
(2018) 01 BOM CK 0253
In the Bombay High Court
Case No : 53 of 2003

Prabhakar S/o Ramling Choudhari

APPELLANT

Vs

The State of Maharashtra & Ors.

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

[Land Acquisition Act, 1894](#), [Section 4](#) -
Publication of preliminary notification and powers of officers thereupon.

Citation : (2018) 01 BOM CK 0253

Hon'ble Judges : M.S.Sonak

Bench : Single Bench

Advocate : H.I.Pathan, A.M.Phule

Final Decision : Disposed

Judgement

1. Heard Mr.H.I.Pathan, learned counsel for the appellants and Mr.A.M.Phule, learned AGP for the respondents in these appeals. The learned counsel for the parties agreed that all these appeals can be disposed of by common Judgment and order taking into consideration the fact that the acquisition was for one and the same Project.

2. The First Appeal Nos.53 of 2003 and 56 of 2003 have been instituted by Mr.Prabhakar Ramling Choudhari in respect of acquisition of his agricultural lands from Gut No.453 admeasuring 28 Are and 72 Are. In First Appeal Nos.53 of 2003 and 56 of 2003 the Notification under Section 4 was issued on 22.2.1990. The Special Land Acquisition Officer has determined compensation in respect of land admeasuring 28 Are @ Rs.32,000/per Hectare and compensation in respect of land admeasuring 72 Are @ Rs.35,000/per Hectare.

3. The appellant in First Appeal Nos.53 of 2003 and 56 of 2003, Mr.Prabhakar Ramling Choudhari applied for enhancement and the References came to be registered as LAR Nos.473 of 1995 and 872 of 1997. The Reference Court has determined the compensation @ Rs.85,000/per Hectare. It is the case of the

appellant that such determination is not reflecting the actual market value as on date of Notification under Section 4 i.e. 22.2.1990. Hence, the two appeals.

4. The First Appeal Nos.54 of 2003 and 55 of 2203 have been instituted by Smt.Sugalabai w/o Prabhakar Choudhari. This relates to acquisition of her land in Gut No.460 admeasuring 1 Hectare 22 Are and 1 Hectare 99 Are respectively. The Special Land Acquisition Officer determined compensation @ Rs.51,000/per Hectare and the Reference Court has enhanced the same to Rs.85,000/per Hectare. Smt.Sugalabai has appealed the determination by the Reference Court since according to her, the market value of the acquired land was Rs.1,50,000/per Hectare.

5. Mr.Pathan, learned counsel for the appellants submits that there is ample evidence on record, which establishes that the acquired lands were Bagayat lands. He submits that the Reference Court has relied upon the Sale Deed dated 18.3.1992 (Exh.25) in First Appeal No.56 of 2003 in respect of land admeasuring 82 Are situated in village Bhatangali, Tq. & Dist.Latur, which is the same village where the acquired lands were situated. He submits that from reading of the Sale Deed itself and also from the oral evidence led on behalf of the appellants, it is quite clear that the Sale Deed pertains to Jirayat lands and the rate as per the Sale Deed is Rs.1,50,000/per Hectare. Mr.Pathan submits that as a Thumb Rule, compensation in respect of Bagayat land has to be twice the rate at which Jirayat land can be sold or purchased. On this basis, Mr.Pathan submits that compensation could have been determined at the rates, which is higher than Rs.1,50,000/per Hectare and in any case the amount as claimed by the appellants i.e. Rs.1,50,000/per Hectare should have been awarded to them by the Reference Court.

6. Mr.A.M.Phule, learned AGP for the State submits that there is neither any evidence to establish that the acquired lands were Bagayat lands nor that the land, which is subject matter of Exh.25 was Jirayat land. Mr.Phule, submits that the Sale Deed dated 18.3.1992 is quite irrelevant in so far as determination of compensation in respect of lands, which were the subject matter of Notification under Section 4 dated 22.2.1990 i.e. the First Appeal Nos.53 of 2003 and 56 of 2003 instituted by Mr.Prabhakar Ramling Choudhari. Mr.Phule, learned AGP submits that in the absence of any cogent evidence on record, there is no reason to interfere with the impugned Awards made by the Reference Court and therefore, all these appeals may be dismissed.

7. In so far as the First Appeal Nos.53 of 2003 and 56 of 2003 instituted by Mr.Prabhakar Ramling Choudhari are concerned, obviously the Sale Deed dated 18.3.1992 (Exh.25) cannot be regarded as extremely relevant documentary evidence. Normally, Sale Deeds in respect of transactions prior to Notification under Section 4 are relevant for determining the market value. Though, there is no absolute bar to refer to post Notification Sale Deeds, such reference is usually for the purposes of establishing the trend of escalation and not for the purposes of actual market value.

8. In First Appeal Nos.53 of 2003 and 56 of 2003, upon perusal of the evidence on record, it appears that the claimants had produced the sale instance, which was marked as Exh.15. This sale instance was dated 4.3.1989 in which the vendor sold his land admeasuring about 3 Acres for consideration of Rs.1,20,000/-. The Reference Court has however, noted that the land in question had been mortgaged by the vendor to the vendee. The Reference Court has noted that the Sale Deed itself states that the vendee would execute a reconveyance of sold lands after one year on 3.3.1990. The Reference Court has noted that except of said sale instance, no other sale instance has produced on record by the appellants to determine the market price in respect of acquired lands situated in the vicinity of the acquired land.

9. In these appeals also, no material was pointed out on the basis of which, the claim of Rs.1,50,000/per Hectare could be justified. The sale instance dated 4.3.1989 was quite rightly excluded from consideration by the Reference Court.

10. The Reference Court, has taken into consideration the Award in LAR No.278 of 1995 (Exh.40) in which compensation determined @ Rs.1,25,000/per Hectare in respect of lands situated at Village Shivani (BK), Taluka AUSA. The Reference Court has observed that though this field is not adjacent to the village in which the acquired lands are situated, some sustenance can be drawn from the award and after making suitable allowance for the differences in the quality and fertility to the lands in question, compensation can be determined @ Rs.85,000/per Hectare. In the lands of this nature, some amount of guesswork is inevitable. The State has also accepted this determination of compensation of Rs.85,000/per Hectare. There is no case made out to order further enhancement. Accordingly First Appeal Nos.53 of 2003 and 56 of 2003 are liable to be dismissed and hereby dismissed.

11. Mr.Pathan, learned counsel submitted that the possession of the acquired land was taken over on 16.10.1987, though the Notification Section 4 was issued on 22.2.1990. He submits that Reference Court should have granted atleast some compensation for the period between 16.10.1987 to 22.2.1990. Since, these are statutory appeals under the provisions of Land Acquisition Act, 1894, and since, even the determination of compensation before the Reference Court was in proceedings under the Land Acquisition Act, 1894, it may not be possible to accede to this request. Therefore, without going into the issue of the date on which the possession have been taken, suffice to note that this contention cannot be accepted in the present appeals.

12. In so far as the lands, which are the subject matter of First Appeal Nos.54 of 2003 and 55 of 2003, Notification the Section 4 was issued on 30.9.1993 i.e. after a period of almost three years since the issuance of Notification under Section 4 dated 22.2.1990 by which lands which were subject matter of the First Appeal Nos.53 of 2003 and 56 of 2003 came to be acquired.

13. The determination of market rate @ Rs.85,000/Per Hectare by the Reference

Court in LAR Nos.473 of 1995 and 872 of 1997, which determination has now been confirmed in First Appeal Nos.53 of 2003 and 56 of 2003, stands. Infact, such determination was never questioned by the State Government or the acquiring body. Thus, the rate of Rs.85,000/Per Hectare in respect of acquired lands at Bhatangadi as on 22.2.1990, will have to be taken as the basis. If this is taken as the basis, then in respect of acquisition under Section 4 Notification dated 30.9.1993, escalation of 10% each year on compound basis will have to be awarded in determining the market value as on 30.9.1993. On this basis, market value will have to be determined @ Rs.1,13,050/per Hectare which can be safely rounded up to Rs.1,15,000/Per Hectare. Taking into consideration the fact that by this time, the work of the Project had already commenced or was already known in view of the earlier acquisition under Section 4 Notification dated 22.2.1990, the Reference Court, which decided all the four lands acquisition references together was not at all justified in determining the same rate of compensation in respect of lands from the same village under two different Notifications issued three years apart. In respect of the later acquisition, escalation @ 10% p.a. on compound basis was due and has been erroneously withheld by the Reference Court.

14. Mr.H.I.Pathan, learned counsel's contention that the compensation has to be awarded @ Rs.150,000/per Hectare, however, cannot be accepted because there is no cogent evidence on record to establish that the sale instance dated 18.3.1992 (Exh.25) was in respect of Jirayat land. Witness, who was examined to prove the sale instance was not posed any questions as regard the nature of land. Even the appellants merely stated that the acquired land was better land than the land, which was the subject matter of the sale instance Jirayat land or dry land. Mr.Pathan did make a request to take on record 7/12 extract, in which, there is an indication that certain nonessential crops were grown in the land, which is the subject matter of the sale instance. At this stage, it is really not possible to take into consideration such documents and on the basis of the same, award compensation @ Rs.1,50,000/per Hectare. This is not a case where there was any deprivation of any opportunity to the appellants to produce relevant evidence on record.

15. The First Appeal Nos.54 of 2003 and 55 of 2003 are liable to be partly allowed and the compensation amount is liable to be enhanced from Rs.85,000/per Hectare to Rs.1,15,000/per Hectare. The appeals are therefore, allowed in the aforesaid terms. The impugned awards, which are the subject matter of First Appeal Nos.54 of 2003 and 55 of 2003 are modified by substituting the compensation amount of Rs.85,000/per Hectare to Rs.1,15,000/per Hectare. Save and except such modification/substitution, the rest of the award is maintained.

16. The appeals are disposed of by the following order: ORDER

(I) First Appeal Nos.53 of 2003 and 56 of 2003 are hereby dismissed.

(II) First Appeal Nos.54 of 2003 and 55 of 2003 are partly allowed and the compensation amount is enhanced from Rs.85,000/Per Hectare to Rs.1,15,000/ per Hectare.

(III) In all these appeals, there shall be no order as to costs.

(IV) The appellants in First Appeal Nos.54 of 2003 and 55 of 2003 shall be entitled to consequential benefits like interest, solatium etc. in so far as the enhanced compensation is concerned.

(V) The respondents are directed to pay the additional compensation together with proportionate statutory benefits to the appellants in First Appeal Nos.54 of 2003 and 55 of 2003, within a period of 12 weeks from today.