(2011) 04 BOM CK 0139

In the Bombay High Court

Case No : First Appeal No. 312 of 1999 Alongwith Cross Objection ST. No. 9157 of 2011 Alongwith Civil Application No. 149 of 2011 and First Appeal No. 315 of 1999 Alongwith Cross Objection ST. No. 38545 of 1999

State of Maharashtra APPELLANT

Vs

Kalu Ladkku Mhatre RESPONDENT

Date of Decision : 15-04-2011

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 23, 23(A, 28, 4(1)

Citation : (2012) 1 BomCR 167

Hon'ble Judges : Oka A.S, J

Bench : Single Bench

Advocate : A.R. Patil, A.G.P, for the Appellant; S.M. Kamble, for the Respondent

Final Decision : Allowed

Judgement

Oka A.S., J.—These appeals and Cross Objections can be disposed of by a common judgment. The challenge in these Appeals is to the Awards made u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act"). The lands subject-matter of acquisition in these appeals are situated at village Pendhar, District Raigad. Notification u/s 4(1) of the said Act was issued on 3rd February, 1970 by which the lands was notified for acquisition for the public purpose of setting up of satellite city of Navi Mumbai. By the impugned judgment and Awards, the market value has been fixed at the rate of Rs. 14/-per square meter. There are Cross Objections filed seeking enhancement of the compensation.

2. The Division Bench of this Court by a judgment and order dated 16th March, 2000 in First Appeal No. 875 of 1995 (Abdul Aziz Husenmiya Patel Vs. The Special Land Acquisition Officer)l, and other connected matters, dealt with the appeals arising out of References u/s 18 of the said Act relating to land at village Pendhar and other villages in Taluka Panvel District Raigad which were notified u/s 4(1) on 3rd February 1970 for the same public purpose. In paragraph No. 7 of

the said decision, the Division Bench of this Court discussed the issue of market value of the lands at village Pendhar. It is held thus:

So far as First Appeal No. 875 of 1985 is concerned, there is acquisition of, in all, five lands, bearing Survey Nos. 94,95, 98 111 and 112. Having regard to the location of these lands as well as the fact that they are situated, practically abutting the Murnbai-Pune Highway, we think that the proper market value in respect of the lands should be Rs. 25.00 per sq. meter. As regards First Appeal No. 85 of 1992, there is acquisition of seven lands bearing Survey Nos. 155/1, 157/1, 157/2, 159/2, 168/ 0, 184/1 and 184/2. It is seen from the Chart that these lands are situated at a distance of 480 meters from Mumbai Pune Highway and 120 meters to the south of the Sion-Panvel Highway. The other factors in respect of these lands are almost the same as those of the lands in First Appeal No. 875 of 1985. We further find that out of the above-mentioned seven lands, the lands bearing Survey Nos. 155/1, 157/1, 157/2, 184/1 and 184/2 are away from the Sion-Panvel Highway, as compared to the remaining two lands, that is, Survey Nos. 158/2 and 168/0. We, therefore, propose to fix the market value of the first-mentioned two lands at Rs. 22.00 per sq. meter. Coming to First Appeal No. 110 of 1992, there are two lands, that is, Survey Nos. 186/4 and 230, which were acquired. Considering their distances from the Highway as well as the other factors, we think that the market value of the land bearing Survey No. 230 deserves to be fixed at Rs. 19.00 per sq. meter, whereas in respect of the land bearing Survey No. 186/4, the market value of this land deserves to be fixed at Rs. 20.00 per sq. meter. As regards First Appeal No. 1091 of 1991 there is, only one land, that is, Survey No. 113 is involved and it is touching the Pune-Mumbai Highway. Considering this factor, as well as the other factors, we think that the market value of this land deserves to be fixed at a higher rate, which in our opinion, will be Rs. 25.00per sq. meter. This takes us to the last appeal in this group, that is, First Appeal No. 175 of 1989. In this appeal, there is acquisition of only six lands bearing Survey Nos. 45, 50, 51, 52, 54/ 2 and 182. Considering the distance from the Highway as well as the other factors, we think that the market value of Survey Nos. 45, 154/ 2 and 182 will have to be fixed at Rs. 20.00 per sq. meter, whereas that of the lands bearing Survey Nos. 0 and 51 and 52, which are more closure to the Highway will be Rs. 22.00 per sq. meter.

The perusal of the evidence and in particular the evidence of Mr. Kaustubh Jeevan Kulkarni, expert valuer shows that the acquired land was at the distance of 1200 meters from Bombay-Pune National Highway and at a distance of 4800 meters from Panvel-Sion Highway. Thus, the lands subject-matter of the acquisition will fall in the third category in the decision of the Division Bench where the market value of Rs. 19/- per square meter has been fixed. The acquired lands are far away from the Sion-Panvel Highway as well as Bombay-Pune National Highway. Therefore, the market value will have to be fixed at the rate of Rs. 19/- per square meter. The Division Bench made a deduction of 10% on account of development charges as evident from paragraph No. 13 of the judgment. By making a deduction of 10%, the market value will have to be fixed at Rs. 17.70/- per square meter. Hence, I pass the following order:

ORDER

i. First Appeal No. 312 of 1999 and First Appeal No. 315 of 1999 are dismissed with no order as to costs.

ii. Cross Objection Stamp Nos. 38545 of 1999 and 9157 of 2011 are partly allowed and the market value of the acquired lands is fixed at the rate of Rs. 17.10 per square meter. In addition to the market value, the claimants will be entitled to the statutory benefits u/s 23(1-A), 23 and 28 of the Land Acquisition Act, 1894.

iii. The claimants will be entitled to the proportionate costs of the References as well as the Cross Objections.

iv. The exercise of determining the compensation payable in accordance with the modified Award shall be completed by the Reference Court within a period of three months from the date on which the writ of this judgment is received by the said Court.

v. The additional compensation amount shall be deposited by the State Government within a period of three months from the date on which amount is determined.

vi. Civil Application No. 149 of 2011 is allowed in terms of prayer Clause (a).