
(2003) 06 BOM CK 0116

In the Bombay High Court

Case No : First Appeal No's. 62, 63 and 64 of 1989

The State of Maharashtra

APPELLANT

Vs

Shankar Kondiba Bitake

RESPONDENT

Date of Decision : 24-06-2003

Acts Referred:

Evidence Act, 1872 — Section 11, 43
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2003) 105 BOMLR 594

Hon'ble Judges : D.S. Zoting, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.S. Zoting, J.—Heard Mrs. S.S. Autade, learned A.G.P., for the appellant (Original respondent) and Mr. V.S. Bedre, learned Counsel for respondents (Original applicants).

2. These are the three appeals preferred by the original respondent -State of Maharashtra against the Judgments and Awards dated 27.7.1984 passed by IInd Jt. Civil Judge, S.D., Ahmednagar in L.A.R. No. 26/1983. 25/1983 and 27/1983 respectively.

3. As a common question is Involved as regards the market value of the acquired lands in all these appeals arising out of the land reference and as all the land reference were decided on the basis of the common evidence, common arguments have been advanced by both the parties and therefore it would be just and proper to dispose of all these appeals by common Judgment and therefore, they are being disposed of by common Judgment.

4. The State of Maharashtra issued notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") seeking to acquire the lands belonging to the claimants of Bitkewadi, Taluka; Karjat, Dist - Ahmednagar for public purpose namely for the percolation tank of village Bitkewadi, The

notification was published in Government Gazette Part-I dated 26th November, 1981 at page No. 1830. The lands under acquisition are of village Bitkewadi. Declaration u/s 6 of the Act was published. The Special Land Acquisition Officer passed award on 8.9.1982. He fixed the market value of the acquired lands at the rate of Rs. 3000/- per acre treating all the lands as Jirayat agricultural lands. The possession of the acquired area was obtained by private negotiation. The claimants accepted the amount under protest and requested the Land Acquisition Officer to refer all the applications for enhanced compensation to the Civil Court for determination of the adequate price contending that the market value of the acquired lands fixed by the Land Acquisition Officer is inadequate and the said rate does not reflect the correct, market value of the lands prevailing at the material time of notification u/s 4(1) of the Act. They claimed compensation at the rate of Rs. 12,500/- per hectare (i.e. Rs. 5000/- acre) before the reference Court.

5. On notice being served, the respondent State put in appearance through the A.G.P., and resisted the claim of the claimants by filing the written statements contending that the Land Acquisition Officer has considered several sale instances and fixed the market value at the rate of Rs. 3000/- per acre which is just, and proper and adequate as it reflects the correct market value prevailing at the material time of the notification. It is, therefore, submitted that there is no merit in the reference applications filed by the claimants and they may be dismissed.

6. In support of the claim, claimants in L.A.R. No. 25/1983 examined himself as a witness and he placed reliance on the certified copy of the Judgment and Award passed by reference Court in the L.A.R. No. 80/1981 fixing the market value of the acquired land at the rate of Rs. 4000/- per acre for Jirayat land of the similar type of land in adjoining village Shinde.

7. The respondent State did not produce any evidence. The reference Court on appreciation of the evidence fixed the market value of the acquired land at the rate of Rs. 4000/- per acre by relying upon the Judgment and Award passed by that Court in Land Reference No. 80/1981.

8. Being aggrieved by the Judgments and Award of the reference Court the present appellant-State of Maharashtra preferred these three appeals. It is contended by Mrs. S.S. Autade, the learned A.G.P. on behalf of the appellants that the reference Court was in error who have come to the findings that the market value of the acquired lands was Rs. 4000/- per acre. It is submitted that, the owners of the lands have not adduced any documentary evidence more particularly the sale instances to show that the market value prevailing at the material time was Rs. 4,000/-. According to the learned A.G.P. the learned Judge was in error to place reliance on the Judgment and Award in Land Reference No. 80/1981 which is in respect of the land situated in another village.

9. Against this, Shri V.S. Bedre, learned Counsel for the original claimants -

respondents has fully supported the impugned Judgments and Awards. He submitted that the land involved in Land Reference No. 80/81 is adjoining to the village Bitkewadi and the said land was acquired prior to the notification u/s 4(1) of the Act published in the present matter. He further submits that no appeal was preferred against the Judgment and Award passed in Land Reference No. 80/1981 and, therefore, the said Judgment and Award has become final and as the said Judgment is in respect of the adjoining lands, the said Judgment is relevant and helpful to determine the market value of the acquired area.

10. Taking into consideration the contentions raised by both the parties, the problem which has surfaced in the present appeal is centred on the question of the market value of the land under acquisition.

11. It is to be noted that the notification u/s 4(1) of the Act was published on 26th November, 1981, therefore, the market value existing at that time will have to be considered for the purpose of assessing the market value of the acquired land.

12. In Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, it was held that :

The State was bound to pay to the claimants compensation on the basis of the; market value of the land acquired. It was pointed out that the State Government must do, "what is fair and just to the Citizen" and should not as far as possible, take up a technical plea to defeat the legitimate and just claim of the citizen. Thus, bearing in mind the circumstance, of lands being taken away without the consent and much against the wish of the land owner, the humanising factor in the law has thought it fit to remove all hurdles and humps in the way of the claimant getting a compensation which, is deemed just and adequate. While the law of course expects him to make good the claim made before Court by producing ample evidence, it has nonetheless thought fit to remove all barriers that may prevent or preclude him from claiming the market value of the land.

13. In Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, . Thakkar, J. speaking for the Court held :

The Court has to treat the reference as an original proceeding before it and determine the; market value afresh on the basis of the material produced before it.

The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the other side can also produce the material and prove the same and; that can also be taken into account for the purpose of ascertaining the market value of acquired land.

Thereby, it is settled law that the claimant is a plaintiff and the Reference is an original proceeding to determine market value afresh. It is for the claimant to produce the material evidence for enhancement of the price of acquired land.

14. In the present case, claimants have produced the evidence of one witness and two sale instances. As against that evidence, the present appellant, who was respondent in the Land Reference, did not produce any evidence either oral or documentary.

15. Thus, the State of Maharashtra has no evidence to show that market value of the acquired area was less than Rs. 4,000/- as awarded by the reference Court. Under such circumstances, the evidence produced by the owners of the acquired lands together with the Judgment and Award passed in Land Reference No. 80/1981 relied upon by them is available to ascertain the market value. It is to be noted that in Reference No. 80/1981 lands of village Shinde was acquired for construction of percolation tank at village Shinde. In the said land reference, the reference Court fixed the market value at the rate of Rs. 4,000/- per acre for Jirayat: Class-I agricultural land. The notification u/s 4(1) of the Act in that matter was issued on 24.5.1979, whereas in the present case said notification was issued on 26th November, 1981 i.e. two years after the notification referred to in the Land Reference Case No. 80/1981. Compensation was awarded by fixing the market value at the rate of Rs. 4,000/- in the said case with other statutory benefits. The State of Maharashtra has not preferred any appeal against the said Judgment and Order. Therefore, the learned Judge has observed that village Bitkewadi where the acquired lands situated comes under the village Shinde and it is hamlet of the village Shinde and no appeal was preferred against the Judgment in said reference, he come to the conclusion that the market value of the acquired land should be fixed at the same rate as awarded in the Land Reference Case No. 80/1981. In my opinion, the basis of the valuation as found by the reference Court with regards to neighbouring land which has become final has rightly been taken into consideration for determining the just compensation in respect of the acquired land situated in the hamlet of main village Shinde which are continuous blocks.

16. In case of determining the rate of compensation for land acquired under Land Acquisition Act, Judgment fixing the market value in some other case will be relevant and admissible u/s 43 read with Section 11 of the Indian Evidence Act. for showing that the rate allowed in that case would be highly probable rate as the lands in both the cases were in same vicinity and similarly situated and were acquired for same purpose.

17. Thus, considering the facts and circumstances, the evidence on record and the important features which have been noted by me above, lead me to the conclusion that the learned Judge of the reference Court has not committed any error in fixing the market value at the rate of Rs. 4,000/-per acre which appears just, proper and correct valuation reflecting the market value at the material time of the notification u/s 4(1) of the Act especially under the circumstances that the appellant State of Maharashtra has not adduced any evidence before the reference Court to show that the market value of the land does not exceed the price of the acquired land fixed by the Land Acquisition Officer.

18. In the result, I find that all the appeals preferred by the State of Maharashtra are devoid of any substance and they deserves to be dismissed and they are dismissed accordingly with no order as to costs.