
(2009) 04 BOM CK 0144

In the Bombay High Court

Case No : First Appeal No. 683 of 2001 in Land Acquisition Reference No. 1432 of 1998

State of Maharashtra

APPELLANT

Vs

Mishrilal Bansilal Jain

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18, 23, 24, 4

Citation : (2009) 3 BomCR 32

Hon'ble Judges : Tated K.K., J

Bench : Single Bench

Advocate : S.P. Dound, A.G.P, for the Appellant; D.G. Chewale, h/f. P.R. Patil, for Respondent sole, for the Respondent

Final Decision : Allowed

Judgement

Tated K.K., J.—Heard Mr. Dound, learned A.G.P. for the appellant and Mr. Chewale, learned Counsel for respondent.

2. The issue involved in the present first appeal is that, whether claimant is entitled to enhanced compensation in respect of acquired land on the basis of two sale deeds produced by him on record. One more issue is about fixing the market value of Bagayat land on the basis of valuation of Jirayat land.

3. The present appeal preferred by original respondent-State of Maharashtra against the judgment and award dated 30th March, 2000 passed by IInd Joint Civil Judge, Senior Division, Jalgaon in L.A.R. No. 1432 of 1998.

4. In the present case the Special Land Acquisition Officer (for short "S.L.A.O.") issued Notification u/s 4 of the Land Acquisition Act dated 9th June, 1988 for acquiring respondent's/original claimant's land from village Vitner, Taluka and District-Jalgaon admeasuring 4 Hectors and 87 Rs and 9 Rs Potkharaba land from Gut No. 341/1 for percolation tank, Vitner. After following due process of law, the S.L.A.O. declared award dated 8th March, 1991 and awarded compensation in

respect of acquired land to the tune of Rs. 53,588/-. The S.L.A.O. issued notice u/s 12(2) of the Land Acquisition Act dated 15th April, 1991 to the respondent and same was served on him on 28th April, 1991. After receipt of notice u/s 12(2) of the Land Acquisition Act, respondent/original claimant preferred reference u/s 18 of the Land Acquisition Act dated 7th May, 1991 and claimed compensation in respect of acquired land @ Rs. 1,00,000/- per Hectore. The Reference Court by judgment and award dated 30th March, 2000 awarded compensation in respect of acquired land @ Rs. 1,00,000/- per Hectore for Bagayat land and Rs. 25,000/- per Hectore for Potkharaba land. Being aggrieved by the said judgment and award passed by the Reference Court, the appellant preferred above mentioned appeal.

5. It is the case of the appellant that the lower Court wrongly relied, while determining the market value of acquired land, only on single sale instance which is not proper and just. The appellant further contended that the lower Court was wrong in holding that the single sale instance is a sole guide-line for fixing the market value of the acquired land. The appellant further raised objection about fixing of market value in respect of Bagayat land double than the value of Jirayat land.

6. On the other hand, learned Counsel for respondent submits that the Reference Court rightly considered the sale instance at Exhibit 30 dated 4th June, 1987 in respect of 21 Rs land and 6 Rs. Potkharaba land, for determining the market value of the land involved in the present case. Learned Counsel for respondent further submitted that the Reference Court failed to award additional compensation in respect of well. In spite of that the respondent/original claimant has not preferred any appeal and/or cross-objections in the present case. He further submitted that the claimant brought on record sufficient evidence to hold that the claimant is entitled to compensation in respect of acquired land @ Rs. 1,00,000/- per Hectore. Therefore, the Appeal preferred by the State of Maharashtra to be dismissed with costs.

7. With the help of learned Counsel for the parties, I have gone through the record and proceedings of the above mentioned matter. Learned A.G.P. for appellant points out that the Reference Court mainly relied on Exhibit 30, a sale deed dated 4th June, 1987 in respect of 21 Rs of land plus 6 Rs. of Potkharaba land for fixing the market value of the acquired land. He pointed out that, in this sale deed Exhibit 30 the transaction took place for Rs. 10,000/- and therefore the rate comes to Rs. 37,037/- per Hectore. The Reference Court in Para 21 wrongly held that rate in respect of sale deed comes to Rs. 47,619/- per Hectore. At the time of fixing the market value, the trial Court given 10% increase in valuation of sale deed Exhibit 30 for determining the market value of the acquired land. For the purpose of 10%, the trial Court added Rs. 4761/- in the market value of Exhibit 30 i.e. Rs. 47,619/- and held that market value of Jirayat land comes to Rs. 52380/-. On the basis of these calculations, the Reference Court decided market value of Jirayat land @ Rs. 50,000/- per Hectore. Learned A.G.P. correctly pointed out that in Exhibit 30 sale deed dated 4th June, 1987

land involved is Jirayat land and the rate comes to Rs. 37,037/- per Hectore i.e. Rs. 14,814/- per Acre. Even if 10% increase given in respect of the rate under sale deed at Exhibit 30, it comes to Rs. 40,740/- per Hectore. Therefore, the learned A.G.P. rightly pointed out that the Reference Court erred in coming to the conclusion that sale deed Exhibit 30 took place @ Rs. 47,619/- per Hectore. If actual calculation is done, then market rate in respect of Exhibit 30 comes to Rs. 37,037/- per Hectore i.e. Rs. 14,814/- per Acre.

8. Learned A.G.P. further pointed out that Reference Court erred in coming to the conclusion that Bagayat land to be valued double than the Jirayat land. For that purpose the Reference Court relied on the judgment in the case of State of Maharashtra and Ors. v. Vithal Rodabaji Shide reported in 1993 B.C.J. 230. It is to be noted that the said reported judgment considered by the Full Bench of this Court in the matter of State of Maharashtra Vs. Prashram Jagannath Aute, It is held in this judgment that the Court has to determine amount of compensation/market value of the land at the date of publication of the notification u/s 4 in consonance with the statutory provisions of Sections 23 and 24 of the Act read in conjunction with the various judicial pronouncements for arriving at such determination with reference to the facts and circumstances as also evidence led by the parties in each case. It is neither permissible nor proper for the Court to lay down any strait jacket formula universally applicable to all land acquisition cases at any level of proceedings. Para 7 of the said judgment reads as under:

7. Before a precedent can be applied to a subsequent case the Court has to examine that such a precedent satisfies the principles of ratio decidendi. It must apply on facts and on question of law. A peculiar decision taken on the facts of a given case would per se not be the law applicable to the other cases. Firstly the judgment of the Division Bench in a given case *stricto sensu* enunciates no principles of law and secondly it is not a settlement of law being *sub silentio*. It is hardly in conflict with the judgment of the Supreme Court that the irrigated land should get higher or even double compensation than the dry land. This is the finding recorded on the basis of the evidence before the Court. It could hardly be stated to be an absolute proposition of laws, much less of universal application to the lands acquired *de hors* the facts and evidence of that case. The judgment of the Supreme Court as already noticed in *Hookiyar Singh etc.etc. Vs. Special Land Acquisition Officer, Moradabad and another*, case again is no discussion on law on the subject and merely reiterates the existing principles, of Court stating that duty of the Court is to carefully examine and scrutinise the evidence and then proceed to determine the just and adequate compensation in each case.

In our view, it would hardly be necessary to make a reference to that case as the various judgments of the Supreme Court and the High Courts applicable to the facts of the case were available to the parties to be placed for the consideration of the learned Single Judge. Having considered over the controversy in issue or on analytical analysis of the principles enunciated, we have no hesitation and infact would answer the question on law crystalline as follows:

1. The division bench judgment of the Court in Vithal Rodhaji Shinde's case does not state any absolute legal principle as panacea and uniformly applicable or capable of being applied as binding precedent de hors the facts of that case or proposition of law. We also see no conflict in the judgment in Hookiyar Singh's case and the Division Bench judgment of this Court and they are judgments on their own facts. However, since the matter has been referred to the Full Bench we would state the principle of law as well.

2. The Court has to determine amount of compensation/market value of the land at the date of publication of the notification u/s 4 in consonance with the statutory provisions of Sections 23 and 24 of the Act read in conjunction with the various judicial pronouncements for arriving at such determination with reference to the facts and circumstances as also evidence led by the parties in each case. It is neither permissible nor proper for the Court to lay down any strait jacket formula universally applicable to all land acquisition cases at any level of proceedings.

9. In view of the above mentioned facts and circumstances it is crystal clear that the Reference Court erred in coming to the conclusion that market value of the Bagayat land is always double than the market value of the Jirayat land.

10. Learned Counsel for the respondent supports the impugned judgment of the Reference Court on the ground that the respondent produced 7/12 extracts of the acquired land showing that respondent was taking Bagayat crops. He further pointed out that Exhibit 22 i.e. 7/12 extracts shows that the acquired land is Bagayat land. He further pointed out the evidence recorded at Exhibit 26 of claimant in which he specifically stated that lands involved in the present case are Bagayat lands. The said witness further stated in his deposition that there was well having 20 fts. in diameter and depth about 45 ft. He stated that on the basis of said well, he used to take Bagayat crops in the acquired land. He further stated that it is a fact of transactions in respect of agricultural land that the market price of Bagayat land is always double than the price of Jirayat land. Therefore, the learned Counsel for respondent contended that the Reference Court rightly determined the market value of Bagayat land @ Rs. 1,00,000/- per Hector on the basis of market rate of Jirayat land.

11. For determination of the market value of the land acquired in terms of the provisions of the Land Acquisition Act, it depends upon large number of factors, first being the nature and quality of the land i.e. whether agricultural land or non agricultural land. Apart from nature and quality of the land, in the event of agricultural lands are acquired, the other factors relevant therefore are also required to be considered, namely, as to whether they are irrigated or non irrigated lands, the extent of facilities available for irrigation, location of the land, closeness thereof from any road or high way. On these factors the market value of the land always depends. In the present case the claimant entered into witness box and his evidence is recorded at Exhibit 26. It is stated in his evidence that he used to cultivate crops like banana, ground nuts, oil seeds,

cotton in the acquired land. He further pointed out that he used to take Bagayat crops on the basis of well water. The claimant himself produced sale deed dated 4th June, 1987 at Exhibit 30 in respect of 21 Rs. of land plus 6 Rs of Potkharaba land sold for Rs. 10,000/-. This transaction took place @ Rs. 37037/- per Hecter. Land involved in the said sale deed is from village Bornar, whereas the land involved in the present case is from village Vitner. The claimant himself stated in his cross-examination in Para 3 that village Bornar is away by 10 k.m. from village Shirsoli and 12 k.m. away from village Vitner. But in his evidence he stated that the quality of the land from village Bornar and village Vitner is near about same. The claimant produced certificate from Talathi of Vitner at Exhibit 29 to show that boundaries of village Vitner and Shirsoli are common. The Reference Court relied on sale deed Exhibit 30 and held that market value of Jirayat land on the date of issuance of notification u/s 4 of the Land Acquisition Act should be Rs. 50,000/- per Hecter and considering the decision of this Court in the matter of State of Maharashtra v. Vithal Rodabaji Shinde (supra), held that market value of Bagayat land is double than the market value of Jirayat land. On the basis of these principles, the Reference Court fixed the market value of Bagayat land @ Rs. 1,00,000/- per Hecter.

12. It is necessary here to refer the Full Bench judgment of this Court in the matter of State of Maharashtra Vs. Prashram Jagannath Aute, In the said authority the matter was referred to the Full Bench to consider the decision in the matter of Vithal Rodabaji Shinde (supra). In the said authority the Full Bench held that market value of Bagayat land is to be fixed on the basis of quality and other facilities available to the land. Therefore, it is clear that the Reference Court erred in coming to the conclusion that market value of Bagayat land is always double than the market value of Jirayat land.

13. Though the sale deed involved in Exhibit 30 is from other village, the same can be considered for fixing the market value of the acquired land. This Court in the matter of The State of Maharashtra Vs. Smt. Bhimabai Bhika Gondal and Others, , held that considering the circumstances in the case, sale deed from nearby village can be considered for fixing the market value of the acquired land. Para 8 of the said judgment reads as under:

8. The main argument raised before us on behalf of the State was that the sale instances of village Vetale were not comparable instances and same compensation could not be awarded to the claimants. This argument, on the face of it, is of no help to the State. It is a settled proposition of law that the sale instances of the adjacent villages can be taken into consideration while determining the compensation payable to the claimants for acquisition of their lands and particularly when none of the parties had led evidence in regard to sale instances relating to the same village from where the lands were acquired. In this regard, reference can be made to a judgment of the Division Bench of this Court in the case of The State of Maharashtra, The Special Land Acquisition Officer, Irrigation No. 1 and The Executive Engineer, Karanjwan Project Vs.

Yashwant Kahnu Shirsath, . The relevant observations are as under:

7. It is a settled principle of law that the land of the adjacent villages can be made the basis for determining the fair market value of an acquire land. This principle of law is qualified by a clear dictum of the Supreme Court itself that wherever direct evidence i.e. the instances from the same village are available then it is most desirable that the Court should consider those instances rather than relying upon sale instances of the adjoining land. The exclusion of these exhibits from the zone of consideration for determination of the controversy thus cannot be said to be incorrect in law. The land in Exhibit 30 relates to village Mukane, while Exhibits-14 and 15 relate to the other two villages viz. Modade and Rayambe. These villages are located around the acquired land but have a better potential as they are closer to industrial area and the Highway. The evidence tendered in relation to the land of the adjacent villages would be a relevant piece of evidence for determining the market value of the land and even the awards relating to those adjoining villages would also be a relevant consideration. Reference in this regard can be made to the case of Sham Krishan Chandiwalla and Another Vs. Union of India, and judgment of the Supreme Court in the case of Harcharan Vs. State of Haryana,, where the Court stated that subject to the test of comparison of land area wise ,topographywise and usewise, awards and transactions in relation to the adjacent areas are the best evidence with regard to valuation of price of land. Still, in the case of Gokal Vs. State of Haryana, , the Court was concerned with awarding of compensation to the land similarly situated but vide different notifications issued by the Government u/s 4 of the Act. Trend in increase of the land prices in those areas was also taken to be a relevant consideration.

14. Therefore, the sale deed at Exhibit 30 can be considered for fixing the market value of the acquired land.

15. Learned Counsel for respondent submitted that the Reference Court failed to consider Exhibit 31 sale deed dated 5th September, 1988 for fixing the market value of the acquired land on the ground that the said sale deed is post dated. In support of his contention that post notification sale deed can be considered for fixing the market value of the acquired land, he relied on the decision in the matter of The State of Maharashtra Vs. Bhaskar Namdeo Wagh and Others, . It is held in this case that a transaction immediately preceding or succeeding would afford a good guidance to determine the market value of the acquired land. Para 6 of the said judgment reads as under:

6. It is next submitted by the learned Counsel for the appellant that the sale instances relied upon by the claimants are subsequent to the issuance of Section 4 Notification and hence ought not to have been considered. This issue has been addressed by the Supreme Court in the case of Karan Singh and others etc. Vs. Union of India, In para 5 of the judgment, the Supreme Court has observed thus:

...When a land is compulsorily acquired, what is basically required to be done for

awarding compensation is to arrive at the market value of the land on the date of the notification u/s 4 of the Act. The market value of a piece of land for determining compensation u/s 23 of the Act would be the price at which the vendor and the vendee (buyer and seller) are willing to sell or purchase the land. The consideration in terms of price received for land under bona fide transaction on the date of notification issued u/s 4 of the Act or a few days before or after the issue of notification u/s 4 of the Act generally shows the market value of the acquired land and the market value of the acquired land has to be assessed in terms of those transactions. The sale of land on or about the issue of notification u/s 4 of the Act is stated to be the best piece of evidence for determining the market value of the acquired land.

Thus, a transaction immediately preceding or succeeding would afford a good guidance to determine the market value of the acquired land. Perusal of the evidence also shows that the appellant did not object to the bona fides of the said transactions. Thus the sale instances will have to be presumed to be bona fide, more so in the absence of filing of the written statement and/or examination of any witness by the State.

16. It is correct that the Reference Court failed to consider the sale deed at Exhibit 31 dated 5th September, 1988 for determining the market value of acquired land. Even if the sale deed at Exhibit 31 has to be taken into consideration for determining the market value of acquired land, in that case it is incumbent on the part of the claimant to produce cogent evidence on record to show that land at village Shirsoli where the sale deed at Exhibit 31 took place and land at village Vitner from where the lands are acquired are similar. There is no evidence on record produced by the claimants to the effect that lands at village Shirsoli and village Vitner are also of same quality. Therefore, there is no question of considering the sale deed at Exhibit 31 for determining the market value of the acquired land.

17. Learned Counsel for respondent further submitted that the appellant State of Maharashtra failed to produce any evidence and/or documents on record to show that the claimant is not entitled to enhanced compensation in respect of the acquired land. He relied on the judgment in the matter of State of Maharashtra Vs. Ishwarsharan Kedarnath Bhargava and Others, It is held in this judgment that if the State failed to discharge its onus as it was for the State to show that the compensation awarded by the Collector was justified and was the fair market value of the land in question, then the claimant is entitled to enhanced compensation as claimed by him. Para 13 of the said judgment is relevant, which reads as under:

13. Besides the above evidence, various claimants entered the witness box. Witness No. 1, Ishwar Sharan had referred in his statement judgments in LAQ Nos. 34/84 and 48/86 where the compensation was awarded at the rate of Rs. 7.20 per sq. mtr. In his statement he claimed compensation at the rate of Rs. 40/- per sq. mtr. he also stated that the land in question was situate at a

distance of about 8-9 Kms. from Thane Creek Bridge connecting Sion-Panvel Highway. he did say that water, electricity and other facilities were available. He admitted that compared to the Municipal areas, Gram Panchayat taxes were less and the land was situate in Gram Panchayat As is evident from the above facts, there is hardly any relevant and material piece of evidence which could form basis for awarding any higher compensation. Not only the claimants but even the State has failed discharge its onus as it was for the State to show that the compensation awarded by the collector was justified and was the fair market value of the land in question. However, neither of the parties cared to lead proper and cogent evidence on record to support their respective claims. The primary onus is always on the claimants but the State is not absolved of its liability to bring to the notice of the Court adequate evidence if they pray that the compensation amount awarded by Reference Court should be reduced. In fact, the present case is a case of no evidence other than the judgments of the Court which have been relied upon by the learned Reference Court. It has to be accepted that the judgments or awards of the courts relating to the same land or the lands surrounding the acquired land are relevant piece of evidence and cannot be a precept to determine fair market value of the land in consonance with the provisions of Section 23 of the Act. The Reference Court, while relying upon judgment in LAR No. 60/83, Exhibit 24/2 and keeping in view the time factor, increasing trend of the value of the land and by applying reasonable guess work, awarded compensation to the claimants at the rate of Rs. 12/- per sq. mtr. We find no reason to interfere with the impugned judgment. The judgment of the Reference Court neither suffers from error of jurisdiction nor error in appreciation of evidence. The order is in consonance with the settled principles of law and calls for no interference by this Court. Consequently ,all the appeals, cross-objections and civil applications are dismissed, while leaving the parties to bear their own costs. Appeal dismissed.

18. On the basis of these submissions, learned Counsel for respondent/original claimant submits that the claimant produced cogent evidence on record to show that the claimant is entitled to compensation in respect of acquired Bagayat land at least @ Rs. 1,00,000/- per Hector.

19. It is clear that Exhibit 30 sale deed dated 4th June, 1987 from village Bornar is comparable sale deed for determining the market value of the acquired land. The land involved in this sale deed is Jirayat. The rate comes to Rs. 37,037/- per Hector. The sale deed is of 1987 and therefore considering the 10% increase per year in the market price, same can be taken at the rate of Rs. 40,740/- per Hector. The lands involved in the present matter are Bagayat lands. It is the case of the claimant that he used to take Bagayat crops on the basis of well water. There is no evidence on record to show that the lands involved in the present case are perennially Bagayat lands. Therefore, for determining the market value of acquired land on the basis of sale deed at Exhibit 30, same can be done by awarding 1 and 3/4 time market value of the Jirayat land. Therefore, the claimant is entitled to compensation in respect of acquired land @ Rs. 71,295/-,

round up to Rs. 72,000/- per Hector in respect of acquired Bagayat land.

20. In view of the above mentioned facts and circumstances, the appeal preferred by the state is partly allowed holding that the respondent/original claimant is entitled to compensation in respect of acquired Bagayat land @ Rs. 72,000/- per Hector. To that effect, award passed by the Reference Court is to be modified. Hence the Order:

ORDER

(i) First Appeal No. 683 of 2001 preferred by the appellant-State of Maharashtra is partly allowed.

(ii) The judgment and award passed by the Reference Court in L.A.R. No. 1432 of 1998 dated 30th March, 2000 is modified to the extent that the respondent/original claimant is entitled to compensation in respect of acquired Bagayat land at the rate of Rs. 72,000/- (Rs. Seventy Two Thousand only) per Hector.

(iii) No order as to the costs.