(2015) 03 BOM CK 0320

In the Bombay High Court

Case No : First Appeal No. 378 of 2001, Civil Application No. 2114 of 2004, Cross Objection (ST) No. 29053 of 2007, Civil Application No. 4531 of 2008, First Appeal No. 718 of 2004,Civil Application No. 4528 of 2008, Cross Objection (ST) No. 22597 of 2008, Civil Ap

State of Maharashtra APPELLANT

Vs

Chindibai Ganpat Thakur and Others RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23, 23 (1-A), 23(1-A)

Citation : (2015) 03 BOM CK 0320

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : A.R. Patil, AGP, for the Appellant; Sachin S. Punde, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Abhay Shreeniwas Oka, J—We have heard the learned AGP representing the Appellants. We have heard the learned Senior Counsel representing the Respondents.

2. These Appeals can be conveniently disposed of by a common judgment and order. These Appeals arise out of a common judgment and order dated 29th June, 1996 delivered by the learned Joint District Judge, Raigad at Alibag by which a group of references under section 18 of the Land Acquisition Act, 1894 (for short "the said Act") was disposed of. The lands subject matter of the references are situated at village Roadpali, Taluka Panvel, District Raigad. The lands were notified for acquisition on 24th September, 1986 by a notification issued under section 4(1) of the said Act. The Awards under section 11 of the said Act were made on 31st May, 1989. The Respondents claimants did not accept the said awards and, therefore, at their instance, references under section 18 were made which were referred to the Court for adjudication. The claim

initially made in the references was enhanced to Rs.2000 per sq. meters. By the impugned judgment, the trial Court has fixed the market value at the rate of Rs.200 per sq. meters. The statutory benefits under sub-section (1-A) of section 23, sub-section (2) of section 23 and section 28 of the said Act were granted by the learned Judge in addition to the market value.

3. There are Cross Objections preferred by the Respondents-claimants in these Appeals preferred by the State Government. The claim made in the Cross Objections is for grant of market value at the rate of Rs.2000 per sq. meters.

4. The learned AGP in support of these Appeals relied upon a decision of the Apex Court in the case of The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, (2008) 9 JT 480 : (2009) 153 PLR 494 : (2008) 11 SCALE 637 He urged that depending upon the location of the acquired lands, various positive and negative factors ought to have been considered. He pointed out that though the Respondents are relying upon a decision of the Division Bench of this Court in the case of State of Maharashtra Vs. Trimbak Joma Thakur deceased through his legal representatives Dasharath Trimbak Thakur and Others, (2007) 6 ALLMR 827 : (2007) 6 BomCR 609 : (2007) 5 MhLj 187 , the law laid down by the Apex Court in the case of General Manager, Oil and Natural Gas Corporation Limited (supra) will have to be applied inasmuch as evidence of the comparable sale instances has not been adduced by the Respondents claimants and that they have not discharged the burden on them to prove that the market value offered to them by the Awards under section 11 was inadequate. He invited attention of the Court to the evidence of Shri Chandar Balkrishna Gondhali, the second Respondent in First Appeal No. 378/2001 and pointed out that even on the relevant date i.e. 24th September, 1986, the lands subject matter of acquisition were paddy lands. He, therefore, submitted that even assuming that the Respondents can rely upon the decision of the Division Benches in the case of State of Maharashtra V/s. Trimbak Joma Thakur (supra), considering this negative factor, the Respondents are entitled to a lesser market value. He also pointed out the applications for amendment of memorandum of Appeal made by the State Government for raising a contention that when amendment was made to the Reference Applications demanding market value at the rate of 2000 per sq. meters, the amendment was already barred by limitation and that the claimants were not entitled to make amendment to the Reference Applications.

5. The learned Senior Counsel appearing for the Respondents- claimants relied upon the decision of the Division Bench of this Court in the case of State of Maharashtra V/s. Trimbak Joma Thakur(supra). He pointed out that the said decision was challenged by the City and Industrial Development Corporation of Maharashtra by filing Special Leave Petitions before the Apex Court. He has placed on record the order of the Apex Court dated 10th March, 2015 by which the said Special Leave Petitions were dismissed on the ground of delay. He pointed out that the State of Maharashtra has not challenged the decision in the

case of State of Maharashtra V/s. Shri Trimabk Joma Thakur. He urged that the location of the lands subject matter of the said decision and the location of the lands subject matter of these Appeals is no different and, therefore, market value of Rs.1725 per sq. meters fixed by the Division Bench in the said decision will have to be granted by allowing the Cross Objections. He pointed out that Civil Applications have been filed for enhancing the claim in the cross objection are pending.

6. We have given careful consideration to the submissions. The State Government took a policy decision of establishing a satellite city of Navi Mumbai with the object of reducing the congestion in the city of Mumbai. Agricultural Lands in about 96 villages forming part of Taluka Thane of District Thane and Taluka Panvel of District Raigad were notified for the acquisition in the year 1970 for the public purpose of setting up a satellite city of Navi Mumbai. Thereafter, large number of lands were notified in the year 1986 for the same public purpose. It will be necessary to make a reference to the decision of Division Bench in the case of State of Maharashtra V/s. Trimabk Joma Thakur. This was a case where the agricultural lands from the same village Roadpali, Taluka Panvel, District Raigad were notified for acquisition on 24th September, 1986 under section 4(1) of the said Act. The purpose of acquisition was also the same. The awards under section 11 were also made in the year 1989. A group of Appeals arising out of judgments of the Reference Court in references under section 18 was decided by the Division Bench. There were Cross Objections filed by the claimants. Even in this case, the market value of Rs.200 per sq. meters to 230 per sq. meters was awarded by the Reference Court. It will be necessary to consider paragraph 12 of the said decision. It describes the location of the village Roadpali. Paragraph 12 of the said decision reads thus:-

"Exhibit 15 is the Development Plan as modified up to May 1992, which shows the location of the acquired lands. In this map, Village Roadpali is shown adjacent to the boundary of Village Kalamboli, and also reflects the Commercial Complex and Warehousing areas. At some distance from the revenue boundaries of Village Roadpali are reflected the M.I.D.C. Industrial Area, Revenue District of Village Padghe. On one side is the road, and on the other side is the highway touching the already required lands. The Valuation Report prepared by witness Jeevan Kulkarni also shows the situation of the acquired lands. As per this report, the location is stated to be as under :-

"The land mentioned above is to the east of Bombay Pune National Highway No. 4 and is to the east of railway line of Central Railway line joining Diwa-Panvel-Apta. The land is plain and it is very close to Kalamboli railway station."

In this report, other land marks and their approximate distances have been shown, including Kalamboli Railway Station, which is 640 Meters (South), M.I.D.C. Industrial Area, Taloja, 640 Meters (North), Bombay Pune Highway, 900 Meters (West), and Roadpali Gaothan, 640 Meters (West). In regard to infrastructure, it has been stated that there is heavy traffic on Pune-Bombay

National Highway. It has been stated that water and electricity supplies are available in the village, and there are all chances for future development, and the lands have the potential of residential and industrial areas. The respondents had cross-examined both these witnesses. While cross-examining Witness Mr. Karyal Bahuleyan, nothing material came out, and the cross-examination was hardly of any consequence. Thus, it is clear from the above documentary and oral evidence that the lands had potential as on the date of acquisition; and the lands were located amidst the developed area and have various facilities."

7. There is no dispute that the location of the lands subject matter of this group of these Appeals is more or less similar. There is evidence of Shri Chandar Balkrishna Gondhali, one of the claimants in L.A. R No. 129 of 1989 which is the subject matter of First Appeal No. 378/01. In paragraph 3 of his deposition, he has set out the description of the acquired lands which can be summarized as under:-

(a) On the western side, there is a Kalamboli Railway Station at a distance of 5 to 10 minutes;

(b) On the eastern side, there are villages Walawali and Padghe at a distance of 10 minutes walk;

(c) On the southern side, there is a steel market at a walking distance of 10 minutes;

(d) On the northern side, there is village Ambetarkhar and Taloja MIDC (Industrial estate of the Maharashtra Industrial Development Corporation);

(e) Godowns of Food Corporation of India are to the southern side of the acquired lands and New Kalamboli locality is to the West-South of the acquired lands at a distance of 10 minutes walk;

(f) MIDC water pipeline passes by the side of the acquired lands;

(g) Electric line passes from the distance of 50 to 60 feet from the acquired lands;

(h) In September, 1986 the railway station, new Kalamboli locality, steel market and godowns were in existence;

(i) Bombay Pune road passes from the western side of this land at a distance of 10 to 15 minutes walk. From the Northern side of the acquired lands, Padghe road passes which is a tar road. From the acquired lands, the Sion Panvel Highway is at distance of 2-3 minutes distance by a car.

8. In his cross examination, it is brought on record that all the lands in Roadpali were paddy lands. It is also brought on record that there is no direct electricity connection to the acquired lands. In the cross examination it is also brought on record that the steel market, the railway station at a Kalamboli and godowns were developed by CIDCO were in existence on the date of the notification. Comparing the description of the lands brought on record along with the

description of the lands subject of the decision of the Division Bench set out in paragraph 12 thereof which we have quoted above, we find that the lands subject matter of these appeals are comparable in all respects with the lands subject matter of Appeals before the Division Bench in the case of State of Maharashtra V/s. Trimbak Joma Thakur and other cases. What is observed in the said decision is that the electric supply was available to the village Roadpali and not to a particular land subject matter of acquisition. The lands subject matter of these Appeals as well as the lands subject matter of the said decision were agricultural lands on the date of the notification under section 4(1). The lands are situated in the same village which were notified for the same public purpose.

9. Thus, in the case of similarly placed agricultural lands at village Roadpali which were notified for acquisition under the same notification under section 4(1) of the said Act dated 24th September, 1986, a Division Bench has fixed the market value of Rs.1725 per sq. meters. As stated earlier, State Government did not challenge the decision of the Division Bench. It was pointed out by the learned senior counsel for the Respondents that the said decision was challenged by the City and Industrial Development Corporation of Maharashtra by filing Special Leave Petitions which have been dismissed. We accept the said statement. In any case, the decision of the Division Bench still holds the field.

10. The argument that the tests laid down in the case of General Manager, Oil and Natural Gas Corporation Limited (supra) is not applied by Division Bench is of no relevance at all. The Division Bench after considering all relevant factors has fixed the market value of the comparable lands at Rs.1725 per sq. meters.

11. In the circumstances, there is no option but to grant the market value at the rate of Rs.1725 per sq. meter to the Respondents claimants. There is no dispute that the Respondents claimants will be entitled to all statutory benefits under section 23 (1-A), section 23(2) and section 28 of the said Act.

12. As far as the objection raised by the Appellants to grant of permission by the reference Court for enhancing the claim in reference is concerned, the law is no more res integra. A full Bench of this Court in the case of The State of Maharashtra and Others Vs. Sitaram Narayan Patil (since deceased through his L.Rs. Shri Pralhad Sitaram Patil and Others) and Others etc. etc., (2010) 2 ALLMR 508 : (2010) 2 BomCR 366 : (2010) 112 BOMLR 652 : (2010) 2 MhLj 387 held that even if after the expiry of the period of limitation for filing an application under section 18 of the said Act, the claim made in reference application can be always enhanced. The said judgment is approved by the Apex Court in the case of A K Mhatre (since deceased through LRs) V/s. State of Maharashtra by a judgment dated 12th September, 2011 in Civil Appeal No. 7784/2011. In fact, the Apex Court held that the claim can be permitted to be amended even in an Appeal arising out of an award on a reference under section 18 of the said Act.

13. Hence, we dispose of these Appeals by passing the following order:-

(a) All applications for amendment of the memorandum of Appeal as well the Cross Objections are allowed. Formal amendments shall be carried out within a period of one month from today;

(b) The impugned awards are modified. It is held that the Respondents original claimants are entitled to market value at the rate of Rs.1725 per sq. meter;

(c) In addition to the market value, the Respondents claimants shall be entitled to statutory benefits under section 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894;

(d) The Appeals preferred by the State are dismissed with no orders as to costs.

(e) The Cross Objections filed by the Respondents are partly allowed on above terms.

(f) The Respondents claimants will be entitled to the proportionate costs of the References as well as Cross Objections from the State Government;

(g) The Reference Court shall compute the compensation payable to the Respondents in terms of the modified Awards within a period of 3 months from the date on which a writ of this judgment is received by the Reference Court;

(h) The Reference Court shall hear the parties before determining the amount. The enhanced amount shall deposited by the Appellants with the Reference Court within a period of 4 months from the date on which the determination of enhanced compensation is made by the Reference Court;

(i) The writ of this judgment and record and proceedings shall be forwarded to the Reference Court expeditiously.

