
(2003) 03 BOM CK 0106
In the Bombay High Court
Case No : First Appeal No. 200 of 1988

State of Maharashtra

APPELLANT

Vs

Zakir Ali and Another

RESPONDENT

Date of Decision : 04-03-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 51A

Citation : (2003) 3 ALLMR 1082 : (2004) 1 MhLj 565

Hon'ble Judges : V.G. Munshi, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : C.K. Shinde, A.G.P, for the Appellant; G.D. Kale and P.K. Joshi, for the Respondent

Final Decision : Allowed

Judgement

B. H. Marlapalle, J.—The award passed in L. A. R. No.

1159/1987, by the learned District Judge at Beed on 8th of July, 1988, has been challenged in this appeal filed u/s 54 of the Land Acquisition Act, 1894 (for short, "the Act").

2. We shall deal with the facts.

Agricultural land located in Survey No. 171 of Ambejogai, admeasuring 3 H. and 72 R. and owned by the appellant i.e. Zakir Ali s/o Parwarish Ali was acquired by the State Government under the Act for construction of S. T. Depot and Staff Quarters for the Maharashtra State Road Transport Corporation, along with other patch of land admeasuring 49 R. from the said survey number thus, making a total of 4 H. and 21 R. under acquisition. The notification u/s 4 was issued on 12-8-1982, possession of the subject land was taken over on 13-8-1984, and, finally the Land Acquisition Officer passed his award on 23rd of September, 1986, and granted compensation at the rate of Rs. 900/- per R. for agricultural land and Rs. 4/- per sq. foot for the non-agricultural land. In addition, solatium at 30% as well as the interest component along with interest u/s 34 of the Act was

granted and, thus, a total amount of Rs. 6,01,330.90 was paid to the respondent No. 1 in respect of the agricultural land admeasuring 3 H.72R.

3. Being dissatisfied with the said amount of compensation, the claimant filed an application u/s 18 of the Act, for enhancement, which application was referred to the Court below and was registered as L.A.R. No. 1159/1987. The learned District Judge was pleased to fix the market value at the rate of Rs. 15/- per sq. foot and, by allowing one-third deduction for development charges, the amount of market value came to be fixed at Rs. 10/-per sq. foot for the entire land admeasuring 3 H. 72 R. (4,05,408 sq. foot) and by deducting the amount already paid to the claimants, additional amount of Rs. 48,31,164/- plus 12 per cent component was also directed to be paid u/s 23(1A) of the Act from the date of publication of the notification u/s 4 i.e. 12-8-1982 to the date of possession i.e. 13th of August, 1984, The said additional amount came to Rs. 8,91,907/-. In addition, interest, as payable u/s 28, i.e. 9 per cent for the first year, from the date of possession, and, at the rate of 15 per cent thereafter, has also been directed to be paid. The entire amount has been deposited with the Bank of India by the M.S.R.T.C. as per the directions of this Court, while admitting the appeal.

4. While the reference was pending before the District Court, the M.S.R.T.C. moved an application at Exh. 10 for being impleaded as respondent No. 2 and the said application was allowed by order dt. 14-3-1988. The M.S.R.T.C. was allowed to cross examine all the witnesses produced by the claimants as well as the Land Acquisition Officer and, it appears that, it examined Vasant Purohit (D. W. 2). Thus, the M.S.R.T.C., for whom the land was acquired, was given full opportunity to adduce the evidence and to take part in the reference proceedings. In the impugned award, the M.S.R.T.C. has been shown as respondent No. 2 and in this appeal filed by the State Government, the said Corporation is also shown as respondent No. 2, pursuant to the order passed by this Court on 6th of September, 1989, though it could have been in fact added as the second appellant.

5. It has been contended before us, on behalf of the State and the acquiring body that, the compensation rate fixed by the Court below at Rs. 10 per sq. foot is not only exorbitant but, indeed, without considering the sale instances which were relied upon by the Land Acquisition Officer in his award dt. 23rd of September, 1986, as well as those additional sale instances which were brought before the Court below through the evidence of Vasant (D.W.2). The learned District Judge committed an error in relying upon the two sale instances from Survey No. 612 (Guruwar Peth). These two sale instances have been supported by bringing on record copies of the sale deeds at Exh. 20/1 and 20/2 along with the Development Plan of Ambejogai town at Exh. 20/3. It is submitted that though the subject land formed part of the municipal limits of Ambejogai town, it was not declared non-agricultural land at any time and the land owner was cultivating the same for agricultural purposes. The sale instances relied upon were in respect of the small patches of land which were located in the heart of

the town and subject land is located beyond one kilometer from the said two plots. These were not comparable sale instances and, on the other hand, the Land Acquisition Officer had considered the sale instances in respect of the land located in Survey No. 86/B and, in addition, sale instances from Survey Nos. 103, 196, 217, 204, 373 and 438 were brought before the Reference Court through the evidence of D. W. 2. All these sale instances were in respect of the big patches of land i.e. more than one acre and they pertained to the period of 1979 to 1981. The Reference Court did not consider all these sale instances may be on the ground that the parties to the sale deeds were not examined during the reference proceedings. It is also pointed out before us that the sale deed executed by the claimant himself on 11-2-1980 in respect of the land admeasuring 1 H. and 62 R. was a most comparable sale instance from Survey No. 171/1 and the said land was sold by the claimant himself at the rate of Rs. 5,000/- per acre in favour of one Shri Haribhau Kishanrao Kendre, a practising doctor at Ambejogai.

This sale instance, being most comparable one, was also not considered by the Reference Court and, therefore, the award impugned suffers from gross and manifest error, urged the learned Counsel for the M.S.R.T.C. as well as the learned A.G.P., by referring to Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., .

6. The learned Advocate for the claimants, on the other hand, submitted that the award passed by the Land Acquisition Officer itself has granted compensation at the rate of Rs. 4/- per sq. foot in respect of the adjacent patch of land admeasuring 49 R, and, therefore, the Land Acquisition Officer committed grave error in fixing the compensation payable in respect of the agricultural land at Rs. 900/- per R. and, in fact, the Land Acquisition Officer ought to have granted the same rate of Rs. 4/- sq. foot to the present claimants as well. It is further submitted by the learned Advocate for the claimants that the subject land had non-agricultural potential, all around it developments had taken place inasmuch as some Educational Institutions were located nearby and it was adjacent to the State highway. The Court below has considered all these aspects and rightly granted compensation at Rs. 10/- per sq. foot and no interference is called for in the said award, urged the claimant. Before we proceed further, we need to clarify that the award dated 23-9-1986 by the Land Acquisition Officer has not granted compensation @ Rs. 4/- per sq. foot to the owner of 49 R. and the compensation awarded is at a uniform rate.

7. In the case of the The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, , it has been held that, while determining the market value of a large area, the sale instances of small plots of land cannot be held to be comparable sale instances and, therefore, could not be relied upon. The same view has been reiterated in the case of Agricultural Produce Market Committee by its Secretary and Others Vs. Land Acquisition Officer and Asstt. Commissioner and Another, , wherein the Supreme Court observed thus :

"It is now settled legal position by a catena of decisions of this Court that the Civil Court has to sit in the armchair of a willing prudent purchaser and put a question to itself and answer whether such a willing prudent purchaser would offer to purchase in the open market at the rate the Court proposes to determine as compensation. When a total extent of 7 acres and odd is sought to be acquired, no prudent purchaser in the open market would offer to purchase the open land on square foot basis and that too on the basis of a few small transactions of small extents would always fetch higher market value and the same will never command such price in respect of large extent. This Court had always rejected such instances as being not comparable sales.

In the case of Smt. Tribeni Devi and Others Vs. Collector of Ranchi, , a three Judges Bench of the Apex Court stated thus :

"The general principles for determining a compensation have been set out in Sections 23 and 24 of the Act. The compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may not be possible to ascertain with any amount of precision, the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. The land acquired has, therefore, to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act but its potential value also must be taken into account. The sale-deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value."

8. Regarding the factors to be considered for determining market value of the land u/s 23 of the Act, it has been stated in Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others, , that the following factors are required to be considered :

- (1) the sale must be a genuine transaction,
- (2) that the sale deed must have been executed at the time proximate to the date of issue of notification u/s 4 of the Act,
- (3) that the land covered by the sale must be in the vicinity of the acquired land,
- (4) that the land covered by the sales must be similar to the acquired land, and
- (5) that the size of plot of the land covered by the sales be comparable to the land acquired.

On the point of onus to prove the market value of the subject land it has been held that it rests on the claimants, who are dissatisfied with the award passed by the Land Acquisition Officer, and claim higher compensation in reference proceedings. In this regard we may usefully refer to the case of Hookiyar Singh etc.etc. Vs. Special Land Acquisition Officer, Moradabad and another, . Following observations, in the said case, are relevant:

"It is settled law that the burden of proof of market value prevailing as on the date of publication of Section 4(1) notification is always on the claimants. Though this Court has time and again pointed out the apathy and blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of interest on the part of the Counsel for the State to cross examine the witnesses on material facts, it is the duty of the Court to carefully scrutinise the evidence and determine just and adequate compensation. If the sale deeds are found to be genuine, the market value mentioned therein must be presumed to be correct. If the genuineness is doubted, it cannot be relied upon."

"The Court must not indulge in feats of imagination but, sit in the armchair of a prudent purchaser in open market and to put a question to itself whether as a prudent purchaser it would offer the same price in the open market as is to be determined? This should be the acid test."

9. Section 51-A of the Act states that in any proceedings thereunder, a certified copy of a document registered under the Registration Act, 1908, including a copy given u/s 57 of that Act, may be accepted as evidence of the transaction recorded in such a document. The provision was incorporated under the Act by Act No. 68/1984 and, so long as the true copies of registered sale deeds are brought on record, for the purpose of comparable sale instances, such documents cannot be discarded solely on the ground that, the parties to the sale deeds were not examined before the Reference Court. Such registered documents are required to be accepted and read as evidence in the reference proceedings.

In the case of State of Haryana Vs. Ram Singh, , the provisions of Section 51-A of the Act fell for considerations and, it has been observed :

"It is not the law that the certified copy of a registered agreement for sale is inadmissible in evidence unless the parties to the document are examined to prove it. That would be contrary to what Section 77 read with Sections 74(2) and 76 of the Evidence Act, 1872, and more specifically Section 51-A of the Act provide. As far as the provisions of the Evidence Act are concerned, a certified copy of the registered sale deed is admissible in evidence and does not need to be proved by calling a witness. [See Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, "

Section 51-A of the Act is to the same effect. In the case of Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, , it was held that:

"By virtue of Section 51-A, a certified copy of a document registered under the Registration Act, 1908, including a copy u/s 57 of the Act, may be accepted as a evidence of the transaction recorded in such documents."

10. On the touchstone of the enunciations, referred to hereinabove, we are required to consider the challenge raised against the award passed by the learned District Judge. We have noted that the sale instances at Exhs. 20/1 and

20/2 were in respect of the plots admeasuring 16 ft. x 30 ft. and 40 ft. x 60 ft. respectively. P. W. 2 Ghansham Bhansali and his brother Ramnivas, P. W. 3, who were examined in support of these two sale instances, have stated unequivocally that these two plots are located in the town and the claimants land is located at a distance beyond one kilometer from the said plots of sale instances, (Exhs. 20/1 and 20/2). A certified copy of the map at Exh.20/3/D is on record and it shows that the land in Survey No. 438 as well as 373 is located towards the town area though out of the Municipal Council limits. Similarly, the land in Survey Nos. 103, 204, 196, 86 and 217 is in the vicinity of the subject land. In fact, the land in Survey No. 86 is just opposite the subject land and land in Survey No. 170 is adjacent to the subject land. The sale instances of the land in Survey No. 170 have been brought on record in addition to the sale instances of Survey No. 171/1, in respect of 4 acres of land sold by the claimant himself on 11-2-1980. The Land Acquisition Officer considered in all 14 sale instances and did not take into consideration the nine sale instances of 1979. The other four sale instances of Feb., 1980 were also available before the Land Acquisition Officer and they were all in respect of the land admeasuring more than two acres. These were the sale transactions in respect of the land from Survey Nos. 196, 204, 217, and 171/1. The value of the land varied from Rs. 64.51 to Rs. 154.63 per R. The Land Acquisition Officer discarded these sale instances on the ground that they were entered into in Feb., 1980 whereas, the notification u/s 4 of the Act was published on or about 7-7-1983 and possession was taken over on or about 13th of August, 1984. He, therefore, considered the sale instance dt. 7-3-1981 in respect of 47 R, land from Survey No. 86/B which is located exactly opposite the subject land on the other side of the highway and it was sold at the rate of Rs. 970/- per R. He, therefore, proceeded to fix the market value of the subject land at Rs. 90,000/- per H. by considering that the date of notification u/s 4 was 12-8-1982, and the land under acquisition was much more than 47 R.

11. The Reference Court did not consider the sale instances relied upon by the State as well as the M.S.R.T.C. These sale instances were discarded by the following reasons :

"..... I have perused all these sale deeds. These sale instances are of the agricultural lands and not of the land having N. A. potentiality. In my opinion, these sale instances of the agricultural lands cannot be a base to determine the market value of the acquired land having N. A. potentiality. In my opinion, these sale instances will not come to the help of the acquiring body to determine the price of the acquired land on the basis of the market value of the agricultural lands. I thus totally ignore these sale instances of the agricultural lands filed with Exh. 35/1 to 9."

However, it is apparent from the depositions of the Land Acquisition Officer, that he had considered the subject land as N, A. potential like the land in Survey No. 86. We do not agree with the above presumptions of the Court below, as they are not supported by the evidence on record.

12. We have perused the sale deeds of the sale instances at Exh. 35/1 to 9 and, as noted earlier, they are in respect of the lands in Survey Nos. 170, 103, 204, 217, 373 and 438 and admeasuring from 4 acres onwards. In addition, the sale instances relied upon by the Land Acquisition Officer in respect of the land in Survey No. 86B, which transaction was completed on 7-3-1981, in our view, was also relevant. In addition, the Reference Court as well as the Land Acquisition Officer were, perhaps, unmindful of the fact that the claimant himself had disposed of 4 acres of land, adjoining the subject land, by sale deed dt. 11-2-1980 and at a price of Rs. 5,000/- per acre. From the evidence, on record, it appears that the claimant owned total of 23 acres and 23 gunthas of land in Survey No. 171 and over a period of time, he went on disposing the land in patches and starting from the township, the subject plot was the last holding in possession of the claimant and though he had stated in his depositions that, for the last ten years prior to the date of notification issued u/s 4 of the Act, it was not being used for agricultural purposes, we have noticed that, on 1-9-1984, he had submitted an application before the Land Acquisition Officer claiming compensation for the standing crop and an amount of Rs. 6,200/- was claimed. From the enquiry made with the M.S.R.T.C. authorities, it was revealed that Kharif crops were harvested by the cultivators and, therefore, the claim for compensation was denied. Obviously, there was no loss caused to the cultivators when the possession of the subject land was taken over as the crops were harvested earlier. The application made by the claimant must clearly demonstrate that the subject land was an agricultural land and this would not be disputed by anyone. The Reference Court, was overwhelmed by the non-agricultural potentiality of the subject land. While arriving at the market value, the Court below did not consider the sale instances in Survey Nos. 171/1, 170, 86-B. 373(1) as well as 438. The State Government itself had acquired land from Survey Nos. 170, 373, 438 at earlier point of time and the compensation amount paid was at less than Rs. 900/- per R. or Rs. 90,000/- per H. When the claimant himself had sold land admeasuring 4 acres from the adjacent plot at the rate of Rs. 5,000/- per acre, just about a year before the date of notification u/s 4 issued in respect of the subject land, there was no reason to discard that sale instance. In our view, it was a comparable sale instance and it was relevant to be taken into consideration. Similarly, the sale instances in respect of the land located in Survey No. 86-B and 170 ought to have been treated as comparable sale instances and if so done, the determination of the market value as done by the Reference Court cannot meet the requirements of law.

13. The Reference Court has given much weightage to the evidence of Shri Ghodke, P. W. 4, who claims to be an expert. He admitted that, he had visited the subject land for the first time on 9-4-1988, along with the claimant, for making valuation of the said land. He stated in his depositions that the market value of the land, at the relevant time, was Rs. 20/- to Rs. 25/- per sq. foot on the basis that when he visited the subject land, the market value was at the rate of Rs. 35/- to Rs. 40/- per sq. foot. In support of these contentions nothing was

placed on record and beyond his oral contentions, there was no material for the Reference Court to presume that the said testimony could be relied upon. The Reference Court has simply considered the two sale instances at Exh. 20/1 and 2072 and proceeded to fix the market value at Rs. 15/- per sq. ft. By giving deduction at one-third, towards the development charges, the market value has been fixed at Rs. 10/- per sq. ft. When the acquired land is to the extent of 3 H. and 72 R. from the ownership of the present claimant, there was not reason to fix the price on per sq. ft. basis though it was a land located within the Municipal area. When the land was taken in possession, it was an agricultural land and it certainly had non-agricultural potential which has been duly considered by the Land Acquisition Officer and, therefore, he fixed the market value at Rs. 90,000/- per H. or Rs. 900/- per R. The Reference Court committed manifest error in fixing the market value on per square foot basis.

14. The parameters as well as the sale instances considered by the Reference Court, while determining the market value at Rs. 10/- sq. ft. are grossly erroneous and against the settled legal position, by a catena of decisions, some of which have been referred to hereinabove and, therefore the same cannot be sustained. Even in respect of the nine plots admeasuring about 4 to 5 R. each, from the remaining patch of land admeasuring 49 R. which was declared as non-agricultural, much before the notification u/s 4 was issued, the Land Acquisition Officer has granted compensation at the rate of Rs. 900/- per R. The Land Acquisition Officer took into consideration the sale instances which have the maximum sale price amongst the neighbouring land sale instances and proceeded to fix the market value on the basis of the sale instances in respect of the land in Survey No. 867B. He could have very well considered the sale instances in respect of 4 acres land in Survey No. 171/1 sold by the claimant himself in the year 1981 but he did not do so and took the benevolent view in granting higher compensation to the claimant. The Reference Court has not given proper reasons as to why the market value so fixed by the Land Acquisition Officer was not proper and required further enhancement. The reasoning given by the Reference Court, to enhance and fix the market price at Rs. 10/- per sq. ft. is contrary to the well settled legal position and the parameters set out in Section 23 of the Act. Under the circumstances, this appeal must succeed.

15. In the result, we allow the appeal and quash and set aside the impugned award in L.A.R. No. 1159/1987 passed by the learned District Judge at Beed. We hold that the market value fixed at Rs. 90,000/- per hectare by the Land Acquisition Officer was just and proper and in keeping with the parameters laid down u/s 23 of the Act. We hold that the claimant will be entitled for interest on the solatium as well as 12 per cent component u/s 34 as well as Section 28 in view of the Constitution Bench decision in *Sunder v. Union of India*, air 2001 sc 3516. The M.S.R.T.C. shall remit the said amount of interest within a period of four weeks in the Reference Court and, on application, the same shall be disbursed to the claimant. The Corporation is allowed to withdraw the amount deposited, with interest, if any, from the Bank of India at Aurangabad which

amount was deposited pursuant to the order passed by this Court on 4th of October, 1989, We have noted the undertaking furnished by Shri P. K. Joshi, on instructions, that the said amount in its entirety shall be used for augmenting the fleet and other infrastructural facilities under the Beed Division in particular and Aurangabad Region in general, by the M.S.R.T.C,