**(2001) 10 BOM CK 0082**

**In the Bombay High Court**

**Case No :** Land Acquisition Reference No. 8 of 1980

Special Land Acquisition Officer APPELLANT

Vs

Bawa Bir Singh and Another RESPONDENT

**Date of Decision :** 23-10-2001

**Acts Referred:**
Land Acquisition Act, 1894 — Section 18

**Citation :** (2002) 2 BomCR 598

**Hon'ble Judges :** J.A. Patil, J

**Bench :** Single Bench

**Advocate :** A Kalyanrao, A.G.P., U.J. Makhija and J. Xavier, for acquiring Body, for the Appellant; D.V. Merchant, instructed by Shah and Sanghavi, for the Respondent

**Final Decision :** Dismissed

## Judgement

J.A. Patil, J.—This is a reference u/s 18 of the Land Acquisition Act, 1894 (for short the Act). The claimants were the owners of the plots of land bearing C.T.S. Nos. 1109 (Part). 1110 (Part) and 1111 (Part) of village Mulund Taluka Kurla. All the three plots are contiguous and they totally admeasure 8730 sq. metres. Notification u/s 4 of the Act was issued on 14-9-1973 and published in the Government Gazette on 20-12-1973. Notification u/s 6 of the Act was issued on 24-7-1974 and published on 5-9-1974. The land has been acquired for the Bombay Municipal Corporation for the purpose of Fire Brigade Station and road. The Special Land Acquisition Officer, Bombay and Suburban District (for short, SLAO) passed his Award on 10-1-1980, giving a total compensation of Rs. 14,05,579/- at the rate of Rs. 140/- per square metre. The claimants accepted the said compensation under protest on 23-1-1980, on which date, possession of the acquired land was taken and handed over to the acquiring body. The claimants not being satisfied with the quantum, applied to the SLAO for making a reference to this Court for enhancement at the rate of Rs. 250/- per sq. metre.

2. The description of the land as given by the SLAO is that it is situated in

Mulund (West) at a distance of about one Kilometer from the Mulund Railway Station and abutting the Lal Bahadur Shastri Marg (old Bombay-Agra Road). The land is situated in a residential zone and just opposite to it, beyond the road, is industrial zone. The area is developed area and all facilities are available there.

3. On behalf of the claimants, two witnesses have been examined. They are Rajiv Kulwant Singh Bawa and expert valuer Harshad Maniar. No witness is examined on behalf of the acquiring body.

4. Maniar has stated that he visited the land under acquisition on 27-3-2001 and found that there was a 60 feet wide road and 30 feet wide road constructed on the site and the remaining area was developed for Fire Brigade Station. He produced and proved his valuation report along with the plan (Exhibit C-21 Collectively). In the said report, he has made a reference to the 12 sale instances relied upon by the SLAO and pointed out that 8 out of them are of land and buildings and 2 instances are of earlier awards. According to him only 2 instances, i.e. instance Nos. 3 and 8 are comparable and out of them instance No. 3 is quite comparable. As regards instance No. 8, Maniar has later on explained that it is not a comparable sale instance. It is a sale transaction dated 29-6-1972 of a plot of land admeasuring 418 sq. metres bearing Survey No. 1078/79/B of Vrindavan Nagar for a consideration of Rs. 75,000/-. The rate of the land works out to Rs. 179.42 per sq. metre. Maniar has pointed out the comparable merits and demerits of both the lands with reference to certain factors such as situation, location, relevant date of valuation, zone, permissible F.S.I. encumbrances and area. He has stated in his that the acquired land is abutting the 100 ft. wide L.B.S. Marg and 90 feet. Wide L.D.D. Marg. whereas the land in sale instance No. 3 is abutting the 25 ft. wide internal access road. He has, therefore, given 20 per cent weightage to the acquired land. On the factor of area, he has pointed out that the land in sale instance No. 3 is only 418 sq. metres, whereas the acquired land is 8,730 sq. metres, i.e. about 20 times smaller than the acquired land. On the other factors, except the date of valuation, he finds both the lands at par. However, on the factor of date of valuation, he has given 15 per cent rise per annum as the relevant date of the sale instance is 29-6-1972 and that of the acquired land is 20-12-1973. Maniar has worked out the rise in price at Rs. 41.44 for the period of 1 year and 5 months and calculated the price of the acquired land at Rs. 179.42 per sq.mtrs plus Rs. 41.44 per sq. metre = Rs. 220/86 per sq. metre. Thus, in the opinion of Maniar, the fair market value of the acquired land will be Rs. 220/- per sq. metre.

5. Para 8 of the evidence of Maniar shows that he has made some mistake with regard to the area of the land in sale instance No. 3. It consists of two plots i.e. plot No. 1078 and 108/79/B each admeasuring 418 sq. metres. But Maniar took into consideration the area of plot No. 1078/79/B only and stated that the value of the land in sale instance No. 3 is Rs. 179.42. However, when he realised his mistake, he stated that the rate of the land in sale instance No. 3 is Rs. 89.71 per sq. metre. This admission on his part goes to show that the basis for valuing

 

the acquired land is not correct. The following questions and answers in para 12 of the evidence of Maniar make the position clear:

"Question: You have valued the acquired plot at the rate of Rs. 220/- per sq. metre while comparing it with the plot under sale instance No. 3. Is that correct?

Yes: Yes.

Question : This valuation of Rs. 220/- was made by you on the basis that the area of plot under sale instance No. 3 is 418 sq. metres. Is that correct?

Ans. Yes.

Question : According to you, on the basis of evidence given today, the correct area of the plot under sale instance No. 3 is 836 sq. metres. Is that correct?

Ans. Yes.

Question : If the area of plot under instance No. 3 is taken into account, how would you value the acquired plot on the very same factors which you have taken into account while submitting your report?

Ans. Rs. 109.51 per sq. metre."

6. Maniar further stated that the acquired land was not under reservation except 60 feet wide development plan road, while, according to him, covers an area of 884 sq. metres. But when the dimensions of the acquired land and the fact that the said road runs throughout the eastern side of the land, were brought to his notice, Maniar had to admit that the area covered by the said road comes to 1900 sq. metres and not 884 sq. metres. Finally, he categorically admitted:

"It is correct report that on the basis of my valuation report and the evidence given, the rate of the acquired plot should be Rs. 109.51 per sq. metre."

It will thus be seen that the aforesaid admissions by Maniar take out the very basis of the claim of the claimants that the market value of the acquired land should be given at the rate of Rs. 250/- per sq. metre.

7. Being faced with this situation. Shri Merchant, the learned Advocate for the claimants submitted that if the evidence of the expert is discarded, then the Court has to fall upon the award and see if the price offered by the SLAO is just. Referring to the provisions of sections 23 and 24 of the Act, Shri Merchant urged that the Court can consider whether there are any inherent defects in the award. He pointed out that as per the SLAO, the average valuation comes to Rs. 269/- per sq. metre. Therefore, according to Shri Merchant there is no reason for reducing that rate to Rs. 140/- per sq. metre. In support of his submission, Shri Merchant relied upon the decision in The Special Land Acquisition Officer and another etc. etc. Vs. Sri Siddappa Omanna Tumari and others etc., and in particular the following observations made in para 7:

"The legislative scheme contained in sections 12, 18 and 19 while on the one hand entitled the claimant not to accept the award u/s 11 as to the amount of compensation determined as payable for his acquired land and seek a reference to the Court for determination of the amount of compensation payable for his land, on the other hand requires him to make good before the Court the objection raised by him as regards the inadequacy of the amount of compensation allowed for his land under the award made u/s 11, with a view to enable the Court to determine the amount of compensation exceeding the amount of compensation allowed by the award u/s 11, be it by reference to the improbabilities inherent in the award itself or on the evidence aliunde adduced by him to that effect."

Shri U.J. Makhija, the learned Counsel for the B.M.C. on the other hand, submitted that none of the witnesses has uttered a single word that there are inherent defects in the award. The position of a claimant in a reference is that of a plaintiff in the suit and the initial burden of proving that the compensation allowed by the SLAO is inadequate is on the claimant. But if this initial burden is not discharged, the award is final and conclusive evidence u/s 12 of the Act. In the instant case, neither Rajiv Kulwant Singh (C.W. 1) nor the expert valuer Maniar (C.W. 2) has stated anything in their evidence before the Court that there is any discrepancy or defect in the award with regard to the determination of the rate per sq. metre. The reference u/s 18 is not an appeal against the award and the Court cannot take into account the material relied upon by the SLAO. The award is not to be treated as a judgment of the trial Court, open to challenge before the Court hearing the reference. It is only an offer and the Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of material produced before it vide Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, . In view of this settled position, the alleged defect or discrepancy in a award pointed out by Shri Merchant for the first time in his argument, cannot be considered on account of the claimant''s failure "to make good before the Court the objection raised by him as regards the inadequacy of the amount of compensation. ......"

Consequently, the award deserves to be affirmed and reference rejected.

8. In the result, the reference is dismissed.

9. Certified copy expedited. Authenticated copy by the Associate is allowed.

 