

(1983) 12 BOM CK 0038

In the Bombay High Court

Case No : First Appeals No's. 224, 225, 226 and 227 of 1976

State of Maharashtra

APPELLANT

Vs

Baburao Vishwanath Shende and others

RESPONDENT

Date of Decision : 02-12-1983

Acts Referred:

Land Acquisition Act, 1894 — Section 25(2), 25(3), 4, 9

Citation : (1984) MhLj 557

Hon'ble Judges : D.B. Deshpande, J

Bench : Single Bench

Advocate : A.B. Naik, Asstt. Govt. Pleader, for the Appellant; Pradeep Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Deshpande, J.—All these 4 appeals arise out of a common judgment delivered by the learned Joint Civil Judge, Senior Division, Osmanabad in 4 different land acquisition references pending before him and that is why they are heard together and are disposed of by common judgment.

2. The date of Notification u/s 4 of the Land Acquisition Act is 30th November, 1966. The lands are acquired for the purpose of Torna Project. Lands in 3 cases are situated at village Tugaon whereas the land in one case is situated at Gowardhan Wadi. After considering the material that was before him the Land Acquisition Officer awarded Rs. 300 per acre in First Appeals Nos. 224 of 1976 and 225 of 1976. He awarded at the rate of Rs. 900 per acre in First Appeal No. 226 of 1976 and he awarded Rs. 700 per acre in First Appeal No. 227 of 1976. The claimants in all these acquisition cases were not satisfied with the amount of compensation awarded to them and that is why they sought for references to the Civil Court. Accordingly these 4 references were made to the Civil Court.

3. First Appeal No. 224 of 1976 arises out of Land Acquisition Reference No. 2 of 1970. The lands that are acquired are Survey Nos. 56 admeasuring 14 acres 22

gunthas and Survey No. 69 admeasuring 8 acres 39 gunthas. As already stated the Land Acquisition Officer awarded compensation at the rate of Rs. 800 per acre in this matter and the Reference Court valued all the lands in all these 4 appeals at the rate of Rs. 2,000 per acre and the State has filed these appeals against this enhanced compensation.

4. First Appeal No. 225 of 1976 arises out of the Land Acquisition Reference No. 1 of 1970, and the land that is involved in this case is Survey No. 9 admeasuring 4 acres 9 gunthas. The Land Acquisition Officer awarded at the rate of 800 per acre whereas the Reference Court awarded at the rate of Rs. 2,000 per acre.

5. First Appeal No. 226 of 1976 arises of Land Reference No. 14 of 1970. The land is Survey No. 65/2 admeasuring 2 acres 12 gunthas. The Land Acquisition Officer awarded at the rate of Rs. 900 per acre and the Trial Court awarded at the rate of Rs. 2000 per acre. This is a land situated at Gowardhan Wadi and not at Tugaon.

6. The last appeal No. 227 of 1976 arises out of Land Reference No. 13 of 1970. The property that is involved is Survey No. 49 admeasuring 4 acres 20 gunthas. The Land Acquisition Officer awarded at the rate of Rs. 700 per acre but the Trial Court awarded at the rate of Rs. 2000 per acre.

7. In all these 4 appeals the State being aggrieved by the enhanced claim awarded by the Trial Court has preferred these 4 appeals. It may be stated here itself that by consent of all the parties all the evidence was recorded in Land Reference No. 2 of 1970 against which First Appeal No. 224 of 1976 is filed.

8. Shri A.B. Naik, the Learned Assistant Government Pleader, appearing on behalf of the State, has raised only two points before me. His first submission in respect of Appeal No. 224 of 1976 is that in his claim u/s 9 of the Land Acquisition Act the claimant did not mention any specific amount but only made a request that proper compensation may be paid to him. According to Shri Naik this does not amount to the laying of a claim u/s 9 of the Land Acquisition Act. In respect of the other 3 appeals he contended that those claimants did not lodge any claim u/s 9 of the Land Acquisition Act and that is why they are not entitled to any enhanced compensation at all. And the second ground is that there was no justification for the enhancement of the compensation awarded by the Trial Court.

9. First of all I shall consider the first ground raised by Shri Naik. As already stated the claimant in First Appeal No. 224 of 1976 had lodged a claim and according to Shri Naik he did not include any definite amount. It is at Exh. 33 in the Trial Court's record. It is clear from this Exh. 33 that the land of this claimant was acquired by the State Government in 2 stages. 1 acre 18 gunthas were acquired in the first stage and the remaining land was acquired in the second stage. The claimant has claimed u/s 9 that he should be given compensation at the same rate at which compensation was paid to him when 8 acre 18 gunthas were acquired at the first stage. Hence, there is no force in the contention of Shri Naik that there was no definite claim lodged by the claimant in

Exh. 33. This exhibit makes a clear reading that the claimant claimed at the same rate at which he had received compensation at the first stage. Thus the minimum that was claimed by him was the rate which he got at the acquisition of the first stage and even the State Government knows what was paid at the first stage and hence there is no force in the contention of Shri Naik.

10. Now it appears that in one of the appeals it is that claim of the claimant that he lodged oral claim but it is very difficult to believe such version, I, therefore, proceed on the assumption that no claim was lodged u/s 9 by the claimants in the other 3 appeals. In view of this it was urged by Shri Naik that the claimants are not entitled to any enhanced compensation in view of section 25 (2) and section 25 (3) of the Land Acquisition Act. On the other hand Shri Pradeep Deshmukh, appearing on behalf of the claimants urged that there was no error of jurisdiction committed by the Trial Court in awarding enhanced compensation. It was also urged by him that the learned Judge felt that injustice had been done to the claimants and he invited my attention to the fact that the sale instances showed that there was an approximate increase by Rs. 1000 per acre per year in respect of the sales of land. He urged also that a written claim was not necessary. He claimed further that there was no averment about this in all the 4 appeal memos. Relying on sections 25 (2) and 25 (3) he contended that the failure to lodge the claim can be condoned and he wanted an opportunity even at this stage in First Appeal for showing the cause. I do not think that he should go to such an extent in this respect. It is apparent from the record that in the Trial Court the State Government did not file any written statement at all in any of these 4 reference petitions. It therefore, follows that no such contention was raised by the State Government in the Trial Court about the absence of claim u/s 9 of the Land Acquisition Act. In order to properly appreciate the position in this respect I am reproducing sections 25 (2) and 25 (3) below:?

25(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

25 (3)?When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

It will, therefore, be seen that there is no absolute bar in the absence of claim u/s 9 and a discretion is given to the Court to condone the non-lodging of the claim u/s 9. As the State Government did not raise any such contention in the Trial Court there was no occasion for the claimants to make any such request to the Trial Court, and the provisions of law clearly show that the discretion is vested in the Trial Court. If the State had raised a contention in the written statement the claimants would have shown some reason and then it would have been up to the Judge to condone the delay or not. Shri A.B. Naik placed reliance upon a Division Bench Ruling of this Court in *The State of Maharashtra Vs. Shantabai and*

Another, . The facts clearly reveal that the State Government had contended before the Civil Judge concerned that the claimant had failed to make any specific amount of claim for compensation in reply to the notice u/s 9 of the Land Acquisition Act. This position makes all the difference between that ruling and the facts of the instant case. At the fault of repetition, I may point out that such a contention was not raised in written statement and that is why the claimants had no opportunity whatsoever to show any reasons for the condonation of non-lodging of the claim. The claimant in First Appeal No. 224 of 1976 also would have given some reason for not mentioning the specific amount. In this circumstance I do not think that the State Government can raise this contention in these appeals. As pointed by Shri Pradeep Deshmukh this is not even mentioned in grounds of appeal filed in this Court. I do not, therefore, take this objection into consideration and I overrule this. The only other question is about the granting of enhanced compensation. The claimants have relied upon sale instances. The first sale instance is at Exh. 43. In this sale-deed 4 acres 26 gunthas of land of Tugaon is sold for Rs. 14,000 on 10-4-1968. The value comes to more than Rs. 3,000 per acre. The second sale deed is Exh. 42 and under this deed 4 acres and 13 gunthas of land at Tugaon are sold for Rs. 12,000 on 8-3-1968 and the last instance is Exh. 44 wherein 4 acres 2 gunthas of land is sold for Rs. 20,000 on 4-5-1970. That is a land from village Rui Dhoki and we need not take this instance into consideration. It is true that the first two instances are post-notification sales. The notification is issued on 30-11-1966 and these instances are of March 1968 and April 1968. There is hardly a difference of a year and 4 to 5 months. There is nothing on record either in the cross-examination of these witnesses or by way of evidence on behalf of the State that there was abnormal rise in the prices in this village during this period and hence it will have to be assumed that there was no abnormal rise in prices during this period. In this background if the Trial Court has awarded Rs. 2,000 per acre I do not think that the Trial Court has committed any error in awarding the price at that rate. I am, therefore, satisfied that there is no reason whatsoever to interfere with the decision of the Trial Court.

All the four appeals are, therefore, dismissed with cost.