

(2017) 09 BOM CK 0059
In the Bombay High Court
Case No : 580 of 2005

Sayed Ale Mohiuddin Hadi Naqshabandi, (since deceased
through legal heirs) Syed Izharul Islam Talib Nawshbandi, &
Ors.

APPELLANT

Vs

State of Maharashtra, Through the Collector, Akola, & Anr.

RESPONDENT

Date of Decision : 07-09-2017

Acts Referred:

[Land Acquisition Act, 1894](#), [Section 4](#) -
Publication of preliminary notification and powers of officers thereupon.
[Maharashtra Industrial Development Act, 1961](#), [Section 34](#),

Citation : (2017) 09 BOM CK 0059

Hon'ble Judges : S.B. Shukre

Bench : SINGLE BENCH

Advocate : Khajanchi, S.O. Ahmed, M.S. Naik, M.M. Agnihotri

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the judgment and order dated 20th June, 2005, delivered by 3rd Adhoc Additional District Judge, Akola in Land Acquisition Case No.24/1995.

2. 10 hectare agricultural land from out of 14 hectare and 53 R of the agricultural land, bearing Survey No.1 belonging to the appellant was acquired for public purposes or to be precise for purposes of development of industrial area near town Balapur, District Akola. There was acquisition done by the State in respect of a smaller piece of land bearing Survey No.1 belonging to the appellants in the year 1972 and at that time, the market value of that portion of the land was determined by the State to be at Rs.12,500/per hectare. But, in the acquisition made subsequently in the instant case, which was in the year 1989, the State determined the market value of the acquired land only at Rs.8,000/per hectare. The appellants were obviously aggrieved by such determination of the market value of the land and therefore, the appellants preferred reference application

under Section 34 of the Maharashtra Industrial Development Act, which was referred to the Reference Court for being decided in accordance with law. By this application, enhanced compensation at the rate of Rs.5,00,000/per hectare was demanded by the appellants. This claim was resisted by the respondents. On merits of the case, Reference Court found that the determination of the market value of the acquired land was on the lower side and considering the evidence available on record, the Reference Court determined the same to be at Rs.17,000/per hectare. The appellants were still not satisfied and therefore, they preferred the present appeal and that is how the claimants are now before this Court.

3. I have heard learned counsel for the appellants and learned counsel for the respondents. I have gone through the record of the case including the impugned award.

4. Now, the only point which arises for my determination is :

Whether the compensation granted by the Reference Court is just and proper ?

5. Learned counsel for the appellants has submitted that the Reference Court has not properly appreciated the evidence on record and has committed a grave error of law in ignoring the sale instances vide Exhs.38 to 42 in the instant case. He also submits that Section 32(2) of the Maharashtra Industrial Development Act, 1961 (for short, "MID Act") notification, which is equivalent to Section 4 Land Acquisition Act notification (for short "LA Act") was published on 30th August, 1991 and this was the date which should have been considered as relevant for the purpose of determination of the true market value of the acquired land. He submits that all the sale instances which were produced on record by the appellants and the sale instances which were included in consideration by the Land Acquisition Officer, by virtue of date 30th August, 1991, became relevant and if they are now considered, one would find that the market value of the acquired land, at the relevant time, was much more than what has been found by the Reference Court. He submits that in any case, with smaller portion of the same land having been evaluated at the rate of Rs.12,500/per hectare in the year 1972, the acquired land deserved evaluation by addition of 10% of Rs.12,500/for every year from 1972 onwards till the year 1991 and by such addition, the market value of the acquired land would have come to about Rs.45,000/to Rs.50,000/per hectare.

6. Shri M.M. Agnihotri, learned counsel for the respondent No.2 submits that there is no need for making any interferences with the impugned award as no evidence of the sale instance of comparable lands has been tendered by the appellants and even the evidence regarding escalation in prices of the land in the vicinity of the acquired land has not been produced on record by the appellants and, therefore, no addition at the rate of 10% p.a. to the rate of Rs.12,500/can be made while determining the true market value of the acquired land.

7. About the argument of learned counsel for appellants that it is the date of

Section 32(2) MID Act, notification, which is relevant for determining true market value of acquired land, there can be no quarrel, for, it is equivalent to Section 4 LA Act notification. But, the evidence about sale instances being what it is, I must say, this date of Section 32(2) MID Act notification, 30th August, 1991, hardly makes any difference for them.

8. The evidence regarding the sale instances of the relevant period is in the nature of certified copies of the index No.2, which is a record maintained by the office of the SubRegistrar. These documents are not the certified copies of the sale deeds. They only indicate the area of the land sold, the sale consideration and parties to the sale transaction and nothing more. Such nature of evidence one would agree, makes comparison between the lands involved in these transactions and the acquired land very difficult. From such evidence, one is not able to ascertain the nature of lands involved in the sale instances, their potentiality and functionality and importantly their distance from the acquired land. So, the lands involved in Exhs.38 to 42, without there being any supportive evidence, would be hardly of any use for making useful comparison between them and the acquired land and consequently, these transactions cannot be considered for determination of the market value of the acquired land, unless there is some other evidence produced on record by the appellants. Unfortunately, no such evidence has been adduced by the appellants.

9. The appellants have also not stated in clear terms the distance between acquired land and the land represented by the documents vide Exhs.38 to 42. The appellants through the evidence of PW 1, only stated that these lands in Exhs.38 to 42 were situated about 3 to 4 fields away from the acquired land. Such a statement does not lead us anywhere as nobody knows the size of each of the agricultural fields that stands in between these lands and the acquired land. On the contrary, there is a suggestion given to PW 1 that these lands were situated about 7 to 8 Kms. away from the acquired land. Of course this suggestion has been denied by the appellants. But, the fact remains that situation of these lands in Exhs.38 to 42 has been disputed by the respondents and therefore, the burden to prove their situation, comparability, potential and functionality was upon the appellants, which the appellants have not discharged in this case. So, the sale instances referred to in documents vide Exhs.38 to 42 cannot be considered for any purpose.

10. The Reference Court, however, has rejected the sale instances for different reasons. According to learned counsel for the appellants, those reasons are not borne out from the record. That may be true. But giving of wrong reasons for excluding such evidence from out of consideration of the Court would not make the evidence as admissible and reliable. If there are some reasons, not weighed with the mind of the lower Court, this Court, as a court of appeal on facts and law, would be under an obligation of law to consider those reasons. This is what I have done in the present case. Therefore, the argument of learned counsel for the appellants made in this regard cannot be accepted and is rejected.

11. Once we take out of consideration the sale transactions reflected in documents vide Exhs.38 to 42, what remains is the other material available on record and this other material, I must say, does not help establish the entitlement of the appellants to enhancement in compensation. In the award passed by the Land Acquisition Officer there is a consideration given to 6 sale instances and in the process, the Land Acquisition Officer found only one sale instance as relevant and further found the remaining sale instances as not establishing the similarity between the lands, so essential for accepting the rates of the lands mentioned in those sale instances, as representing their true market value. In this regard, learned counsel for the appellants has invited my attention to the sale instances at Sr.Nos.4 and 5 in the award, which were of 19.4.1989. These sale instances indicated the price of the lands to be at Rs.34,482/per hectare. Learned counsel for the appellants submits that these sale instances being of April 1989, much before Section 32(2) MID Act notification was published, it was published on 30st August, 1991, were relevant and there was no reason for the Land Acquisition Officer to have rejected them. He submits that just because the lands in those sale instances were acquired for the purposes of storing of wastes, those lands could not have been excluded from consideration by the Land Acquisition Officer. I would have accepted this argument had the appellants posed any challenge to the exclusion of these sale instances from the consideration by the Land Acquisition Officer, DW 1 Tejusing Wasram Pawar, who examined himself as the respondent's witness and was crossexamined by learned counsel for the appellants. If one takes a look at his crossexamination, one would immediately find that not a single question has been put to this witness taking exception to the reasons stated by him in the award for rejecting the sale instances at Sr. Nos.4 and 5 in the award vide Exh.50. Therefore, these sale instances now cannot be considered by this Court.

12. Learned counsel for the appellants also submits that it has been established by the appellants that in the year 1972, the State had found market value of a smaller portion of the same land from out of Survey No.1 when it was acquired for the purposes of a bypass road to be at Rs.12,500/. He further submits that it was reasonable for the appellants to expect higher evaluation of another portion of the land from out of the same survey number acquired after 19 years and such enhancement could have been carried out in a scientific manner by making addition of 10% of Rs.12,500/for every year after 1972 till the year 1991. Learned counsel for the respondent submits that such escalation in price by adopting the method of addition to be made per year at the rate of 10% could have been there, had the appellants adduced some evidence to show that the acquired land or the lands in the vicinity of the acquired land enjoyed the prospect of escalation in the price. He places his reliance in this regard upon the case of General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jivanbhai Patel and another, reported in (2008) 14 SCC 745.

13. The evidence available on record indeed shows that a smaller piece of land admeasuring 1 hectare from out of same survey number was assigned the

market value at Rs.12,500/per hectare by the State and that it was also accepted by the appellants. It would be quite natural for such a land owner to think that when another portion of the same survey number is acquired about two decades later, higher compensation is paid to him by the State by assessing the value of the land at higher rate. In the instant case, such expectation of the appellants has been belied by the State. While in the year 1972 the State assessed the value of the land at Rs.12,500/per hectare and about 19 years later, the State assessed value of another portion of the same land at lower rate or to be precise at the rate of Rs.8,000/per hectare.

14. Ordinarily, it has been seen in India that for last several decades, the land prices have not witnessed any reversal in their prices in the sense that the land prices have not fallen down rather, they have increased always as the years passed by. The Reference Court has also taken a judicial note of this fact and accordingly considered the escalation in price of land over a period of time and by approximation it enhanced the market value of the land from Rs.8,000/to Rs.17,000/- per hectare. Such fixation of the market value of the land has been done by the Reference Court by considering the evidence available on record. This evidence, of course was in general terms in the sense that the acquired land was situated near a highway, a few developmental activities were going on in the vicinity of the acquired land the details of which were not known and the acquired land was also not a far away land from Balapur town, with its distance of about 2 to 3 Kms from Balapur town, and so the Reference Court found that the rate of Rs.17,000/per hectare of the acquired land would be fairly true representative of the prevailing price of the land. Leaned counsel for the appellants has objection in this approach of the Reference Court. According to him, instead of such broad approximation, Reference Court ought to have taken recourse to addition method for determining correct market value of the land. He submits that addition of 10% of Rs.12,500/for every year that went by after 1972 till Section 32(2) of MID Act notification was published in the official gazette should have been made to 1972 market value of the land. But, for making such addition, as held in the case of Rameshbhai (supra), it is necessary that there is some evidence regarding ordinary developments taking place in the vicinity of the acquired land or regular increase in prices in the area where the acquired land is situated. As stated earlier, in the instant case, there is only general evidence about the situation of the land. The appellants have not tendered any evidence about particular developmental activities that were going on in and around the acquired land. So, I do not think that such addition at the rate of 10% for 19 years can be made in the instant case.

15. I am also supported in this conclusion by the other evidence available on record. This evidence is in the nature of award of the Land Acquisition Officer vide Exh.50. In this award, 6 sale instances were under consideration of the Land Acquisition Officer and if one takes a look at them, one would find that there is not a single sale instance therein, in which the sale consideration is equal to or somewhat near to the price calculated by making addition of 10% of Rs.12,500/

for every year that went by after the year 1972. The Land Acquisition Officer considered as relevant the sale instance dated 9.4.1985 and in this sale instance, the price of the land was taken to be at Rs.5,085/per hectare. Even in the sale instances dated 19.4.1989 at Sr. Nos.4 and 5 considered and not accepted as relevant by the Land Acquisition Officer, such high escalation in prices is not reflected. These prices reflected in all these sale instances are only an indication of the fact that even after about 13 to 17 years from the year 1972, there has not been much escalation in price of the land in the area where the acquired land is situate. Therefore, enhancement in compensation made by the Reference Court by resorting to the method of approximation, in my view, is correct and no fault with the same could be found. It cannot be said that the compensation given to the appellants is unjust and unfair. There is no merit in the appeal. The point is answered accordingly.

16. The appeal stands dismissed.

17. The parties to bear their own costs.