
(1982) 02 BOM CK 0004
In the Bombay High Court
Case No : F.A. No. 567 of 1976

State of Maharashtra

APPELLANT

Vs

Ganpatrao Amritrao Deshpande

RESPONDENT

Date of Decision : 02-02-1982

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32
Land Acquisition Act, 1894 — Section 18, 23(1), 4, 6

Citation : (1982) MhLj 639

Hon'ble Judges : S.P. Bharucha, J; B.A. Masodkar, J

Bench : Division Bench

Advocate : C.D. Shenoy, for the Appellant; M.A. Rane, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Bharucha, J.—By a notification u/s 4 of the Land Acquisition Act (hereinafter called "the said Act") dated 30th November 1961 land measuring 6 acres and 68 gunthas and bearing Survey No. 850 of village Nasik in Nasik district was notified for acquisition for the purposes of the Barhe Vibhag Jungale Kamgar Sahakari Sangh Society. In respect of the said acquisition an award was made on 5th June 1973 by the Special Land Acquisition Officer. The Special Land Acquisition Officer took into consideration various instances of sale in the neighbourhood and, after dividing the land into three belts, formed the opinion that the reasonable market value of these belts would be Rs. 500 per guntha, Rs. 300 per guntha and Rs. 200 per gunthas respectively. On the basis of this he concluded that the reasonable market value of the land at the relevant time was Rs. 11,000 per acre. Under the heading "Inam Land" in the award the Special Land Acquisition Officer noted that the land under acquisition was Inam land of class V which had been regranted in the name of the Kabjedar (the respondent) who had paid an amount equal to twenty-six times the assessment of the land, Mutation Entry No. 6886 dated 13th August 1965 pertaining to the regrant stood certified in the village records. The land was assessed at the rate of Rs. 7.50. Twenty-six times

this amount came to Rs. 195 out of which Rs. 150 had been paid as regrant. The land had been regretted for agricultural purposes. The said paragraph went on to state "However, it is found that the land is being used for N.A. purposes since 1952-53, i.e., after abolition of the Inam category of the land. In these circumstances the land owner had to pay nazrana equal to the difference between 50% of the market value and the nazrana already paid. In this case the market value of the land comes to Rs. 72,675 (Seventy two thousand six hundred seventy-five only). 50% of this comes to Rs. 36,337.50 (Thirty-six thousand three hundred thirty-seven and paise fifty only). After deduction of the amount of nazrana already paid, i.e. Rs. 150 (One hundred fifty only) the amount to go to Government as Government interest will be Rs. 36,337.50 (Minus 150) (36,187.50) Thirty-six thousand one hundred eighty-seven and paise fifty only. This amount of Rs. 36,187.50 should be credited to Government to proper head of account. The holder should be asked to obtain necessary permission for N.A. use of the land" The award stated that there was no question of apportionment, there being only one claimant. It also stated that "after deduction of the amount of Government share, the remaining amount should go to the claimant."

2. The respondent filed a reference for enhancement of the compensation awarded u/s 18 of the said Act, which was heard by the Joint Judge, Nasik. By his judgment and order dated 30th April 1976 the learned Joint Judge rejected the respondent's claim for enhancement of compensation but declared that he was entitled to the full value of the land. In paragraph 16 of the judgment the learned Joint Judge stated: "Next point arises for consideration is about the amount of Rs. 36, 187.50 P. ordered to be credited as Government interest. In para 11 of the award it is stated that the land under acquisition was Inam land of Class V and the same is regretted in the name of Kabjedar. There is no dispute that the land has been regranted on old tenure basis to the claimant. It is not pointed out there was a restriction on alienation of the land. I am not shown any provision on behalf of the opponent by which the Government is entitled to the deduction of 50 per cent of the amount of the price of the land, because the land has been used for non-agricultural purpose and it has been regranted to the claimant after abolition of the Inams. In determining the compensation payable for any land under the Land Acquisition Act, the element of non-transferability of the land cannot enter into consideration. The publication of declaration u/s 6 has a result of removing all restrictions on the rights of the owner. By necessary implication, it withdraws Inam land from the purview of the grant and consequently lifts the embargo on its transferability. The Inam land stands on the same footing as any freehold land. In my view, therefore, the claimant is entitled to full value of the market price of the acquired land. He is entitled to claim Rs. 36,187.50 P. deducted by the Government."

3. It is against the finding of the learned Joint Judge in paragraph 16 of his judgment that this appeal is filed by the State of Maharashtra.

4. Mrs. Shenoy, the learned Assistant Government Pleader, appearing on behalf of the appellant submitted that the Land Acquisition Officer was justified in concluding that the respondent had to pay the appellants "nazrana" equal to the difference between 50% of the market value of the said land and the "nazrana" already paid since the land was being used for non-agricultural purposes and he was entitled to reduce the market value of the land ascertained by him to this extent, and award only the balance to the respondent. She relied in this behalf upon section 4 of the Bombay Pargana and Kulkarni Watans Abolition Act, 1950, (now referred to as "the said Abolition Act") and upon a Government Resolution of the appellants dated 18th August 1953. Section 4(2) of the said Abolition Act is relevant and provides thus:

(2) The occupancy of the land regranted under sub-section (1) shall not be transferable or partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine.

Clause (2) of the said resolution provides that the amount of nazrana to be levied for converting the new tenure of watan lands regranted under the said section 4 into ordinary rayatwari tenure should be equal to 50% of the market value of the land if it was or was intended to be used for a purpose other than agriculture and should be equal to 20 times the assessment if the land was or was intended to be used for agricultural purposes only: provided that if the agricultural use of the land was subsequently changed for a purpose other than agriculture the holder would become liable to pay u/s 65 of the Bombay Land Revenue Code a fine equal to the difference between 50% the market value and 20 times the assessable value of the land.

5. The reduction in the market value made by the Collector in the said award would appear to be based upon the said resolution on account of the fact that the land was being used for non-agricultural purposes.

6. Mrs. Shenoy placed reliance upon a judgment of the Supreme Court in *The Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another*, upon a judgment of a Division Bench of the Gujarat High Court in *Special Land Acquisition Officer, Baroda Vs. Sushilaben Chhanganlal Thakkar and Another*, and upon an unreported judgment of a Division Bench of this Court in Appeal No. 747 of 1973 (decided on 15th September 1981 by Jahagirdar and Mody, JJ). She also placed reliance upon a judgment of the Privy Council in *Corrie v. MacDermott*. 1914 AC 1056 since that judgment pertains to the resumption of land granted by Government under a deed and to the compensation to be paid to the grantee thereon it does not assist us and we do not propose to consider it further.

7. In *M.S. Seshagiri Rao's* case lands were granted to the respondents by the Government of Mysore upon the condition that the grantees had to surrender the lands to government without claiming any compensation in the event of the

Government requiring the lands for any reason whatsoever. The lands were thereafter acquired under the said Act. The Supreme Court held that the Government was obliged to pay compensation for the acquisition of the lands under the provisions of the said Act, but in assessing the compensation payable to the grantees the existence of the condition which severely restricted their rights could not be ignored. The grantees were entitled to compensation for the lands of which the ownership was vested in them; the measure of that compensation was the market value of the land at the date of the notification and the measure of that market value was what a willing purchaser might pay for the land subject to the option vested in the Government.

8. In the case before the Gujarat High Court land was acquired under said Act. There was a tenant upon the land who had become its deemed purchaser u/s 32 of the Bombay Tenancy and Agricultural Lands Act, 1948. With regard to the valuation of his interest the Land Acquisition Officer adopted this formula: He valued the land as if it were held on old tenure to which the restrictions engrafted by Section 43(1) of the Tenancy Act were not applicable; thereafter he valued the interest of the tenant at 2/3rd of the valuation on the ground that, so far as the tenant was concerned, his land was held on the new tenure created by Section 43(1) of the Tenancy Act which imposed restrictions with regard to sale, gift, exchange, mortgage, lease, assignment or partition without payment to the State Government of such amount as it may by general or special order determine. The validity of the formula was challenged before the Gujarat High Court. The Court held that it would not be right to value the land at a discount merely by reason of the land as there was a restriction on its alienation but that principle was of no avail when the court was confronted with a question regarding the valuation of land where its transferability depended on an obligation to pay a sum of money to the Government. The Court, therefore, did not agree with the submission made by the tenant's counsel that the Land Acquisition Officer was not right in valuing the new tenure land held by the tenant at 2/3rd of the notional valuation of the old tenure land. The court said it would be contrary to principle to value property which is burdened with the obligation to pay a portion of the sale-price to the State at par with a property which did not carry any such obligation and that it was unable to see any principle in awarding to the owner of such property a larger amount as compensation if acquired for a public purpose under the said Act than he would be otherwise entitled to if he sold in the open market.

9. In Appeal No. 747 of 1973 a Division Bench of this court (hereinafter referred to as "the latter Division Bench") was concerned with land covered by the Maharashtra Revenue Patels (Abolition of Office) Act, 1962. The relevant section of that enactment is substantially similar to the provisions of Section 4 of the said Abolition Act read with the said resolution with which we are here concerned. The land was agricultural land but had been put to non-agricultural use for about six years by the State who had requisitioned it. In the award the claimants were given a price of Rs. 1.50 per sq. ft. but it was reduced by 50% in

view of the provisions of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962. In the claimant's reference u/s 18 the court arrived at the market price of Rs. 3.75 per sq. ft. but reduced it for the same reason to Rs. 1.80 per sq. ft. The claimants filed an appeal seeking enhancement. The later Division Bench came to the conclusion that the price of the land, subject to considering the effect of the enactment, was Rs. 4/- per sq. ft. It went on to say that it was obvious that a purchaser would pay only Rs. 2/- per sq. ft. for the land, if it was being transferred subject to the liability of payment of premium to the State under the enactment, when the prevailing value in respect of neighbouring lands which were free from such restriction was Rs. 4 /- per sq. ft. It held that the market value of the land would have to be calculated at the rate of Rs. 2/- per sq. ft. It stated that what had to be valued was the interest in the land; the interest had to be valued subject to a restriction which was capable of being valued in terms of money, and when the monetary value of the restriction was deducted from the market price of surrounding lands which were free from the restriction, the ultimate figure arrived at would be the market price of the acquired land.

10. Mr. Rane on the other hand contended that the reasoning of the Special Land Acquisition Officer in the award was wrong and that the learned Joint Judge was right in not making any deduction and awarding the full market value to the respondent. He placed reliance upon a judgment of the Division Bench of this court (now referred to as "the earlier Division Bench") in Appeal No. 502 of 1969 (decided on 2nd September 1976 by Kantawala, C.J. and Sawant, J.). Paragraph 6 of that judgment needs to be fully reproduced :

That takes us to the cross-appeal filed by the State Government. The questions involved in this cross appeal by the State Government relate to apportionment of compensation and award of solatium. We will proceed on the assumption that one of the terms in the order of re-grant upon the abolition of Jahagirs was that in case the land was converted to N.A. purposes 50% of the price was to be paid to the Government. However, in the present case at no time prior to the making of the award the land was converted to N.A. use. In fact no application was made at any time by the claimant to the Collector or any other Revenue authorities for conversion of his land for N.A. purposes. The restriction or the obligation imposed under the order of re-grant can only be attracted if the claimant wants voluntarily to convert his land to N.A. purposes. If Government by statutory exercise of powers wants to acquire a claimant's land for using it for non-agricultural purposes like construction of a filter house, it cannot be said that the terms of the regnant would be attracted in such a case. Government after it becoming the owner of the property can use the property in such manner as it likes, but it could not be said that obligation has arisen in view of the terms of the order of re-grant because at no time in respect of any portion of the acquired land was any application made by the claimant for its conversion to N.A. purposes. Thus the trial Court was right in setting aside the apportionment made by the Land Acquisition Officer in respect of the amount of compensation. In fact

the claimant was entitled to the whole of the amount awarded as compensation by the Land Acquisition Officer.

Reliance was also placed by Mr. Rane upon a judgment delivered by one of us (Masodkar, J.) in *The State of Maharashtra Vs. Govindrao Narayanrao Ghorpade*, . The land acquired was Inam land covered by the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955. u/s 7(3) of that Act land was not transferable or partible without the previous sanction of the Collector and except on payment of such amount as the State Government by general or special order determine. The Land Acquisition Officer found that the claimant was not entitled to 1/3rd of the market value of the land and made an award accordingly. The claimant filed a reference and the Court held that it was improper to deduct that portion of the market value. Against that order an appeal was preferred to this Court. It was held that the first and primary consideration in determining compensation was what the market value of the acquired land, whether or not of unrestricted tenure, was. The Court said, "If the market value can be fairly determined of such land there is hardly any scope to deduct any amount from that value so as to compensate the restrictions with regard to transferability.... In terms of statutory injunction available in section 23(1) firstly of the Land Acquisition Act, the claimant is entitled to get the market value of the entire acquired land and nothing less than that."

11. The judgment of the Supreme Court in *Seshagiri Rao's* case cited by Mrs. Shenoy does not advance her case; quite the contrary. It was there held that the measure of the compensation which the grantee of restricted land must get is its market value and the measure of that market value is what a willing purchaser will pay for the land subject to the restriction. This, therefore, expressly enjoins upon the authority ascertaining the compensation payable for restricted land which is acquired to determine what a willing purchaser would pay for it and, necessarily, excludes the deduction of any amount from the market value. It contemplates the determination of the market value of restricted land in the manner in which the market value of land which is subject to no restrictions is ascertained.

12. It appears that before the later Division Bench the judgment in *Seshagiri Rao's* case, the earlier Division Bench judgment and the judgment in *Govindrao's* case were not cited. In fact, it would appear from the judgment that no decisions were read to it. It had, therefore, no opportunity to read the decision of the earlier Division Bench that the restriction imposed under an order of regnant was attracted only if the claimant voluntarily converted the land to non-agricultural purposes and to appreciate that to the case before it this dictum applied because the claimant before them had not voluntarily converted his land to non-agricultural purposes but this had been done by the State after requisition. Not having before it the judgment in *Seshagiri Rao's* case it was also not afforded the opportunity to consider the dictum of the Supreme Court that, even in the case of restricted land, its market value had to be assessed for the

purposes of determining compensation and that the measure of that market value was what a willing purchaser would pay for it.

13. Section 23(1), firstly, of the Act requires that in determining the amount of compensation to be awarded for land that is acquired its market value at the date of publication of the notification u/s 4 shall be taken into consideration. To use the language of the Supreme Court the measure of that market value is what a willing purchaser might reasonably pay for the land. To assess market value resort must be had to well recognised principles of valuation which, in the cases we are concerned with, would be instances of sale of comparable lands situated in the vicinity and the opinions of experts. It is, therefore, not open to the authority determining compensation to reduce the market value of restricted land by some arbitrary proportion arrived at by itself to compensate for the restriction. Nor is it open to the authority determining compensation to fix first the market value of adjoining lands and assess the market value of the restricted land by reducing the market value of the adjoining lands by some arbitrary proportion arrived at by itself. Far less is it open to the authority assessing compensation to find, as the Special Land Acquisition Officer in the case before us has done, the market value of the acquired land, to deduct 50% of it for the reason that the respondent had to pay a fine to the appellants equal to the difference between 50% of its market value and the "nazrana" already paid because the land was being used for non-agricultural purposes, and to direct that that deducted half should be credited to the appellants. The function of the Special Land Acquisition Officer is to assess the compensation which, in his opinion, should be allowed for the land acquired; it is not to collect "nazranas" and fines for the appellants.

14. It bears repetition that even for restricted land compensation must only be determined by finding out what a willing purchaser will pay for it, knowing it to bear to restriction.

15. It will be obvious from what we have said that we differ very respectfully from the view expressed by the Gujarat High Court in *Special Land Acquisition Officer v. Sushilaben Chhaganlal Thakkar*.

16. There is no merit in the appeal. It is dismissed with costs.