
(1998) 06 BOM CK 0039

In the Bombay High Court

Case No : First Appeal No"s. 128, 129 and 130 of 1985

Ranganath Babu Bhote and another

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-06-1998

Acts Referred:

Evidence Act, 1872 — Section 101, 102

Land Acquisition Act, 1894 — Section 18, 23, 4(1)

Citation : (1998) 4 BomCR 778 : (1999) 1 MhLj 312

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

Bench : Division Bench

Advocate : Murar Deshpande, for the Appellant; S.V. Chillarge, A.G.P., for the Respondent

Judgement

A.D. Mane, J.—These three first appeals arise out of the judgment and order dated 27-3-1985 passed by the learned Civil Judge, Senior Division, Parbhani in Land Acquisition References filed by the appellants-claimants for enhancement of the compensation in respect of their lands acquired for the purpose of Upper Penganga Project. Acquired lands are from village Dongargaon Naka.

2. Notification u/s 4(1) of the Land Acquisition Act was issued on 8-1-1980. The appellants claimants submitted their claims before the Special Land Acquisition Officer, inter alia, claiming compensation at the rate of Rs. 12,000 per acre. The Special Land Acquisition Officer, however, did not accept the value as asked for by the claimants and assessed the value of the market price of the lands acquired at the rate of Rs. 3,000 per acre. It is however, to be noted that on his own saying by the Special Land Acquisition Officer, he did not collect any single instance for the year 1980 but he has taken into account the sale instances for the period prior to 1976.

3. The appellants, dissatisfied with this award filed separate references before the Civil Court claiming enhanced compensation at the rate of Rs. 10,000/- per acre. In support of their claims, the claimants have relied upon the various sale

deeds, including the award passed by the Civil Court in Reference Case No. 83 of 1981, the land covered under which, was adjacent and at the distance of 2-3 miles from the lands acquired in the present case. In that case, the Land Acquisition Officer assessed the market price at the rate of Rs. 3,400 per acre, but the Civil Court fixed it at the rate of Rs. 9,000 per acre.

4. These appeals are disposed of by the common judgment and order, since the questions of law and facts are identical.

5. On going through the evidence adduced by the claimants, the learned trial Judge discarded the sale instance dated 2-1-1985 and we think, rightly, by reason of suspicious, circumstances in regard to the payment of consideration. The learned trial Judge, however, did not accept the previous award, which is relied upon by the claimants as according to him, the lands u/s 4 of the notification were acquired in the year 1978. Therefore, the previous award was rejected as not relevant.

6. Shri Deshpande, learned Counsel for the appellants claimants urged that the learned trial Judge has committed an error in observing that the previous award is not relevant. It is submitted that the previous award is admissible in the evidence and it ought to have been considered as guide for fixation of the price of the acquired land.

7. It appears that while rejecting the sale instances and also not placing reliance on the previous award, the learned trial Judge seems to have confused the case on the basis of the annual returns which the claimants used to receive from the lands acquired. The claimants have stated that they were receiving cash of Rs. 6,000/- annually on sale of the produces of the land. We do not think, that approach of the learned trial Judge while fixing, the price of the acquired land was proper in law. It therefore, becomes necessary to assess the reasonable compensation on the available material on record.

8. The claimants have strongly relied upon the sale instance dated 22-1-1985 (Exhibit 15), certified copy of which is filed in L.A.R. No. 298 of 1982. This sale instance shows that, at the time when the document was registered Rs. 18,000 were paid but according to the claimants vide receipt Exhibit 21, further amount of Rs. 30,000/- was paid for the purchase of the said land under the same registered sale deed. There is no reasonable explanation for payment of Rs. 30,000/- subsequent to the registration of the sale deed. It is doubtful circumstance to represent the consideration as sought to be submitted by the claimants. We, therefore, do not consider this sale instance as genuine sale instance to be relied on. The learned trial Judge was, therefore, justified in rejecting that sale instance.

9. We, however, find that the previous award cannot be said to be not relevant for assessing the reasonable compensation for the lands acquired in the instant case. There is no dispute that in order to reduce to the minimum the element of speculation, the proper method of awarding compensation is to proceed on the

land in neighbourhood at the same time making allowance for the enhanced value in proportion of the rates in the price of produce. There is no difficulty to accept the contention of the learned Counsel for the appellants that previous award is admissible in evidence.

10. It is common that the lands in the village spread over the vast extent. So all lands cannot and should not be classified as possessed of same market value. Burden is always on the claimant to prove the market value and the Court should adopt realistic standards and pragmatic approach in evaluation of the evidence. The doctrine of equality in termination and payment of same compensation for all claimants involved in the same notification is not a good principle. Therefore, the compensation requires to be determined for the lands acquired by applying the acid test which the Court has to adopt, namely, to sit in the armchair of a prudent purchaser, eschew feats of imagination and consider whether a reasonable prudent purchaser in the open market would offer the same price which the Court is intending to fix the market value in respect of the acquired land. It is true that the previous award shows that the land covered by the award was acquired by section 4(1) notification in the year 1978. The compensation awarded was at the rate of Rs. 9,000/- per acre. The land is from the village which is 3-4 kms. away from the village, wherefrom the present lands came to be acquired. The claimants have submitted that the lands acquired has all the advantages as that of the land covered in the award.

11. If regard be had to the annual income as deposed to by the claimants, which they were receiving as a crop value, perhaps, it cannot be denied that the lands acquired are more fertile and having irrigation facilities. In absence of any further data having been relied upon by the Special Land Acquisition Officer or the claimants, in regard to the sale instances between 1978 to 1980, perhaps, we will not make any allowance for the enhanced value in proportion to the increase in price during these years. We however, find no justifiable ground to reject the previous award, as guide for fixation of price of the presently acquired land. The price of the property indicated in award furnish an index of its market value in the neighbouring village.

12. We may emphasise here that in the method of arriving at a valuation of land by reference to price realised by sales of neighbouring lands it is plain that seldom evidence of former sales can be obtained which shall be precisely parallel in all its circumstances to the sale of the particular land in question. Differences, small or great exist in various conditions and what precise allowance should be made for those differences is not a matter which can be reduced to any hard and fast rule. Therefore we find no difficulty to determine the market price of the acquired land on basis of the previous award. That necessarily means that the market price of the acquired land at the relevant time of publication of notification under, section 4(1) of the Land Acquisition Act would come to Rs. 9,000/- per acre.

13. In the result, the appeals succeed. The appellants claimants are entitled to

receive differences in the compensation, solatium and interest together, at the rate of Rs. 9,000/- per acre instead of Rs. 6,000/- per acre as assessed by the trial Court.

14. The appeals are allowed. The respondent is directed to pay to the appellants the amount of compensation calculated at the rate of Rs. 9,000/- per acre together with solatium and interest thereon. There shall, however, be no order as to costs.

15. Appeal allowed.