

(2011) 03 BOM CK 0253
In the Bombay High Court
Case No : First Appeal No. 442 of 1994

The State of Maharashtra

APPELLANT

Vs

Parubai Vithal Gawade

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 3, 4

Citation : (2011) 3 ALLMR 47 : (2011) 113 BOMLR 1106

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : S.D. Shelke, Asstt. Govt. Pleader, for the Appellant; B.H. Jadhav, for the Respondent

Final Decision : Dismissed

Judgement

Shrihari P. Davare, J.—Heard Smt. S.D. Shelke, learned Asstt. Government Pleader for the Appellant-State. None for the Respondents.

2. The present appeals are directed against the judgment and award dated 26.8.1987 rendered by learned Additional District Judge, Beed, in Land Acquisition Reference No. 8 of 1985, along with a group of connected L.A. Rs. bearing Nos. 35, 17,12,9, 38,18,27, 37, 28, 39, 24 26, 40, 42 of 1985, 459 of 1986 and 36 of 1985, u/s 18 of the Land Acquisition Act (hereinafter referred to as the "said Act").

3. The lands under the aforesaid L.A. Rs. belonging to village Nimgaon-Bodkha, were acquired by the Government for construction of Sina irrigation project. Notification u/s 4 of the said Act, was published on 13.4.1978. The Special Land Acquisition Officer ("SLAO" for brevity's sake), Beed, was appointed u/s 3 of the said Act, who fixed compensation payable to the claimants for their lands acquired for the said project, under the common Award bearing No. 78/LNQ/CR/49, dated 5.3.1982. While passing the said award, the SLAO classified the lands in different groups on the basis of their revenue assessment. He also

considered the sale instances. Accordingly, after considering the material before him, and also considering the nature of the lands i.e. dry lands and crops grown therein, such as, jawar, Bajara, Mug, Paddy, safflower, cotton etc., as also the fact that the lands were situated on bank river, fertility and potentiality thereof, the SLAO made the valuation which can be described with reference to the rate of assessment and the price fixed is given in a tabulated form which is reproduced below.

Ratio of land revenue Group Price fixed Per Are. 0.00 to 1.25 ps. I Rs. 30/- Rs.1.26 to 2.50 ps. II Rs. 35/- Rs.2.51 to 3.75 ps. III Rs. 40/- S. No. 22, since it has high assessment. -- Rs.45/ 4. However, being aggrieved and dissatisfied with the compensation awarded by the SLAO, the claimants preferred petitions for additional compensation, before the Collector, Beed who referred the said petitions to the District Court, Beed, u/s 18 of the said Act. In turn, the District Court, transferred the said petitions to the learned Additional District Judge, Beed, to decide the same in accordance with the law. Accordingly, evidence was adduced in L.A.R. No. 8 of 1985 and pursis was passed to the effect that the said evidence be treated and read as evidence in other Land Acquisition References, and as such, LAR No. 8 of 1985 was treated as the main petition/reference.

5. The particulars of the lands acquired with reference to their survey numbers, area acquired, group and the rate at which the SLAO had fixed their price, can usefully be described in a tabular form as below.

LAR Survey Area Group Price Per First Appeal No. No. No. acquired Are(Rs. PS)
8/85 1 7-70+PK II 35=00 442/94 0.28

12/2 0.16 III 40=00 12/5 1.11 III 40=00 7/85 15/6 0.39 II 35=00 15/7 0.63 II 35=00 9/85 9/3 0.30 II 35=00 429/94 9/5 0.24 II 35=00 9/8 0.51 II 35=00 27/6 0.10 II 35=00 10/13 0.27 III 40=00 10/10 0.09 III 40=00 10/85 9/2 0.26 II 35=00 9/7 0.46 II 35=00 9/12 0.04 II 35=00 27/7 0.10 II 35=00 10/05 0.05 III 40=00 10/09 0.10 III 40=00 10/14 0.26 III 40=00 10/15 0.28 III 40=00 11/85 77/1 1.62 I 30=00 -0.04Pk =1.58 36/4 0.52 II 35=00 38/8 0.46 II 35=00 12/85 74/1 2.47 I 30=00 428/94 75/1 2.65 II 35=00 0.02 PK 13/85 17/1 0.56 II 35=00 17/2 0.42 II 35=00 17/3 0.49 II 35=00 17/4 0.81 II 35=00 17/5 0.69 II 35=00 17/6 0.74 II 35=00 14/85 40/10 0.19 III 40=00 0.01 Pk 41/6 0.06 III 40=00 42/4 1.10 III 40=00 42/12 0.11 III 40=00 43/10 0.06 III 40=00 73/4 1.63 II 35=00 76/2 3.88 II 35=00 0.04 Pk 39/3 0.11 II 35=00 38/5 1.60 II 35=00 15/85 74/3 0.91 I 30=00 16/85 78/1 1.41 II 35=00 17/85 85 7.03 I 30=00 427/94 0.36 Pk =7.39 3.52 19/2 1.01 II 35=00 18 0.36 II 35=00 14 0.32 II 35=00 18/85 84 11.57 I 30=00 431/94 2 =5.78.50 85 7.3 I 30=00 4 =1-75.75 =7.54 14 0.16 II 35=00 18 0.19 II 35=00 19/1 0.13 II 35=00 19/2 0.51 II 35=00 19/85 9/11 0.98 II 35=00 9/12 0.16 II 35=00 27/8 0.58 II 35=00 10/2 0.75 III 40=00 10/5 0.20 III 40=00 10/6 0.26 III 40=00 10/7 1.22 III 40=00 10/15 0.07 III 40=00 20/85 9/5 0.42 II 35=00 9/9 1.67 II 35=00 27/3 0.21 II

35=00 +0.01pk 27/4 0.22 II 35=00 10/3 0.81 III 40=00 10/5 0-82 III
 40=00 21/85 23/1 0.40 II 35=00 23/3 1.82 II 35=00 22/85 70/3 2.10 II 35=00
 23/85 9/5C 0.91 II 35=00 9/5U 1.06 II 35=00 9/10 0.98 II 35=00 27/1 0.20
 II 35=00 27/2 0.23 II 35=00 + 0.01 pk 27/16 0.06 II 35=00 27/17 0.03 I
 35=00 10/1 0.77 III 40=00 10/5 0.20 III 40=00 10/5B 0.21 III 40=00 10/6B
 0.33 III 40=00 24/85 29 5.68 =0.2PK = 72 3.48 II 35=00 437/94 0.7PK
 25/85 9/4 0.60 II 35=00 9/5A 0.12 II 35=00 9/6 0.78 II 35=00 9/12 0.06 II
 35=00 10/5 0.10 III 40=00 10/15 0.04 III 40=00 26/85 21 5.11 II 35=00
 438/94 31 5.38 II 35=00 27/85 15/4 0.20 II 35=00 432/94 15/5 0.16 II
 35=00 21 5.25 II 35=00 28/85 15/8 0.54 II 35=00 434/94 71 4.29 II 35=00
 0.11PK 29/85 15/1 0.40 II 35=00 15/2 0.10 II 35=00 15/8 0.54 II 35=00 71
 4.29 II 35=00 +0.11pk 60/1 0.40 II 35=00 +0.5PK 30/85 77/4 2.44 I 30=00
 +0.7PK 36/1 0-17 II 35=00 +0.1pk

36/3 0-17 II 35=00 +0.1pK 36/3 0.82 II 35=00 31/85 84 5.79 II 30=00
 +0.4PK 85 1.49 I 30=00 +0.18pk

14 0.16 II 35=00 18 0.19 II 35=00 19/1 0.13 II 35=00 19/2 0.51 II 35=00
 32/85 65 1.77+0.13 II 35=00 pk 33/85 16 1.69 II 35=00 30 1.51 II 40=00
 34/85 15/88 0.54 II 35=00 71 4.28 II 35=00 +0.12pk 35/85 30 1.25 III
 40=00 426/94 80/5 1.03 I 30=00 36/85 16 1.69 II 35=00 445/94 30 1.51 III
 40=00 37/85 2/8 2.01 I 30=00 433/94 2/9 0.02 I 30=00 5/5 0.57 II 35=00 28
 2.92 II 35=00 13 3.38 II 35=00 11/1 1.19 III 40=00 38/85 2/3 0.60 I 30=00
 430/94 +0.3pk

2/4 0.02 I 30=00 2/7 0-64 I 30=00 76/3 1.56 II 35=00 +0.2pk

12/4 0.95 II 35=00 39/85 2/5 0.51 I 30=00 436/94 2/6 0.06 I 30=00 11/2
 0.32 II 35=00 76/4 2.02 II 35=00 +0.2pk 12/1 0.87 II 35=00 40/85 72 3.47
 II 35=00 440/94 +0.7PK 41/85 2/1 0.36 I 30=00 2/2 0.01 I 30=00 11/2 0-28
 II 35=00 12/3 0.40 II 35=00 42/85 78/5 0.57 II 35=00 441/94 78/11 0.53 II
 35=00 Half Share i.e.0.55 55/85 77/2 0.48 I 30=00 77/5 1.78 I 30=00 34/2
 0.95 I 30=00 36/6 0.84 II 35=00 36/9 0.85 II 35=00 369/86 11/2/3 0.65 III
 40=00 63 2.10 II 35=00 5/1 0.05 II 35=00 5/2 0.33 II 35=00 5/3 0.33 II
 35=00 5/4 0.41 II 35=00 370/86 78/14 0.75 II 35=00 375/86 22 0.30 IV
 45=00 23 1.58 II 35=00 376/86 35 1.00 II 30=00 +0.2PK 40/2 0.13 III
 40=00 377/86 72 1.06 II 35=00 414/86 28 2-91 II 35=00 +0.1Pk 415/86 9/1
 0.92 II 35=00 60 0.67 II 35=00 +0.5pk 416/86 30 0-76 III 40=00 (2Anna)
 80/4 0.56 I 30=00 459/86 22 0.50 IV 45=00 444/94 23 1-68 II 35=00 6.

Considering the rival pleadings, and also considering the evidence adduced and
 produced by the parties before the Reference Court, as well as considering the
 sale instances, fertility, potentiality, location of the lands and the assessment
 thereof, the Reference Court decided the market price of lands under above
 referred group Nos. I to IV, as follows.

Group No. Market Price Per Are. I Rs. 150/- II Rs. 225/- III Rs. 250/- IV. Rs.
 250/ 07. Feeling aggrieved and dissatisfied with the compensation awarded by

the Reference Court, as being excessive and exorbitant, the State (original Respondent) has preferred the present group of Appeals, assailing the judgment and award dated 26.8.1987, passed by the learned Additional District Judge, Beed, in above group of Land Acquisition References.

8. Learned A.G.P. Smt. Shelke for the Appellants, canvassed that the lands under the respective land references were acquired from village Nimgaon Taluka Asthi, District Beed, for the purpose of construction of Sina Irrigation Project and the SLAO classified the said lands in four groups and awarded proper compensation to the said lands, treating the said lands as dry lands as per the respective group, considering the quality, fertility and potentiality of the said lands. However, according to the learned A.G.P., the learned reference court awarded excessive and exorbitant compensation to the said lands. It is submitted by the learned A.G.P. that there is absolutely no cogent evidence on record to show that the lands acquired were bagayat lands and still the reference court treated them as bagayat lands.

9. The learned A.G.P. also invited my attention to the date of notification u/s 4 of the said Act, which is 13.4.1978, and pointed out the sale instance considered by the reference court, which is dated 25.9.1978 i.e. sale deed (Exh.24) i.e. after substantial period five months later than notification, and submitted that such post notification sale instance for computation of the compensation awarded to the claimants, is not appropriate and reasonable. It is also submitted that the reasoning given by the learned reference court for accepting the post notification sale instance, is not convincing and acceptable. In the said context, it is further submitted by the learned A.G.P. that the sale deed (Exh.24) pertains to the land from village Dongargaon, and not from the same village i.e. Nimgaon, and submitted that Dongargaon is two kilometers away from the acquired lands, which fact was admitted by the claimants" witness.

10. The comparative table of the amount of compensation awarded by the S.L.A.O. and the reference court, groupwise of the respective lands, is given below.

Sr.	Group of	Amount of compensation awarded by the S.L.A.O.	Amount of compensation awarded by Reference Court	No. the land
01.	I	Rs. 30 Per Are	Rs. 150 Per Are	
02.	II	Rs. 35 Per Are	Rs. 225 Per Are	
03.	III	Rs. 40 Per Are	Rs. 250 Per Are	
04.	IV	Rs. 45 Per Are	Rs. 250 Per Are	

11. Accordingly, learned A.G.P. submitted that it is evident from the aforesaid compensation awarded by the S.L.A.O. and reference court to the claimants-Respondents herein, that the compensation awarded by the reference court is excessive and exorbitant, as the same is 5 to 6 times more than the compensation awarded by the S.L.A.O. without having any legal and sound basis and foundation therefor and hence, urged that the present appeals deserve to be allowed, by quashing and setting aside the impugned judgment and award dated 26.8.1987.

12. As regards classification of the lands in Groups I to IV, the land assessment is

fixed after taking into consideration various aspects, such as, quality of soil, the condition of the land, topography and location of the lands. There is no dispute that applying modern methods of cultivation and by constructing bunds etc., the lands can be improved, but still the basic difference between the lands having fertile soil and the lands having ordinary or poor soil, cannot be ignored. If soil is very fertile in case of irrigated land, then there is possibility of more income, whereas in case the land is not so fertile, then even with the irrigation facility, such land would not give much income and at least to obtain more income, fertilizers and manures would be required to be used which would increase the cost of cultivation, if the soil is not fertile. Hence, it is apparent that all the lands cannot be treated alike and difference will have to be maintained on the basis of fertility of the lands. Hence, being other things equal, the land revenue assessment is the only criteria on the basis of which superiority or otherwise of the land can be judged. Therefore, classification done by the S.L.A.O. on the basis of land revenue assessment appears to be just and proper, as held by the learned Reference Court.

13. Keeping in mind the said aspect, and coming to the notification u/s 4 of the said Act in the present case, which is dated 13.4.1978 which is the material date for determination of the market value of the lands under acquisition, it is settled principle that the market value of the land can be determined on the basis of following parameters.

(i) Price paid for the same land or portion of it in recent years, after making all necessary allowances for lapse of time, advantage of situation and other possible differences between lands sold and the lands to be acquired.

(ii) Price paid for similar lands in the vicinity in recent years after making all proper allowances for lapse of time, advantage of situation etc. and

(iii) Net annual income from the land, which may be capitalised at a certain number of years, number of years dependent upon the nature of property, the state of money market and other circumstances of the case.

14. In the instant case, learned reference court opted to fix up the market value of the lands under the second parameter referred to hereinabove i.e. price paid for similar lands in the vicinity. Accordingly, reference court considered the sale deed dated 25.9.1978 (Exhibit 24) which is in respect of two pieces of lands situated at village Dongargaon, and the area sold thereunder was about 48 R. out of Survey Nos. 161/E/5/AA and 161/F/5/B. The rate of assessment of the lands sold is Rs. 1.50 per acre and the land has been sold for Rs. 25,000/- which comes to Rs. 520.83 as price Per Are and the said lands belonged to group II as aforesaid, considering its rate of assessment. There is no dispute that the said sale instance is about five months later than the date of notification u/s 4 of the said Act and the reference court was aware of the said fact, while taking it as basis and foundation for computation of compensation awarded to the Respondents-claimants, and even assuming that during this period of five

months, prices of the lands had increased, still the claim made by the claimants-Respondents herein would be just and proper.

15. Moreover, while considering the said sale instance dated 25.9.1978 (Exh.24) which was five months later than Section 4 Notification which was dated 13.4.1978, learned reference court considered the evidence on record and observed that during the cross examination of the claimants, a suggestion was given that since the famine of 1972, there was no water to the wells of the claimants, but the same was denied by the claimants, and also considering the argument that land under sale instance had better facilities than the acquired land, since it was irrigated by well water, the learned trial court concluded that roughly, it can be said that the land under sale instance and the acquired lands were having similar facilities or advantages. Moreover, learned trial court also considered the other aspect that the acquired lands were situated on the bank of river Sina and, therefore, on the contrary the said acquired lands were superior to the land under the sale instance, and consequently, relied upon the sale instance which would be useful for deciding the market value of the acquired lands, and the reasoning adopted by the reference court for the said conclusion, cannot be faulted with.

16. Further, in the said context, the learned reference court observed that the claimants-Respondents herein claimed Rs. 10,000/= per acre for Bagayat lands and Rs. 600 per acre for jirayat lands, which means the claimants have claimed price at Rs. 250/= per Are for bagayat land, and Rs. 150 per Are for jirayat land and, therefore, assuming that the prices of lands had increased during the aforesaid period of five months from issuance of Section 4 notification dated 13.4.1978 to date of sale instance which is 25.9.1978, still the claim of the Respondents-claimants appears to be just and proper, and further observed that, in fact, considering the sale instance, the claimants could have claimed higher rate for acquired lands, and consequently, fixed the market value of the acquired lands with reference to the groups of the said lands, as mentioned herein below .

Group Market Price (Per Are) I Rs. 150.00 II Rs. 225.00 III Rs. 250.00 IV Rs. 250.00 17. Accordingly, compensation of market value of the lands belonging to above respective groups, considering the aforesaid aspects which are considered by the reference court, and also considering the aspect of restriction of claim by the claimants, appears to be just and proper and there is no substance in the argument canvassed by the learned A.G.P. that the reference court awarded excessive and exorbitant compensation to the claimants-Respondents herein, and hence, no interference therein, is called for.

18. As regards the argument of the learned A.G.P. that the acquired lands and the land under sale instance, are not of the same quality and are having no similar potentiality and further that the claimants have not examined any expert witness in that respect, since the S.L.A.O., as well as reference court made the land revenue assessment as the basis for classification of the lands, on which superiority or otherwise of the land can be arrived at while awarding

compensation, there is no substance in the aforesaid argument advanced by the learned A.G.P. in that respect, since the land assessment has been fixed long back after taking into consideration various aspects, such as, fertility, superiority and quality of the soil, condition of the land and the situation and topography of the land, more so when other things are equal.

19. Accordingly, after assessing and analyzing the evidence on record and considering the submissions advanced by the learned A.G.P. for the Appellant, and more particularly considering the impugned judgment and the award, and having comprehensive view of the matter, it is apparent that the reasoning given by the learned reference court for awarding compensation to the Respondents-claimants at the rate fixed by it, cannot be faulted with and the same does not appear to be perverse, or contrary to the record. Moreover, after considering and appreciating the evidence on record, the view adopted by the reference court appears to be a probable view and, therefore, no interference therein is called for, in the appellate jurisdiction and accordingly, present appeals lack merits and deserve to be dismissed.

20. In the result, present appeals, which are sans merits, stand dismissed.

21. Record and Proceedings be sent back to the concerned court.