
(2015) 06 BOM CK 0095

In the Bombay High Court

Case No : First Appeal No. 651/1994 and Cross Objection No. 2 of 2015

State of Maharashtra and Others

APPELLANT

Vs

Namdeo

RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 5-A, 6, 9

Citation : (2015) 4 ABR 585 : (2015) 6 BomCR 168 : (2015) 6 MhLj 274

Hon'ble Judges : V.A. Naik, J;C.V. Bhadang, J

Bench : Division Bench

Advocate : T.H. Udeshi, A.G.P., for the Appellant; A.Z. Jibhkate, Advocates for the Respondent

Judgement

V.A. Naik, J.—Since the issues involved in First Appeal No. 651 of 1994 and Cross Objection No. 2 of 2015 are identical and the correctness of the judgment of the reference Court is questioned in both, they are heard together and are decided by this common judgment.

2. The land of the claimant was situated on the outskirts of village Mandwa i.e. Mandwa Shivar or Gaothan. Out of the 10 Hectares of land belonging to the claimant, 5 Hectares was acquired by the State of Maharashtra for rehabilitation of the landholders of Laighwan, by the Section 4 notification, dated 12.04.1987. The Award was passed by the Special Land Acquisition Officer on 31.01.1990. The Special Land Acquisition Officer granted compensation to the claimant at the rate of Rs. 14,500/-per Hectare. For the seven mango trees that were standing on the acquired land, the Special Land Acquisition Officer granted compensation of Rs. 15,140/-. Being aggrieved by the grant of meager compensation, the claimant filed an application under Section 18 of the Land Acquisition Act, 1894 on 22.02.1990. By the said application, the claimant sought a sum of Rs. 50,000/-per Acre for the acquired land and also claimed higher compensation for the trees. By an amendment application that was filed more than three years later, the claimant sought much higher compensation at the rate of Rs. 15/-per

square foot. It was stated by the claimant in the amendment application that he had undervalued the land and had made a lesser claim for avoiding the Court fees. The said amendment application, though opposed by the State Government, was allowed by the reference Court. The reference Court after permitting the parties to tender evidence, by the judgment dated 30.07.1994, enhanced the compensation manifold, and granted it at the rate of Rs. 6,00,000/- per Hectare. The judgment of the reference Court is challenged by the State Government in the instant appeal. The cross-objection is filed by the claimant for enhancement of compensation.

3. Ms Udeshi, the learned Assistant Government Pleader appearing on behalf of the State, submitted that the reference Court committed a serious error in allowing the amendment application. It is stated that the claimant had initially made a claim for compensation at the rate of Rs. 50,000/-per acre and by the amendment, the claimant claimed compensation at the rate of Rs. 15/- per square foot. It is submitted that it is stated in the application that he had undervalued the land and made a meager claim for avoiding Court fees and the statement stands falsified by the cross-examination of the claimant. It is stated that the claimant had clearly admitted in his cross-examination that he had instructed his advocate to claim compensation at the rate of Rs. 15/-per square foot but, he is not aware as to why the advocate did not make a claim at that rate. It is stated that the two versions of the claimant, one in the amendment application and the other in his cross-examination clearly show that the claimant had not undervalued the claim and had rightly sought compensation at the rate of Rs. 50,000/-per acre, though that was also on a higher side. It is stated that for the reasons best known to the claimant, the claimant had illegally sought the enhancement of the compensation to such a great extent. The learned Assistant Government Pleader submitted that the claimant is a literate person having a teaching experience of nearly 28 years and, hence, it cannot be believed that the claimant had undervalued the land with a view to avoid the Court fees. It is stated that the judgment in the case of Shri Ambya Kalya Mhatre (d) through legal heirs and Others Vs. The State of Maharashtra, (2011) 4 RCR(Civil) 767 : (2011) 10 SCALE 296 : (2011) 5 UJ 3322 cannot be made applicable to the facts of this case and the reference Court ought to have rejected the amendment application. It is stated that the claimant has illegally claimed exorbitant compensation though he was surely aware of the actual market price of the acquired land, which was much lesser than claimed, on the date of issuance of the Section 4 notification.

4. It is then submitted that the reference Court illegally enhanced the compensation several times to grant it at the rate of Rs. 6,00,000/-per Hectare though it was rightly granted at the rate of Rs. 14,500/-per Hectare by the Special Land Acquisition Officer. It is stated that the reference Court has relied on only two documents for granting compensation to the claimant at the rate of Rs. 6,00,000/-per Hectare. It is submitted that the reference Court has relied on the judgment of the reference Court in Land Acquisition Case No. 73 of 1992 in land

acquisition proceedings of village Lakh, which is five kilometers away from village Mandwa, in the outskirts of which the land of the claimant was situated. It is stated that the judgment in L.A.C. No. 73 of 1992, in the case of Ramrao Tayde was considered by the reference Court to hold that the market value of the claimant's land could be between Rs. 7/-to Rs. 8/-per square foot as compensation was granted to Ramrao in L.A.C. No. 73 of 1992 at that rate. It is stated that Pritesh Tayde, the son of Ramrao, was examined by the claimant to prove the grant of compensation by the reference Court in the case of Ramrao Tayde at the rate of Rs. 8/-per square foot and the said witness has falsely stated in his cross-examination that the judgment of the reference Court in L.A.C. No. 73 of 1992 has attained finality after the appeal filed by the State Government against the said judgment was dismissed. It is submitted that the State Government had filed First Appeal No. 441 of 1995 against the judgment of the reference Court in L.A.C. No. 73 of 1992 and this Court has partly allowed the appeal filed by the State Government and modified the judgment of the reference Court. The learned Assistant Government Pleader relied on the judgment dated 14.10.2009 in First Appeal No. 441 of 1995 to submit that the compensation was reduced by the High Court in the first appeal and this Court had held, by the judgment dated 14.10.2009 that Ramrao Tayde was entitled to compensation only at the rate of Rs. 70,000/-per hectare. It is submitted that even if the Award in the land acquisition cases of village Lakh is to be considered, as was considered by the reference Court, the claimant herein would be entitled to compensation at the rate of Rs. 70,000/-per Hectare only.

5. The learned Assistant Government Pleader submitted that the reference Court had erroneously relied on an extract of the Index Register showing the sale of 1134 square feet of land by Deorao Dhangar Gopal of Mandwa to Tulshiram Tukaram Thakre of Dhamni on 20.02.1985 for a sum of Rs. 4,000/-to grant compensation at the rate of Rs. 6,00,000/-per Hectare to the claimant. It is stated that firstly, Deorao had not sold a plot of land to Tulshiram and a house property on land admeasuring 1134 square feet was sold to Tulshiram by Deorao. Secondly, according to the learned Assistant Government Pleader, the property sold by Deorao to Tulshiram was situated in the village in Ward no.2, whereas the acquired land was situated in Mandwa Shivar or the outskirts of Mandwa. It is stated that the said sale instance could not have been considered by the reference Court for granting higher compensation to the claimant. It is stated that the reference Court had also considered the income of the claimant from the sale of the agricultural produce for applying the income capitalization method but had not relied on the same for granting compensation. It is stated that the said method cannot be applied to the facts of the case as the oral evidence of Ramrao about the income by sale of the agricultural produce including cotton was not substantiated by producing the relevant documentary evidence on record. It is submitted that only on the basis of a couple of receipts which showed that some cotton was sold to the federation, the reference Court could not have applied the income capitalization method. The learned Assistant Government Pleader then

relied on the unreported judgments in First Appeal Nos. 201 of 1994, 452 of 1994 and 453 of 1994 to canvass that when the land from Mandwa village was acquired by the Section 4 notification published on 22.02.1982, the claimants were held entitled to compensation at the rate of Rs. 50,000/-per Hectare and this Court had confirmed the judgments of the reference Court, after holding that the market price of irrigated land at the relevant time was Rs. 50,000/-per Hectare. It is stated that since the said notification was issued more than four years earlier, even if an increase in the value of the property to the extent of 8-10% per year is considered, the claimant would be entitled to compensation only at the rate of Rs. 70,000/-per Hectare, as is granted in the case of Ramrao Tayde. It is stated that in all other connected First Appeals of Lakh which deal with the acquisition of land of Pritesh Tayde (Witness no.3 for the claimant) and his brothers, the High Court has held that the grant of compensation at the rate of Rs. 70,000/-per Hectare would be proper. The learned Assistant Government Pleader relied on the judgments in First Appeal Nos. 440/1995, 407/1993, 408/1993, 413/1993, 441/1993, 442/1993, 300/1994, 328/1994 and 330/1994. The learned Assistant Government Pleader submitted that this is a case where the claimant has mischievously and fraudulently sought compensation at an exorbitant rate though the claimant was clearly aware that his land was not worth even Rs. 50,000/-per acre at the time of issuance of the Section 4 notification.

6. Shri Jibhkate, the learned counsel for the claimant, supported the judgment of the reference Court and submitted that the compensation was rightly enhanced. It is submitted that Deorao Dhangar had stated in his evidence that he had sold a plot of land admeasuring 1134 square feet to Tulshiram Thakre for a consideration of Rs. 5,000/- but, the consideration was shown to be Rs. 4,000/- in the sale-deed. It is stated that it was clear from the evidence of Pritesh Tayde that the reference Court had granted compensation at the rate of Rs. 8/-per square foot in Land Acquisition Case No. 73 of 1992 in the case of his father Ramrao Tayde. It is stated that Ramrao's property was situated at a distance of five kilometers from the property of the claimant. It is submitted that village Lakh is in the interior whereas village Mandwa is on the highway. It is stated that on an appreciation of the evidence of the claimant, Deorao Dhangar and Pritesh Tayde, the reference Court rightly relied on the extract of sale instance relating to 1134 square feet of land by Deorao to Tulshiram and also on the Award in Land Acquisition Case No. 73 of 1992 in the case of Ramrao Tayde. The learned counsel, however, had nothing to say after the learned Assistant Government Pleader pointed out by referring to the record of First Appeal No. 441 of 1995 and the judgment dated 14.10.2009 therein, that the High Court had partly allowed the appeal filed by the State Government and reduced the compensation awarded to Ramrao from Rs. 8/- per square foot to Rs. 70,000/-per Hectare. In view of the unreported judgments of this Court, relied on by the learned Assistant Government Pleader, the counsel for the claimant did not press his claim in cross-appeal and stated that at least the order granting compensation at

the rate of Rs. 6,00,000/-per Hectare should be maintained.

7. On hearing the learned counsel for the parties and on a perusal of the original Record and Proceedings, it appears that the following points arise for determination in the appeal ---

I) Whether the reference Court was justified in granting compensation at the rate of Rs. 6,00,000/-per Hectare to the claimant for the acquired land ?

II) What order ?

8. On a perusal of the original Record and Proceedings, it appears that this is a case where the claimant has dishonestly and fraudulently sought exorbitant compensation at a rate which never existed at the time of the issuance of the Section 4 notification, by seeking an amendment to the reference though initially compensation was sought at the rate of Rs. 50,000/-per acre. Not only has the claimant who was working as a teacher for more than 28 years tendered false reasons and evidence for seeking higher compensation but, the witnesses examined by him have also falsely deposed about certain extremely relevant facts which are now proved to be non-existent.

9. The claimant had sought compensation at the rate of Rs. 50,000/-per acre by filing the reference application on 22.02.1990. As observed by the Hon'ble Supreme Court in the case of Shri Ambya Kalya Mhatre (d) through legal heirs and Others Vs. The State of Maharashtra, (2011) 4 RCR(Civil) 767 : (2011) 10 SCALE 296 : (2011) 5 UJ 3322 , the landholder, particularly a rural agriculturist, may not know the exact value of his land on the date of issuance of the notification under Section 4 of the Act. In the instant case, the claimant is not only a rural agriculturist. The claimant is a literate person and was in fact imparting education to students for more than 25 years when his land was acquired. It is highly improbable and it is really impossible to believe that an Assistant Teacher, who was working for more than 25 years as such, did not know the market value of his land on the date of issuance of the Section 4 notification. Even if a claimant may not be aware of the market value of the land on the date of issuance of the Section 4 notification, he can make enquiries and while making a claim in the proceedings under Section 9 of the Land Acquisition Act can seek appropriate compensation as per the market rate. There is a considerable time gap between the date of issuance of the Section 4 notification and the enquiry under Section 9, as in between the two, the enquiry under Section 5-A is required to be conducted and the Section 6 notification is required to be issued. If that be so, it cannot be believed that an agriculturist, a literate one, would not be in a position to make an enquiry in regard to the actual market value of his land during the period between the date of issuance of the Section 4 notification till the enquiry under Section 9. Sometimes there could be some difference between the market value which the claimant may think to be appropriate at the time of conducting an enquiry under Section 9 or at the time of filing of the reference application under section 18 of the Land Acquisition Act

and the filing of the amendment application but, the difference cannot be 10 or 100 fold. In this case, we find that the difference between the initial claim in the reference application and the amended claim is manifold. It is possible to believe that a person believed that his property is worth Rs. 5,00,000/- (Rupees Five Lacs) at a particular point of time and the actual market value of the property is later on found to be Rs. 7,50,000/- (Rupees Seven Lacs Fifty Thousand) at the relevant time but, it is impossible to believe that initially a person finds that his property is worth Rs. 5,00,000/- (Rupees Five Lacs) and subsequently finds that his property was worth Rs. 1,00,00,000/- (Rupees One Crore) and not Rs. 5,00,000/- (Rupees Five Lacs). This is not the only land acquisition case, wherein by an amendment application such exorbitant manifold increase in the claim is made. We find such amendment applications in almost every matter which comes up for consideration before us in the first appeals. In the instant case, there is reason to believe that the claimant has dishonestly claimed much higher compensation though he was aware about the actual market value of his land. Firstly, the claimant was a teacher and a literate person. Secondly, in the application for amendment, the claimant had clearly stated that he had deliberately undervalued his land as he was not able to pay the Court fees due to the marriage in his family and the illness of his wife. The application is absolutely silent in regard to the date of the marriage, the date of the receipt of the compensation determined by the land acquisition officer and the period during which the wife of the claimant was ill. We find that the claimant has paid the Court fee of Rs. 3,450/- on the enhanced claim. It is difficult to believe that the claimant could not have paid the Court fee of Rs. 3,450/- at the time of filing of the reference application in the year 1990 when the claimant had received the compensation for 5 Hectares of land at the rate of Rs. 14,500/- per Hectare and also a sum of more than Rs. 15,000/- for the mango trees along with solatium and interest just a few days before the filing of the reference. Since the period of limitation for filing the reference is extremely short, the claimant could have utilized the amount received towards compensation at the time of filing of the reference. Be that as it may, the claimant has himself falsified his statement in his amendment application. In the amendment application, the claimant had stated that he had deliberately undervalued the land to avoid the payment of Court fees and in his evidence he has categorically stated that he had asked his advocate to claim compensation at the rate of Rs. 15/- per square foot but, his advocate had for the reasons best known to him not claimed at that rate. There is a great variance between the statement made in the amendment application and the statement made by the claimant in his evidence. In fact, both the statements are totally contradictory. The learned Assistant Government Pleader has, therefore, rightly submitted that before allowing the amendment application, the reference Court should have given some thought to the serious objections raised by the State Government for rejecting the amendment application. In the instant case, we find that the amendment application was dishonestly filed by the claimant to dupe the Government and cause a great loss to its exchequer.

10. Be that as it may, it would be necessary to consider whether the reference Court was justified in granting compensation to the claimants at the rate of Rs. 6,00,000/-per Hectare and whether the claimant had substantiated his claim to the said extent, even assuming that the amendment application was rightly allowed. As already recorded in the submissions made on behalf of the State Government and on a perusal of the judgment of the reference Court, it appears that the reference Court has primarily based the judgment of enhancement on the basis of two documents. One of the documents is Exhibit 28, i.e. a certified copy of the extract of the sale instance, by which Deorao Dhangar Gopal sold 1134 square feet of land to Tulshiram Tukaram Thakre for a consideration of Rs. 4,000/-. The second document is the judgment in Land Acquisition Case No. 73 of 1992 in the case of Ramrao Tayde whereby the reference Court had granted compensation to Ramrao at the rate of Rs. 8/-per square foot towards the acquisition of his land from village Lakh. For proving the extract of sale instance at Exhibit 28, the claimant has examined Deorao Dhangar. It is stated by Deorao in his evidence that he had sold the plot admeasuring 1134 square foot to Tulshiram for a consideration of Rs. 5,000/-though the consideration was shown as Rs. 4,000/-in the sale-deed. Deorao, however, admitted in his cross-examination that at the relevant time only 20 to 25 sites were available in village Mandwa and those sites were of Chipde family. He showed ignorance about the time of the acquisition of the land of the claimant for the creation of Gaothan. He also admitted that he did not know the names of the persons who purchased the plots at higher rates and from whom. The reference Court ought not have relied on Exhibit 28 for the purpose of determining the compensation as by the said sale transaction, Deorao had sold a house property in Ward No. 2 of village Mandwa to Tulshiram and the said house property was situated on the plot admeasuring 1134 square feet. The sale instance of a house property on an extremely small plot of 1134 square feet in the village cannot be considered for deciding the price of a large tract of land situated outside the village. About 5 Hectares of land of the claimant was acquired and the said land was situated outside Mandwa village, whereas, Deorao had sold to Tulshiram a house property situated on a small plot admeasuring 1134 square feet in the heart of the village for a consideration of Rs. 4,000/-. The said transaction does not show that the market value of plots of land with house properties inside the village was between Rs. 7/-to Rs. 8/-per square foot, i.e. the rate which is granted by the reference Court to the claimant. The transaction at Exhibit 28 shows that the house property on an extremely small plot of land i.e. 1134 square feet in the heart of the village was sold at a rate of less than Rs. 2/-per square foot at the relevant time. The reference Court did not consider that the property sold by Deorao was situated in the heart of the village and was a house property, whereas the property of the claimant was situated outside the village and the same was admittedly not developed till the date of the issuance of the Section 4 notification and was a big tract of land. Even if we rely on the document at Exhibit 28 for awarding compensation, still by no stretch of imagination could the market value of the land of the claimant be determined at the rate of Rs. 7/-to

Rs. 8/-per square foot as granted by the reference Court. In our view, the reference Court ought not have relied on Exhibit 28 to grant compensation to the claimant at the rate of Rs. 6,00,000/-per Hectare.

11. Now, turning to the other documentary evidence considered by the reference Court, i.e. the judgment in Land Acquisition Case No. 73 of 1992, it could be seen that the reference Court blindly relied on the evidence of Pritesh Tayde to hold that the judgment in Land Acquisition Case No. 73 of 1992 had attained finality after the dismissal of the first appeal filed by the State Government against the same and that Ramrao Tayde had received the amount of enhanced compensation, as per the judgment of the reference Court. We find that the evidence of Pritesh Tayde is not worthy of credence. Pritesh Tayde has falsely stated in his evidence that the judgment in Land Acquisition Case No. 73 of 1992 had attained finality and he had received the compensation after the dismissal of the appeal filed by the State Government against the said judgment. The learned Assistant Government Pleader has pointed out the judgment in First Appeal No. 441 of 1995 dated 14.10.2009 by which this Court has allowed the first appeal filed by the State Government against the judgment in Land Acquisition Case No. 73 of 1992 and reduced the compensation granted by the judgment in Land Acquisition Case No. 73 of 1992 to Ramrao. This Court has reduced the compensation to a great extent and in stead of the compensation that was directed to be paid to Ramrao at the rate of Rs. 8/-per square foot, this Court had directed the payment of compensation only at the rate of Rs. 70,000/-per Hectare. Even in First Appeal Nos. 440/1995, 407/1993, 408/1993, 413/1993, 441/1993, 442/1993, 300/1994, 328/1994 and 330/1994, which arise out of the land acquisition cases in the matters pertaining to the acquisition of lands of Pritesh Tayde and his brothers by the same Section 4 notification, this Court has awarded only Rs. 70,000/- per Hectare towards compensation. Even if we consider the awards in the cases of Ramrao Tayde, Pritesh Tayde, etc., though their property was situated at a distance of five kilometers from village Mandwa, the outskirts of which the land of the claimant was situated, the claimant would be entitled to compensation only at the rate of Rs. 70,000/-per Hectare. Also, the judgments in First Appeal Nos. 201/1994, 452/1994 and 453 of 1994 dated 10.08.2009 and relied on by the learned Assistant Government Pleader would be of much help in determining the market value of the land. In the said appeals bearing nos.201 of 1994, 452 of 1994 and 453 of 1994, this Court has found that compensation at the rate of Rs. 50,000/-per Hectare was proper towards the acquisition of lands of Mandwa village, by the notification published on 27.02.1982. Even if we consider that the market value of land increases by about 8% to 10% every year, as per the norms fixed by the Hon''ble Supreme Court, the claimant would be entitled to compensation only at the rate of Rs. 70,000/-per Hectare. It is rightly submitted on behalf of the State Government that the income capitalization method cannot be applied in this case as the claimant had not tendered cogent documentary evidence to substantiate his statements in his examination-in-chief. Also we find that the evidence of the claimant in regard to

the income from the acquired land stands falsified by his evidence in his cross-examination. In any case, in view of the other documentary evidence including the judgments in the first appeals mentioned hereinabove, on which great reliance has been placed by the State Government, it can be safely said that the market value of the land of the claimant would have been only Rs. 70,000/- per Hectare at the time of issuance of the Section 4 notification. The reference Court seriously erred in granting compensation to the claimant at the rate of Rs. 6,00,000/-per Hectare. No wonder, at the time of admission, this Court had granted a blanket stay to the order of the reference Court.

12. Hence, for the reasons aforesaid, the first appeal filed by the State is partly allowed. The Cross-Objection of the claimant is dismissed. The judgment of the reference Court is modified. It is hereby held that the claimant would be entitled to compensation for the acquired land at the rate of Rs. 70,000/-per Hectare along with all consequential benefits. We confirm the order of the reference Court granting compensation for the trees.

Order accordingly. No costs.