
(2000) 10 BOM CK 0005
In the Bombay High Court
Case No : F.A. No. 323 and 324 of 1981

State of Maharashtra

APPELLANT

Vs

Dhananjay Digamber Patil

RESPONDENT

Date of Decision : 18-10-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18, 19, 4

Citation : (2000) 10 BOM CK 0005

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : G.L. Deshpande, A.G.P., for State, for the Appellant; Umakant K. Patil, for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Heard Advocates for the parties. Since common question of law and facts arise in both these appeals, the same were heard together and are being disposed of by this common judgment.

2. In both these cases, the land of the respondent situated in the village Kale Sawargaon was sought to be acquired pursuant to issuance of notification u/s 4 of the Land Acquisition Act, 1894. The notification was issued on 21-11-1973. The notices u/s 12(2) were issued to the respondents on 28th March, 1976, the day on which the respondents collected compensation. The respondents being dissatisfied with the compensation awarded by the Land Acquisition Officer, preferred reference u/s 18 of the said Act and the applications were filed on 3rd May, 1976. The reference Court, placing reliance upon the sale instances produced by the respondents as well as on the statement regarding the yield from the property and the income received therefrom, enhanced the compensation in both the cases.

3. In First Appeal 323 of 1981, which arises from LAR No. 4/1977, an area of 7 Hectares and 28 Ares was acquired and the Land Acquisition Officer had awarded

compensation to the tune of Rs. 58,604/- whereas it was claimed by the respondent that he was entitled to a sum of Rs. 69,796/- in excess of the compensation already awarded.

In First Appeal No. 324 of 1981 which arises out of award in LAR No. 3/1977, an area of 8 Hectares and 6 Ares of the respondent was acquired and the Land Acquisition Officer had awarded compensation of Rs. 64,833/-whereas it was claimed by the respondent that he was entitled for a sum of Rs. 37,217/- in excess of the compensation already awarded. In both these cases, the reference Court while allowing the claim for enhancement has ordered the payment of the amount as claimed by the respondents.

4. While assailing the impugned award, the learned Government Advocate submitted that the sale instances relied upon in support of the claim for enhancement are for the period much prior to the issuance of notification besides, the fact that they relate to a small plot of land and from village far away from the village from which the land was acquired in the case in hand. Therefore, according to the learned Government Advocate, considering the law laid down by the Apex Court in the matters of State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, , and Kanwar Singh and Others Vs. Union of India, , the reference Court could not have given any value to the said sale instances and could not have arrived at market value of the acquired land on the basis of sale instances. It is further contended that the reference Court also erred in placing reliance on the testimony of the expert. According to the Government Advocate, such testimony cannot form basis of determination of market value in view of the decision of the Delhi High Court in the matter of Inder Prasad Vs. Union of India, . Besides, the sale instances are in relation of irrigated land whereas the evidence on record does not establish that the acquired land was an irrigated land.

5. On the other hand, the learned Advocate for the respondents submitted that the reference Court, having passed the award after detail analysis of the evidence on record, which includes consideration of the sale instances as well as the evidence regarding the income received from the property by the claimant, duly supported by the evidence of expert, no fault can be found with the award of the reference Court. Further, drawing attention to ground No. 10 in the appeal memo of first appeal No. 323/1981, it was sought to be contended that it is an undisputed fact that in LAR No. 3/1977 the compensation awarded is at Rs. 6000/- per acre and in view of the said ground in the memo of appeal, it is evident that the appellants have no grievance if the acquired property is valued at Rs. 6,000/- per acre. The learned Government Advocate, however, has also contended that the reference u/s 18 of the said Act itself was beyond the period of limitation having been filed after six weeks from the date of notice u/s 12(2) and, therefore, the entire award is bad ab-initio.

6. Upon hearing the learned Advocates for the parties and on perusal of record, the point for determination which arises in these appeals is - whether the

respondents had sufficiently established their claim for enhancement of compensation at a rate at which the reference Court has granted?

7. The point regarding limitation was specifically raised by the" appellants before the reference Court and in fact, Issue No. 4 was framed in that regard in both the cases and the reference Court, in that regard, has observed that there is no dispute that the notices u/s 12(2) were served upon the respondents on 20th March, 1976. The statement u/s 19 filed by the Land Acquisition Officer along with the reference also discloses that the notice u/s 12(2) was served upon the respondents on 12-3-1976. It is an undisputed fact that the application u/s 18 of the said Act was filed by the respondents on 3rd May, 1976. Being so, it cannot be disputed that the application was filed on 44th day from the date of the service of notice u/s 12(2) of the said Act. However, the evidence on record clearly established that 1st of May, 1976 was a holiday being Statehood day of the State of Maharashtra and the 2nd May was Sunday. The last date for filing the application u/s 18, therefore, was on 1st May, 1976 and the said being holiday as well as the following day was also holiday, the respondents were entitled to file the applications on 3rd May, 1976. Considering the same, it cannot be said that the applications were beyond the period of limitation prescribed under the law and hence there is no substance in the first ground of challenge to the impugned award.

8. As regards the sale instances, the evidence discloses that the first sale deed is dated 2nd June, 1973 in respect of an area of 1 acre and 6 gunthas sold for Rs. 9,000/-. It is in respect of a land in the village of Sone Jawala. The second sale instance is of the year 1968 and by the said sale deed, an area of 4 acres and 13 gunthas from the village Andora was sold for Rs. 35,000/-. It is, therefore, clear that both the sale instances are from the villages different from the one from which the land was acquired in the case in hand. The evidence on record discloses that the village Sone Jawala is situated about three miles away from the village Kale Sawargaon and the village Andora is situated at a distance of four miles away from the said village Kale Sawargaon. The land acquired is from Kale Sawargaon. The purchaser of the land from Sone Jawala - witness No. 1 has stated that with the property he had also purchased share in the well water situated in the said property. He has further deposed that there is no well in the land of the claimant. The husband of the purchaser of the land in village Andora has stated that there are two wells in the land purchased, one of which is lying fallow and in the other well he has four Annas share. The fact that there is no well in the property of claimants has been clearly admitted by the claimants in the Courts of examination. As regards the claim of the respondent that the property was irrigated by way of lift irrigation system is also unbelievable for the reasons to be narrated therein below and in the circumstances, therefore, it is apparent that the land which was subject matter of the sale instance was benefited with irrigation facilities from well water whereas there was no such facility available in the land acquired. Considering the same, mere statement on behalf of the witnesses who had purchased land from Andora and Sone Jawala

that the lands which were subject matter of the sale instances, were of same nature as that of the acquired lands, cannot be believed and cannot be of any assistance to show the parity between the land acquired and the lands covered by the sale instances. The so called expert examined by the claimants also lends no support in this regard to the claimants. Apart from claiming that he has examined the soil from the acquired land, he has not deposed in detail about his findings regarding the examination of the soil and on what basis he had arrived at a conclusion that the land acquired was fertile land. This being the case, there is absolutely no evidence placed on record by the respondents to establish the parity between the land acquired and those which were the subject matter of the sale instances. That apart, as rightly submitted by the Government Advocate, the sale instances were of a small piece of land as compared to the large piece of land acquired in the case in hand and, therefore, following the decision of the Apex Court in the matter of State of J&K (*supra*), the sale instance of the small piece of land cannot be said to be comparable sale instance and hence, no value can be attached to the said evidence regarding the sale instances while determining the market value of the acquired land, in absence of any evidence regarding similarity between the acquired land and the lands which were subject matter of the said sale instances. The learned Government Advocate is also justified in relying on the decision of the Apex Court wherein it has been held that mere sale instances from the adjoining villages do not determine the market value of the acquired land in the absence of the claimant establishing that the situation and potentiality of the lands in both the villages being similar and not different. This being so, the evidence regarding the sale instances can be of no help to justify the enhancement of compensation.

9. As regards evidence of the expert, it is the contention of the learned Government Advocate that no value can be attached to such evidence in view of the decision of Delhi High Court in the matter of Inder Prasad (*supra*). The Delhi High Court, in the said decision, has held that the owner is entitled to the value of the land at the time of section 4 notification and that the market value cannot be ascertained from an officer, however highly placed, or from a booklet or a directory. It was further held that the market value must be ascertained from the actual transactions of neighboring properties of a similar character. The prices paid for comparable properties in the neighborhood are the best evidence of the market value. However, the decision does not lay down a proposition of law that in no circumstances the evidence of an expert can be relied upon for the purpose of determination of market value. There can be no doubt that the prices paid for the properties of similar character in the neighborhood, can be the best piece of evidence for the purpose of determination of market value. However, that is not the only method to determine the market value. There may not be any single sale transaction in the village around the time of issuance of notification u/s 4 of the said Act. In such cases, the claimant would be definitely entitled to adduce other evidence to establish the market value which the claimant is entitled to claim on acquisition of the property. Hence, the decision of Delhi High Court can

be of no assistance to the appellants to challenge the impugned award.

10. As regards the expert's evidence, it is apparent on the face of his testimony that he claims to be B.Sc. (Agri) and his subjects at B.Sc. course were Agronomy, Soil Chemistry and Crop Cultivation. Considering the subjects which he had studied at the graduation level, in no circumstances, he can be considered as an "expert" in the field of valuation of the property. His expertise may be in the field of soil chemistry or in crop cultivation. That by itself is not sufficient for a person to claim expertise in the matter of valuation of the property. That apart, the witness nowhere assists the claimants in establishing the market value of the property. He had claimed to have analysed the soil sample from the acquired land. However, he has candidly admitted that he could not state the date and month when such soil test and analysis were carried out. Undoubtedly, if the soil test was subsequent to the acquisition, it can be of no help to the respondents/claimants. Secondly, from his testimony, it is clear that rather than assisting the Court in arriving at a fair conclusion regarding the market value of the land, he was more interested in securing the customers for himself in his business of selling seeds, manures, fertilizers etc. The witness has stated that it is not his business to give expert opinion, but it helps him in my business of selling manure, fertilizers etc. as the agriculturists purchase it from his shop. Naturally, he had come forward to depose on behalf of the claimants as his personal interest was involved in the matter. In the circumstances, no importance can be attached to his testimony while determining the market value of the land.

11. The learned Advocate for the respondents sought to argue that the testimony of the claimant clearly gives the details about the yield from the property in question as well as the income derived therefrom by the claimants and it clearly justifies the enhancement granted by the reference Court. Perusal of the testimony of the claimant however, discloses that he has undoubtedly, stated that he had been cultivating various types of crops in the property in question and the said cultivation was being done with the help of lift irrigation. He has also deposed that he had provided water by way of lift irrigation system and from Manjra river with the help of 11 H. P. Oil Engine to irrigate the land. However, in the cross-examination, he has admitted that he had not sought any permission from the Government for the purpose of lift irrigation and that, he felt it to be not necessary. Irrespective of the fact whether the claimants had sought permission or not for lift irrigation system for the purpose of irrigating the land in question, the fact remains that apart from the mere claim that they used to lift water from the river with the help of 11 H.P. Oil Engine, the claimants have not produced any evidence in support of the said claim. There is neither any document to show that he had either purchased any such engine or that, he was incurring any expenditure towards any fuel for running such engine or that, it was provided with electricity supply facility, nor there is any other oral evidence in that regard in support of the claim of the claimants that the land was irrigated with the help of lift irrigation system. Undoubtedly, there was no well in the land

in question. Being so, in the absence of cogent evidence regarding irrigation facility being available in the land, mere claim of the claimants that the property used to be cultivated with number of various crops and used to give income of Rs. 7000/- per acre, cannot be believed.

12. Considering the entire evidence on record, there is absolutely no material to justify the enhancement of compensation granted by the reference Court and hence, the impugned award cannot be sustained.

13. In the result, the appeals succeed. The impugned awards are hereby set aside. The respondents shall refund the amount of enhancement already collected by them, within a period of six months from today along with interest at the rate of 6% thereon from the date of collection of the said amount till repayment of the entire amount.