
(2007) 11 BOM CK 0047
In the Bombay High Court
Case No : First Appeal No. 238 of 1992

State of Maharashtra

APPELLANT

Vs

Ram Iqbal Mishra

RESPONDENT

Date of Decision : 27-11-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2008) 1 ALLMR 676

Hon'ble Judges : R.C. Chavan, J;K.J. Rohee, J

Bench : Division Bench

Advocate : A.M. Deshpande, AGP, for the Appellant; K.H. Deshpande and S.C. Mehadia, for the Respondent

Judgement

R.C. Chavan, J.—These first appeals by the State are directed against the award passed by the learned Civil Judge, Senior Division, Chandrapur, in Land Acquisition Reference Nos. 32/90 and 15/90, whereby the learned Judge enhanced the compensation granted to the respondents herein from Rs. 14,500/- per hectare to Rs. 60,000/-per acre, i.e. about Rs. 1,60,000/-per hectare.

2. The lands of the respondents were sought to be acquired for an open cast mine by notification dated 14-11-1985 issued u/s 4 of the Land Acquisition Act. This notification was last published on 22-1-1986, which is thus the relevant date for the purpose of determining the value of the lands. After taking further steps under the provisions of the Land Acquisition Act and considering the claims submitted by the land owners, by an award dated 21-10-1998, the Land Acquisition Officer granted compensation at the rate of Rs. 14,500/-per hectare or Rs. 5,800/-per acre to the two claimants. The land involved in First Appeal No. 238 of 1992 is 4 hectares and 70 ares, whereas that in First Appeal No. 239 of 1992 is 13 hectares and 53 ares. Being aggrieved by the compensation awarded, the land owners sought a reference to be made u/s 18 of the Land Acquisition Act to the District Court. They claimed compensation at the rate of Rs. 75,000/- per acre or Rs. 1,87,500/-per hectare. Upon considering the evidence tendered

before him, the learned Civil Judge granted enhanced compensation, as indicated above.

3. The appellant-State as well as the acquiring body-Western Coalfields Ltd. felt aggrieved by enhancement of over ten times granted by the learned Civil Judge and, therefore, have assailed the award by preferring the present appeals, contending that the compensation granted at the rate of Rs. 14,500/-per hectare by the Land Acquisition Officer was just and fair and in any case, it could not have exceeded Rs. 20,000/-per hectare. Cross-objections have been filed on behalf of the respondent-claimants seeking further enhancement to Rs. 1,00,000/-and Rs. 75,000/-per acre respective in the two appeals.

4. We have heard Shri A.M. Deshpande, learned AGP for the appellant-State; Shri S.C. Mehadia, learned Advocate for the acquiring body- Western Coalfields Ltd.; and Shri K.H. Deshpande, learned Senior Advocate for the respondent-claimants. With the help of the learned Advocates, we have gone through the entire evidence tendered and examined the causation employed by the learned Civil Judge while arriving at his conclusions.

5. One instance of sale of two acres of land by PW 3 Shamrao had been ignored by the Land Acquisition Officer. This sale had taken place on 26-3-1980, whereby 81 ares of land bearing survey No. 105 in Village Durgapur was sold for a sum of Rs. 40,000/-. This sale instance has been relied on by the learned Civil Judge for granting enhancement of compensation. It may be seen from the evidence of PW 3 Shamrao that he had purchased the land in 1980 for his son Subhash. The land purchased was within the limits of Village Durgapur and was on a road branching off to Village Sinala, one to one-and-half furlong away from Tadoba road. The witness had stated in his cross-examination on behalf of the State as well as the acquiring body that the price of his land was higher than the lands under acquisition. This sale between the willing purchasers and sellers was long before the date of the first notification, i.e. 14-11-1985, and, therefore, could provide a good basis for calculating the price of the lands acquired. Instead, the Land Acquisition Officer had preferred a sale instance of 4-2-1985, whereby 2 hectares and 33 ares of land bearing survey No. 140 was sold for a sum of Rs. 30,000/-, bringing the price per hectare to Rs. 12,875/-. He preferred this sale, because this land is possibly adjacent to the lands in question, and also because of the proximity of date of sale with the date of notification u/s 4 of the Land Acquisition Act.

6. The learned AGP for the State as well as the learned Advocate for the acquiring body submitted that the Land Acquisition Officer had rightly relied on this sale in preference to the sale in favour of PW 3 Shamrao dated 26-3-1980, because of proximity, physical as well as in point of time. They submitted that the sale instance dated 26-3-1980 could not have been relied on because that land was situated on a road, whereas the acquired lands were away from any road and, therefore, had no non-agricultural or commercial potential. They submitted that the learned Trial Judge should not have been swayed by the

dreamy picture of industrial growth and development in and around Chandrapur in order to grant escalation on the scale claimed by the land owners in a Village on the outskirts.

7. There can be no doubt that the learned Judge should not have considered the probable use for which the land was to be put, namely for open cast mine, or the profits that the acquiring body was to make from such use. This was not a relevant consideration. All the same, as rightly pointed out by Shri K.H. Deshpande, learned Senior Advocate for the respondent- claimants, the learned Judge could not have been oblivious to the developments taking place in the vicinity of industrial town of Chandrapur. He pointed out, and rightly in our view, that the biggest thermal power station at Chandrapur is in fact located at Village Durgapur from where the lands have been acquired. Therefore, there was obviously scope for developmental activities in the vicinity of Chandrapur town and in particular at Village Durgapur. All the same, the learned Judge should have also seen that in face of evidence of PW 3 Shamrao, on which the claimants themselves place reliance, the value of claimants' lands could not have exceeded than that of land purchased by PW 3 Shamrao. He should have also seen that even if commercial potential was to be accorded to the lands in question, since Shamrao had purchased the land for commercial purpose, the value of the acquired lands could not have exceeded that of Shamrao. Thus, the value of Shamrao's land bearing survey No. 105 purchased at the rate of Rs. 20,000/ per acre on 26-3-1980 was rightly taken as the benchmark by the learned Trial Judge, but he failed to explain as to how he arrived at a figure of Rs. 60,000/- per acre as the price of land acquired from the respondents.

8. There can be no doubt that prices of real property have been increasing at a substantial pace over the years. But we do not agree with the learned Senior Advocate for the respondent-claimants that the rate of increase is as high as 25 per cent per annum. The rate of increase could not have been so high at least in the early eighties, which is the period with which we are concerned. In our view, an increase at 10 per cent per annum would also amount to erring on higher side, rather than that being too stingy in a matter concerning taking away the lands of the farmers. With an increase at 10 per cent per annum on the value of Rs. 20,000/-on 26-3-1980, the value on the relevant date, i.e. 22-1-1986, i.e. almost six years from the date of the sale instance, would come to around Rs. 35,000/-. We do not see as to how the compensation could, therefore, have been awarded by the learned Judge at the rate of Rs. 60,000/- per acre.

9. The learned Senior Advocate for the respondent-claimants has pressed for award of compensation at the rate of Rs. 75,000/-per acre. This inflated claim is based on speculative factors, like extra ordinary speed of urbanization and the trend of rising prices of real estate. We are alive to a probable trap in which a person can fall while assessing price of real property at a point of time in the distant past. When the price of a property over 21 years' ago has to be assessed, the possibility of getting influenced by the present astronomical values

cannot be ruled out. Therefore, we would not blame the claimants for staking claim to higher amount, or nursing a grievance that what they had received was pittance as compared to the present day prices. All the same, since the valuation has to be done with reference to a particular date, factors, such as extra ordinary speed of urbanization or industrialization or exponential rise in the property of real estate cannot be permitted to obscure the stark realities as they existed 21 years" ago.

10. We, therefore, hold that the value of the respondents" lands could not have exceeded Rs. 35,000/-per acre on the relevant date and, therefore, we see no justification for grant of compensation at the rate of Rs. 60,000/ per acre, as has been done by the learned Civil Judge.

11. We, therefore, allow both the appeals partly; dismiss both the cross-objections; and direct that the respondents shall be entitled to receive compensation calculated at the rate of Rs. 35,000/-per acre for their lands acquired by the appellant-State. The respondents would also be entitled to the statutory additives, like solatium, component and interest, minus the amounts awarded by the Land Acquisition Officer and received by the respondents under protest. The respondents shall refund within three months amounts, if any, received in excess of the above sum. The award passed by the learned Civil Judge, Senior Division, shall be modified, as indicated above.