

(2007) 06 BOM CK 0144

In the Bombay High Court

Case No : First Appeal No's. 219, 220, 568 and 569 of 1989

The State of Maharashtra

APPELLANT

Vs

Sat Dev Prakash
 Sat Dev Prakash Vs The Special Land
Acquisition Officer

RESPONDENT

Date of Decision : 21-06-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(1), 23(1A), 23(2), 28

Citation : AIR 2007 Bom 179 : (2007) 5 ALLMR 272 : (2007) 5 MhLj 570

Hon'ble Judges : Swatanter Kumar, C.J;S.R. Sathe, J

Bench : Division Bench

Advocate : None, for the Appellant; K.K. Tated, AGP in First Appeal Nos. 219 and 220 of 1989 and K.K. Tated, AGP in First Appeal Nos. 568 and 569 of 1989, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, C.J.—The appropriate Government issued a Notification u/s 4 of the Land Acquisition Act, hereinafter referred to as "the Act" on 3rd February, 1970 intending to acquire land admeasuring about 54,650 square meters, being Plot Nos. 6 and 7 situated at village Ambetarkhar, Taluka Panvel, District Raigad. The Special Land Acquisition Officer, vide his Award dated 21st December 1984, awarded Rs. 10 per square meter as compensation payable to the claimants. Dissatisfied by the said Award, the claimants preferred References u/s 18 of the Act claiming higher compensation. The learned District Judge, Raigad, Alibag in Land Reference No. 172 of 1986 enhanced the compensation payable to the claimants to Rs. 90 per square meter and also granted other statutory benefits permissible under law. The claimants, still dissatisfied by the judgment of the trial Court dated 11th October 1988, filed First Appeal (Land Acquisition) No. 568 of 1989 for further enhancement of the awarded compensation. However, the State also felt aggrieved by the same judgment dated 11th October 1988 and thus filed two First Appeals, being First Appeal Nos. 219 of 1989 and 220 of 1989 praying that the amount awarded under the impugned judgment is contrary to

the settled principles of law and thus is liable to be set aside and the Award of the Collector needs to be restored. This is how all these appeals were heard together and are now being disposed of by this common judgment.

2. These appeals came up before the court for hearing on various occasions, but when they came up for hearing before this Bench on 30th April 2007 the court passed the following order:

These appeals have been on regular Board of this Court for sometime. When these appeals were taken up for hearing on 26th April 2007, the learned Counsel appeared on behalf of the appellant State as well as Mr. C.D. Patel, on behalf of M/s Kanga and Co., for respondents in all appeals and at their request the appeals were adjourned for 27th April 2007, on which date, again could not be taken up and the same were adjourned for 30th April 2007. The Court had passed an order on that day that the matters be passed over to another Bench and that is how the matters came up for hearing before this Bench. Even on previous dates, it was made clear to the learned Counsel appearing for the parties that since the appeals relate to the year 1989, no adjournment shall be granted to any party and the appeals will be heard on merit. Despite the fact that we had passed over the appeals, nobody appeared today on behalf of the respondents and thus we heard the appeals *ex parte*. We have heard the learned Counsel for the appellants at some length and matters are closed for orders.

3. Being left with no option, we have heard the appeals of the State *ex parte* and as nobody appeared on behalf of the appellants in the appeals filed by the claimants, rather than dismissing them for default simpliciter, we would proceed to deal with them, as all these appeals arise from one and the same judgment. It may be necessary to refer to the facts before recording our findings on the contentions raised before us. Though the notification for acquisition of the land in question was issued u/s 4 of the Act on 3rd February 1970, the claimants had approached the Supreme Court by way of writ petition, being Civil Writ Petition No. 656 of 1985 and in that petition the Supreme Court had directed that for all intent and purposes the compensation payable to the claimants would be as on 1st July 1977 and not 3rd February 1970. It was particularly for the purpose that the compensation of the land had not been taken in furtherance to the notification issued u/s 4 of the Act till 1st July 1977. It also appears from the record that the Special Land Acquisition Officer had commenced the proceedings for acquisition of the land and had fixed the market value at the rate of Rs. 4.80 per square meter as on 3rd February 1970, when certain objections were raised by the claimants in respect of the award, which led to the prolonged proceedings between the parties and the matter thereafter got resolved by the order of the Supreme Court as aforesaid. In the petition before the Supreme Court the claimants revised their claim at Exhibit 25 and claimed compensation at the rate of Rs. 200 per square meter along with statutory benefits, as contemplated under Sections 23(1) and 28 of the Act. It was the case of the Government before the Court that in reply to the notice u/s 9(3) and (4) of the Act, the

claimants claimed compensation at the rate of Rs. 25 per square meter and even after giving appropriate increase from the year 1977, the claimants would not be entitled to the amount of compensation as claimed by them. To Exhibit 25 of the claimants, additional written statement by way of Exhibit 26 was filed on behalf of the State taking various pleas as to how the compensation should not be enhanced. The trial court vide Exhibit 13 framed the following issues:

- 1) Whether the Claimant proves that the amount of compensation granted by the Opponent is inadequate, improper and not as per sales instances in view of the situation, location of the acquired lands?
- 2) Is the claimant entitled to get enhanced compensation? If yes, what quantum?
- 3) What order or award?

The trial court answered first two issues in the affirmative and has also enhanced compensation. Oral and documentary evidence was produced by the parties in support of their respective contentions. According to the claimants, the compensation was required to be enhanced as the area was a developed area and the acquired land was adjoining road as well as Konkan Railway was constructing tracks, which would pass quite close to the said land. It was also their case that two industrial estates at Taloja MIDC and Jawahar were also being permitted and Panvel was fast developing into an industrial town. Keeping these facts in mind and the fact that the land was quite close to Bombay-Pune Road, claimant Satya Dev Parkash had agreed to purchase the land in question for the price of Rs. 4,500 per acre in 1964. They had taken N.A. permission which was granted by order dated 17th March 1966 Exhibit 66 and all other amenities and facility like electric poles, water and road were available. The main plank of the claim for enhancement by the claimants was the sale instance by which CIDCO had sold a plot of land to Food Corporation of India (FCI) at the rate of Rs. 50 per square meter in the year 1976 and taking 60% over and above the price of the land in the case of the leasehold rights, the land of the claimants deserves to be paid compensation at the rate of Rs. 200 per square meter. Reliance was also placed on behalf of the claimants before the trial court in L.A.R. No. 270 of 1986 wherein the compensation was granted at the rate of Rs. 22 per square meter as on 3rd February 1970, thus claiming enhancement even at the fixed rate, according to the claimants, the compensation claimed by them would be just and fair. These are also primarily the grounds raised by the claimants even in the grounds of appeals before us.

5. The main contentions raised on behalf of the State in their respective appeals are that (1) the trial court has erred in law in computing and granting interest at the rate of 12% p.a. on compound basis for a period covered under the said provision. The interest payable has to be for the fixed period at simple rate of interest of 12%., (2) the findings in the impugned judgment are otherwise based on no evidence. If at all the compensation had to be awarded on the basis of and with reference to the plot of land in terms of the sale instance by CIDCO to FCI,

the court should have essentially deducted the development charges and (3) that the compensation awarded at the face of the judgment is excessive and unreasonable. In the face of the fact that the land in question was purchased by the claimants in the year 1966 at the rate of Rs. 1.11 per square meter would in no way justify the grant of Rs. 90 per square meter with statutory benefits as in the year 1970/1977. The provisions of Section 23(1A) of the Act read as under:

23. Matters to be considered in determining compensation:

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration:

...

(1A) In addition to the market value of the land, as above provided, the court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4, Sub-section (1), in respect of such land to the date of award of the Collector or the date of taking possession of the land, whichever is earlier.

Bare reading of the above provision clearly shows that the legislative intent is that the claimants would be entitled to the amount in addition to the market value of the land at the rate of 12% per annum on such market value commencing on and from the date of publication of the notification u/s 4 till the date of the award or date of taking possession, whichever is earlier, but the period of stay or injunction has to be excluded. The rate at which this additional amount is to be paid is fixed i.e. 12% per annum. The period is also clear beyond ambiguity. There is no scope under this provision to direct payment of interest computed on compounding basis. The amount to be calculated is for the period as specified in the provision and to be given at the rate computed on the basis of per annum, without adding such amount to the principal amount payable and then paid. In other words, there is no reason for the court to allow compounding of interest in terms of Section 23(1A). The provision of this section is clear and does not admit any ambiguity so as to justify grant of compounding rate of additional compensation on the market value payable to the claimants. Once the market value payable to the claimants is determined in accordance with law, then the question with regard to the payment of additional amount in terms of this provision would arise. Defining of the period in question puts the matter beyond controversy, that interest at 12% per annum has to be paid for that period and obviously this 12% cannot by implication be raised to the figure of 12% added to the market value for the year and then on that amount only 12% per annum would have to be computed. Such an interpretation would be contrary to the plain language of this section and thus would not be permissible.

7. The entire basis for awarding compensation to the claimants at the rate of Rs. 90 per square meter as reflected in the impugned judgment under appeal is the sale instance of the plot sold by CIDCO to FCI at the rate of Rs. 50 per square

meter in the year 1976. Thereafter in paragraph 107 of the impugned judgment the trial court has referred to the evidence of one Keskar and while enhancing the compensation from Rs. 50 to Rs. 90 in the year 1977 recorded as under:

There is another cheek so far as the fixation of price pine is concerned for the acquired land and it appears from the evidence on the record that the CIDCO had sold plot to FCI in the year 1976 at the rate of Rs. 50 per sq meter. If on this basis the price for the freehold land is to be worked out, then it would be 45% per annum more as admitted by Mr. Keskar i.e. equal to Rs. 90 per sq meter or as admitted by Mr. Tamhankar double than Rs. 50 i.e. Rs. 100 per sq meter. This rate will be before the year 1976 and adding again some margin for one year 1977, it would be beyond that. Therefore, fixation of price line should be somewhere between Rs. 90 and Rs. 100 per sq meter taking into consideration the expenses incurred by the CIDCO. But it appears from the record that the plot that was leased out to FCI by CIDCO was leased without making any such improvements and the developments were carried out by the FCI itself.

8. Having recorded the above finding, the trial court has then proceeded on the basis that admittedly there are no transactions near about the acquiring land between the period 1970-1977, except the sale by CIDCO. Another incident which was referred was in the case of Hendre, whose land came to be acquired by notification issued in the year 1981 and the SLAO himself has granted the market value of the land at the rate of Rs. 50 per square meter. However, this transaction was not considered relevant as it was subsequent to the date of notification in the present case. Giving increase of nearly 45% for one year the trial court granted Rs. 90 per square meter as compensation in addition to the statutory benefits.

9. As regards the compensation awarded on account of barbed wire fencing, the court had found that the claim of the claimants at Rs. 50 per sq meter to be exaggerated and awarded 40% on that count, which has not been questioned before us in the present appeals by the State.

10. The trial court has fallen in error in recording the statement of Keskar, who was examined as P.W. 2 and who had admitted that there was increase of 45% p.a. The statement of this witness does not reflect any averment of that nature. It is probably the trial court intended to refer to the statement of the valuer examined as P.W. 2 by the claimants, in whose report some reference in this regard has been made. Be that as it may, the plot sold by CIDCO would obviously be a developed plot and not of an agricultural land or even non-agricultural land. It has certainly come on record that FCI had spent certain amount in making its own roads etc., but that would not by itself lead to result that the plot was undeveloped and was like barren land. It is a matter of common knowledge that sale of plots by such developing agencies is normally of developed plots. In the statement of Keskar, P.W. 2 on behalf of CIDCO no suggestion was made to the said witness that the plot was not developed and did not had the basic amenities. If this was a developed plot then certain amount of

deduction was certainly called for. It is a settled principle of law that wherever comparable instances are that of developed plots and the land acquired is an agricultural and/or even land which has the developed potential, there should be some deduction in the rate of compensation to the claimants. The above principle clearly shows that the deduction in the amount payable can be in fact from 20% to 50%. Applying this principle to the amount of sale consideration payable in relation to the plot sold by CIDCO at Rs. 50 per sq meter, 20% thereof comes approximately to Rs. 40/- per square meter. The claimants thus further would be entitled to certain amount for the intervening period, the cut off date being 1st July 1977. While CIDCO sold the plot in the year 1976, the compensation payable would be approximately Rs. 60/- per square meter. Even if the claimants were to be granted gradual and greater increase in the value over a period, still on any principle, compensation at the rate of Rs. 90 per square meter can hardly be justified. See *Kasturi and Others Vs. State of Haryana*, and *Chimanlal Hargovindas v. State of Poona and Anr.* (1988) 2 SCC 751.

11. At this stage, a reference can appropriately be made to a judgment of the Supreme Court in the case of *Priya Vart and another Vs. Union of India*, , where the court dealing with the proviso to Section 28 and provisions of Section 23(2) of the Act clearly stated that the interest referred to at the rate of 6% p.a. would be simple and not compound interest. The Court therein held as under:

It is next contended that unamended Section 28 prescribes interest only at 6 per cent and the court is entitled to award compound interest in view of the long delay in disposal of the matter. We find no force in this contention as well. When the statute prescribed interest " 6% per annum, it necessarily means only simple interest and not compound interest and pendency of proceedings is no ground to award compound interest. When the Act prescribes payment of interest at a particular rate, it needs to be awarded at the rate prescribed and in no other way.

12. The principle stated by the Supreme Court (*supra*) is clearly applicable to the facts of the present case as well. In those provisions also different purposes have been mentioned, for which interest is to be computed at the rate of 6% p.a. or 15% p.a. as the case may be. In the face of the dictum of the Supreme Court, in fact no further discussion is called for on this issue and we have no hesitation in accepting the contention of the appellants in this regard.

13. It is settled law that the future potential of the acquired land cannot per-se be equated to a developed land and thus being granted similar compensation. In the case of *The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others*, and *V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer and Mandal R. Officer*, , the criteria and principle in relation to fixation of compensation payable in acquisition cases was discussed in some elaboration by the court. There is no rule of thumb that awarding percentage increases annually is absolute or universally accepted principle in relation to computation of compensation payable to the claimants. In the present case, direct evidence is available and claimants had heavily relied

upon the sale of plot by CIDCO to FCI in the year 1976. The said piece of evidence would be relevant and comparable for determining the compensation payable to the claimants for acquisition of their land on the deemed date of 1977.

The price of the plot was at the rate of Rs. 50 per square meter, which was a developed plot, and therefore certain amount of deduction would have to be made for the developments carried out by the authorities. We will proceed on the basis that it was not a fully developed area and FCI had to incur certain expenditure to lay its own roads etc, but still for other developments which had been carried out by CIDCO, certain amount has to be deducted. Further such deduction can be set off against the increase in the price from 1976-1977. Still it would be difficult to hold that the claimants would have been granted compensation at the rate of Rs. 90 per square meter. During the course of hearing, reliance was also placed on the decision of the Division Bench of this Court dated 31st March 2004 in First Appeal No. 757 of 2003 The State of Maharashtra v. Smt. Kamali Keshav Mhatre and Ors. where, for a plot of land in a nearby village, the court had awarded compensation at the rate of Rs. 25 per square meter for acquisition of the land vide notification dated 3rd February 1970. This judgment may not be relevant for the reason that it related to the land in a different village and was admittedly at some distance from highway, while the land under acquisition in the present case is near to the highway. That judgment normally would not be comparable instance particularly when in the present case there is other documentary evidence available on record. Thus they cannot be safely relied upon for determining the compensation.

14. There is also evidence on record that the land had a potential at the relevant time as, according to the claimants, they were given permission for N.A. Activity, showing that the land in question was not exclusively agricultural, at least as in 1977. Some element of guesswork has to be applied by the court particularly when direct evidence is not available on record. Of course such application of guess work for determining the compensation payable to the claimants essentially has to be within a very narrow compass. Keeping in view the above evidence on record we are of the considered view that the just and fair market value of the land as on 1st July 1977 can be assessed at Rs. 60 per square meter. In light of the above discussion, we partly allow the appeals filed by the State holding that the claimants would be entitled to compensation at the rate of Rs. 60 per square meter with the statutory benefits payable in terms of Section 23(1A) at the simple rate computed at the rate of 12% p.a. and would also be entitled to the benefit of provisions of Sections 23(2) and 28 of the Act. The appeals filed by the claimants are dismissed. However, we leave the parties to bear their own costs. Decree be drawn up in terms of the above judgment.