
(2016) 03 BOM CK 0215

In the Bombay High Court

Case No : First Appeal No. 581 of 2007 and Cross-Objection No. 1 of 2008

The State of Maharashtra and Others

APPELLANT

Vs

Harichand Bhasu Rathod

RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 18, Section 28, Section 4, Section 6

Citation : (2016) 03 BOM CK 0215

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : M.A. Kadu, Assistant Government Pleader, for the Appellant; M.M. Agnihotri and R.J. Shinde, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

R.K. Deshpande, J.—1. The Reference Court, acting under Section 18 of the Land Acquisition Act, 1894, has enhanced the compensation for acquisition of land, admeasuring 4 H and 31 R, out of Survey No. 103 of Village Waigaul, to Rs. 89,500/- per acre (Rs. 2,23,750/- per hectare) as against the rate of Rs. 23,000/- per hectare awarded by the Land Acquisition Officer. The compensation for 1,056 orange trees has also been granted at the rate of Rs. 700/- per tree. In addition to it, the respondent-claimant is also held entitled to other statutory benefits. While awarding the interest, it is held by the Reference Court that the balance outstanding amount shall carry interest at the rate of 9% per annum under Section 28 of the Land Acquisition Act from the date of taking possession for one year, and thereafter at the rate of 15% per annum till realization of the entire amount. This award of the Reference Court passed on 7-12-2006 is the subject-matter of challenge in this appeal by the State Government. The claimant has also filed Cross-Objection No. 1 of 2008 seeking further enhancement of compensation.

2. The undisputed factual position is as under :

The claimant is the owner of land Survey No. 103, admeasuring 4 H and 11 R, situated at Village Waigaul. The State Government took possession of this land on 15-11-1994 and thereafter on 30-4-1998, the notification under Section 4 of the Land Acquisition Act was issued to acquire the land for the purposes of Waigaul Dam. The notification under Section 6 of the said Act was issued on 10-6-1998. The claimant lodged his claim for the acquisition of land at the rate of Rs. 2,50,000/- per hectare. The Land Acquisition Officer passed an award on 16-12-2000 granting compensation at the rate of Rs. 23,000/- per hectare for the land acquired, and Rs. 66,450/- for the well.

3. The reference under Section 18 of the said Act, registered as Land Acquisition Case No. 140 of 2002, was filed by the claimant for enhancement of compensation, and the compensation for acquisition of land was enhanced to Rs. 2,23,750/- per hectare. The claim for enhancement of compensation for acquisition of land is not pressed, but the enhancement is claimed in respect of the compensation for 1,056 orange trees. The claim is for the rate of Rs. 4,000/- per orange tree. Though the Reference Court has held that the balance outstanding amount shall carry interest at the rate of 9% per annum under Section 28 of the said Act from the date of taking possession for one year and thereafter at the rate of 15% per annum till realization of the entire amount, Shri Agnihotri, the learned counsel appearing for the respondent-claimant, submits that in view of the challenge raised by the State Government to this portion in this appeal, the grant of interest can be from the date of passing of the award at the rate of 9% per annum for one year and thereafter at the rate of 15% per annum till realization of the entire amount. Hence, the controversy to that extent does not survive.

4. The point for determination is as under :

Whether the respondent-claimant has established the claim at the rate of Rs. 4,000/- per tree for 1,056 orange trees?

5. Shri Agnihotri, the learned counsel for the respondent-claimant, has relied upon the decision of the Reference Court in Land Acquisition Case No. 41 of 2004 in the case of Sanjay Balaji Regulwar v. State of Maharashtra and others, delivered on 31-3-2007, in which the compensation for 277 orange trees was granted at the rate of Rs. 4,000/- per tree. He submits that the acquisition in the said case pertains to the same notification issued under Section 4 of the Land Acquisition Act on 30-4-1998 acquiring the land for Waigaul Dam out of Survey No. 127, admeasuring 1 H and 21 R from the same Village. He further submits that in the present case, the acquisition is in respect of land Survey No. 103 pursuant to the same notification and the same award passed on 16-12-2000. He has also invited my attention to the letter dated 20-3-2015, said to have been issued by the Executive Engineer, Minor Irrigation Department, Washim, the appellant No. 3, in the name of the claimant in this case, informing that there is no appeal preferred against the decision in Land Acquisition Case No. 41 of 2004, decided on 31-3-2007, and the amount of compensation awarded by the

Reference Court has been disbursed.

6. Shri Kadu, the learned Assistant Government Pleader appearing for the appellant-State Government, submits that both these documents were not placed before the Reference Court, and hence unless instructions are taken from the concerned Department, it would not be possible for him to make any statement or accept the contention that no appeal was preferred in respect of the decision in Land Acquisition Case No. 41 of 2004. He also submits that it is the income capitalization method, which is adopted by the Reference Court, and, therefore, the claimant would not be entitled to separate compensation for the land acquired and for orange trees. He further submits that there is nothing on record to show that there existed 1,056 orange trees.

7. The Reference Court has recorded the finding of fact that there existed 1,056 orange trees on the land in question. The reliance is placed on 7/12 extract at Exhibits 34 to 39, and the document at Exhibit 63 produced on record, addressed by the Minor Irrigation Department to the Minister of the concerned Department, stating therein that at the time of acquisition of land, there were 1,056 orange trees on the land of the claimant prior to joint measurement and the trees were cut by the Irrigation Department. It, therefore, seems that there existed 1,056 orange trees at the time when the possession of the land acquired was taken on 15-11-1994 by the State Government, but subsequently those trees were cut and there is nothing brought on record to show that before cutting the trees, the counting was done. The 7/12 extract as well as the document at Exhibit 54 clearly show existence of 1,056 orange trees on the land under acquisition.

8. No doubt, that the decision of the Reference Court in Land Acquisition Case No. 41 of 2004 delivered on 31-3-2007 was not before the Reference Court. Obviously, in the present case, the reference was decided on 7-12-2006 and the decision in Land Acquisition Case No. 41 of 2004 was delivered subsequently on 31-3-2007. The certified copy of the judgment is produced before this Court for the first time, and I do not see any reason to disbelieve this document, which grants the rate of Rs. 4,000/- per orange trees. Apart from this, the claimant has entered the witness-box and examined one expert witness, viz. Sharad Umale, M.Sc. in Agriculture, the Horticulturist. He has deposed in his evidence that he had inspected all the orange trees on the land under acquisition in the year 1995, more particularly on 1-6-1995, which is the date reflected in the report filed at Exhibit 54. He has further deposed about the diameter of the stem of the tree, height of the tree, spread of the tree, condition of the tree, average life of the tree, etc. He has deposed that the average total income of a single tree during its life would be around Rs. 5,000/-.

9. In the decision of the Apex Court in the case of Mahesh Dattatray Thirthkar v. State of Maharashtra, reported in , AIR 2009 SC 2238, relied upon by Shri Agnihotri, the learned counsel appearing for the respondent-claimant, it has been held in paras 29 and 30 as under :

"29. Giving that the appellant has been able to show, by the testimony and valuation report of the expert valuer, that the award of compensation passed by the Land Acquisition Officer was inadequate, the onus now shifts on the Respondent to adduce sufficient evidence to sustain the award, as was held clearly in the case of *Special Land Acquisition Officer v. Sidappa Omanna Tumari* [, 1995 Supp (2) SCC 168]. We firmly feel that the State-Respondent has completely failed to discharge this burden. The Respondent has been unable to produce any evidence at all to support its claim of sufficiency of the award and the High Court judgment, leave alone the question of having adduced sufficient evidence."

"30. It is clear that the High Court has completely overlooked the lack of evidence in support of the contentions of the Respondent and the conclusion of the High Court is backed only by assertions rather than by acceptable reasoning based on proper appreciation of evidence. This being the case, the order of the High Court cannot be sustained, as held in the case of *Othayath Lekshmy Amma & Anr. v. Nellachinkuniyil Govindan Nair & ors.* [, {1990) 3 SCC 374]. We are thus inclined to accept the contention of the appellant that the High Court has relied merely on suggestions made by the State-Respondent in cross-examinations, when they have failed to derive any admissions on the basis of these suggestions."

In the aforesaid decision, the Apex Court has held that once the appellant is able to show by his testimony and the valuation report of the Expert Valuer that the award of compensation passed by the Land Acquisition Officer was inadequate, the onus shifts upon the respondent to adduce sufficient evidence to sustain the award. It has been held that the State Government had failed to discharge the burden, and the High Court had completely overlooked the lack of evidence in support of the contention of the respondent. In the present case, in fact, the Land Acquisition Officer has ignored to grant any compensation for the fruit-bearing orange trees. The Reference Court has recorded the existence of 1,056 orange trees and the claimant has produced the report of the Expert Valuer, who has also been examined in the present case.

10. In another decision of the Apex Court in the case of *Mahadev v. Asstt. Commissioner/Land Acquisition Officer*, reported in , (2002) 9 SCC 487, relied upon by Shri Agnihotri, the learned counsel for the respondent-claimant, it has been held in para 9 as under :

"9. Having heard the counsel for the parties and perused the records, we do not think the High Court was justified in interfering with the award of the Reference Court. The High Court ought to have been that the acquiring authority viz. the Government has accepted the award in regard to similar lands, all of which were sought to be acquired under the same notification. The High Court has not come to the conclusion that the lands of the appellant are in any way inferior to the lands of those owners in whose favour the Reference Court award has become final. In such a situation, we find it difficult to agree with the view taken by the

High Court mainly because of the fact that the acquiring authority itself has accepted the award of the Reference Court. The appeal before the High Court was not based on any question of law applicable to the peculiar facts of the appeal before it. It was also an appeal on facts on the basis of which the learned District Judge confirmed the award. If the very same evidence was acceptable to the acquiring authority in regard to six other owners, we fail to understand why it should not be acceptable to the acquiring authority in regard to the appeal before us. At the cost of repetition, it may be stated that it is not the case of the acquiring authority tht the land of the appellant is, in any way, inferior to the other lands acquired under the same notification."

11. In view of the fact that there is already a view taken by the Reference Court in another case arising out of the same notification, same project and same award, granting compensation at the rate of Rs. 4,000/- per orange tree, which has been accepted by the State Government, there is no reason to take a different view of the matter, particularly when it is not the case of the State Government that the land acquired along with the trees are in any manner different than those covered by Land Acquisition Case No. 41 of 2004.

12. In view of above, the appeal as well as cross-objection are partly allowed, and the following order is passed :

(1) The compensation awarded by the Reference Court at the rate of Rs. 89,500/- per acre for acquisition of 4 H and 31 R of land out of Survey No. 103 of Village Waigaul, is maintained.

(2) The claimant is held entitled to the compensation at the rate of Rs. 4,000/- per tree for 1,056 orange trees.

(3) If the claimant has already received the amount of compensation, then on the balance outstanding, the claimant shall be entitled to interest at the rate of 9% per annum under Section 28 of the Land Acquisition Act from the date of passing of the award, i.e. from 1-12-2000, for a period of one year, and thereafter at the rate of 15% per annum till its realization.

(4) The other statutory entitlements, as are granted by the Reference Court, shall remain intact.

13. It is informed that the appellant-State Government has deposited the entire amount in the Reference Court. The claimant shall be permitted to withdraw the entire amount along with interest, if any accrued thereon, and the surety furnished for withdrawal of the amount, shall stand discharged.

14. The appeal as well as cross-objection stand disposed of. No order as to costs.