
(1994) 02 BOM CK 0018
In the Bombay High Court
Case No : First Appeal No. 20 of 1988

Osman Khan and another	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 09-02-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 26, 28, 30(2)
Land Acquisition Act, 1984 — Section 4(1)

Citation : AIR 1994 Bom 271 : (1994) 3 BomCR 333 : (1994) 96 BOMLR 873

Hon'ble Judges : A.D. Mane, J;A.A. Halbe, J

Bench : Division Bench

Advocate : Mr. K.C. Khader, for the Appellant; Mr. K.B. Choudhary, Assistant Government Pleader, for the Respondent

Judgement

A. D. Mane, J.—This appeal arises out of the Land Acquisition Reference No. 66 of 1984 decided on 18-8-1987, by the 2nd Additional District Judge, Aurangabad.

2. The Appellants are the claimants. They have together 2/3rd share in the land forming part of CTS No. 19049/1 admeasuring 8809 sq. mts situated at Padampura, Aurangabad, Railway Station, Aurangabad. The said land came to be acquired for the purpose of development of Railway road in Marathwada area to merge Meter Gauge line passing from Manmad to Kachiguda through Aurangabad Centre into Broad Gauge line. The notification u/s 4(1) of the Land Acquisition Act, 1984 (for short, the Act) which was published in the Maharashtra Government Gazette on 21-1-1982 by applying the urgent clause. The notification u/s 6 of the Act was issued on 23-3-1982 which was published in the Maharashtra Government Gazette on 8-4-1982. The Special Land Acquisition Officer passed the Award on 23-2-1984. The Special Land Acquisition Officer valued the land virtually adopting a belting method for determination of the compensation. The total area under the plotting system came to be considered 6539 sq. mts. and its value was assessed at Rs. 6,90,990/-.

With the assistance of the learned Counsel for the parties we worked out the

price at which the compensation was awarded and it comes to Rs. 105/- per sq. mt. i.e. Rs. 9.82/-per sq. ft.

3. The Appellants-claimants were dissatisfied with the Award passed by the Special Land Acquisition Officer, as according to them, the compensation awarded in their favour was inadequate and unreasonable. They, therefore, made application for reference to the Court u/s 18 of the Act. It was stated that the market price of the comparable land as prevailing on the relevant date of the acquisition of the land was Rs. 25/- per sq. ft. In support of that say of the Appellants, they relied on two sale instances Exhibits 31 and 32 to show that the land in neighbouring area was sold at the rate of Rs. 25.25 ps. per sq.ft. in August, 1981 and in November, 1984, at the rate of Rs. 33/- per sq. ft. respectively. In addition to these sale deeds the Appellants also relied on one more sale instance dated 5-8-1981 to show that the price fetched for a plot of 60 x 60 ft. was at the rate of Rs. 15/- per sq. ft. Lastly the agreements of sale dated 29-9-1981 at Exhibits 27 and 28 were also relied on but those were cancelled by the parties subsequently.

4. The Court below, concurring with the Award passed by the Special Land Acquisition Officer rejected the reference by his order dated 18-8-1987.

5. Shri Khader, learned Counsel for the Appellants, argued with reference to the sale instance relied on by the claimants that the court below had made a wrong application of principle and also overlooked or misapplied the important points affecting the valuation of the acquired land. It was submitted by the learned counsel that for the purpose of assessment of the market value of the land the Court below ought to have taken it as urban land with high potentialities and its value ought to have been determined on the basis of sale instances relied on by the appellants, It was also submitted that the method of valuation as adopted in the present case in ascertaining the market value of the land acquired on principle of deduction of the area or value for the purpose of compensation was not correct since the acquired property is situated in a developed area with little or no requirement of further development. The learned counsel next argued that the court below erred in not considering the statutory benefits accrued to the claimants in the matter of higher solatium and interest on the amount of compensation in compulsory acquisition of the land. It was submitted that the claimants have been wrongly denied the additional 15% solatium and higher rate of interest on the amount of compensation when the present case is covered under the amended sections 23(2) and 28 of the Act. The Award was made on 23-2-1984 by the Special Land Acquisition Officer and, therefore, transitional period between April 30, 1982 and September 24, 1984 is applicable. It was then submitted that the claimants were entitled to enhanced amount of compensation together with the higher solatium and interest.

6. Now, therefore, there involves two important questions. The first important question is what was the fair and reasonable market value of the acquired land on the date of the notification u/s 4(1) of the Act. The second equally important

question is whether the claimants were entitled to the higher solatium and interest on the amount of compensation under Sections 23(1-A) and 28 of the Act.

7. We shall first proceed to consider the question as to the fair and reasonable market value of the acquired land. What is fair and reasonable market value is always a question of fact depending on the nature of the evidence, circumstances and probabilities in each case. It is, however, the paramount duty of the courts of facts to subject the evidence to close scrutiny, objectively assess the evidence tendered by the parties on proper considerations thereof in correct perspective to arrive at reasonable market value. The attending facts and the circumstances in each case would furnish guidance to arrive at the market value of the acquired land. That is so because the claimant has legal and legitimate right to a fair and reasonable compensation of the land he is deprived of by legal process. The Supreme Court in *Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala*, observed that :

"The guiding start would be the conduct of a hypothetical willing vendor who would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions as on the date of the notification u/s 4(1) but not an anxious buyer dealing at arm's length nor facade of sale or factious sales brought about in quick succession or otherwise to inflate the market value."

8. Next it may be kept in view that the amount awarded by the Land Acquisition Officer forms an offer and it is for the claimants to establish that the acquired land was capable of fetching higher market value and the amount offered by the Land Acquisition Officer was inadequate and he proceeded on a wrong premise or principle. Mr. Khader, learned counsel for the appellants, mainly relied on and we think rightly, on three sale instances although he made a reference to the agreements of sale produced at Exhibits 28 and 29 pertaining to the very property acquired. We may tabulate as follows the sale instances upon which reliance is strongly placed by the learned counsel for the Appellants.

(See table on next page)

The price fetched for the aforesaid plots of the lands covered under the sale instances discloses the price prevailing in 1981, 1982 and 1984. In 1981 the price was Rs. 15/- per sq. ft.

Sr. No.	Exh. No.	Date	Area	Location	Price/Rate
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1.	31	25-11-82	5350 sq. ft.	Padampura.	Rs 1,31,00,75 ps. i.e. Rs. 24.50/- per sq. ft.
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2.	32	21-12-84	150"	East-West towards South.	Rs. 3,00,000/- i.e Rs. 33/- per sq. ft.
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			150 x 60"	North-South towards West.	
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60" North-South towards West.

Samarthnagar.

3. XX 5-8-1981 681.4 sq. mts. i.e. 7320 sq. ft. Kesarsingpura. Rs. 1,09,800/-i.e Rs. 15/- per sq.ft.

whereas the price in November, 1982, was at the rate of Rs. 15/- 24.50/- ps. per sq. ft. but in December, 1984 it was at the rate of Rs. 33/-per sq. ft. We may note that there is no quarrel on proof of the contents of these sale instances nor was there any challenge to the bona fides of these transactions.

Mr. Khader, learned Counsel appearing for the appellants, points out that the Court below did not exhibit the sale-deed dated 5-8-1981 as in its view mere filing of the certified copy of the sale-deed is not enough proof of its contents. That view however is not correct in view of the express provisions contained in Section 51A of the Act.

It is true that the Court below did not exhibit the third sale instance for want of proof despite Sec. 51A of the Act which provides for acceptance of certified copy of the sale-deed as evidence of a document registered under the Registration Act, 1908. There is no dispute that the claimants have filed the certified copy of the registered document and therefore, some could be read in evidence.

9. We may mention at this stage that though the learned counsel for the appellants tried to rely on two more documents in the form of Isar Paotis i.e. agreements of sale produced at Exhibits 28 and 29, we are of the view that the said Isar Paotis were rightly rejected by the Court below. The claimants have proved these Isar Paotis in evidence of their witness and these agreements show that the witness agreed to purchase two plots of 60 x 60 ft. and 100 x 100 ft at a rate of Rs. 50/-per sq. ft. by paying the earnest money of Rs. 5,000/- and Rs. 16,000/- respectively. It may be stated that the intending purchasers have not completed the transactions. The material evidence shows that the intending purchasers had entered into the transactions as the interested persons who had notice of acquisition of the land by the Government. We do not, therefore, see that the price shown therein represents the market price of the land at the relevant date, because, those agreements cannot be termed as agreements between a willing vendor who would offer the land to a willing purchaser who in normal human conduct would be willing to buy as a prudent man in normal market conditions. It seems to us that the two agreements appear to have been executed by the anxious buyer dealing at arm's length.

10. We, however, see no reason to discard the evidence furnished by the three sale instances produced at Exhibits 31, 32 and sale instance dated 5-8-1981. It is well settled that the transactions relating to the acquired land of recent dates or in the neighbourhood lands that possessed of similar potentiality or fertility or other advantageous features furnish relevant evidence. Do or do not these sale instances, on which reliance is placed by the Appellants really furnish better

evidence to make determination of the market price of the acquired land by resorting to a "comparable sales method" for the valuation is indeed the main question and we think to solve this question, regard may first be had to the description of the acquired land including its location, nature and potentialities. At the outset we may exclude the sale-deed exhibit 32 from our consideration. The Appellants' contention that the sale-deed exhibit 32, of the year 1984 is a relevant sale instance for determination of the market value of the acquired land in 1982 is only to be mentioned and rejected. The market value postulated in Sec. 23(1) of the Act is designed to award just and fair compensation for the lands acquired. The word "market value" would postulate the price of the land prevailing on the date of the publication of the notification u/s 4(1) of the Act. Therefore, the price paid in sale or purchase of the land in the neighbourhood within a reasonable time from the date of the acquisition of the land in question or in or about the time of the notification would be the best piece of evidence and would supply the data to assess the market value. The transaction of 1984 was relevant subsequent after a span of more than 2 years next before the date of the notification u/s 4 of the Act and therefore, cannot furnish any guide to determine the market value of the acquired land.

11. The two sale-deeds exhibits 31 and dated 5-8-81 in our view, are, however, most relevant sale instances and the evidence furnished by these sale instances satisfies the test of "comparable sales" of the lands.

Before we consider the evidence furnished by these two sale-deeds, we think it appropriate to consider the contention of Mr. K. B. Choudhary, learned Assistant Government Pleader. The learned Assistant Government Pleader for the Respondent submitted that in fixing the market value of a large property on the basis of sale transactions of smaller property such transactions generally do not represent real basis for fixing the compensation and, therefore, in the instant case the two sale instances, dated-5-8-1981 and 25-11-82 were rightly discarded by the Court below. The argument of the learned Assistant Government Pleader can fully be answered with reference to the decision of the Supreme Court in the case of Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, which, in turn, has approved the view taken by this Court in the case of The State of Maharashtra (Public Works Department) Vs. Bapurao Dnyanoba Chiddarwar and Others, . The Supreme Court observed that :

"The market value envisages the price which a willing purchaser may pay under bona fide transfer to a willing seller. The land value can differ depending upon the extent and nature of the land sold. While comparing the price shown in the transactions all variables have to be taken into consideration. The transaction in regard to small property cannot, therefore, be taken as a real basis for fixing the compensation for large tracts of property. But the proposition that large area of the land cannot possibly fetch a price at the same rate at which smaller plots are sold is not absolute proposition but in given circumstances it would be

permissible to take into account the price fetched by the small plots of the land."

In this context, we may refer to the situation and location of the acquired land as has been more particularly described in the Award itself. It has been stated in the Award that :

"The land under acquisition is situated in Padampura locality. It has frontage on Aurangabad-Paithan State highway and on East-South corner, there is railway station and road of Aurangabad-Paithan. Bus transport just across the railway line. The land under acquisition is situated between the commercial, industrial, residential and official areas. Deccan floor mill is to the south of the land. All facilities are available to the land under acquisition, namely; railway station, bus stand, hotels etc. The situation of the land under acquisition is prominent and is useful for residential, commercial and industrial purposes also. The trend of development is also towards Aurangabad-Paithan road."

Moreover, on behalf of the claimants, witness Mohd. Iqbal Mohd. Nazir, exhibit 30, has stated as follows :

".....the land bearing CRS 19049/1 in the area of Padampur Railway station is within the Municipal Corporation limit, Aurangabad..... That site was acquired for broad gauge railway premises.....The area acquired is in the heart of city. Present railway station, Aurangabad, is at a walking distance for 2 minutes from the site in question. Opposite to that site there is Deccan floor Mill, Maharashtra Metal Boxes, Big Beams creations. Factories are near the site in question. Aurangabad-Paithan road lies to the west of the site in question adjoining to it. To the South of site in question there is Corporation road to the extent of 80 feet in width. There is one High School and number of residential houses near the site in question. S.T. Depot is also near the site in question. Government press is also near the site in question at a distance of 2 minutes" walk..... At the time of acquisition price of the land was Rs. 25/- to Rs. 30/- per sq. feet. That pertains to the land near Paithan road."

It is clear from the above evidence which is otherwise accepted by the respondent that the location of the land acquired is in a populace area of the city i.e. in the heart of the city as said by the claimants. The sale instances, exhibit 31 and of 5-8-1981 as mentioned earlier show that the price of the neighbouring lands gradually increased from Rs. 15/- in 1981 to Rs. 24.50/- ps. per sq. ft. in 1982. The proposition that the large area of the land cannot possibly fetch a price at the same rate at which small plots are sold, in our considered opinion, does not apply in given circumstances of the case. We think that these sale instances certainly constitutes a relevant piece of evidence for determining the value of the acquired land.

9th February, 1994.

12. Mr. K. B. Choudhary, learned Assistant Government Pleader for the respondent has relied on the decision of this Court in the case of State of

Maharashtra v. Aniruddha, 1993 MLJ 1575 to contend that in fixing the market value of a large property on the basis of sale transactions of smaller property, a deduction is to be given on account of the expenses required for the development of large tract to make smaller plots in that area. We may, however, advert to that question later on. It is enough here to emphasize that in the award it has been etc. clearly stated that there has been a general trend of escalation in prices of the real property between 1973 to 1982. The land value was from Rs. 38/- per sq. ft. to Rs. 119.40 ps. per sq. ft. with reference to the locality, size of the plots, safe area, etc. If we take into account the market value as discussed in the above two sale instances, we must give some allowance to such an increase in prices. In our opinion, the market price of the acquired land can be fixed at Rs. 16/- per sq. ft. as against Rs. 15/- per sq. ft. in the earlier year.

13. That takes us to the question as argued by the learned Assistant Government Pleader, whether in fixing the market value of the acquired land on the basis of the sale transaction of smaller property, deduction necessarily be given taking into consideration the expenses required for development of large tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transactions. The Apex Court in its decision in the case of Bhagwathulla's case cited supra has an occasion to consider the very question. In paras 7 and 13 of the report, Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, , it has been observed as follows :

"In awarding compensation proceedings, the Court has necessarily to determine the market value of the land as on the date of the relevant notification. It is useful to consider the value paid for similar land at the material time under genuine transactions. The market value envisages the price which a willing purchaser may pay under bona fide transfer to a willing seller. The land value can differ depending upon the extent and nature of the land sold. While comparing the price shown in the transactions all variables have to be taken into consideration. The transaction in regard to smaller property cannot, therefore, be taken as a real basis for fixing the compensation for larger tracts of the property. But the proposition that large area of the land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. A fully developed small plot in an important locality may fetch a higher value than a larger area in an undeveloped condition and situated in a remote locality. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted."

Further in paras 7 and 11 of the report, the Apex Court has observed that :

"In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the large tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. However, in applying this principle of deduction it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition which is the only relevant factor. If smaller area within the large tract is already developed and situated in an advantageous position suitable for building purposes and have all amenities such as roads; drainage, electricity, communications, etc; then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified."

In the present case the acquired land is located by the side of State Highway and surrounded by the buildings meant for commercial, industrial, residential and official use. The bus stand is also situated to the North just across the railway line. All such aforesaid facilities are available to the land acquired. Not only that but in the award it has also been suggested that the situation of the acquired land is prominent and it is useful for residential, commercial, official and industrial purposes also. Moreover, the trend of development of the city is also all along Aurangabad-Paithan road. That necessarily means that the neighbouring areas of the acquired land are already developed ones and houses have been constructed and the lands have potential value of being used as building site.

In Bhagwathula's case (cited supra) similar was the position of the acquired land it was observed in paras 12/13 of the report as follows :

"In the present case the lands covered by the acquisition are located by the side of the National Highway and the Southern Railway Staff quarters with the Town Planning Trust road on the north. The neighbouring areas are already developed ones and houses have been constructed, and the land has potential value for being used as building sites. Having found that the land is to be valued only as building sites and having stated the advantageous position in which the land in question lies though forming part of the larger area, the High Court should not have applied the principles of deduction. It is not in every case that such deduction is to be allowed."

In our opinion, in the facts and circumstances of the present case the principle of deduction need not be applied when the case is squarely and fully covered by the ratio of the Apex Court.

14. We have considered the case upon which reliance is placed by Mr. K. B. Choudhary, learned Assistant Government Pleader, for the respondents. In the case of State of Maharashtra v. Aniruddha (cited supra) attention of the Court, in the first place, does not appear to have been drawn to the ratio laid down by the Apex Court in the Bhagwathula's case (cited supra). As a matter of fact, no reference is made to the said decision. Secondly the land acquired in that case was not situated in a developed area of the city. The situation of the land was

also altogether different than the one in the present case. Moreover, that was not the land converted into city survey but was used for agricultural purposes. The acquired land in the present case is already converted in city survey numbers and is very much part of the developed site for housing. The decision upon which reliance is placed by the learned Assistant Government Pleader, therefore, is clearly distinguishable on facts. It is, therefore, not possible to receive any support to the argument of the learned Assistant Government Pleader to apply principle of deduction in the facts and circumstances of the present case.

15. We, therefore, come to the conclusion that the court below was not justified in not taking into account the material evidence furnishing proper guidelines for fixing market price of the acquired land. It may be thus stated that on the material evidence adduced by the claimants the amount offered by the Special Land Acquisition Officer was inadequate and the Appellants have proved that the Court below had proceeded on the wrong premises and the principles especially when the evidence is adduced by them in the land acquisition reference shows that the acquired land was capable of fetching higher market value. The market price of the acquired land, at the relevant time, was Rs. 16/- per sq. ft. We, therefore, hold that the market value of the acquired land admeasuring 63,189.89 sq. ft. will have to be determined at the rate of Rs. 16/- per sq. ft.

16. In the view that we take, now coming to the value of the acquired area of the land it is not necessary to apply the principles of deduction in the present case. The total area of the acquired land is 8809 sq. mt. i.e. 94,784.89 sq. ft. The two-third share of the appellants comes to 63,189.89 sq. ft. The value of the acquired land of 2/3rd share of the appellants shall have to be assessed at the rate of Rs. 16/- per sq. ft.

17. Now coming to the other question regarding the entitlement of the claimants to receive higher solatium and the interest on the value of the acquired land, it is not in dispute that the claimants have been allowed 15% solatium and not 30% solatium. Moreover, no interest on the amount of compensation is granted either by the Special Land Acquisition Officer or the Court below. In the award of the Special Land Acquisition Officer it has, however, been stated that the possession of the acquired land was taken by the acquiring body through private negotiations and the acquiring body agreed to pay rent to the owners for the period from the date of taking over possession of the land acquired to the date of final payment to them. The Appellants have filed affidavit in this appeal inter alia stating that no amount of rent was paid or settled nor have they been paid any rent after possession of the acquired land was taken. They have further stated on oath that none of the claimants received a single paise of rent and thus as it was not settled it was not paid. They have received the compensation amount under protest. According to them, the record shows that no negotiations for rent were ever materialised. That statement made on oath by the appellants has not been controverted and, therefore, it was a fact that the claimants were not granted interest on the amount of compensation from the date of the notification u/s 4(1)

of the Act or from the date of possession whichever is earlier.

18. As said above, solatium of 15% was allowed. The Court below did not consider the claim for higher solatium of 30% nor has considered the question of interest payable to the claimants on the amount of compensation. That necessarily means that the Court below has rejected the claim of the appellants regarding higher solatium and interest. So far as interest on the value of the acquired area of the land is concerned we may point out that section 34 of the Act contains a mandatory provision inter alia providing that when the amount of compensation is not paid on or before taking possession of the acquired land, the Collector shall pay interest from the date of taking over possession. The payment of interest is not dependant on any claim of the person whose land has been acquired. There can be no controversy or any lis between the parties regarding the payment of interest. Once the provisions of Sec. 34 of the Act are attracted it is obligatory on the Collector to pay interest and if he fails to pay the same, it can be claimed from the Court in proceedings under Sec. 18 of the Act or even from the appellate Court thereafter. A reliance can be placed on the decision in the case of *Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat*, . The Supreme Court has observed that (at page 660):

"Interest could be paid u/s 34 as also u/s 28 which is of different character than the compensation amount u/s 23(1) of the Act and interest if payable under the Act can be claimed at any stage of the proceedings whereas the amount of compensation u/s 23(1) which is an Award-decree u/s 26 is subject to the rules, procedure and limitations. The rules of procedure are hand-made rules which cannot come in the way of substantive rights of the citizens under the Act."

We are of the view that the Appellants are therefore entitled to claim interest on the amount of market value of the acquired land.

19. We may now consider the question whether the claimants are entitled to additional benefits in view of the transitional provision of Sec. 36(2) of the Land Acquisition (Amendment) Act, 1984. In other words, the question is whether the provisions of Section 23(1-A) and 28 of the Act are to be extended to the present case. In the present case, the Special Land Acquisition Officer made and declared his award on 23-2-1984 whereas the notifications under sections 4 and 6 of the Act were issued on 21-1-1982 and 23-3-1982. It is now settled by virtue of the decision of the Supreme Court in *Union of India (UOI) and Another Vs. Raghbir Singh (Dead) by Lrs. Etc.*, that the amended section 23(2) of the Act applies to the Awards made by the Collector or the Court between August April 30, 1982 and September 24, 1984 in acquisition proceedings commenced prior to the said dates in view of the transitional provisions of section 30(2) of the Land Acquisition (Amendment) Act, 1984. The higher solatium could also be given by the High Court or the Supreme Court in appeals against such awards. Undisputedly the Award in the present case falls within the interregnum i.e. between April 30, 1982 and September 24, 1984, (See *Union of India v. Phillip Tiago Dc Cama of Vedem*, AIR 1990 SC 981. We, therefore, hold that the

appellants are entitled to the interest on the amount of compensation and also benefit of higher solatium and interest as per sections 30(2) and 18 of the Land Acquisition (Amendment) Act, 1984.

20. We, therefore, allow the appeal partly. We direct the respondents to pay to the Appellants, compensation at the rate of Rs. 16/- per sq.ft. for the acquired area of land to the extent of 63,189.89 sq. ft. together with 30% solatium and interest by deducting the amount already paid to the Appellants. The appellants shall be paid proportionate costs on the amount of enhanced compensation.

Appeal partly allowed.