(2015) 06 BOM CK 0204

In the Bombay High Court

Case No : First Appeal Nos. 222, 565 and 120 of 2014

Shantabai and Others APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:
Land Acquisition Act, 1894 — Section 12(2), 18, 4, 6

Citation : (2015) 06 BOM CK 0204

Hon'ble Judges : P.B. Varale, J

Bench : Single Bench

Advocate : V.N. Patre, for the Appellant; M.J. Khan and M.A. Kadu, A.G.Ps., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

P.B. Varale, J—Heard. ADMIT.

All these First Appeals challenge the judgment and order passed by the learned Civil Judge, Senior Division, Amravati (hereinafter referred to as ''the Reference Court'' for the sake of brevity), thereby partly allowing the references field by the appellants/claimants herein. As all these appeals involve an identical issue, these appeals are heard and decided together by this common judgment. Certain details like Reference No., name of claimant, details of the property acquired etc. are summarized in the following table:-

2. The present appellants/claimants were the owner and possessor of the respective houses situated at village Yerad, Dist, Amravati, having respective constructed as well as open area, as mentioned in the aforesaid chart. The State Government had initiated a project named and styled as ''Bembla River Project'' and the property of the appellant i.e. house and open plot were acquired for the said project.

3. The notification under Section 4 of the Land Acquisition Act, 1894 was published in the official Gazette on 20.07.2000 and the notice under Section 6 of

the said Act was issued on 24.01.2002 (in F.A. No. 565/14, these dates are 27.1.2001 & 10.01.2002, respectively). The respondent-Special Land Acquisition Officer (SLAO), by passing Award on 16.05.2004 granted compensation towards the said acquisition. The notice under Section 12(2) of the said Act was issued by the respondent-SLAO on 02.07.2004 and the same was received by the appellants on 02.07.2004. Being aggrieved by the inadequate and less compensation awarded by the respondent-SLAO, the references came to be filed by the respective claimants/appellants before the learned Reference Court under Section 18 of the Land Acquisition Act, seeking enhancement of the compensation.

4. It was the submission of the claimants/appellants before the Reference Court that the respondent-SLAO has failed to appreciate the value of the property i.e. houses acquired by the Government. The houses in question were situated in village Yerad, having modern facilities such as telephone connection, electricity connection, water connection and the educational facilities. It was submitted that at the time of publication of the notification under Section 4 of the L.A. Act, the market value of the open plot was about Rs. 50/- per sq. feet. and for constructed area the claimants relied upon the valuation report of the private valuer Mr. T.N. Boob. The necessary details in respect of compensation awarded by the respondent-SLAO towards constructed area and open plot, the estimated value of open plot and constructed house at the relevant time as determined by the private valuer Mr. Boob as well as the claim raised for enhancement of the compensation along with other statutory benefits, are given in the following table:

5. The claims before the Reference Court were resisted by the respondents herein by filing written statement. It was submitted by the respondents that the appellants/claimants have failed to protest the acquisition and neither any objection nor statement of claim was submitted to the respondent-SLAO before passing the impugned Award. It was submitted that the claimants were rehabilitated by allotting the plots in new gaothan and this allotment was accepted by the claimants. It was submitted that apart from the rehabilitation process and the allotment of plots to the claimants, the claimants were also allowed to take away the building material of their existing house. As such, the minimum damage to the house property of the claimants was caused while acquiring the property i.e. house property of the claimants. It was further submitted that the valuation carried out by the private valuer Mr. Boob was too excessive and unacceptable. It was submitted by the respondents that the property i.e. houses of the claimants were properly valued by the Government Valuer by carrying out inspection of the houses. The valuation report was prepared by the Government valuer Mr. Dilip Machale.

6. The learned Reference Court, on an appreciation of the material presented before it namely the valuation reports of private valuer Mr. Boob and government valuer Mr. Machale as well as oral testimony of the claimants and the witnesses namely Mr. Boob and Mr. Machale, arrived at a conclusion that the claimants are

entitled for the compensation @ Rs. 413/- per sq.mtr. for open plot and addition of 40% in the market value of the construction and as such the Reference Court, in case of appellant in F.A. No. 222/2014, has held that the claimant/appellant was entitled for compensation of Rs. 1,88,945/- for the constructed area and by including the price of open plot the claimant was entitled for compensation of Rs. 2,46,352/-. As the respondent - SLAO awarded the compensation and paid amount of Rs. 1,47,471/-, which was received by the claimant, it was held that the claimant/appellant was entitled for an amount of Rs. 98,881/- along with other statutory benefits.

Needless to say that as per the area of the acquired property i.e. constructed as well as open, of each claimant, the amount of entitlement would differ in respect of each of the appellant as summarized in tabular form given above and described in paragraph 19 of the impugned judgment (para 25 of impugned judgment in F.A. No. 565/14).

7. In challenge to the judgment and award of the learned Reference Court, Mr. Patre, the learned counsel for the appellant vehemently submitted that the learned Reference Court has grossly erred in not considering the valuation report submitted by Mr. Boob. The learned counsel then submitted that the valuation report prepared by the Civil Engineer/government valuer was offering very low rates towards the plot and constructed area and the Reference Court, by accepting the said report of the Civil Engineer awarded inadequate compensation to the claimants/appellants. He submitted that the Reference Court also erred in granting 10% increase in the market value per year, whereas the increase should have been @ 15% per year. The learned counsel then submitted that the learned Reference Court also proceeded to appreciate the evidence of D.W. 1 Mr. Machale. The learned counsel submitted that though there was data available in the nature of schedule rates fixed by the Government, the learned Reference Court has failed to take into consideration the said material. In support of his submissions, the learned counsel for the appellant placed reliance on the judgment of the Apex Court reported in AIR 2004 Supreme Court 2209 in the case of Special land Acquisition Officer vs. Chandramma (deceased by Lrs.); and Union of India (UOI) Vs. Savjiram and Another, (2003) 10 SCALE 1035 : (2004) 9 SCC 312 : (2003) 6 SCR 1006 Supp : (2004) AIRSCW 4255 : (2003) 8 Supreme 721

8. The learned counsel for the appellants/claimants then submitted that the State Government had issued a Circular fixing the rates of the construction in Amravati region and the said Circular was issued on 20.01.2001. The learned counsel for the appellant submitted that one Office Note was also circulated by the Government in reference to schedule rates fixed for the year 1999 to 2000 and also accepting the rates fixed in the year 2001-2002. The learned counsel for the appellant then placed heavy reliance on the judgment of the Hon''ble Apex Court reported in Prabhakar Raghunath Patil and Others Vs. State of Maharashtra, (2010) 12 JT 456 : (2011) 1 RCR(Civil) 186 : (2010) 11 SCALE

659 : (2010) 13 SCC 107 : (2010) AIRSCW 7016 : (2010) 7 Supreme 992 The learned counsel for the appellant submitted that in the matter of Prabhakar Patil vs. State, the Apex Court, by referring to the Circular dated 03.01.1991, issued by the Chief Engineer, Amravati, allowed the appeals partly and as the house property acquired of the appellants/claimants by the State Government through respondent-SLAO, were situated in village Yerad, Tah. Chandur Rly. of Amravati district for Bembla project in Yavatmal District, the Circular considered by the Apex Court in Prabhakar Patil''s case for fixing entitlement of compensation, can also be a basis for awarding enhancement in compensation to the present appellants/claimants.

9. Per contra, learned Assistant Government Pleaders appearing on behalf of respondent Nos. 1 & 2 (Respondent No. 1 & 3 in F.A. No. 565/14) and Mr. Jagtap, learned counsel for respondent No. 3 (R. No. 2 in F.A. No. 565/14) support the impugned judgments and awards passed by the learned Reference Court.

10. Mr. Jagtap, the learned counsel for respondent No. 3 submits that no error has been committed by the learned Reference Court in discarding the evidence of private valuer Mr. Boob, as it suffers from various infirmities. He submits that on proper appreciation of the valuation report of the government valuer Mr. Machale, Sectional Engineer coupled with his oral evidence, the learned Reference Court has arrived at a conclusion that the claimant/appellant is entitled for compensation @ Rs. 413/- per sq.meter for open plot and 40% increase in construction. The learned counsel submitted that the learned Reference Court by considering the evidence of D.W. 1 Mr. Machale held that there may be a difference in the valuation carried out by the government valuer and the actual value of the property and awarded reasonable increase and as such the Reference Court has awarded just and proper compensation. The learned counsel further submits that it is the primary responsibility of the claimant to submit the material in support of his claim before the Reference Court, seeking enhancement in compensation. Mr. Jagtap, learned counsel submits that no material was placed before the learned Reference Court, except the valuation report of the private valuer Mr. Boob and for the first time before this Court, the appellants/claimants are placing reliance on certain Circulars of the government. The learned counsel then submitted that these Circulars only provide the estimated rates and the said Circulars cannot be said to be a material fixing the rates or value of the property.

11. I have heard the learned counsel for the parties at length. With the assistance of both the learned counsel, I have gone through the record.

12. As stated above, the material presented before the learned Reference Court in support of the claims raised by the appellants/claimants was the valuation report of Mr. Boob. Some sale instances of the property situated at village Ghuikhed and village Dabha were placed on record before the Reference Court, but no sale instance of village Yerad i.e. the village wherein the houses of the claimants were situated, was produced on record. Considering the fact that

village Dabha is adjacent to village Yerad and there was no sale instance from village Yerad placed on record, the learned Reference Court considered the sale instance of village Dabha dated 08.10.1997, relating to area of 128.85 sq.mtrs for the consideration of Rs. 40,000/-. On considering the fact that notice under Section 4 of the L.A. Act was published on 20.07.2000 (on 27.01.2001 in F.A. No. 565/14) and the sale instance placed on record was of the year 1997, the Reference Court by giving 10% increase per year in the market value held that the market value of the acquired plot (in case of appellant in F.A. No. 222/14) at the relevant time i.e. on the date of Sec. 4 notification, was @ Rs. 57,507/-. As stated above, the said amount would differ in respect of the other appellants/ claimants as per their claim.

13. On this backdrop, perusal of the oral evidence of the claimants and P.W. 2 Mr. Boob reveal that the claimants had submitted that their acquired houses were constructed with good quality material and were fetching good market value and this aspect was not considered by the learned Reference Court. Perusal of the testimony of P.W. 2 Mr. Boob, Civil Engineer reveals that in the cross-examination, he admitted that he was not a government approved valuer. In cross-examination, Mr. Boob stated that prior to November, 2000, he had no occasion to go to village Yerad. Mr. Boob further admitted in his cross-examination that in the valuation report prepared by him, there is no reference to the number of rooms in the houses and also the building material used for the construction of the house. He also admitted in the cross-examination that while drawing District Schedule Rates, the valuation was prepared by considering each of the head. He also admitted in cross-examination that while fixing the District Schedule Rates, the government considers the proper profit margin. He then admitted that there is no reference in his valuation report as to on what basis, he arrived at a conclusion of value of constructed area. He also admitted that in the valuation report prepared by him, no separate rates are shown for the areas like walls and ceiling per square meter and the doors and windows per cubic meter. Considering all these aspects, in my opinion, the reference Court has committed no error in not accepting the valuation report of Mr. Boob for awarding compensation towards acquisition of the property i.e. houses.

14. It will be also useful to refer to the oral evidence of D.W. 1 Mr. Dilip Machale, the government valuer. Mr. Machale in his testimony submitted that he was assigned with the duty of carrying out valuation of the properties situated at village Yerad. He stated that prior to initiation of the acquisition proceeding, the Taluka Inspector of Land Records (TILR) and the representative of Bembla project, in presence of the property owners had conducted the survey of all the properties from 10.01.1999 to 31.03.1999. External measurements of the property was carried out and a joint measurement report was prepared. He submitted that he himself had inspected the house properties of village Yerad and carried out the measurement of each house. This process was initiated from 20.07.2000. Mr. Machale also submitted that for preparation of the valuation report, the rate list prepared by the building and construction department in the

year 1999-2000 was considered. The information was obtained from the Gram Panchayat in respect of approximate age of the property so as to calculate the amount of depreciation.

15. So far as the valuation of the house property of the appellants/claimants is concerned, Mr. Machale submitted that the valuation was prepared as per the procedure and in the valuation report, detailed description of the property was submitted. The witness was subjected to cross-examination by the claimants. In the cross-examination, he submitted that he was possessing the academic qualification of Civil Engineer and was working in the Irrigation Department from 02.05.1980 as Civil Engineer. In the cross-examination, he admitted that no separate training was obtained by him for conducting valuation of the house property. He also admitted that there may be 15% difference in the estimated valuation and the actual valuation of the property. He admitted in the cross-examination that for valuation of the house property nearly 30-40 aspects are to be considered, whereas he has considered 8-10 aspects during his valuation. Though, Mr. Patre, learned counsel for the appellants/claimants vehemently submitted that as Mr. Machale, DW 1, has admitted in cross-examination that in the valuation 30-40 aspects are to be considered and he had considered 8-10 aspects and as such, the learned Reference Court ought not to have relied on the testimony of this witness, I am unable to accept the submission of Mr. Patre for the reason that only by picking up this part of the testimony, the entire testimony of D.W. 1 Mr. Machale cannot be discarded. D.W. 1 Mr. Machale gave all the other aspects required to be considered while preparing the valuation report in detail. The valuation report EXh. 53 placed on record show that there are various aspects and items referred to in the valuation report. It was an attempt of the learned counsel for the appellant/claimant to submit that the testimony of P.W. 2 Mr. Boob ought to have been accepted by the Reference Court as stated above. Mr. Boob, in his cross-examination admitted that he has not given the details in his valuation report of the material aspects such as rooms in the house, the material used for the construction, constructed area etc. As the valuation report of Mr. Boob and his oral testimony show that Mr. Boob had admitted in his cross-examination that he failed to give the material details in the valuation report, no error has been committed by the learned Reference Court in not placing reliance on the valuation report of Mr. Boob.

16. Now, considering the material aspects i.e. whether the appellants/claimants are entitled for the enhanced compensation and if so, at what rate, in my opinion, though Mr. Patre, the learned counsel for the appellant placed reliance on the Circular issued by the Chief Engineer, Amravati, dated 20.01.2001 and a copy of office note, these documents cannot be accepted in support of the submission of Mr. Patre. Insofar as copy of office note is concerned, it clearly show that it is a communication having impact of internal communication from one officer to another officer. Insofar as the circular dated 20.01.2001 is concerned, the said circular was never submitted before the learned Reference Court by the claimants and it has been submitted only at the time of hearing

before this Court. This being the position, I am unable to accept the submission of Mr. Patre, the learned counsel for the appellants to place implicit reliance on these documents.

17. Mr. Patre, learned counsel for the appellants/claimants placed reliance on the judgment of the Apex Court in the case of Special Land Acquisition Officer vs. Chandramma (supra). Though, there cannot be any dispute on the proposition of law reflected in the said reported judgment on the aspect that the data available from the sources such as schedule rates adopted by the P.W.D. provide foundation for making valuation and if such data is not noticed by the Reference Court, the matter can be referred to the Reference Court for fresh appreciation. In the present matter, the data has been made available in respect of the Circulars by the claimants before this Court only and not before the Reference Court. In view of these facts, I am not inclined to accept the submissions of the learned counsel Mr. Patre for the appellants for seeking enhancement in compensation for the open area, however, I find that the claim of enhancement for constructed area needs consideration.

18. Insofar as the judgment relied upon by the learned counsel Mr. Patre in Prabhakar Patil vs. State of Maharashtra''s case, is concerned, in my opinion, the learned counsel for the judgment was justified in placing reliance on the said judgment. In the said judgment, the Apex Court has considered the compensation awarded by the Reference Court in the matters of acquisition of the property i.e. land and constructed area for the project namely Hathnoor project. The claimant before the Apex Court had claimed compensation @ Rs. 350/- per sq.mtr. for open land and Rs. 2000/- per sq.mtr. for the constructed structure. The learned Reference Court had enhanced the compensation determining the value of open land @ Rs. 225/- per sq.mtr. and @ Rs. 1200/- sq.mtr. for the constructed structure. The State of Maharashtra has challenged the enhanced compensation granted by the Reference Court as well the claimants also filed appeals seeking further enhancement in the compensation awarded by the Reference Court. The High Court has held that the Reference Court was justified in awarding compensation @ Rs. 225/- sq.mtr. for the open space and considered the prayer for enhancement of valuation of the structure and accordingly partly allowed the appeals. In the said reported case, a Circular dated 03.01.1991, issued by the Chief Officer, Amravati was considered by the Apex Court. By this Circular, the Chief Engineer, Amravati had fixed the cost of residential building as under:

As, in the present matters, the witness of the claimant Mr. Boob has failed to give any specific detail of the age of structure etc. and in the matter of Prabhakar Patil vs. State also the evidence of the expert was silent on these aspects, and as the Circular considered by the Hon''ble Apex Court was issued by the Chief Engineer, Amravati and the property of these appellants/claimants were also situated in Amravati district as well the notification under Section 4 of the L.A. Act was issued on 20.07.2000 (on 27.01.2001 in F.A. No. 565/2014) in these claims, it will be useful to refer to the observations of the Apex Court:

9. In so far as the opinion of the expert is concerned, he has not given any specific evidence as to what was the age of the structure when it was notified for acquisition. Without making an enquiry with regard to the age of the structure which was acquired, it would be difficult to assess the valuation and, therefore, the expert was not justified in not making an assessment with regard to the age of the structure. He has faulted on the basic principle of assessment of valuation of a construction. Besides, the cost of construction of the ground floor is always on the higher side while the cost of construction of first floor and second floor is on the lower side. The expert examined has also ignored the said fact which goes to the root of the valuation and for that also the evidence of the expert, in our considered opinion, is not reliable. The only evidence that, therefore, is available before us is the circular issued by the Chief Engineer, Amravati dated 03.01.1991 regarding District Schedule Rates in respect of cost of construction with reference to Building and Construction Department of State of Maharashtra.

(Emphasis supplied)

10. The High Court, however, held that the aforesaid evidence is also not reliable as the same shows the District Schedule Rates for the year 1991 in District Amravati and that the same cannot be a safe guide for the determination of the compensation of the structure in question acquired in the year 1983. It is established from the records that the practice of issuing circular by the Chief Engineer with regard to the cost of construction was for the first time introduced in the year 1991 and no such practice was in existence in the year 1983. But since there is at least some evidence indicating the District Schedule Rates for the standing structure in the year 1991 we can relate back the said valuation to the year 1983. However, such an exercise to determine the compensation with reference to future documents must be undertaken with great care and caution. The dangers of such a comparison have already been amply illustrated by this Court in The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, (2008) 9 JT 480 : (2009) 153 PLR 494 : (2008) 11 SCALE 637 wherein it was observed:

13. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995-96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us

illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future.

12. Therefore, the cost of construction, which would be admittedly lower in 1983 than in 1991, must also be juxtaposed with the depreciation that would have accrued to the structures owing to wear and tear over a period of 8 years. In the year 1991, the cost of construction of residential building was 2,800 per square meter for the ground floor and 2,200 per square meter for the second and third floors. We are of the considered opinion that a deduction of 60 per cent (approximate) from the said valuation of the cost of construction in 1991 would be appropriate, and accordingly arrive at a compensation of 1700 per square meter for the structure. Our decision to deduct the said percentage of 60% is based on the Building Cost Index between 1983 and 1991 published by the Central Public Works Department, which reflects the rise in cost of construction over the said period of time.

(emphasis supplied)

19. The Apex Court, thus by considering the Circular issued by the Chief Engineer, Amravati allowed the appeals partly and the compensation for the structure was enhanced from Rs. 1,200/- per sq.mtr. to Rs. 1,700/- per sq.mtr. The Apex Court, however, rejected the claim for increase in the amount of compensation insofar as open space is concerned.

20. Considering the judgment of the Apex Court in Prabhakar Patil vs. State of Maharashtra''s case, in my opinion, the appellants/claimants would be entitled to the compensation for the constructed structure @ Rs. 1,700/- per sq.mtr. along with other statutory benefits.

It is made clear that as undertaken by the appellant and as observed by this Court in the order while condoning the delay, the appellants/claimants are not entitled for the interest for the period of delay in filing the First Appeals.

21. All the First Appeals are thus partly allowed and disposed of in the above terms with no order as to costs.

