference Court has enhanced the compensation by granting rate of Rs.100/per sq.ft and the State Government was directed to pay the sum of Rs.3,75,67,985/along with future interest at the rate of 15% per annum on the amount of Rs.1,69,07,225.86. This is how the matter has come up before this Court in two appeals - (i) First Appeal No. 414 of 2007, preferred by the State Government challenging the enhancement and (ii) First Appeal No. 67 of 2005 preferred by the claimant seeking further enhancement.

8. The Reference Court in its judgment and order dated 2nd January, 2004, delivered in Land Acquisition Case No. 18/1997 has recorded the finding that the entire layout including the land acquired was converted into nonagricultural use in the year 1981 i.e more than 13 years prior to the date of notification under Section 4 and in that survey number, a Polytechnic College, Deaf and Dumb School were in existence since 1982 and 1991 respectively, run by Vasant Naik Education Society. The reference Court placed reliance upon the diagrammatic representation (Article "A") drawn by PW1, the son of the original claimant, who is the Computer Engineer, to hold that the land in question acquired nonagricultural potentiality. The Court held that though in the cross-examination PW1 admitted that no documents are produced to show the Education, Medical, Banking facilities and other developments were in existence at the time of issuance of notification under Section 4 of the Land Acquisition Act, it does not mean that his oral testimony in that respect should not be disbelieved specially when any contrary evidence has not been adduced by the respondent to establish the market value of the land acquired.

9. The Reference Court has relied upon two sale instances reflected by the certified copies of two sale Indexes at Exh.24 and 25. The sale instance at Exh. 24 is dated 16.10.1992 by Ramrao Bhoyar who sold Plot No. 5, admeasuring 1027 sq.ft to Shri Chore for a consideration of Rs. 1,29,000/and it was found just at a distance of 490 feet from the acquired land across the State Highway. The another sale instance is dated 13.10.1992 at Exh. 25, in respect of Plot No. 74 admeasuring 400 sq.ft sold by Smt. Vatsalabai Mahindre to Kishor Sarode for the consideration of Rs.48,000/, situated at Gurudeo Nagar, at a distance of 400 feet from State Highway and about 450500 feet from the acquired land. The sale instances are proved by examining PW2 Ramrao Bhoyar and PW3 Kishor Ramrao Sarode. Both the sale instances indicate the rate of Rs.125/and Rs. 120/per sq.ft., respectively in the year 1992.

10. Two more sale instances at Exh. 26, dated 03.09.1992 and Exh. 27, dated 09.09.1992, are also referred by the reference Court, but those have not been acted upon to enhance the compensation. The evidence of Sachin Ade, the power of attorney holder of the claimant, Ramrao Bhoyar and Kishor Sarode has also

been relied upon. The court has also held that in Land Acquisition Case Nos. 50/1991 and 51/1991, the court granted compensation to nonagricultural plots from the same village at the rate of Rs.125/per sq. ft and hence the same rate is claimed by the claimant.

11. The points for determination are as under;

(a) Whether the Reference Court was justified in awarding compensation at the rate of Rs.100/per sq.ft., for acquisition of 1.21 HR of land out of Survey No. 118/3 of Digras, Distt. Yavatmal?

(b) Whether the claimants are entitled for further enhancement of compensation at the rate of Rs.125/per sq.ft.?

12. We have gone through the record and proceeding of the case. We do not find, in spite of search, any document produced on record to show that either the land in the sale instances at Exhs. 24 to 27 relied upon by the claimant or the lands under acquisitions were converted for nonagricultural purpose. The finding in Para 9 of the judgment of the Reference Court that "the entire layout including the land acquired was converted into nonagricultural use in the year 1981 i.e. more than 13 years prior to the date of notification under Section 4 of the said Act" is based upon the sole testimony of Sachin Pratapsingh Ade, the son and power of attorney holder of the claimant. In the award passed on 7th December, 1996 also, there is a statement appearing in para 5 that the land under acquisition is converted in the year 1981 for non agricultural purpose.

13. The sale indexes at Exh. 24, dated 16.10.1992 and Exh. 25 dated 13.10.1992 relied upon by the claimant are proved by examining PW2 Ramrao Fattuji Bhoyar, the vendor in respect of sale index at Exh. 24, dated 16.10.1992 and PW3 Kishor Ramrao Sarode, the purchaser of the property covered by sale index at Exh.25, dated 13.10.1992. Exh. 24 is in respect of sale of Plot No. 5 admeasuring 1027 sq. ft., out of Survey No. 136/2 sold on 16.10.1992 to Janardhan Chore for consideration of Rs.1,29,000/, whereas Exh.25 is in respect of sale of Plot No. 74, admeasuring 400 sq.ft., out of Survey No. 136/2 by Smt. Vatsalabai Mahindre on 13.10.1992 for total consideration of Rs.48,000/. Though the vendor and purchaser in respect of Exh. 24 and 25 respectively are examined, none of them have produced the original sale deeds or the copies thereof on record.

14. Though PW2 Ramrao Bhoyar and PW3 Kishor Sarode have deposed that the plots purchased by them are at the distance of about 200250 feet and 500 feet respectively from the land under acquisition, which is located touching Nanded Nagpur State Highway, none of them have stated that the lands covered by the sale indexes at Exh. 24 and Exh.25 in respect of Survey No. 136/2 were converted for nonagricultural purpose at any point of time. The vendors and the purchasers in respect of the sale deeds at Exh. 26 and 27 in respect of plots out of Survey Nos. 6768 have not been examined and neither the original sale deeds nor the copies thereof are placed on record of the Reference Court. There is

nothing on record to show that the land Survey Nos. 6768 were converted for nonagricultural purpose. The sale index at Exh. 26 dated 03.09.1992 has not been relied upon by the Reference Court, but it is in respect of Plot No. 14, admeasuring 500 sq.ft., out of Survey Nos. 6768 for consideration of Rs. 50,000/ by Ramesh Hari Pawar to Sanjay Hari Pawar. The sale index at Exh. 27, dated 09.09.1992 has also not been relied upon by the Reference Court, but it is in respect of Plot No. 10 admeasuring 437.11 sq.ft., out of survey No. 6768 by Mohan Kheru Chouhan to Janusa Bhopasingh Powar for total consideration of Rs.50,000/.

15. It is not understood as to how different persons have executed sale deeds at Exh. 26 and Exh. 27 in respect of different plots in the same survey number i.e. Survey No. 6768. The same is the case in respect of sales at Exh. 24 and 25 which are in respect of different plots in Survey No. 136/2. All these four transactions have taken place between 03.09.1992 and 16.10.1992 i.e. within a span of 1 1/2 month immediately preceding the date of issuance of notification on 23.03.1993 under Section 4 of the Land Acquisition Act for acquiring land Survey No. 57 and 71, admeasuring 7.11 hectares at Digras for the purpose of rehabilitation of persons from village Chincholi affected by Arunawati project, which are the subject matter of First Appeal Nos. 198/2005, 185/2005, 212/2005 and 519/2004, decided on 9th December, 2014.

16. Under Section 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, the transfers by way of sales creating fragment of small plots in respect of an agricultural land without being converted for nonagricultural purpose is prohibited. Such transfers become void under Section 9 of the said Act. Similarly, the agricultural lands cannot be transferred to non-agriculturist without the permission of the Collector as required under Section 89 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act. There is nothing on record to show that the lands under sale deed at Exh. 24 to 27 were sold to the agriculturists. The transfers reflected by sale indexes at Exh. 24 to Exh. 27 do not appear to be bonafide apart from the fact that they cannot constitute the basis for determining the true and correct market value of the lands in question which admeasures 1.21 HR and the Reference Court has, therefore, committed an error in relying upon such sale deeds.

17. The layout plan produced on record is prepared by PW1 Sachin Ade, the son of the claimant and the power of attorney holder. It is marked as Article "A" and it is not proved to establish the surrounding areas of the land under acquisition, to decide as to whether the land in question possesses non agricultural potentiality. Though the Reference Court has recorded the finding that PW1 has admitted in his cross examination that no documents are produced on record to show the education, medical, banking facilities and other developments were in existence at the time of issuance of notification under Section 4 of the Land Acquisition Act, it has committed an error in holding that the land under acquisition has acquired nonagricultural potentiality. Though the claimant has

examined two witnesses, namely, Ramrao Bhojar and Kishor Sarode, none of them have deposed about the nonagricultural potentiality of the land under acquisition. None of them have stated that the land under acquisition was converted for nonagricultural use or that on the said land a Polytechnic College or Deaf and Dumb School is in existence since 1982 and 1991 respectively. The evidence of PW1 Sachin Ade regarding nonagricultural potentiality of the land under acquisition does not inspire confidence and should not have been relied upon by the Reference Court.

18. Though the Reference Court has held that in Land Acquisition Case Nos. 50 of 1991 and 51 of 1991, the Court granted compensation to nonagricultural plots from the same village at the rate of Rs.125/per sq.ft., in spite of search, we could not find anything in the record and proceedings of the Reference Court in respect of the decision in said cases, so as to have comparison. There is no finding that the so called nonagricultural plots in L.A.C. Nos. 50 of 1991 and 51 of 1991 are comparable with the land in question.

19. In view of above, we are of the view that the Reference under Section 18 of the Land Acquisition Act was required to be dismissed by the Reference Court for failure to prove the claim for enhancement of compensation. Not only that, but we find that prima facie it is a case of fraud which is played on the court to claim the enhanced compensation. There also seems to be an internal connection with the claim for enhancement of compensation in these cases and the claim for enhancement of compensation in Land Acquisition Case Nos. 210 of 1995 and 212 of 1993 for acquisition of Survey Nos. 57, 71 and 73/1 of Mouza Digras, for the purpose of rehabilitation of persons affected by Arunawati project. We have decided First Appeal Nos. 198 of 2005 and 185 of 2005 on 9th December, 2014, arising out of it. The claimant in those first appeals is Shri Vasant Naik Education Society through its Secretary, Shri Sachin Pratapsingh Ade, who is the claimant in these First Appeal Nos. 67 of 2005 and 414 of 2007.

20. We have seen the affidavit dated 23rd December, 2014, sworn in by Rajendra Sakaharam Chitkulwar, the Naib Tahsildar from the office of Sub Divisional Officer, Darwha, filed in response to the order dated 15.12.2014 passed by this Court. From his affidavit, it is apparent that in 1981, none of the lands were converted for nonagricultural use in Taluka Digras in the year 1981. There is misrepresentation of fact that the lands were converted for nonagricultural purpose in the year 1981. The claim for enhancement of compensation in Reference also does not seem to have been defended properly. In the award itself, we have noticed the fact that the lands were converted for nonagricultural purpose in the year 1981, which fact is found to be false.

21. In view of above, we dismiss First Appeal No. 67 of 2005 filed by the claimant Smt. Nirmalabai Pratapsingh Ade and allow the First Appeal No. 414 of 2007 filed by the State and pass further orders as under;

[i] The Reference under Section 18 of the Land Acquisition Act registered as Land

Acquisition Case No. 18 of 1997 is hereby dismissed.

[ii] If any amount is deposited by the State Government either in the Reference Court or in this Court, the same is permitted to be withdrawn by the State Government.

[iii] If any part of the amount is permitted to be withdrawn by the claimant upon furnishing solvent security, then the claimant is directed to redeposit the said amount within a period of three months from today along with interest at the rate of 6% per annum from the date of withdrawal of such amount till its redeposit.

[iv] If such amount is not redeposited within the stipulated time, the State Government can proceed to recover it from the claimant as an arrears of land revenue and/or by enforcing the solvent security, if any.

[v] The Collector, Yavatmal, is directed to make an enquiry and submit his report on the following aspects.

(a) Whether the lands under acquisitions viz. Survey No. 118/3, Survey No. 57 and 71 and Survey No. 73/1 of Digras were converted for nonagricultural purpose prior to the date of issuance of notification under Section 4 of the Land Acquisition Act, on 23.03.1993 and 07.01.1995.

(b) Whether the sale deeds at Exh. 24 to 27 in Land Acquisition Case No. 18 of 1997 were in respect of land converted for nonagricultural use and whether such sale deeds were hit by the provisions of Section 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and Section 89 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act.

(c) How many sale instances of agricultural lands are registered in sale indexes of Digras during 1988 to 1997, creating fragment prohibited by Section 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

(d) How sale transactions of small plots out of agricultural lands at Digras were registered in contravention of Section 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

(e) What steps the Collector can take if the transfers are in violation of the aforesaid provisions and what action he proposes to take.

(f) How much amount is paid to the claimants pursuant to the order of Reference Court and how does he propose to recover it.

[vi] The Collector, Yavatmal, to submit his report within a period of three months from today to the Registrar (Administration) of this Court who shall bring it to the notice of this Court.