

(2017) 07 BOM CK 0091
In the Bombay High Court
Case No : 103 of 2006

Shi	Vs	APPELLANT
ingh s/o Chatarsing Suradkar, & Ors. Maharashtra Through Collector, & Ors.	Vs State of	RESPONDENT

Date of Decision : 25-07-2017

Acts Referred:

Land Acquisition Act, 1894, Section 4, Section 18 - Publication of preliminary notification and powers of officers thereupon. - Reference to Court

Citation : (2017) 07 BOM CK 0091

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : S. U. Nemade, M. A. Kadu, R.L. Khapre

Final Decision : Allowed

Judgement

1. As all these five appeals are arising out of the common judgment dated 25.8.2005 passed by Civil Judge, Senior Division, Buldana in the various Land References, they are being decided by this common judgment.

2. Brief facts, which are common, to all these appeals can be stated as follows: By Notification dated 25.3.1993 issued and published in the Government Gazette, under Section 4 of the Land Acquisition Act, 1984, (for short, the "Act") the lands belonging to the appellants came to be acquired by the Government for Minor Irrigation Project, Buldhana. By the common award passed on 12.7.1996 the Special Land Acquisition Officer (S.L.A.O.), awarded compensation at the rate of Rs.28,000/per hectare. Being not satisfied with the said amount, the appellants herein approached the Reference Court by filing the Reference petitions under Section 18 of the Act. In support of their contentions, the appellants examined themselves and on the basis of the evidence adduced before it, the Reference Court was pleased to enhance compensation from Rs.28,000/to Rs.43,000/per hectare.

3. Still being not satisfied with the enhancement awarded by the Reference Court, the appellants have approached this Court by contending inter alia that having regard to the quality, texture and fertility of their acquired lands, Reference Court should have awarded the compensation at the enhanced rate, as claimed by the Appellants. It is submitted that their lands were irrigated, they were taking cash crops like cotton, various kind of fruits; however the Reference Court has failed to take note of the said fact. The Reference Court has also not considered the various sale instances cited by them. Though some of the sale instances were considered by S.L.A.O. in his award, it is submitted that, as per the settled position of law, the S.L.A.O. has to consider the higher exemplar; however, the S.L.A.O. has not done so; even the Reference Court has also not adhered to legal position and awarded only meager amount of compensation. Hence according to appellants, impugned judgment and order of the Reference Court needs to be modified to the extent of enhancing the amount of compensation from Rs. 43,000/per hectare to Rs.1,50,000/per hectare.

4. In this appeal, I have heard learned counsel for the appellants and learned A.G.P.. The only point therefore, which arises for my determination in all these appeals is whether the amount of compensation, as awarded by the Reference Court, needs to be enhanced further?

5. The appellant in First Appeal No. 103 of 2006 is the owner of the agricultural land bearing Gat No. 364 situated at village Godri, out of which area adm. 1.65 H.R. was acquired by the Government. According to him, there were different types of fruit bearing trees in the land. The land was also irrigated with well water from the pipeline.

6. The appellant in First Appeal No. 105 of 2006, is the owner of the land bearing Gat No. 364 of the same village. Out of the said land, the area adm. 1.65 H.R. was acquired by the Government for the same project. According to him also, his land was irrigated and was having black soil. He had well and pipeline therein. He was taking cash crops like sugarcane, wheat, chilly etc. in the said land and the market price of the said land cannot be less than Rs.70,000/per acre.

7. In the First Appeal No. 104 of 2006 the appellant is the owner of land bearing Gat No. 361 of the same village Godri. Out of that land, the area adm. 1.65 H.R. was acquired by the Government. According to his evidence also, the land was irrigated. He used to take all types of crops. There were fruit bearing trees planted in 78 R. Hence, according to him also, the compensation for the said land needs to be enhanced from the 28,000/per hectare as awarded by the S.L.A.O., Rs.43,000/enhanced by Reference Court to Rs. 1,53,000/per acre.

8. In the First Appeal No. 126 of 2006 the appellant is the owner and possessor of Gat No. 361, out of which the land adm. 2.84 H.R. was acquired. According to this appellant also, the said land was irrigated and he was taking various crops like sugarcane, cotton etc. In support of his case, he has examined himself and he has also relied upon the sale instance at Exh.44 under which one Vinayak has

sold his land for consideration of Rs.44,000 on 1.12.1989.

9. In First Appeal No. 96 of 2006, the appellant is the owner of Gat No. 370 admeasuring 6.08 H.R., out of which as per the award area adm. 2.48 H.R. Came to be acquired. According to learned counsel for appellant, his entire land was acquired. It was also irrigated and he was taking crops like cotton, sugarcane etc.

10. Thus, it can be seen that all these five lands are of the same village. They are situated adjacent to each other and having more or less same quality, in which they are taking the same crops and claiming same amount of compensation.

11. In Reference Court the appellants have placed reliance on one sale instance at Exh.34 under which Satish Chopda has sold his land to Tukaram Kothalkar for consideration of Rs.60,000/per acre. However, in my considered opinion, the Reference Court has rightly refused to consider this sale instance on the ground that it was post Notification and executed on the date award was passed by the S.L.A.O..

12. The Reference Court has considered the quality, texture and income of the land and further considered another sale instance Exh.44, under which one Dinkar has purchased the land at the rate of Rs.40,000/per acre. The said sale instance was dated 11.12.1989. The Reference Court however, refused to place reliance on the sale instance on the count that no oral evidence was adduced to prove that the quality and texture of the land under the sale instance at Exh.44 was same that of the acquired lands.

13. The Reference Court has then, in para57 of its judgment considered the sale instances which were also considered by the S.L.A.O in his award. Those, sale instances are for the period from 1998 to 1991. The Reference Court has considered that as the S.L.A.O. has not awarded 10% increase per year in the price from the date of those sale instances to the date of Notification, the Reference Court awarded the same and held that the market price of the acquired lands can be to the tune of Rs. 40,000/per hectare. Accordingly, Reference Court has enhanced the compensation from Rs.28,000/per hectare to Rs.43,000/per hectare.

14. However, in my considered opinion, if one has regard to the sale instances which were considered by the S.L.A.O. in his award, then there were totally 13 sale instances, which he has taken note of. The law is well settled that when the market price of the acquired land is to be decided on the basis of sale instances, then the highest exemplar needs to be considered. Herein the case, out of these 13 sale instances, considered by the S.L.A.O., in the sale instance at Sr.No.2 which pertains to the land bearing Gat No. 444, the consideration was Rs.70,968/per hectare on 11.1.1989; whereas for the sale instance at Sr.No.7 pertaining to the land bearing land Gat No. 361 the consideration was at the rate of Rs.1,00,000/per hectare.

15. Learned counsel for the appellants have also relied upon the judgment of the Reference Court dated 11.8.2010 in Land Acquisition Case No. 123/95. In the said case also, the land bearing Gat No. 369 of the same village Godri was acquired and Reference Court has fixed the market value thereof at the rate of Rs.72,000/per hectare. It is submitted by learned counsel for the appellants that judgment of the Reference Court in LA.C. No. 123/95 is not challenged by the acquiring body, or by the claimant also and it has attained finality. It is further submitted that learned Reference Court has referred it in his impugned judgment and it is also referred by the S.L.A.O. in his award. However, it is submitted by learned counsel for the appellants that in the said Reference case, the Court has not granted the annual increase at the rate of 10% which needs to be granted in this case. I find much substance in the submission. In my opinion, therefore, if such increase at the rate of 10% per annum is granted, then market price of the land comes to Rs.1,05,450/per hectare. Hence, considering the sale instances on which the reliance is placed by the S.L.A.O. and the market price decided in the Land Acquisition Case No. 123/95, in my considered opinion, it would be just and reasonable to enhance the compensation, in these appeals from Rs.43,000/per hectare to Rs.1,00,000/per hectare. All the appeals needs to be allowed to that extent.

16. It is further grievance of the appellant in First Appeal No.96 of 2006 that, though his entire land admeasuring 6.08 H.R. was acquired, the S.L.A.O. has awarded the compensation for the land adm. 2.48 H.R. only and hence, he should have been awarded compensation for the entire land. Reference Court has considered this aspect in its judgment and held that as per the averments made in award, at Exh.23, the government has acquired area of 2.48 H.R. only and, therefore, appellant is entitled for compensation as per the area mentioned in the award. Reference Court has no jurisdiction to correct the said award. Hence, it was held that the appellant cannot be entitled to get the compensation for entire land adm. 6.08 H.R..

17. In this respect however, if the evidence of appellant is considered, then he has categorically stated that as the area of the land was not correctly recorded in the 7/12 extract, he has got it corrected. He has produced on record certified copy of the order passed by Tahsildar at Exh.24 ordering correction in the area of the said land. He has also produced on record 7/12 extract of the land Exh.26 Exh.27 and Exh.28 showing the corrected area. He has further deposed that except the land acquired by the government, he has no other land. He has therefore, become landless. Learned counsel for appellant submitted that if the land is acquired for Minor Irrigation Project, then there was hardly any possibility of some area of his land being left out from acquisition as all the lands bearing Gat No. 366 to Gat No. 377 were acquired and his land bearing Gat No.370 was falling in between these lands.

18. I find much substance in the submission made by learned counsel for appellant, especially having regard to the fact that appellant has not been

crossexamined at all on this material aspect, relating to the correction of the record of his land and also his evidence that his entire land was acquired. Hence, it is necessary to hold that appellant should get compensation at the rate of Rs.1,00,000/per hectare for his entire land admeasuring 6.08 H.R.. However, to be on safer side, it would be proper to direct the compensation to be paid for this entire land, after verification of the said fact by S.L.A.O..

19. Accordingly, the appeals are allowed.

20. The impugned judgment and award of the Reference Court is modified to the extent that appellants are held entitled to get compensation at the rate of Rs.1,00,000/per hectare, in place of Rs.43,000/per hectare, as awarded by the Reference Court, with all statutory benefits.

21. As regards the Appellant in First Appeal No.96 of 2006, he is held entitled to get compensation for his entire land admeasuring 6-H. 08-R, after the verification of the area by S.L.A.O..