
(2003) 01 BOM CK 0046
In the Bombay High Court
Case No : First Appeal No. 944 of 1989

Rama Nama Pawar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-01-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 23(2), 28, 4

Citation : (2003) 01 BOM CK 0046

Hon'ble Judges : D.S. Zoting, J

Bench : Single Bench

Advocate : S.S. Choudhary, for the Appellant; S.R. Palnitkar, A.G.P., for the Respondent

Final Decision : Partly Allowed

Judgement

D.S. Zoting, J.—Heard parties.

2. This is an appeal preferred by the original claimant Rama Nama Pawar against the judgment and award dated 13th July, 1989, passed by the learned Civil Judge, Senior Division, Osmanabad, in Land Acquisition Reference No. 77 of 1985.

3. Relevant facts, in brief, are as follows.

The State of Maharashtra issued notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") on 2nd December, 1976, seeking to acquire the lands belonging to the claimants of village Wadgaon (Shiradhon), taluka Kallam, district Osmanabad, including the land of the present appellant for public purpose, namely construction of irrigation tank at Wadgaon. The said notification was published in Maharashtra Government Gazette on 2nd December, 1976. The declaration u/s 6 of the Act was published in the Maharashtra Government Gazette on 7th July, 1977. The Special Land Acquisition Officer passed the award on 5th June, 1978. It is pertinent to note that 2.31 H. land of Gat No. 306 and 2.94 H. land of Gat No. 298 belonging to the appellant was

acquired. The Land Acquisition Officer fixed the market value of the land acquired at the rate of Rs. 2,000/- per acre.

4. Aggrieved by the award, the claimant submitted application u/s 18 of the Act seeking enhancement of the market value by filing Land Acquisition Reference u/s 18 of the Act. It is alleged that the acquired lands were having facility of river and well water for the purpose of irrigation. The lands were fertile and as such, according to claimant, the market value of the acquired land, as prevailing during the relevant period, was Rs. 7,000/- per acre, however, the Land Acquisition Officer ignoring the factual position and the existing advantages, determined the market price at the rate of Rs. 2,000/- per acre, far below than the then prevailing market value. The claimant further submits that there were standing trees and three wells in the acquired area, however, no separate compensation has been awarded to the claimant by the Land Acquisition Officer on these counts.

5. On notice being served, the respondent/State of Maharashtra put its appearance before the Reference Court through the Assistant Government Pleader. He opposed the application of the claimant by his written statement. According to the respondent, the market value fixed by the Land Acquisition Officer in respect of the land of the claimant is just, proper and reasonable, as the same is awarded as per the then prevailing market value of the said land and as such claimant is not entitled to get any enhanced compensation.

6. On the basis of the rival contentions of the parties, the learned Judge of the Reference Court framed issues. It is to be noted that four Land References arising out of the same award came to be filed before the Reference Court. The evidence has been recorded in Reference No. 77 of 1985. In the said Reference, the evidence of the claimant was recorded and he produced the sale deed of the year 1974 in respect of the land bearing Survey No. 58-A admeasuring 27 and half gunthas fetching value of Rs. 11,000/-. The said land is situated at village Jawala (Khurd). The present appellant, who filed Land Reference No. 75 of 1985, adopted the same evidence for consideration of his case and as all the References arose out of the same award, the learned Judge disposed of all the four References by common judgment.

7. The Reference Court, on appreciation of the evidence, come to the conclusion that the market value of the acquired land should have been awarded at the rate of Rs. 5,000/- per acre. The court further held that the Land Acquisition Officer has not awarded any compensation towards the wells. The Reference Court awarded amount of Rs. 15,000/- towards the depreciated value of the well to the present appellant subject to the payment of deficit court fee.

8. Being dissatisfied with the judgment and award passed by the Reference Court, the original claimant has preferred this appeal, contending that the Reference Court ought to have fixed the market value of the acquired area at the rate of Rs. 7,000/- per acre as claimed by the claimant, as the sale deed

produced by the claimant fetched value at more than Rs. 7,000/- per acre for similar type of land though situated in another village which is adjoining village to the village where the land of the claimant is situated. It is also contended that the mandatory provisions as regards granting statutory benefits u/s 23 of the Act have not been followed by the Reference Court.

9. As against the above contentions, the learned Assistant Government Pleader appearing on behalf of the respondent has fully supported the judgment and award passed by the Reference Court.

10. Taking into consideration the contentions raised by both the parties, the problem which has surfaced in the present appeal is centred on the question of value of the land and wells, as well as the trees under acquisition. It is to be noted that notification u/s 4 of the Act was published on 2nd December, 1976, therefore, the market value existing at that time will have to be considered for the purpose of assessing the market value of the acquired land. In the present case, the claimant has relied upon the sale instance of the year 1974 which is of the period prior to the notification u/s 4 of the Act. Under the said sale deed, Survey No. 58-A admeasuring 27 and half gunthas, the said land fetched value at Rs. 11,000/i.e. about Rs. 15,000/- per acre. It is to be noted that total area acquired is 13.125 acres. It is well settled that a large piece of agricultural land will not fetch the same per acre market value as that of the smaller piece of land like the present sale instance. Therefore, the said sale instance cannot be said to be a comparable sale instance representing the prevailing market value during the relevant period of the notification u/s 4 of the Act. However, the learned Judge considering the said sale deed, fixed the value of the acquired area at Rs. 5,000/- per acre. There is no appeal by the State challenging the said finding nor is there any cross-objection filed and, therefore, though there is no other evidence placed on record, the finding given by the learned Judge does not call for any interference.

11. The learned Judge has considered the contentions raised by the claimant in respect of the wells and the trees. It is to be noted that the present appellant did not enter into witness box. He claimed that 200 Mosambi trees and some Mango trees were standing in his acquired area. However, no evidence was adduced before the Reference Court, therefore, the Reference Court has not committed any error in rejecting the claim on that count. The Reference Court observed that the trees were already cut by the claimant and the wood of the said trees was removed and accordingly the Land Acquisition Officer was informed. As the claimant himself cut the trees and utilized the wood of the trees, no question of granting compensation on the ground of loss of the value of the trees arises in the matter.

As regards the compensation in respect of the well, the Reference Court awarded an amount of Rs. 15,000/- though no evidence has been adduced by the claimant for working out the assessment of the value of the well. As already pointed out, as there is no appeal or cross-objection from the respondent. The

said findings a regards value of the well also cannot be disturbed.

12. However, the learned counsel for the appellant vehemently argued that the Reference Court has not granted all the statutory benefits, to which the claimant is entitled to as per the provisions of Sections 23 and 28 of the Act. He submits that the Reference Court awarded solatium at the rate of 15 per cent instead of 30 per cent and no interest has been awarded on the amount of solatium. He further pointed out that as per the provisions of Section 28 of the Act, the claimant is entitled to get interest at the rate of 9 per cent per annum from the date of taking possession of the land and thereafter after expiry of one year at the rate of 15 per cent per annum till realization of the amount. But the Reference Court awarded interest at the rate of 9 per cent per annum only throughout. When the provisions of Section 28 of the Act are very clear, the Reference Court ought to have awarded the interest at the rate of 9 per cent per annum for the first year from the date of taking possession of the land and thereafter at the rate of 15 per cent per annum on the enhanced amount of compensation. The learned Judge was in error in not awarding the compensation at the rate of 15 per cent per annum after expiry of one year from the date of taking possession of the acquired land. Similarly, the learned Judge of the Reference Court has also erred in rejecting to grant solatium at the rate of 30 per cent on the market value of the acquired land in consideration of compulsory nature of the acquisition. The learned Judge observed that Section 23(2) of the Act only applies in relation to any award made by the Collector, or the court or any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of Principal Act after 30th day of April 1982 and before commencement of this Act on 24th September, 1984. Therefore, according to him, the claim of the claimant for solatium at the rate of 30 per cent cannot be granted. The learned Judge erred in making above observations. It is to be noted that the amended provision as regards 30 per cent solatium is not only applicable in case of the award pending before the Land Acquisition Officer but also in respect of the Reference pending before the Reference Court. As the Reference filed within time was pending after commencement of the amended provisions of the Act, the said provision of Section 23(2) of the Act is applicable in the case of the appellant also. The same is also applicable when any order in appeal is required to be passed by the High Court or the Supreme Court. Therefore, I find that the appellant is entitled to get solatium at the rate of 30 per cent and not at the rate of 15 per cent as awarded by the Reference Court. In view of the latest decision of the Constitutional Bench of the Apex Court, reported in *Sunder Vs. Union of India*, , interest u/s 28 of the Act is payable on the amount of solatium also. No such interest has been awarded on the amount of solatium by the Reference Court.

13. Accordingly, though the judgment and award of the Reference Court deserves to be confirmed as regards market value of the acquired area and the well, the same deserves to be modified so far as statutory benefits under Sections 23 and 28 of the Act are concerned. Therefore, the appeal deserves to be partly allowed.

14. In the result the appeal is partly allowed. At the rate of 5,000/- per acre, the value of the acquired area of 5.25 H. i.e. 13.125 acres comes to Rs. 65,625/-, adding the value of well at Rs. 15,000/- as awarded by the Reference Court, the total market value of the acquired land of the appellant comes to Rs. 80,625/-. He is entitled to get solatium at the rate of 30 per cent on this amount which comes to Rs. 24,187/-, adding the same in the market value, the total comes to Rs. 1,04,812/-. The Land Acquisition Officer awarded compensation of Rs. 62,775/-. Deducting this amount from the amount of Rs. 1,04,812/-, the enhanced amount of compensation inclusive of solatium comes to Rs. 42,037/ rounded off to Rs. 42,000/-. The respondent is directed to pay enhanced amount of compensation Rs. 42,000/inclusive of solatium to the original claimant (appellant). This amount shall carry interest at the rate of 9 per cent per annum from the date on which the Land Acquisition Officer took possession of the land for the first year and thereafter at the rate of 15 per cent per annum till date of payment of the enhanced amount of compensation. The claimant is also entitled to receive additional compensation at the rate of 12 per cent per annum on the market value for the period commencing from the date of publication of notification u/s 4(1) of the Act in respect of such land to the date of award of the Collector or the date of taking possession of the land whichever is earlier. The award passed by the Reference Court, so far as it relates to the appellant, shall stand modified accordingly. In the circumstances of the case, there shall be no order as to costs.