

(1994) 02 BOM CK 0017
In the Bombay High Court
Case No : F.A. No. 191 of 1987

State of Maharashtra and Another

APPELLANT

Vs

Abdul Sattar and Others

RESPONDENT

Date of Decision : 07-02-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18, 23, 4

Citation : AIR 1995 Bom 85 : (1994) 3 BomCR 5

Hon'ble Judges : A.D. Mane, J;A.A. Halbe, J

Bench : Division Bench

Advocate : K.G. Nawandar, Special, for the Appellant;

Judgement

Mane, J.—This appeal arises out of the judgment and award passed by the Court in Land Acquisition Reference u/s 18 of the Land Acquisition Act, 1894 (for short, "the Act"). The respondents own seven pieces of land bearing Survey Nos. 8/1, 88/2, 11/1, 11/2-1, 11/2-3 and 11/2-4, situated at Himayat bag within the Municipal Corporation, Aurangabad. These lands were acquired for Fruit Research Station at Himayat bagh at the instance of Marathwada Agricultural University.

The notification u/s 4 of the Act was published in Maharashtra Government Gazette on 5-2-1973 and the notification u/s 6 of the Act was issued on 11-3-1976.

The Special Land Acquisition Officer, Aurangabad passed award by determining the value of the acquired land on the basis of their qualities. The area of the acquired land falling under perennial Bagayat was valued at the rate of Rs. 18,750/- per acre and the non-perennial portion of the land was valued at the rate of Rs. 15,625/- per acre.

2. The claimants were dissatisfied with the award passed by the Special Land Acquisition Officer. It was the case of the respondents that the acquired lands were capable of fetching higher market value and the amount offered by the Land Acquisition Officer was inadequate and that he had proceeded on the wrong

premise of the principle. According to the respondents, the market value of the similarly situated land in the vicinity and within the limits of Municipal Corporation, at the relevant time, was Rs. 1,00,000/- per acre. The respondents, therefore, filed their application for reference to the Court and accordingly reference was made u/s 18 of the Act to the Court.

3. That reference was, however, objected to by the appellant/State firstly on the ground that the reference was not within the period of limitation; secondly, that the reference was bad for mis-joinder of parties and lastly that the respondents were not entitled to enhanced compensation, as the value of the land was properly determined by the Special Land Acquisition Officer.

4. In support of the claim for enhanced compensation, the respondents, however, restricted their claim at the rate of Rupees. 30,000/- per acre, as against the market price of similarly situated lands within the limits of Municipal Corporation in the vicinity at the rate of Rs. 1,00,000/- per acre. The respondents mainly relied upon a sale instance produced at Exhibit 52 and previous award Exhibit 51, as proved in the evidence of their witness Yusufuddin at Exhibit 49. The claimant No. 1 Abdul Sattar was also examined at Exhibit 43.

5. The Land Reference Court (for short, "the Court below") in the first place settled material issues as arising from the respective say of the parties. The Court below rejected the two-fold objection raised by the appellant in regard to the maintainability of the reference u/s 18 of the Act. On consideration of the material evidence, as adduced by the claimants, the Court below determined the market value of the land acquired at the rate of Rs. 30,000/- per acre and accordingly, passed the amount of award granting enhanced compensation to the respondents.

6. This being the appeal by the State Government, Shri Navandar, the learned Special Counsel for the appellants reiterated the very objection to the maintainability of the reference u/s 18 of the Act in the first place. It has been contended that the view taken by the Court below rejecting the two-fold objection to the maintainability of the Land Acquisition Reference was not correct.

7. At once we may say that the Court below has for sound reasons, and we think rightly, rejected those objections. It is not in dispute that an application for reference can be made by any person interested, who has not accepted the award. Proviso to subsection (2) of Section 18 of the Act. however, provides that "every such application shall be made -- (a) if the person making it was present or represented before the Collector at the time he made his award within six weeks from the date of the Collector's award; (b) in other cases within six weeks of the receipt of the notice from the Collector u/s 12(2) or within six months from the date of the Collector's award whichever period shall first expire,"

8. It is an admitted fact that the award passed by the Special Land Acquisition Officer does not bear the date. That necessarily means that it was not known when the award was passed. The record also does not show that any notice was

served on any of the claimants u/s 12(2) of the Act. No office copy of such notice having been issued finds place in the record. The claimant No. 1 has stated that no notice was served on any of the claimants intimating about the passing of the award. It may be stated that, as observed by the Court below, the payment was received by the claimants under protest on 20-6-1977 and the application for reference was made on or about 1 -7-1977 but it was sent to the Court on 1-4-1980. It is clear from the record that none of the claimants had any knowledge about passing of the award until they received the amount of compensation under protest. The Court below was, therefore, justified in recording a finding that the application for reference to the Court u/s 18 of the Act was well within six months from the date of passing of the award by the Special Land Acquisition Officer. The learned Special Counsel for the appellants has not been able to dislodge this finding of fact recorded by the Court below. There is, therefore, no force in the contention (of) the learned counsel for the appellant that application for reference was not within the time prescribed under clause (a) of sub-section (2) of Section 18 of the Act. The application for reference was well within the time under clause (b) of sub-section (2) of Section 18 of the Act.

9. Now, coming to the other objection, as to whether the application for reference was bad for misjoinder of parties, it may be stated that claimants are brothers inter-se. They were tenants-in-common in possession of the acquired land. The land was acquired under one and the same notification and only one award was passed in that behalf. The court fee was paid by the claimants as per their claims. The court below has, therefore, rightly taken the view that there was no bar for making a joint application for reference to the Court.

Quite apart, the objection raised by the Counsel for the appellant-State is wholly untenable in law. A reference may be made to a case of A. Viswanatha Pillai and others Vs. Special Tahsildar for Land Acquisition No. IV and others, . In our opinion, ratio of the said decision aptly applies to the facts of the present case. In that case a somewhat identical objection was raised on the question, whether in an application filed by brother his co-owner brothers were entitled to claim enhanced compensation in respect of acquired property being the ancestral coparcenaries and continued to be kept in common among the brothers and income derived therein was being showed in proportion of their shares by all the brothers. It has been observed by the Supreme Court, that at Page 1969:

".....When one of the co-owners or coparceners made a statement in his reference application that himself and his brothers are dissatisfied with the award made by the Collector and that they are entitled to higher compensation, it would be clear that he was making a request, though not expressly so but by necessary implication that he was acting on his behalf and on behalf of his other co-owners, or coparceners and was seeking a reference on behalf of other co-owners as well. What was acquired was their totality of right, title and interest in the acquired property and when the reference was made in respect thereof u/s

18 they are equally entitled to receive compensation pro rata as per their shares...."

It was further observed that,

"..... A co-owner of the property is an owner of the property acquired but entitled to receive compensation pro rata. One of the co-owners can file a suit and recover the property against strangers and the decree would ensure to all the co-owners. The State certainly has right and is entitled to resist claim for enhancement and lead evidence in rebuttal to prove the prevailing price as on the" date of notification and ask the Court to determine the correct market value of the lands acquired compulsorily under the Act. But as regards the persons entitled to receive compensation are concerned, it has no role to play. It is for the claimants inter se to lay claim for compensation and the Court would examine and award the compensation to the rightful person. The State Would plead no waiver nor omission by other co-owners to seek reference nor disentitle them to an award to the extent of their legal entitlement when in law they are entitled. The State having acquired the property of a Citizen should not take technical objections regarding the entitlement of the claim....."

Here also, the claimants are brothers. What was acquired was their totality of right, title and interest in the acquired property. A separate application, for reference from each of the brothers was, therefore, unwarranted. We, thus find no merit in the second objection also. The claim for enhancement of compensation by a joint application for reference u/s 18 of the Act was quite legally tenable.

10. That takes us to the principal contention of the learned Special Counsel for the appellant, in regard to the determination of the value of the acquired land. Shri Navandar, learned Special Counsel in the first place submitted that the Court below had proceeded on a wrong premise or principle in determining the market value of the acquired land. The learned Counsel further argued that the land value can differ depending upon the extent and nature of the land sold. While comparing the price shown in sale deed, Exhibit 52, the Court below has failed to take into account all variables. It has been emphasised that location of the land covered by the sale deed Exhibit 52 was altogether different and therefore, the Court below was wrong in resorting to a method what is shown as "comparable sales method" of valuation of the land. A strong reliance is placed on a decision in case of Rao Narain Singh (dead) by L.R.s. Vs. Union of India, The learned counsel for the appellants also argued that the Court below has committed further error in keeping reliance on sale instances and previous award Exhibit 51, because those were the transactions in regard to smaller properties and transaction in regard to smaller property cannot be taken as a real basis for fixing compensation for larger tracts of property. It was, therefore, submitted that the valuation of the acquired land was improper.

11. It is well established that in awarding compensation in acquisition

proceedings, the Court has necessarily to determine the market value of the land as on the date of the relevant notification. It is useful to consider the value paid for similar land at the material time under genuine transactions. The market value envisages the price which the willing purchaser may pay under bona fide transfer to a willing seller. It is true that land value can differ depending upon the extent and nature of the land sold and while comparing the price shown in the transaction all variables such as locations etc. have to be taken into consideration. In the case relied on by the learned Counsel for the Appellants, the Apex Court observed at Page 1560:

".....Method of acquired land's just equivalent price, has to, necessarily depend on the nature of evidence adduced by parties in that regard When, in a given case, the parties produce evidence of sale, relating to the acquired land or lands in the vicinity of the acquired land and require the court concerned to determine the compensation payable for such acquired land, such court resorts to what is known as "the comparable sales method" of valuation of the land..."

On the facts proved in that case, the Supreme Court observed:

".... The location of the lands covered by sale deeds being in a populous area of the city and thus altogether different from the location of the acquired land which is farther away from the city as becomes apparent from the site plan, the lands covered by the sale deeds and the acquired land were rightly held by the High Court to be not comparable...."

12. Let us, therefore, consider the nature of evidence adduced by the claimants in the present case. The evidence led by the claimants in support of their claim for enhancement of compensation comprises testimony of claimant No. 1 Abdul Sattar at Exhibit 43, witness Syed Yusufuddin at Exhibit 49 who has also proved the sale deed dated 21-8-1972 at Exhibit. 52, and further certified copies of sale deeds dated 17-8-1971, 22-6-1971, 21-4-1971 and 11-5-1973 at Exhibits 42, 54, 56, 55 and 57 respectively and previous award at Exhibit 51 in Land Acquisition Reference No. 110/-1978 in respect of acquisition of land admeasuring 47 Acres u/s 4 notification on 23-3-1973 fixing value of the land at the rate more than Rs. 33,000/- per acre. We may first deal with testimony of claimant No. 1 Abdul Sattar (Ex. 43) and sale deed Exhibit 52 because, as a matter of fact, the court below has mainly relied on that piece of evidence in determining the market value of the acquired land at the rate of Rs. 30,000 /- per acre.

13. The oral testimony of Abdul Sattar so far it is relevant on the point of location of the acquired land, nature etc. is as under:

"..... The above lands are located in the Centre of the city. To the East of that land there is Ajantha Jalgaon National High Way. To the West of that land there is Zoo and Himayat Bag area. To the South of that land there is Guest House known as Subhedari Guest House and Government College. Near the land in question there are number of offices including office of Commissioner, Collector, Registrar

and P.W.D. There is also a petrol pump near the land in question. All the above offices and petrol pump are at a distance of walk for 5 to 6 minutes. Road adjoining to the land in question is a busy traffic road. By the side of that road there is officers colony. There is also area meant for habitation known as CIDCO and HUDCO. To the North of the land in question, there is Moulana A/.ad College premises. Roza Bag and Mahemoodpura area are located by the side of the land in question. That college and area are at walking distance, one can reach to that area by walk without 10 minutes..."

The witness has further stated that the acquired land is a fertile land having facility of water from three wells, with electric motor pumps installed on two of the wells. The land is irrigated land.

According to the witness Abdul Sattar and witness Syed Yusufuddin, the land covered under sale deed Exhibit 52 is comparable land to the land acquired. Witness Abdul Sattar has stated that land covered under Exhibit 52 was also located in the city. The said land admeasuring 1 Acre and 18 Gunthas was sold for Rs. 40,000/ -. It is at a distance of 2 1/2 kms. from the acquired land.

14. It is pertinent to note that above evidence of the witness for the claimants has not been rebutted by the State by leading any other piece of evidence such as site plan etc. It was merely suggested in cross of the witness Syed Yusufuddin that the purchaser paid less amount than the one shown in the sale deed Exhibit 52 but that has been clearly denied by the witness. It has, therefore, to be accepted as a fact proved that the acquired land is situated in the centre of the city as in case of the land covered under sale deed Exh. 52. It is, however, undisputed that the acquired land and the land under sale deed were put in use as agricultural lands. Nevertheless, both these lands have equal characteristic of potential values as housing site. In that view of the matter, we feel that distance between these two lands matters little.

The evidence of the witness for the claimants sufficiently establishes that the transaction under sale deed Exhibit 52 is not only genuine but a bonafide transaction.

15. Now, the principle to fix a fair market value with reference to comparable sale is to reduce the element of speculation. In a comparable sale the general features are of four kinds, viz., (i) it must be within a reasonable time of the date of the relevant notification; (ii) it should be a bonafide transaction; (iii) it should be a sale of the land acquired or land adjacent to the land acquired and, (iv) it should possess similar advantages with reference to its location. What is fair and reasonable market value is again always a question of fact depending on the nature of the evidence, circumstances and probability in each case. In the present case, on accepting the testimony of the claimants' witness, we have no doubt in our mind that the Court below was justified in keeping implicit reliance on sale deed Exhibit 52 as a basis for determining the market value of the land acquired. The court below to lend assurance to that approach seems to have

made a reference to other sale instances (Exhibits 42, 54, 55, 56 and 57) and previous award Exhibit 51 relating to the small plots. These instances, undoubtedly disclose the price of already developed plots suggesting price of the land on higher side with the rate of Rs. 60,000/- and above per acre during the relevant time. The sale transaction Exhibit 52 shows that the market price of comparable agricultural land situated in the limits of the Municipal Corporation was more than Rs. 30,000/- per acre.

16. As discussed above, when it is proved that acquired land is situated in the centre of the city, though it is put in use as an agricultural land, it is undoubtedly a comparable land to the land covered under the sale instance Exhibit 52. We have already pointed out that there is absolutely no evidence to show that land covered under sale deed Exhibit 52 stands on a different footing. Both the lands are put in for agricultural use but situate at central place in the city. It is, therefore, clear that the decision upon which reliance is placed by the learned Counsel for the appellant is distinguishable on facts. It is thus not possible for us to accept the abstract contention of the learned Counsel for the appellant that the land covered under sale deed Exhibit 52 is altogether different from the acquired land and, therefore, it is not comparable. The land covered under sale deed Exhibit 52 is the evidence of comparable sale with a view to finding out a reasonable market price of the acquired land. The court below was correct in its approach in determining the value of the acquired land on basis of sale instance produced by the claimants at Exh. 52.

17. The next contention of the learned counsel for the appellant is that while assessing the market value of the acquired land court below made an error of law in taking into consideration the price paid for small developed plots for valuing the large land. Further contention of the learned Counsel is that previous award Exhibit 51 is also not relevant because it also pertains to a small plot admeasuring 61 acres out of land Survey No. 194/ 1 which was sold to a Co-operative Housing Society for Rs. 50,000/-. These contentions are based on a proposition that large area cannot be sold at the same rate at which small plots are sold. As observed by the Supreme Court in case of *Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality*, "... the proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. A fully developed small plot in an important locality may fetch a higher value than a larger area in an undeveloped condition and situated in a remote locality. If the larger tract of land, because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted,"

We have already pointed out that if regard be had to these transactions of small

plots by giving same allowance for permissible deduction, the value of acquired land will come to Rs. 50,000/- per acre, inasmuch as the value of small plot under those sale instances shows that market price then prevailing was at the rate of Rs. 2 per sq. ft. In our opinion, the market price as set out by the Court below on basis of sale instance Exhibit 52 was perfectly reasonable. It cannot be said to be unreasonable or exorbitant. We may emphasise here the observations of Apex Court in Case of Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, , which are as follows (at page 2198):

"..... What is fair and reasonable market price is also the question of fact depending on the nature of the evidence, circumstances and probabilities in each case.....

"..... the guiding star would be the conduct of a hypothetical willing vendor who would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions as on the date of the notification u/s 4(1) but not an anxious buyer dealing at arm's length nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. When the courts are called upon to fix the market value of the land in compulsory acquisition, the best evidence of the value of property is the sale of the acquired land of which the claimant himself is a party, in its absence the sales of the neighbouring lands. The transaction relating to the acquired land of recent dates or in the neighbourhood lands that possessed of similar potentiality or fertility or other advantageous features are relevant pieces of evidence...."

18. Thus, on close scrutiny and assessment of the evidence tendered by the claimants in the present case and on proper consideration thereof in correct perspective to arrive at a reasonable market price, keeping in view attending facts and circumstances of the case, in our opinion, the market value determined by the Court below requires no interference in appeal.

19. In the result, we find that there is hardly any merit in appeal. Appeal fails and is accordingly dismissed. There shall, however, be no order as to costs.

20. Appeal dismissed.