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(2015) 09 BOM CK 0252

In the Bombay High Court

Case No : First Appeal No. 13 of 2006, Cross-Objection Stamp No. 22285 of 2007, First Appeal No. 14 of 2006, Cross-Objection Stamp No. 22289 of 2007, First Appeal No. 15 of 2006 and Cross-Objection Stamp No. 22293 of 2007

The State of Maharashtra APPELLANT

Vs

Ashwin Hariram Ruparel and Others RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 23, 23(1-A), 23(2), 28
Maharashtra Regional and Town Planning Act, 1966 — Section 113

Citation : (2015) 09 BOM CK 0252

Hon'ble Judges : Abhay Shreeniwas Oka and V.L. Achliya, JJ.

Bench : Division Bench

Advocate : A.R. Patil, AGP, for the Appellant; Shriram S. Kulkarni, for the Respondent

Final Decision : Disposed Off

Judgement

Abhay Shreeniwas Oka, J.—By these three Appeals, an exception has been taken by the State of Maharashtra to the common Judgment dated 5th April 2005 passed by the learned Civil Judge, Senior Division, Panvel in Land Acquisition Reference Nos. 16 of 2004, 17 of 2004 and 18 of 2004.

2. Notification under Section 4 of the Land Acquisition Act,1894 (for short ''the said Act'') was published in the Government Gazette dated 3rd February 2000. An Award was made by the Special Land Acquisition Officer Raigad (2) At Alibag on 1st December 2000 under Section 11 of the said Act. The market value at the rate of Rs. 2,500/- per Hectare was offered by the Special Land Acquisition Officer for Warkas Land and for Pot Kharaba land, the market value offered is Rs. 1,500/- per Hectare.

3. The acquired lands are situated at village Adai, Taluka Panvel, District Raigad. Admittedly, the said lands do not form a part of New Bombay (Navi Mumbai).

The area of the lands subject matter of the L.A.R. No.16 of 2004 and L.A.R. No.17 of 2004 is 2,800 sq. meters and 26,600 sq. meters respectively and the area of the land subject matter of L.A.R. No. 18 of 2004 is 77,300 sq. meters. The purpose of acquisition is for carrying on operation of Mumbai-Pune Express Way. The Reference Court by the impugned Judgment and Award fixed the market value at the rate of Rs. 275/- per sq. meter. In addition, the statutory benefits under Sections 23(1-A) , 23(2) and 28 of the said Act were granted. There are Cross-Objections filed seeking enhancement in the market value.

4. The learned AGP has taken us through the record of the cases and depositions. He pointed out that the finding of the learned Trial Judge that the market value of the acquired land was Rs. 275/- per sq. meter was not based on any legal evidence. He invited our attention to the Paragraph No. 18 of the Judgment and pointed out that no reasons have been assigned by the learned Judge of the Reference Court for coming to the said conclusion. Inviting our attention to the evidence adduced by the Claimants, he urged that the sale deeds at Exhibits-26 to 30 are in respect of the layout plots in the sanctioned layout. He pointed out that the plots subject matter of the sale deeds at Exhibits-26 to 30 were already converted for non-agricultural use. He urged that by five different sale deeds, a total area of 1950 sq. meters was sold and the size of the plots subject matter of the sale deeds is very small as compared to the area of the acquired land. His submission is that therefore, by no stretch of imagination, the sale deeds at Exhibits-26 to 30 are in respect of the comparable lands. He pointed out that the other evidence in the form of lease deeds at Exhibits 36 and 37 is in respect of the developed plots in New Panvel. He pointed out that the said plots have been developed by the City Industrial and Development Corporation of Maharashtra Limited (CIDCO). The plots are developed for commercial and residential use. Apart from the fact that the area of the plots subject matter of the sale instances at Exhibits 36 and 37 is outside the limits of the village in which the acquired lands are situated, the plots subject matter of the lease deeds are situated in a developed town of New Panvel. His submission is that thus, none of the sale instances can be said to be the sale instances of comparable lands. He urged that even the evidence of experts has no evidentiary value at all.

5. The learned counsel appearing for the Claimants invited our attention to a copy of the development plan of Navi Mumbai published by the CIDCO which is annexed to the affidavit dated 3rd August 2015 filed in the Civil Application No. 298 of 2012 in Cross-Objection Stamp No. 22295 of 2007. He pointed out that though the Village Adai may be technically outside the limits of Navi Mumbai, as shown in the Plan, it is very close not only to the towns of New Panvel and Panvel but the industrial areas of Asudgaon, Ambetkhar, Roadpali, etc. He invited our attention to the Plan annexed to the said affidavit. He invited our attention to the evidence on record for the purposes of showing that the industrial estates at Panvel, Taloja and Jawhar were very close to the acquired lands. He invited our attention to the evidence of the witness Shri Rajesh Prajapati, who was examined

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to prove the instances of lease at Exhibits 36 and 37. He pointed out that the rate of the lease premium reflected from the documents at Exhibits- 36 and 37 is Rs. 10,010/- and Rs. 7,320/- per sq. meter respectively. He pointed out that the relevant date in the present case is 21st February 2000 and one sale instance of the lease at Panvel is of the year 2000. He submitted that the sale instances at Exhibits-36 to 40 though pertain to the lands in the same village, the same are of the year 1995. He urged that as the sale instances of the lands in the same village in the close proximity of the relevant date are not available, the Court can always rely upon the sale instances of the lands in the adjoining area of new Panvel. He submitted that even assuming that some deduction is required to be made as the plots subject matter of Exhibits 36 and 37 were developed plots, even after making deductions, the market value of the acquired lands cannot be less than Rs. 5,000/- per sq. meter. He also pointed out that considering the location of the acquired lands, the same had potential for non-agricultural use. He submitted that the acquisition is for the purpose of mining activities. He submitted that considering the object for which the lands were acquired and considering the fact that the mining was permissible on the acquired lands, the market value of the acquired lands will be fairly high. He, therefore, submitted that the Appeal preferred by the State be dismissed and the Cross Objections be allowed.

6. We have given careful consideration to the submissions. We have noted that the area of the acquired lands subject matter of the three Appeals is 2,800/- sq. meters, 26,600/- sq. meters and 77,300/- sq meters respectively. As stated earlier, the lands are situated in the village Adai, Taluka Panvel, District Raigad.

7. The Claimants are relying upon the sale instances in the form of documents of lease at Exhibits 36 and 37. The Claimants examined Shri Rajesh Prajapati for the purpose of proving the said two documents. We have perused his evidence. We have also perused the said two documents at Exhibits-36 and 37. Exhibit 36 is a Deed of Confirmation of the Agreement to Lease dated 12th January 2000 executed by the CIDCO in favour of M/s. Prajapati Construction Limited. It is an agreement to create a lease in respect of the Plot No. 7 admeasuring 2032.08 sq. meters at New Panvel. The lease was executed for constructing a building or buildings for residential-cum-commercial use. The second document at Exhibit-37 is the document of Deed of Confirmation of the Agreement to Lease dated 4th March 1998 in respect of the Plot Nos. 22 and 23 totally admeasuring 1992.04 sq. meters. Again, the lease is for the purpose of constructing a building for residential-cum-commercial use.

8. The witness Shri Rajesh Rohitashva Prajapati in the cross-examination admitted that when the plots were taken by his Company, the facilities of electricity supply, water supply as well as road were available to the said plots. He stated that the said plots have been taken by him for residential as well as commercial use. Moreover, the said plots are situated in new Panvel which is a town developed by the CIDCO which was appointed as the Special Town Planning

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under Section 113 of the Maharashtra Regional and Town Planning Act, 1966 for the development of a satellite City of Navi Mumbai. In the present case, we are dealing with the acquired lands at Village Adai. Though the Village Adai is very close to New Panvel, it is not a part of Navi Mumbai as indicated by the development plan produced by the Claimants by way of additional evidence. Thus, the instances at Exhibits 36 and 37 are in respect of the developed plots of lands in the newly set up town of New Panvel to which all the amenities were available such as electricity supply, water supply and road. Moreover, the area of the plots subject matter of documents at Exhibits 36 and 37 is much smaller than the area of the acquired lands. Apart from this, there are sale instances of the lands in the village Adai available which are produced and proved by the Claimants themselves. Apart from the fact that the plots subject matter of documents at Exhibits-36 and 37 are not at all comparable with the acquired lands, pre-notification sale instances of the lands in the very village Adai are available for determination of the market value. It is true that the sale instances of the lands in the very village are pre-notification sales. If the lands subject matter of the said sale instances are otherwise comparable with the acquired lands, the same can be always taken into consideration for determination of the market value. Therefore, we are of the view that the sale instances at Exhibits-36 and 37 will have to be kept out of consideration.

9. Now we turn to the evidence of Shri Vilas Sadanand Karekar, who was examined to prove the sale instances at Exhibits-26 to 30. He deposed that he purchased the lands bearing Survey No. 96/3 of Village Adai, totally admeasuring 1950 sq. meters by separate sale deeds at Exhibits 26 to 30. He stated that he purchased the said lands from one Shri Janardan Shelke in the year 1995 at the rate of Rs. 500/- to Rs. 600/- per sq. meter. He admitted that the lands subject matter of the said sale deeds were already converted for non-agricultural use before the date on which he purchased the said lands. He stated that the lands subject matter of sale deeds at Exhibits 26 to 30 are at a distance about 400 meters from the acquired lands. Though the witness claimed that after developing the said plots and making construction thereon, he sold the same at the rate of Rs. 5,000/- per sq. meter, no documents in support of the said statement have been placed on record.

10. We have perused the sale deeds at Exhibits-36 to 40. The sale deeds are in respect of various sub-plots forming a part of the non-agricultural land bearing Gat No. 96/3 totally admeasuring 1950 sq. meters. The sale deeds are in respect of the smaller plots of land having an area of 310 sq. meters or 385 sq. meters. The recitals in the sale deeds at Exhibits-36 to 40 show that the same relate to different sub-plots in a developed layout. The 7/12 extracts annexed to the sale deeds show that the plots subject matter of the sale deeds at Exhibits-36 to 40 were already converted for a non-agricultural use as there is a specific entry in the 7/12 extracts that the lands are non-agricultural lands. Moreover, in the sale deeds, there is a specific reference to the final sanction granted by the Sub-Divisional Officer, Panvel for non-agricultural use. On 13th August 1991, there

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was a proposal made for converting the large tracts of lands into a non-agricultural use. The plans of the plots subject matter of the sale deeds are also annexed to the sale deeds which show that the plots subject matter of the said sale deeds are compact plots of land forming part of the said layout. The sale deeds at Exhibit-36 to 40 have been executed in April/May 1995. It is not the case of the State Government as reflected from the cross-examination of the witnesses of the Claimants made by the learned AGP or from the award under Section 11 of the said Act that there were sale instances in relation to the lands in the said Village Adai in the close proximity of the relevant date or after the date of Exhibits-36 to 40 and before the relevant date.

11. As there are no other sale instances of the lands in the village in the close proximity of the relevant date, the sale deeds at Exhibits-36 to 40 in respect of the lands from the same village-Adai, though the same are pre-notification sales, can be the basis for arriving at the market value of the acquired lands on the relevant date.

12. On the aforesaid aspect, a useful reference can be made to the well-known decision of the Apex Court in the case of The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, . In the said decision, the Apex Court held that in the absence of any other sale instances, pre-notification sale instances can be taken into consideration and market value of the acquired lands can be arrived at by providing appropriate escalation. The Apex Court also considered the mode and method of calculating the escalation. A useful reference can be made to Paragraph 14 of the said decision which read thus:-

"14. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same".

(Underline supplied)

13. The Apex Court laid down the rule of thumb which refers to the general trend in the Nineties. The Apex Court held that for semi-urban area or the urban areas, increase in the market value can be taken at 10% to 15% per annum and in the case of rural area, the same can be taken at 5% to 7.5% per annum. It will be also necessary to make a reference to Paragraphs 15, 16, 17 and 18 of the said

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decision which read thus:-

"15. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisition), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on-sale transactions/acquisitions precedes the subject acquisition by only a few years, that is upto four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the ''rate'' of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

16. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995-96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/ amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/ industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more.

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The percentage of standard increase becomes unreliable. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may.

17. In this case, the acquisition was in a rural area. There was no evidence of any out-of-ordinary developments or increases in prices in the area. We are of the view that providing an escalation of 7.5% per annum over the 1987 price under Ex.15, would be sufficient and appropriate to arrive at the market value of acquired lands.

Whether the increase should be at a cumulative rate or a flat rate?

18. The increase in market value is calculated with reference to the market value during the immediate preceding year. When market value is sought to be ascertained with reference to a transaction which took place some years before the acquisition, the method adopted is to calculate the year to year increase. As the percentage of increase is always with reference to the previous year''s market value, the appropriate method is to calculate the increase cumulatively and not applying a flat rate. The difference between the two methods is shown by the following illustration (with reference to a 10% increase over a basic price of Rs. 10/- per square metre):

(Underlines supplied)

14. The Apex Court specifically held that while calculating the escalation for arriving at the market value of the acquired lands, the increase in the market value has to be taken cumulatively and not by applying a flat rate.

15. After considering the escalation as laid down by the Apex Court, the question will be of determining the market value of the acquired lands after considering all the relevant negative and positive factors.

16. It is true that the Village Adai may be technically outside the limits of Navi Mumbai, but it is abutting the boundary of the Navi Mumbai. As seen from the development plan of Navi Mumbai prepared by the CIDCO, the Village Adai is close to the towns of New Panvel and Panvel as well as some of the Industrial Areas in Navi Mumbai. Therefore, by no stretch of imagination, as of 3rd February 2000, the area in which the acquired land was situated can be termed as "rural". There was overall growth within the limits of the Navi Mumbai right from 1970 onwards. By making the categorization of the area as "Semi Urban", the escalation will have to be taken at the rate of 10% in light of the law laid down by the Apex Court in the case of ONGC Limited.

17. Now the next issue will be of the consideration of positive and negative factors. A submission was attempted to be canvassed by inviting the attention of the Court to the award under Section 11 of the said Act by the learned counsel appearing for the Claimants that thought the area shown of the acquired lands may be very large, it consists of different Survey numbers and Hissa numbers,

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and therefore, it cannot be said that the different Survey numbers and Hissa numbers forming part of the acquired lands are contiguous. We find that no such case is made out in the evidence. On the contrary, the parties seem to have proceeded on the footing that the entire area subject matter of acquisition is contiguous. As stated earlier, the sale instances at Exhibits-36 to 40 was in respect of the small plots having an area ranging from 310 to 385 sq. meters. As stated earlier, the area of the acquired lands was 2,800, 26,600 and 77,300 sq. meters respectively. Thus, a very large area as compared to the sale instance plots is a negative factor as far as the acquired lands are concerned. The sale instance plots were well developed. The sale instance plots are the sub-plots in a sanctioned layout which were already converted for non-agricultural use way back in the year 1991. The sale instance plots were developed plots. These are the two positive factors in favour of the sale instance plots. On the other hand, from the evidence of Shri Ashwin Ruparel, who was examined on behalf of all the Claimants, it appears to be an admitted position that the acquire lands were not converted for non-agricultural use before the relevant date. He stated that the acquired lands are having non-agricultural potentiality for use for commercial purposes. It is stated that the acquired lands are at the distance of 500 sq. meters away from the Village Adai. He stated that the facility of water supply is available in the Village Adai. He merely stated that the facilities of water supply and electricity supply could have been made available to the acquired lands which shows that the said facilities were not available to the acquired lands on the relevant date. This is one more negative factor in respect of the acquired lands. As far as the sale instance plots are concerned, the witness Shri Vilas Sadanand Karekar admitted that the sale instance plots have the facility of approach road. He stated that he obtained facilities of electricity supply and water supply after purchasing the said plots.

18. The question is that after arriving at the market value of the acquired lands by granting necessary escalation, what should be the extent of deduction. Considering the positive and negative factors discussed above and considering the respective areas of the acquired lands, in our view, the appropriate deductions should be 60%.

19. It is well settled that the matter of determination of the market value under Section 23 of the said Act always involves an element of guess work, but the said guess work is required to be made on the basis of the established well known and established tests.

20. As per our request, the learned counsel appearing for the Claimants has made calculations taking into consideration the escalation of 10% per annum on cumulative basis for a period of five years. The lands subject matter of the sale instances at Exhibits 36 to 40 reflect the market value between Rs. 500 to Rs. 600 per sq. meters. Looking to the positive and negative factors and the location of the Village Adai which is in close proximity of the New Panvel, the market value of the acquired lands as of April/May 1995 can be taken at Rs. 600/- per

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sq. meter. By granting escalation of 10% at compound rate for a period of five years, the market value of the acquired lands comes to Rs. 966.20 per sq. meter. The same will have to be taken as the market value of February 2000 of the lands subject matter of the sale instances at Exhibits-36 to 40. By making a deduction of 60%, the market value of the acquired lands comes approximately to Rs. 387/- per sq. meters. Therefore, the market value of the acquired lands will have to be fixed at Rs. 387/- per sq. meters.

21. Now coming to the impugned Judgment and award, we find that the market value of the acquired lands at the rate of Rs. 275/- per sq. meter arrived at by the Reference Court is without recording any reasons and without relying upon any sale instances. In view of the findings recorded by this Court, the market value will have to be fixed at Rs. 387/- per sq. meter.

22. In the circumstances, the Appeals preferred by the State must fail and the Cross Objections filed by the Claimants will have to be partly allowed.

23. There is no dispute about the entitlement of the Claimants to grant the statutory benefits under Sections 23(1-A) , 23(2) and 28 of the said Act.

24. Hence, the Appeals and the Cross-objections are disposed of by passing the following order:

ORDER :

(a) The impugned Judgments and Awards are modified and it is held that the market value of the acquired lands is Rs. 387/- per sq. meter. Accordingly, the Claimants are entitled to total market value of Rs. 387/- per sq. meter inclusive of the amount offered under the Award under Section 11 of the Land Acquisition Act, 1894;

(b) In addition to the market value, the Claimants shall be entitled to the statutory benefits under Sections 23(1-A) , 23(2) and 28 of the said Act;

(c) The Claimants will be entitled to proportionate costs of the Reference as well as the Cross-objections;

(d) Accordingly, the First Appeal Nos. 13 of 2004, 14 of 2004 and 15 of 2004 are hereby dismissed with no orders as to costs;

(e) The Cross-objection Stamp Nos. 22285 of 2007, 22289 of 2007 and 22293 of 2007 are partly allowed on above terms;

(f) The modified award shall become operative only if deficit Court fees on Cross-objections are paid within ten weeks from today;

(g) Exercise of computing the total compensation payable as per the modified Awards shall be completed by the learned Judge of the Reference Court within a period of three months from the date on which the writ of this judgment and order is received by the Reference Court with the record and proceedings;

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(h) Before making final determination, the learned Judge of the Reference Court shall give an opportunity of being heard to both the parties;

(i) Additional compensation shall be deposited by the State Government within a period of three months from the date on which the exact compensation amount will be determined by the Reference Court;

(j) Writ and the record and proceedings of the Trial Court shall be sent to the Trial Court expeditiously.

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