

(2017) 08 BOM CK 0225
In the Bombay High Court
Case No : 602 of 2006

Vinaykumar Maniram Chavan

APPELLANT

Vs

State of Maharashtra, Through the Collector, Akola, & Anr.

RESPONDENT

Date of Decision : 03-08-2017

Acts Referred:

[Land Acquisition Act, 1894](#), [Section 4](#), [Section 6](#), [Section 9](#), [Section 18](#), [Section 4\(1A\)](#) - Publication of preliminary notification and power

Citation : (2017) 08 BOM CK 0225

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : A.M. Ghare, A.R. Chutake

Final Decision : Dismissed

Judgement

1. This appeal is preferred by the original claimant challenging the judgment and award passed by the 3rd adhoc Additional District Judge, Akola in L.A.C. No. 147/1993 on 23/12/2005, being aggrieved by the inadequate amount of compensation awarded by the reference court.

2. Brief facts of the appeal can be stated as follows : By virtue of Notification, under section 4 of the Land Acquisition Act, 1894 (For short, "Act") issued on 10/04/1991, the land bearing survey No.88/1B admeasuring 2 H 02 R belonging to the appellant, came to be acquired by the respondents for construction of Vishwamitra Project. This Notification u/s.4 was followed by the Notifications issued under section 6 and 9 of the Act and ultimately by the award passed on 30/04/1993. As per the award, the compensation granted to the appellant was at the rate of Rs.8,000/per hectore. However according to appellant, the actual price of the said land was Rs.50,000/per Acre as it was his contention that his land was irrigated by well water. It was having black soil and good fertility.

3. Hence being aggrieved by the meager amount of compensation awarded by

the S.L.A.O., the appellant approached the Reference Court u/s.18 of the Act seeking enhanced amount of compensation for the land, well and trees therein.

4. This petition came to be resisted by the respondents vide their written statement at Exh.14, contending inter alia that the LAO has, after considering all the relevant factors, determined the market price of the acquired land and the trees and the well therein. Hence, no interference is warranted in the same.

5. On these respective pleadings of the parties, the reference court was pleased to frame the necessary issues at Exh.15. In support of his case, appellant examined his power of attorney holder and placed on record various documentary evidence.

6. In the light of this evidence and taking into consideration the reliance placed by the learned counsel for the appellant on the compensation awarded by this court at the rate of Rs.15,000/per acre in respect of the land belonging to Nemichand Choudhari, which was acquired for the same Project, vide Reference Case No. 30/14/1998-99, the reference court added 5% increase thereof and enhanced the compensation at the rate of Rs.37,500/per hectore. The Reference Court also enhanced the compensation awarded towards various trees, however was pleased to reject the claim for compensation for the well.

7. This judgment of the Reference Court is challenged in this appeal by learned counsel for appellant, by submitting that the enhancement awarded by the Reference Court is very meager, especially considering that the Reference Court has granted only 5% increase on the purchase price awarded in the case of Nemichand Choudhari. It is urged that, the increase should have been at the rate of 10%, as held by the Hon'ble Apex Court in its various judgments. Even as regards the compensation awarded for the trees, it was submitted that the market price determined by the reference court is not proper and correct.

8. Per contra, learned AGP has pointed out that the enhancement awarded by the reference court is much higher from Rs.8,000/per hectore to Rs.37,500/per hectore, and therefore, there is no need to further enhance the same. Having regard to the fact that the land of Nemichand Choudhari was acquired as per the Notification issued in the year 1998-99 and there was only difference of one year to the acquisition of land of the appellant, it is submitted that Reference Court has rightly awarded the increase of 5% on purchase price.

9. In the light of these rival submissions advanced by learned counsel for both the parties, the only point which arises for my determination is whether the enhancement of the compensation granted by the Reference Court is just, legal, adequate and fair?

10. In this respect, if one has regard to the submissions advanced by learned counsel for appellant before the Reference Court and which are found reflected in para no.9 of its judgment, it can be seen that the reliance was placed on the compensation awarded in the case of Nemichand Choudhari in L.A.C. No.

51/1990 decided on 04/10/1991, wherein the compensation was enhanced to Rs.15,000/per acre and the said enhancement was confirmed by this court by dismissing summarily F.A. No.219/1991, preferred by Nemichand Choudhari, on 04/10/1991. The Reference Court has accordingly accepted the market value as fixed in the case of Nemichand and held the appellant entitled to get compensation at the rate of Rs.15,000/per acre.

11. Further submission advanced before the Reference Court by learned counsel for appellant was that the land of Nemichand was acquired in the year 1988-89. Hence there should be increase in the market value in subsequent award by 5% escalation. The said argument was also accepted by the Reference Court and 5% escalation was also granted.

12. Now, however learned counsel for appellant has, by placing reliance on the judgment of the Hon''ble Apex Court in the case of Delhi Development Authority - VsBaliram Sharma and others, (2004) 6 Supreme Court Cases 533, submitted that escalation should have been 10%. By pointing out to para no.7 of the said judgment, it is submitted that in the said case, also the Notification under section 4(1A) of the Act was issued on 24/11/1981, whereas earlier Notification was dated 17/11/1980 and hence though there was only a marginal difference of one year between two Notifications, the Hon''ble Apex Court has thought it just and appropriate to give 10% increase in the market value in respect of the said land.

13. Learned counsel for appellant has also placed reliance on the judgment of the Hon''ble Apex Court in the case of Revenue Divisional Officer - cum Land Acquisition Officer VsShaik Azam Saheb and others, (2009) 4 Supreme Court Cases 395, to submit that in this case also the Hon''ble Apex Court was pleased to grant 10% escalation per year. According to learned counsel for appellant, therefore, in this case also Reference Court should have granted 10% escalation per year.

14. However, in my considered opinion, there is no such rule of law laid down by the Hon''ble Apex Court that in every case escalation should be at the rate of 10% in the market price. As is rightly submitted by learned counsel for appellant himself that, higher the gap between the two Notifications, higher the escalation. Here in the case it is pertinent to note that land of Nemichand was acquired vide Reference Case No. 13/47/1988-89, whereas the land of the appellant was acquired in Reference Case No. 19/47/1990-91. Therefore, there is hardly a gap of one year only, between two Notifications, and in such situation, escalation granted at the rate of 5% cannot be called as inadequate, so as to warrant interference therein, especially when such escalation is granted on the basis of submission of learned counsel for appellant before the Reference Court and that too on the basis of the same case law of Delhi Development Authority -VsBaliram Sharma, which is cited in this appeal also. Therefore, in my considered opinion, no interference is warranted in the impugned award of the reference court, as regards the market price of the acquired land, especially when the enhancement granted is more than four times the amount awarded by the S.L.A.O..

15. It is then next submitted that the Reference Court has not awarded any enhancement in the amount of compensation for the well. However in this respect also, as S.L.A.O. has awarded the amount of Rs.51,900/which was awarded to the occupants of the other lands, no interference is warranted on that score also.

16. As regards the compensation for the various trees, it must be noted that the Reference Court has considered the fact that the lemon trees were just the saplings as they were newly planted they were not fruit bearing trees. This fact was found from the perusal of 7/12 extracts of the relevant years. The Reference Court has also considered that Pomegranate trees were also seedling. The Reference Court has further considered difference in the number of trees in joint measurement report and the number of trees claimed by the appellant and thereafter reasonably enhanced the compensation for these various trees and awarded the fair amount of compensation for the same also.

17. Thus, if one reads the entire judgment of the Reference Court which granted the compensation at the rate of Rs.15,000/per Acre with 5% increase in the market value from the date of Notification and the amount of Rs.51,900/towards the well and Rs.1,72,700/towards the trees, then in no way it can be said that compensation amount needs to be enhanced further, it is neither inadequate or not unfair.

18. Appeal, therefore holds no merits. Hence stands dismissed.