

(2009) 05 BOM CK 0022
In the Bombay High Court
Case No : First Appeal No. 72 of 2008

The State of Maharashtra

APPELLANT

Vs

Bhimashankar Sidramappa Chippa, Partner of Umashankar Industries

RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Constitution of India, 1950 — Article 300A

Land Acquisition Act, 1894 — Section 18, 30, 9

Maharashtra Regional and Town Planning Act, 1966 — Section 124(4), 126(4), 37

Citation : (2009) 4 BomCR 1 : (2009) 111 BOMLR 2008

Hon'ble Judges : D.G. Karnik, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : G.P. Mulekar, AGP in F.A. No.72 of 2008 and Nitin Jamdar, in Appeal No. 238 of 1999, for the Appellant; Girish Godbole, for the Respondent

Judgement

D.G. Karnik, J.—These two appeals are directed against the judgement and award dated 31st March 1986 passed by the learned Civil Judge, Sr.Division, Solapur in Land Acquisition Reference No. 52 of 1988 made u/s 18 of the Land Acquisition Act. First Appeal No. 72 of 1998 is filed by the State of Maharashtra while First Appeal No. 233 of 1999 is filed by Solapur Municipal Corporation which is the acquiring body. The cross objections Stamp No. 16262 of 1998 have been filed by the land owner Bhimashankar Sidramappa Chippa, Partner of M/s.Umashankar Industries (for short "the claimant").

2. The land bearing City Survey No. 10388. Final Plot No. 34A/52 under the Town Planning Scheme No. 1, Solapur admeasuring 5587.31 sq.m (hereinafter referred to as "the suit land") was acquired by the Government of Maharashtra at the instance of Solapur Municipal Corporation for the purpose of establishment of a market. Prior to the year 1979, the suit land was reserved as a playground under reservation No. 342, under the development plan for the city of Solapur. By a resolution No. 148 dated 29th September 1979, the Solapur Municipal Corporation resolved that the reservation No. 347 which was for market should

be cancelled and the reservation suit land (reservation No. 342) should be modified from playground to market. Proposal for the modification was sent to and approved by Government u/s 37 of the Maharashtra Regional Town Planning Act (for short "the Town Planning Act") Accordingly, the suit land was reserved for "market" since the year 1979-80. On 14th February 1984 the Standing Committee, Solapur Municipal Corporation passed a resolution proposing to acquire the suit land for the "market." Accordingly, the proceedings for acquisition of the suit land were initiated under the Town Planning Act and a notification u/s 126(4) of the Town Planning Act was published in the Maharashtra Government Gazette on 28th November, 1985. Notice u/s 9 of the Land Acquisition Act was issued on 2nd December 1985/3rd March 1986 and an award was published by the Land Acquisition Officer on 31st March 1986 awarding compensation of Re.1/- to the claimant.

3. Aggrieved by the award, the claimant made an application for reference u/s 18 of the Land Acquisition Act and the matter was referred to the Court for determination. By the judgement and order dated 13th February 1995, the Civil Judge, Sr.Division, Solapur (for short "the Reference Court) allowed the reference and awarded compensation of Rs. 5,80,244/- plus interest to the claimant.

4. Aggrieved by the decision of the reference court, the State as well as the Solapur Municipal Corporation have filed two appeals as mentioned earlier. The claimant has also filed cross objections for enhancement of the compensation.

5. The property bearing Final Plot No. 34 admeasuring about 50,000 sq.meters of which the suit land forms a part was purchased by the claimant prior to the year 1969. He prepared a lay out which was sanctioned by the authorities on 10th March 1969. The land was divided into about 51 plots and an open space of 5587.31 sq.meters as required by the Rules. The said open space is the suit land. Different plots in the lay out were sold by the claimant and the purchasers started using them by raising constructions. When a development plan for the area was prepared under the Town Planning Act the suit land, which was an open space in the lay out, was reserved as a playground in the development plan. However, as stated earlier the Government of Maharashtra vide its order dated 28th August 1983 allowed the minor modification of the Development Plan and the reservation of the suit land was changed from playground to market in the year 1979-80. suit land was subsequently acquired by the Solapur Municipal Corporation for the purpose of establishing of a market as a part of implementation of the development plan.

6. Land Acquisition Officer in his award noted that the suit land was reserved as an open space in the lay out sanctioned by the planning authority and referred to condition No. 4 mentioned in the letter of the planning authority dated 10th March sanctioning in the layout, which reads thus:

The roads and open spaces shown in the lay out plan shall first be got

constructed on site and handed over to Solapur Municipal Corporation for maintenance etc. prior to disposal of the plots

The Land Acquisition Officer held that it was the obligation of the claimant to hand over not only the roads but also the suit land which was the open space under the layout to the Solapur Municipal Corporation. He held that since as per the condition imposed by the planning authority while sanctioning the layout the claimant was required to hand over the suit land to the Solapur Municipal Corporation, he was entitled to only a nominal compensation for handing over of the suit land. That compensation was held to be Re.1/- for the entire suit land and accordingly the land Acquisition Officer passed the award granting compensation of Re.1/- to the claimant. The Reference Court however held that the claimant was entitled to the market value of the suit land as compensation and accordingly modified the award.

7. Mr. Jamdar, learned Advocate appearing for the Solapur Municipal Corporation and Mrs.Mulekar, learned AGP appearing for the State of Maharashtra supported the aforesaid reasoning spelt out in the award of the Land Acquisition Officer. They submitted that as per the conditions of the sanction of the lay out the claimant was required to hand over the suit land which was an open space under the layout, to the Solapur Municipal Corporation. Open spaces in a layout are meant for public use and therefore they are required to be handed over to the Municipal Corporation, which is the planning authority for public use. The learned reference court, according to the counsel, erred in awarding market value as the compensation. In the alternative, Mrs.Mulekar and Mr. Jamdar submitted that while considering the market value of the land the Reference Court ought to have taken into consideration the fact that the suit land was kept as an open space in the lay out and therefore, no building construction was permissible thereon. As such, no prudent and willing purchaser would offer to buy the suit land at a price higher than a nominal price. The reference court therefore erred in fixing the market value of the suit land on the basis of comparative sales. They further submitted that the sale covered by the sale deed at Ex.48 referred to by the reference court could not be regarded as comparative sale because that was a free land and not the sale of a land which was saddled with a condition that it was to be kept as an open space and was unbuildable.

8. Per Contra, Mr. Godbole, learned Counsel for the claimant submitted that the claimant was entitled to compensation equivalent to market value of the suit land. He further submitted that the condition in the lay out that the claimant was required to hand over the suit land i.e. the open space in the layout to the municipal corporation could not be construed to mean that claimant was required to transfer the ownership of the suit land to the municipal corporation without payment of market value as compensation. Planning Authority had no authority of law to impose such a condition and the municipal corporation was not entitled to compel the land owner to surrender the open space as that would amount to compulsory acquisition of land without payment of compensation and without

any authority of law and would be hit by Article 300A of the Constitution of India. In support, he referred to and relied upon a decision of this Court in Vrajlal Jinabhai Patel, since deceased through his L.Rs. Smt. Jagrati Vrajlal Patel and Another Vs. State of Maharashtra and Others, rendered by us sitting in a Division Bench at Aurangabad. Referring to the cross objections, he submitted that the reference court erred in deducting 50% from the market value as determined from the comparative sale. He submitted out that the suit land was completely developed. In fact, it was part of the lay out which was prepared and approved in the year 1969 and by the time of the acquisition in the year 1986 the entire locality was completely developed and the most, if not all, of the plots were built upon. All internal roads were made, pipeline was laid and the locality was fully developed.

9. The contention of the appellant that claimant is not entitled to more than a nominal compensation of Re.1/- is based upon condition No. 4 contained in the letter No. S.T.P/I/BP/2681 dated 22nd December 1970 of the Assistant Director of Town Planning, Solapur, recommending sanction of the N.A. permission and lay out of final plot No. 34-A. The condition reads as under:

The roads and open spaces shown on lay out plan shall first be got constructed on site and handed over to the Solapur Municipal Corporation for maintenance etc. prior to the disposal of the plots

10. Counsel for the appellants submitted that the claimant was required to surrender not only the roads but also the open space provided in the layout to the Solapur Municipal Corporation. Thus, the roads as well as the open space were to vest in the Solapur Municipal Corporation. The claimant had surrendered the roads to the Solapur Municipal Corporation as per the condition No. 4 but had not surrendered the open space for reasons best known to him. The claimant cannot take advantage of his own wrong (breach of condition No. 4) and the fact that the claimant had not surrendered the open space, i.e. the suit land to the Solapur Municipal Corporation did not confer any right on the claimant to claim compensation for the suit land. In our view, the argument has no merit. No Act, Rule of law or a decision of any court was cited before us to show that while sanctioning a lay out, the planning authority can impose a condition that any land or part of the land including an open space would have to be surrendered by the owner to the planning authority or the municipal corporation free of cost. No existing law empowers the planning authority or the Chief Executive Officer of any municipality or a municipal corporation to impose a condition that an open land in a layout required to be kept as such for the benefit of the plot holders in the layout or the general public would vest in the planning authority or the municipality or the municipal corporation free of cost. It is true that the Town Planning Act or Rules framed there under or any Act governing municipalities or municipal corporations generally confer a power on the planning authority/ municipality to sanction a lay out subject to such conditions as it thinks fit. However, the power to impose conditions while sanctioning a layout is to be

utilised for the furtherance of the respective Acts. It may be permissible for a planning authority/municipality while sanctioning a layout to impose a condition that a provision must be made for the roads and open spaces which act as lungs for the area. The open spaces may be required to be kept for the beneficial use for the plot holders who purchase/hold plots in the lay out or for the general public if so authorised by the Rules. But in the absence of any specific power in the Act so to do, a condition cannot be imposed that an open space in the lay out shall be transferred by the owner to the planning authority/ municipality free of cost. No Act or Rule was cited before us which authorises transfer ownership in such open space by the owner to the municipality. In the absence of any such power or authority in law an order requiring the owner to transfer the ownership of any land or open space to the planning authority/municipality would be void and hit by Article 300A of the Constitution of India.

11. We reiterate what we have held in *Vrajlal Patel Vs.State of Maharashtra* (Supra) that an open space under a lay out does not get vested in the municipality free of cost merely because of a condition imposed in the order sanctioning the lay out to transfer the open space in the layout to the municipality.

12. In *Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi*, , the Supreme Court was required to consider whether space reserved in a layout plan for public purpose such as park, school etc. would vest in the municipal corporation free of cost. The Supreme Court held that in the absence of any provision in the relevant Act providing for vesting of any land reserved for an open space or park in the municipal corporation the land would not so vest. However, at the same time the Court held that the landowner shall hold it for the benefit of the Society and an obligation in the nature of trust would be created. In para(6) of the decision the Supreme Court observed:

Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan.

13. Thus though the owner of the land who gets the layout sanctioned continues to be the owner of the land, he would have to hold the land in trust for the plot holders to whom he has sold the plots in the layout. If the land is compulsorily acquired he would be entitled to the market value as compensation but he would hold it in trust for all the plot holders in the layout for whose the benefit the open space was held. However, that is not the issue in the present case. Any plot

holder has not come forward to claim a share in the compensation nor has any plot holder made an application u/s 30 of the Land Acquisition Act for apportionment of the compensation. The plot holders may exercise the right and avail the remedy, if any, available to them against the respondent claimant for a share in the compensation in accordance with law. Subject to decision of such claim, if any, made by plot holders in accordance with law, the claimant would be entitled to receive the compensation equivalent to the market value at the first instance.

14. As regards the amount of compensation, the learned Reference Court has held that the compensation would be equivalent to the market value of the suit land as on the date of publication in the official gazette of the declaration u/s 126(4) of the Town Planning Act. The view taken by the Reference Court is in consonance with the provisions of Sub-section (4) of Section 124 of the Town Planning Act and we confirm the same. The relevant date for determination of the market value of the suit land would therefore be 28th November 1985, when the declaration u/s 126(4) of the Town Planning Act was published in the Maharashtra Government Gazette.

15. For the purpose for determining the market value, the claimant examined on oath himself and one Dilip Motilal Shah, a consulting Engineer, as a valuer. The claimant produced on record a copy of the sanctioned layout plan. He also produced on record (Exhibit-48) a registered sale deed dated 16th April 1985 in respect of a neighbouring plot. There is no dispute between the parties that the sale deed (Exhibit-48) is in respect of a neighbouring plot in the same locality. By the sale deed (Exhibit 48) the claimant who himself was the vendor sold the neighbouring plot admeasuring 167.2 sq.m. to Solapur Urban Industrial Co-operative Bank Ltd. for Rs. 36,000/-. There is no dispute between the parties that this was a bonafide sale and represents the market value of the plots in the locality. Learned Counsel for the claimant submitted that the Reference Court has wrongly taken the area of the plot covered by the sale deed at Exhibit 48 to be 2500 sq.feet and invited our attention to the description of the property given in paragraph No. 1 of the sale deed which clearly shows that the area of the plot sold was only 167.2 sq.m. The rate computed by the Reference Court is therefore erroneous and the correct rate would have to be calculated on the basis of price of Rs. 36,000/- for 167.2. sq.m. so calculated the market rate works out to Rs. 215.31 per sq.meter which is rounded off Rs. 215/- per sq.meter.

16. Counsel for the appellants however submitted that since the plot covered by the sale deed Exhibit-48 was a small fully developed plot the rate at which it was sold cannot be applied for determining the market value of the suit land which was a large plot of land admeasuring 5587.31 sq.m. They further submitted that the deduction of 50% from the rate at which the plot covered by Exhibit-48 was sold, made by the Reference Court was proper. Counsel for the respondent however submitted that though the suit land was a large piece it was a fully developed plot. It was initially an open space in the layout and entire land in the

lay out was fully developed. The suit plot was at the centre of the layout and was surrounded on all four sides by internal roads which were laid and constructed before the acquisition. He therefore submitted that the Reference Court erred in deducting 50% from the value for the purpose of development.

17. In awarding compensation for the acquired land the Court has to determine the market value of the acquired land as on the date of the relevant notification. In determining the market value, it is useful to consider the value paid for similar land at the material time under a genuine transaction. The market value envisages the price which a willing purchaser may pay for a bonafide transfer to a willing seller. The land value can differ depending upon the extent and nature of the land sold. A fully developed small plot in an important locality may fetch higher value than a larger area in an undeveloped condition and situated in a remote locality. It is for this reason that transaction in regard to a smaller property is not taken as the real basis for fixing the market value of a large property. Generally some deduction is made taking into consideration the expenses required for development of the larger tract to make smaller plots within the area in order to compare its price with the smaller plots. This principle has been stated in several decisions of the Supreme Court including *Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another*, .

18. The proposition that a large area of land cannot possibly fetch a price at the same rate at which small plots are sold, however, is not an absolute proposition and in given circumstances it would be permissible to take into account without deduction, the price fetched by the small plot of land while determining price of a larger piece of land. If the larger tract of land because of its advantageous position is capable of being used for the purpose for which small plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction from the value for purpose of comparison is not warranted. This is so held by the Supreme Court in *Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality*, . In our view, depending upon the nature and extent of the development existing at the place, need for carrying out any further development, the situation and locality of the acquired land and the expenses that may be required for putting it to a beneficial use, the Court would deduct a certain sum of money when the acquired land is a large tract of land. The extent of deduction however would be variable and would depend on the facts and circumstances of each case. For example, in *Smt. Tribeni Devi and Others Vs. Collector of Ranchi*, and in *Smt. Kaushalya Devi Bogra v. The Land Acquisition Officer, Aurangabad* AIR 1984 SC 392 the Court held 1/3rd deduction to be reasonable. In *Vijay Kumar Moti Lal Vs. State of Maharashtra*, only 1/3rd amount was deducted towards development charges. In *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, the deduction of 1/3rd granted by the High Court was not disturbed by the Supreme Court. In *The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty*, the deduction

of 25% was held to be reasonable. In Special Land Acquisition Officer, Vishakapatnam v. Rednam Dharma Rao's and Ors. Civil Application No. 1487/82 dated 17.7.1990 a deduction of 1/5th from the market value towards development charges was allowed. Though a copy of the judgement in that case was not produced for our perusal, that case has been referred to in Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, .

19. Turning to the fact of the case, the claimant in his deposition has stated that the suit land was fully developed. He purchased the land bearing Final Plot No. 34A of which the suit property is a part, prepared its layout and developed the entire land. Electric poles, spreading of the pipe line and construction of the roads had been completed before the acquisition. A perusal of the layout plan shows that the suit land is at the centre of the layout of Final Plot No. 34A. There are internal roads of 30 feet on the three sides viz. northern, eastern and southern side abutting the suit land. Road of 40 feet abuts the western side. Thus, the suit land is surrounded on all four sides by roads. The layout contains 51 plots and all plots have been sold long ago and most of the plot holders have constructed buildings. Therefore, hardly any development would be required for the purpose of putting the suit land to the use. In the circumstances, we are of the considered view that the deduction of 50% made by Reference Court is on the higher side. Minimal development was necessary and a deduction of 1/5th would be reasonable and appropriate. Accordingly, market price of the land would have to be reduced from Rs. 215/- sq.m. to Rs. 172/- per sq.m.

20. It is true that initially the land was reserved as an open plot and the claimant could never use it for carrying out any building construction. However, that was the position when the layout was sanctioned in or about the year 1969. In the development plan applicable for the area, the suit land was reserved as a playground under reservation site No. 342. By a resolution dated 20th September 1979, the municipal corporation proposed to cancel the said reservation and reserved the land for market. That modification was approved by the government on 28th August 1983. Thus, with effect from the sanction of the modification of the development plan on 28th August 1983, the suit land was reserved for market. This shows that the land which was once non buildable became buildable with effect from 1983. The building or buildings to be constructed were to be of market i.e. commercial buildings. The land was buildable on the relevant date when the notification for its acquisition was issued.

21. In our opinion, the Land Acquisition Officer clearly erred in holding that the land stood vested and/or was to be vested and transferred to the municipal corporation without payment of price. The Reference Court has rightly held that the owner had to be paid market value as a compensation. However, in our view, the market value by the Reference Court was inadequate. The Reference Court wrongly deducted 50% for development expenses from the value fixed on the basis of comparable sale. For these reasons, the Cross objections would have to be allowed and appeals would have to be dismissed.

22. The appeals filed by the State of Maharashtra and Solapur Municipal Corporation being Appeal No. 72 of 1998 and First Appeal No. 233 of 1999 are dismissed. Cross objections bearing Stamp No. 16262 of 1998 filed by the respondent are allowed in part and market value of the land is determined at Rs. 172/- per sq.m. The claimant would also be entitled to other statutory benefits. The payment to be made to the claimant shall however be subject to the observations made in this order and in particular para No. 13 thereof.

23. Office shall draw a fresh decree in light of this judgement.