
(2018) 07 BOM CK 0155

In the Bombay High Court

Case No : First Appeal No. 61, 62, 63, 64, 65, 66 Of 2012

Shri Sakharam Vasudev Sinai Usgaonkar and Ors.

APPELLANT

Vs

Executive Engineer, Works Division XVIII PWD, Ponda-Goa
and Ors.

RESPONDENT

Date of Decision : 06-07-2018

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 18

Citation : (2018) 07 BOM CK 0155

Hon'ble Judges : Nutan D. Sardessai, J

Bench : Single Bench

Advocate : Sudin M. Usgaonkar, T. Kamat Ghanekar, P. Faldessai

Final Decision : Disposed Off

Judgement

1. By this common judgment i am disposing off the present appeals, one of which is at the instance of the original applicant and the other five at the

instance of the Acquiring Department with cross-objections filed by the interested parties/applicants before the Reference Court.

2. Admittedly the Government had published a Notification under Section 4 of the Land Acquisition Act, 1894, 'the Act', for short for the acquisition of

lands for the purpose of construction of the approach road to the new Usgao Bridge followed by the Notification under Section 6 of the Act.Â The

lands under Survey No.3 and 35/2 admeasuring an area of 4335 sq.mts. and 145 sq.mts. belonging to the appellant were acquired for the said purpose

and the possession was taken by the Government on 29/09/2006.Â The Land Acquisition Officer made an Award granting compensation @ ₹ 150/-

per sq.mt. to each of the applicants who then filed the applications under Section 18 of the Act claiming compensation @ ₹ 1000/- per sq.mt.Â The

learned Reference Court however enhanced the compensation to ₹ 175/- per sq.mt. in respect of the applicant's land and after making certain

deductions fixed different rates for the land of the other applicants/cross-objectors. The applicant challenged the impugned judgment on the grounds

that the Reference Court had relied upon the Sale Deed dated 15/05/1996 whereby a property measuring 55860 sq.mts. was sold @ ₹ 179/- per sq.mt.

3. The learned Reference Court had observed in the impugned judgment that there was an admission at his instance that M/s. Finolex Esses Industries

had constructed its factory in the plot sold by the Sale Deed of 15/05/1996 and observing that it was in a relatively more developed area than the

acquired land, deducted ₹ 19/- per sq.mt. and considered the value of the acquired land @ ₹ 160/- per sq.mt. The learned Reference Court in the

impugned judgment observed that there was an admission by the applicant that the acquired land was 3 to 4 mts. lower than the level of the road and

that the land would require considerable filling before it could be used for the construction and deducted ₹ 70/- per sq.mt. from the value of the

acquired land thereby appraising the value @ ₹ 90/- per sq.mt. The learned Reference Court lost sight of the fact that between the acquired land

bearing Survey No.3 and the river, there existed the properties surveyed under No. 6/0, 7/1, 35/2 and 38/0 parts of which were also

acquired. At one point the learned Reference Court observed that the acquired land was not within the settlement Zone and deducted a further

sum of ₹ 10/- per sq.mt. fixing the market value @ ₹ 80/- per sq.mt.

4. The Reference Court observed in the impugned judgement that one of the acquired lands was a paddy field which was difficult to convert for

construction purposes and deducted an additional amount of ₹ 10/- per sq.mt. and quantified the market value of the acquired land @ ₹ 70/- per sq.mt.

In such a manner, the learned Reference Court erred in making the deductions in respect of each of the acquired lands from the sale price of ₹ 179/-

per sq.mt. and overlooked the report of the valuation whereby the valuer had fixed the market value of the acquired land @ ₹ 400/- per sq.mt. The

learned Reference Court also erred in discarding the two Sale Deeds dated 21/05/2001 and 02/11/2005 in respect of lands which were close to the

acquired land and where the sale prices were ₹ 395.50 and ₹ 500/- per sq.mt.

respectively. The learned Reference Court was perfunctory in appreciation of the evidence and passed the impugned award which was contrary to law and based on conjectures and surmises. The award was therefore liable for interference at the instance of the applicants / crossobjectors.

5. The appellants-State assailed the impugned award being contrary to the facts, law and evidence on record, that the learned District Judge had misinterpreted and misapplied the provisions of the Act as also the principles laid down by this Court and the Apex Court in the matter of assessing the market value in land acquisition cases. The learned District Court had grossly erred in enhancing the market value from ₹ 150/- per sq.mt. to ₹ 225/- per sq.mt. by relying on the Sale Deed dated 15/05/1996 when there was absolutely no evidence on the nature of the land involved in the Sale Deed and the land under acquisition and besides the land in the Sale Deed was not in the vicinity of the acquired land. The learned District Judge erred in granting 10% annual increase in price on compounding basis which was not based on any criteria or evidence and erred in applying the theory of escalation of price contrary to the principles laid down by the Apex Court. The learned District Judge erred while granting deductions which were not in consonance with the principles laid down by the Apex Court and the escalation granting 10% per annum on compounding basis was on the higher side. The impugned order was therefore liable for interference on such and other grounds that may be urged at the time of hearing and pressed for the reduction of the amount.

6. Heard Shri Sudin M. Usgaonkar, learned Senior Advocate on behalf of the party applicant and the cross-objectors who invited attention to the plan of acquisition alongwith the Survey Plan to delineate the position of the acquired lands and how the learned Reference Court was in error to award the compensation which was much lower than that to which the applicants were entitled in law. He next adverted to the impugned judgement and submitted that there were no findings on the expert's evidence despite the examination of an expert by the applicants/cross-objectors. The acquisition was of the year 2006 while the applicant had relied on two Sale instances of 2005 and 2006 where the rate was ₹ 400/- to ₹ 500/- per sq.mt. Yet, the learned Reference Court without any basis gave a finding that the Sale Deeds were not comparable to the land under acquisition

and made deductions instead of allowing a reasonable increase considering the development potential of the lands in question and there was no basis

to decide the reference haphazardly as it did.Â Â

7. Shri Sudin M. Usgaonkar, learned Senior Advocate next submitted that the findings rendered by the learned Reference Court were not at all in

consonance with the case brought forth by the applicants/cross-objectors and the deductions made by the learned Reference Court were totally

unjustified.Â Â He placed reliance in the judgment of this Court inÂ Valmiki Faleiro v/s. Special Land Acquisition Officer and Anr. [2018(1) All MR

137] to substantiate his case that granting 10% increase with compounding annual was in consonance with the law laid down by the Apex Court and

the learned Reference Court had not adhered to the set principles. He adverted to the evidence of the expert being the Government Approved Valuer

who had fixed the market valueÂ on the basis of the Sale Deed @â 400/per sq.mt. unlike the appellants-State which had not examined any witness to

show the valuation of the land to the contrary.

8. Shri Sudin M. Usgaonkar, learned Senior Advocate therefore summed up his arguments that the deduction made by the learned Reference Court

was unjustified, that the testimony and the Valuation Report of the valuer was not considered, the evidence was not examined by the learned

Reference Court in its proper prospective and had instead taken a superficial approach in assessing the material. The applicants/cross-objectors were

entitled to the enhancement of atleast @â 400/- per sq.mt. as per the expert's evidence and there was no basis to reduce the same. He placed further

reliance on theÂ award of the Land Acquisition Officer where he had considered the correct price for the acquired land being â 200/- per sq.mt. but

was unduly swayed by the memorandum issued by the Additional Collector who had approved the rate of â 150/- for untenanted lands in Usgaon and

fixed the rate @â 150/-Â In that context, he placed reliance in Bijoy Kumar Santhalia v/s. State of Bihar and others [AIR 1989 Patna 1] and pressed

for the enhanced compensation in the applicants appeal and the cross-objections filed on behalf of the cross-objectors.

9. Shri P. Faldessai, learned Additional Government Advocate for the appellants-State submitted that it was not only the memorandum issued by the

Additional Collector that had weighed with the learned Land Acquisition Officer

but other reasons were assigned in the award why the rate of the acquired lands was fixed @ ₹ 150/- per sq.mt. He then produced a chart showing the particulars of the five cases which were the subject matter of these appeals and submitted that the learned Reference Court had correctly exercised the discretion in fixing the market value of the acquired lands. The deduction was not at all justified and moreover the Reference Court had considered the expert evidence. The acquisition was in the year 2006 while the valuation was done in the year 2010 which was to suit the applicants/cross-objectors case. The valuer had given the value @ ₹ 400/- per sq.mt. in the year 2010 which was not the position at the time of the acquisition in 2006. No fault could be found with the deductions made by the learned Reference Court which had otherwise given quite some enhancement to the applicants/cross-objectors and therefore the appeal filed by the State had to be allowed and the compensation so awarded had to be reduced appropriately.

10. Shri S.M. Usgaonkar, learned Senior Advocate on behalf of the applicants/cross-objectors submitted in reply that the geographical features of the lands had to be taken into the consideration. The Valuer had relied upon the sale instance and only then drawn the Valuation Report.

Besides, the Reference Court had to see the development potential and grant the enhanced compensation which had failed to do by making deduction which were both misplaced and unjustified.

11. I would consider the submissions of Shri Sudin M. Usgaonkar, learned Senior Advocate on behalf of the applicants/cross-objectors and Shri P.

Faldessai, learned Additional Government Advocate for the Appellants-State, look into the judgments and in the light of the material on record proceed

to appreciate the case of each of the applicants/ crossobjectors and the appellants -State and decide the appeals accordingly.

12. The original applicants/cross-objectors had examined Meghsham (Pw1) as their Constituted Attorney in the proceedings before the Reference

Court and where he had produced the Sale Deeds record alongwith a copy of the Survey Plan and that of acquisition and photographs apart from

the Power of Attorney executed in his favour. Besides, he had also produced the Valuation Report. On seeing the tenor of the cross-examination

it is borne out that all the acquired lands from the Survey Nos.2/0, 3/0, 6/0, 7/1

35/2 and 38/1 of Usgaon village were contiguous and lying along the existing highway of the width of 5 mts.Â at the time of the Section 4 Notification.Â He had then described the area of each of the acquired areas from the respective survey holdings and categorically denied the case of the appellantsâ?State that the portion from Survey No.3/0 acquired in an area of 4035sq.mts. was under paddy cultivation. He had also categorically denied the case put to him that all the acquired lands were 3-4 mts lower than the existing road.Â Although he conceded that the Mandovi river was close to the acquired lands, he had also denied the suggestion that the backwater from the river Mandovi was washing away the acquired lands and the adjacent lands during the tidal effects in monsoon.Â There was otherwise no rebuttal of his case on the proximity of the various amenities and facilities to the acquired lands if his entire cross-examination is perused.

13. The applicants/ cross-objectors had examined the expert Valuer in support of their case namely Sukhtankar (Aw2) who had drawn the report and Certificate of valuation of the acquired lands uniformly @â 400/- per sq.mt. at the time of Section 4 Notification.Â He also maintained during his cross-examination that he had visited the acquired lands for the first time in the year 2006 and then again in 2010 for the preparation of the Valuation Report.Â Therefore, it is not as if he was drawing the Valuation Report in the abstract in 2010 after visiting the land for the first time but that he had an occasion to see the acquired lands and appreciate their contours, topography and the availability of the various amenities and facilities in the year of its acquisition itself i.e. 2006.Â

14. Sukhtankar (Aw2) too was materially unshaken on the nature of the land, the existence of variousÂ amenities and facilities to it withinÂ a radius of 500 mts to 6kms. and denied the suggestion that his Valuation Report was not correct.Â The State â? appellants had not led any evidence to rebut the case of the applicants/cross-objectors either on the nature of the land, its topography and contours and the non-existence of the amenities and facilities to it to dispute their case.Â Therefore, the learned Reference Court was not at all justified after having duly considered the sale instance of 15/05/1996 to impute that it was a notorious fact that the factory was in a relatively more developed area than the acquired land and there was no particular dispute that the construction was done subsequent to the purchase of

the plot by the Deed dated 15/05/1996. The construction of the factory premises ought not to have weighed on the mind of the learned Reference Court to make a deduction in the value of the land and peg it at

□ 160/- per sq.mt.

15. There was no admission by the applicants/cross- objectors that the acquired lands were 3-4 mts. lower than the level of the road. For that matter

there was no admission at their instance through their attorney that the Mandovi river water entered certain portions of the acquired lands and that it

required considerable filling up before it could be used for the construction and on that account to make a deduction of □ 70/per sq.mt. Besides, there

was no basis for the Reference Court to make deductions on the premise that the acquired lands were not within the settlement Zone or were a

paddy field and to continue further deductions on those heads. Therefore as rightly submitted by Shri S.M. Usgaonkar, learned Senior

Advocate, the Reference Court was not at all justified in making the deduction, ignoring the testimony of the Valuer and the report drawn by him and

in failing to assess the evidence in its proper perspective and thereby adopting a superficial approach.

16. In Valmiki (supra), the learned Single Judge of this Court while considering the judgment of the Apex Court in ONGC v/s. Rameshbhai Jivanbhai

Patel and another [2008(14) SCC 745] had held that the application of a flat rate would lead to anomalous results and that the logical, practical and

appropriate move would therefore be to apply the increase cumulatively and not at a flat rate. The memorandum of the Additional Collector

should not at all have weighed with the Land Acquisition Officer to hold that the rate for the acquired land was □ 150/- per sq.mt. even after having

come to a finding that the correct price in the case was □ 200/- per sq.mt. Besides, in Bijoy kumar (supra), the learned Single Judge observed that

although it was well known that under the provisions of the Act, functionaries mentioned therein had been assigned specific duties and powers, the

Act was also a selfcontained Code and laid down a complete procedure thereunder.

It was well settled that the statutory functionary also could not pass an order on the basis of an authority, who has no role to play under the

statute. Considering this judgment too there was no basis for the Land

Acquisition Officer to reduce the price from ₹ 200/- arrived at by him to ₹ 150/- per sq.mt. only because the Additional Collector's vide his Memorandum dated 13/08/2008 had approved the rate @ ₹ 150/- per sq.mt. for the untenanted lands in Usgaon village. Therefore, considering the contentions of Shri Usgaonkar, learned Senior Advocate for the applicants/cross-objectors and those of Shri P. Faldessai, learned Additional Government Advocate for the appellants?" State and on considering the material on record, the Reference Court ought to have fixed the market value of the acquired land @ ₹ 515/- per sq.mt. and not those fixed by him and after allowing deductions on vague and unsubstantiated grounds.

17. The learned Reference Court having considered the sale instance of 15/05/1996 as the basis for computing the valuation ought to have given a steady increase @10% per annum compounded annually and on that premise ought to have awarded the compensation @ ₹ 515/- per sq.mt. instead of making the deductions which were not at all justified in the circumstances of the case.

18. In that view of the matter, I pass the following

O R D E R

1. The appeal of the original applicant is allowed and so too the cross-objections while the appeals filed on behalf of the Acquiring Department are?

State are dismissed.

2. It goes without saying that the applicants/crossobjectors will be entitled to the enhanced compensation of ₹ 515/- per sq.mt. in respect of their acquired lands with all the benefits provided under the statute.