
(2023) 07 BOM CK 0013

In the Bombay High Court

Case No : First Appeal No. 846, 847 Of 2002 1869 Of 2015, 172 Of 2020

Vithoba Bali Pawar And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 07-07-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2023) 07 BOM CK 0013

Hon'ble Judges : Sandipkumar C. More, J

Bench : Single Bench

Advocate : A. P. Bhandari, R. R. Sancheti, B. V. Virdhe, R. R. Sancheti

Final Decision : Dismissed

Judgement

Sandipkumar C. More, J

1. Appellant - Vithoba Bali Pawar and appellant - Namdeo Gunda Kawale, who are the original claimants, have challenged the common judgment in their respective land references passed on 05/12/1997 by learned 2nd Additional District Judge, Latur (hereinafter referred to as 'the learned reference court') by way of their respective appeals namely First Appeal No.846 of 2002 and First Appeal No.847 of 2002. As against this, the respondent - State of Maharashtra in these appeals has also challenged the same judgment by preferring First Appeal No.1869 of 2015 and First Appeal No.172 of 2020 as against the aforesaid appeals respectively in their respective LAR No.57 of 1995 and LAR No.302 of 1995. Thus, the appellants - claimants have filed appeals for enhancement of the compensation amount, whereas the respondent - State has filed the appeals for reduction of the compensation amount. For the sake of convenience and to avoid ambiguity, the appellants - claimants are referred as 'the claimants' and the respondent - State is referred as 'State Acquiring Body'. Since all these appeals are filed against one and the same judgment, they are taken for final disposal through common judgment.

2. The background facts are as under :

The State - Acquiring Body submitted proposal in the year 1994 for acquisition of the land at village Dapegaon, Taluka Ausa, District Latur for rehabilitation and resettlement of people after severe earthquake on 30/09/1993. Accordingly, preliminary notification under Section 4 of the Land Acquisition Act, 1894 (for short 'Act') on 18/07/1994 was issued and published in Government Gazette. In the said acquisition, land of claimant - Vithoba Bali Pawar admeasuring 1H 64R from Gut No.17 and land admeasuring 2H 34 R from Gut No. 38 situated in village Dapegaon, were acquired. Likewise, land admeasuring 1H 48R from Gut No.64 situated in the same village of claimant - Namdeo Gunda Kawale was acquired. The SLAO passed an award in respect of the aforesaid acquired lands on 02/09/1994 and awarded compensation @ Rs.23,000/- per hecter equivalent to Rs.230/- per R to the aforesaid claimants. The aforesaid lands under acquisition, were taken into possession on 30/06/1994 by the State - Acquiring Body. Thereafter, claimant - Vithoba and claimant - Namdeo fled their respective land references namely LAR No.57 of 1995 and LAR No.302 of 1995 and the land reference court granted them compensation in respect of their land under acquisition @ Rs.7/- per sq.ft. Feeling aggrieved with the said rates, the claimants fled appeals for enhancement, whereas the State - Acquiring Body has also challenged the impugned judgment and award on the ground that the reference court granted exorbitant compensation. Hence, these appeals.

3. The learned counsel for the claimants in their respective appeals fled written submissions in addition to his oral submissions at bar.

4. The learned counsel for the claimants submits that the learned reference court granted a meager amount of compensation by ignoring the comparable sale instances produced on record by the claimants. According to him, the learned reference court has also ignored the oral evidence adduced by the claimants by which it was brought on record that the lands under acquisition were having NA potential since the purpose of acquisition itself was for non-agricultural use i.e. residential use. Moreover, a road was also passing middle of the lands of the claimants, which the Special Land Acquisition Officer has also admitted. According to the learned counsel for the claimants, the learned reference court despite observing that subject land had NA potential, granted meager compensation. He pointed out that despite observing in the judgment that the price of the acquired lands should have been Rs.10/- per sq. ft., the learned reference court only granted compensation @ Rs.7/- per sq. ft. without proper reasoning. Therefore, he suggested the enhancement in the compensation @ Rs.10/- per sq. ft. In support of his oral submissions, the learned counsel for the claimants also relied upon following judgments.

I) Trishala Jain and another vs. State of Uttaranchal and another, reported in AIR 2011 SC 2458;

II) Chakas vs. State of Punjab and others, reported in 2011(12) SCC 128;

III) Sanath Kumar vs. Special Tahsildar and another, reported in 2011(12) SCC 404;

IV) Sabhia Mohammed Yusuf Abdul Hamid Mulla and others vs. Special Land Acquisition Officer and others, reported in AIR 2012 SC 2709;

V) Mohinder Singh vs. State of Haryana, reported in 2014(8) SCC 897;

VI) Kasturi and other vs. State of Haryana and others, reported in AIR 2003 SC 202 and

VII) Mehrawal Khewaji Trust vs. State of Punjab, reported in 2012(5) SCC 423;

VIII) The State of Maharashtra vs. Shantaram Govind Tandale, reported in MANU/MH/0574/2011 &

IX) Murlidhar s/o Biharilal Mantri vs. The State of Maharashtra and another, 2022 (1) ALL MR 592.

5. On the contrary, the learned AGP on behalf of the State - Acquiring Body strongly opposed the submissions made on behalf of the claimants and submitted that the sale instances relied upon by the claimants, are of small pieces of land and therefore, the same cannot be considered as comparable sale instances since bigger land of the claimants is under acquisition. According to him, the claimants have also not proved the location of acquired land and no map is produced on record to show that the lands under acquisition could have been compared with the lands mentioned in the comparable sale instances. He pointed out that the lands acquired were agricultural lands at the time of notification and therefore, no rate of non-agricultural land can be awarded. According to him, the sale instances relied upon by the claimants at Exhibits-11 & 13 itself indicated the rate of Rs.3/- per sq. ft. Moreover, the agreement of sale at Exhibit-12 cannot be relied upon for determination of the market value of the acquired lands since sale could not be completed. He also pointed out that the other lands, which were considered by the claimants for determination of the market value of the acquired lands, were fully developed and those were plots from different village and therefore, not considerable for determination of rate of compensation. He specifically pointed out that the sale instance at Exhibit-13 is in respect of the land from Gut No. 64 needs to be relied upon, wherein rate of Rs.3.04 per sq. ft is mentioned. He further submitted that one of the acquired lands is also from Gut No. 64 and therefore, the compensation granted by the learned reference court @ Rs.7/- per sq. ft., by ignoring the aforesaid sale instance Exhibit-13 is definitely exorbitant. Further, according to him, 60% to 70% deduction was required from the areas of lands under acquisition while comparing it to the rate granted to the small plots in the comparable sale instances. With these submissions, he prayed for dismissal of the appeals filed by the claimants and to allow his appeals filed by the State-Acquiring Body. In support of his oral submissions, the learned AGP for State-Acquiring Body relied upon following judgments.

- I) Chandrashekhar vs. The Special Land Acquisition Officer, reported in 2012 AIR (SC) 446;
- II) Union of India vs. Premlata and others, reported
- III) The State of Maharashtra vs. Digambar Tandale, reported in 1996 (2) SCR 90;
- IV) Vinay Kumar vs. The State of Maharashtra, reported in 2022(6) MH.L.J. 580;
- V) Maya Devi vs. The State of Haryana, reported in 2018 AIR (SC) 645;
- VI) General Manager Oil & Natural Gas Corporation Limited vs. Rameshbhai Patel, reported in 2008 (14) SCC 745;
- VII) The Agriculture Produce Market Committee vs. Ramesh Marotrao Deulkar (dead) through his Legal Representatives Nirmala Dhanraj Shirbhate and others, reported 2022 (3) AIR Bom.R. 651;
- VIII) Maharashtra Industrial Development Corporation vs. Bhagatdasi Rajendrakumar Verma, reported in 2016 (3) MH.L.J. 252;
- IX) Rajashekhar Taradandi vs. Assistant Commissioner and Land Acquisition Officer and others, reported in 1996(9) (S.C.) 642;
- X) Sunil Kumar Jain vs. Kishan and others, reported in 1995(4) SCC 147;
- XI) The State of Maharashtra vs. Vishram Raorane, reported in 2009(1) MH.L.J. 827;
- XII) The State of Maharashtra vs. Laxmibai Wagh, reported in 2008(3) MH.L.J. 231;
- XIII) The State of Maharashtra vs. Yashwant Shirsath, reported in 2008 (1) BCR 204;
- XIV) Chimanlal Hargovindas vs. The Special Land Acquisition Officer, reported in 1988 AIR (SC) 1652;
- XV) The State of Maharashtra vs. Kailas Shiva Rangari, reported in 2016 (4) All M.R. 513;
- XVI) Arun Manohar Dange vs. SLAO, reported in 2016 (3) SCC 319;
- XVII) Vithalrao vs. SLAO, reported in 2017 (8) SCC 558;
- XVIII) Ashraf vs. The State of Haryana, reported in AIR 2013 SC 3654;
- XIX) The State of Maharashtra and others vs. Ramesh Tukaram Meshram and others, reported in 2018(1) ALL MR 645 and
- XX) State of Maharashtra and others vs. Dattatrya Uttam Misal and others in First Appeal No.483 of 2018 with other connected appeals, of this court.

6. Heard rival submissions. Also perused the entire evidence on record alongwith impugned judgments. Also considered the written submissions fled on behalf of rival parties and the respective judgments relied upon by them.

7. Admittedly, the learned counsel for the claimants as well as the learned AGP for State - Acquiring Body have placed reliance on so many judgments in respect of determination of compensation amount. So far as judgments relied by the learned counsel for the claimants are concerned, they are already mentioned herein above. In case of Trishala Jain and another (supra) various methods are discussed for determining the correct market value of the land under acquisition. Further, judgments in cases of Chakas, Sanath Kumar, Mohinder Singh and Kasturi and other (supra) the aspect of deduction is considered. The sum and substance of these judgments is that higher deduction on account of land being large chunk is not permissible and 20% deduction of compensation on account of development charges against the normal 1/3rd deduction is proper. Further, the judgment in the case of Mehrawal Khewaji Trust vs. State of Punjab (supra) is on the point that amongst the sale instances produced on record, highest sale instance needs to be considered. Further, the judgment of this court in case of State of Maharashtra and another vs. Shantaram Govind Tandale, reported in MANU/MH/0574/2011, the escalation in the market rate for consecutive three years is given. According to which, for first year there should be 10% escalation, for the second year 11% and for 3rd year 12.10%. On going through all these judgments, various criteria are observed for determination of proper market value of the land under acquisition.

8. As against this, the learned AGP has also relied upon various judgments of this court as well as of Hon'ble Apex Court. The judgments in the cases of Chandrashekhar, Maya Devi, Arun Manohar and Vithalrao (supra) are on the point of deduction, which is to be made to determine the market value. According to these judgments, the deduction up to 86% is permissible in case of acquisition of large chunk of undeveloped land. Further, the sum and substance of the judgments in the cases of Union of India vs. Premalata, The State of Maharashtra vs. Vishram, The State of Maharashtra vs. Laxmibai Wagh and Chimanlal Hargovindas (supra) is that the sale instances in respect of small plots of land, cannot be considered as comparable instances in case of acquisition large agricultural land. It is also observed in some of the judgments that determination of compensation on square feet basis is an illegal principle followed by the courts. Further, determination on the basis of potential value is also illegal. Further, it is also observed that an agreement of sale cannot be taken as substantive evidence for determination of compensation as it does not create any right. Further, it is also observed that the reference court must determine the market value of land under acquisition only on the basis of material produced on record and proved before it. Further, judgments in cases of Vinay Kumar, Maya Devi and The Agriculture Produce Market Committee (supra) are in respect of escalation of market price which could be of 10% only.

Thus, on going through all these judgments relied upon by the rival parties, it appears that there are certain principles laid down by this court as well as the Hon'ble Apex Court as to what aspects are to be taken into consideration while determining the market value of the land under acquisition. However, the Hon'ble Apex Court in the case of Chimanlal Hargovindas (*supra*) has made an important observation that the valuation of the acquired land must be decided on the basis of material produced and proved before the reference court irrespective of what is held by the SLAO. Further, an important principle is also laid down in that case that the smaller area of sale instances cannot be compared with large area of acquired land. Therefore, in the light of observation in the aforesaid judgments, let us consider the material on record produced by the rival sides before the learned reference court.

9. It appears that the claimants have produced on record comparable sale instances at Exhibits-11, 12, 13, 21 & 25. However, Exhibits-11 to 13 are the agreement of sale executed by the respective claimants and one Mahadu Narsu Magar in respect of their lands at village Dapegaon. However, same are in respect of small plots of land and the rate at which those plots were sold is around Rs.3/- per sq. ft. However, as per the observation of the Hon'ble Apex Court in the judgments relied upon by the learned AGP (*supra*), it has been observed that agreement of sale cannot be taken as a substantive evidence for determination of compensation as it does not create right. Further, on perusal of registered sale deeds at Exhibits-21 and 25 it is evident that those sale deeds are in respect of smaller plots having houses thereon and the same are not from village Dapegaon but those are from village Tungi, which is another village. Thus, these sale deeds also cannot be considered as comparable sale instances as per the observation of the Hon'ble Apex Court in the case of Chimanlal Hargovindas (*supra*).

10. On the contrary, the State - acquiring body has also produced on record number of sale deeds from Exhibits-38 to 46 and also produced on record extract of Index No.II Register in respect of transactions of the lands at village Dapegaon for the years 1990-1991 and 1991-1992. On perusal of these sale deeds, it appears that rates of lands at village Dapegaon were ranging between Rs.1.5 to Rs.5/- per sq. ft. However, considering the date of notification under Section 4 of the Act, there should be an escalation in the aforesaid rates. On perusal of the impugned judgment, it appears that the learned reference court has taken into consideration the rate of Rs.7/- per sq. ft., by relying upon the registered sale deed of plots at village Tungi but according to the observation of the Hon'ble Apex Court in the aforesaid cases that sale deed could not be considered as comparable sale instances. The learned counsel also tried to argue that the learned reference court in para 40 of the judgment had once come to the conclusion that the land under acquisition must have been valued at the rate of Rs.10/- per sq. ft., in the acquisition of year 1994. However, that observation of the learned reference court appears to have come on record in the light of sale deed of village Tungi and that too in respect of small plot with house. Therefore,

not much importance can be given to the opinion of the learned reference court whereby it thought that the value of the acquired land could have been calculated at the rate of Rs.10/- per sq. ft.

11. The learned AGP by relying on the judgments (supra) vehemently argued that the learned reference court erred in awarding higher compensation by ignoring the fact that the lands under acquisition were agricultural land and not converted into the lands used for NA purpose. He pointed out that the claimants did not produce any documentary evidence as regards the location of lands. However, it is settled that while determination of market value of the acquired land, the vital aspects which are to be considered, are the location of such land, its potentiality to be used for N.A. purpose, their distance from industrial area and residential area etc. It is extremely important to note that in the evidence of PW-1 Laxman Govind Pawar it has come on record that there was a road passing through middle of the lands of the claimants. Moreover, there was population of 4000/- in the village and education facilities up to 8th standard were also there. Further, it was situated at a distance of 10 Km., from Taluka place-Ausa and the villages Tungi, Masalga, Lamjana, Killari are nearly situated villages. It has also come on record that Latur- Hyderabad Highway is at distance of 2 Km from Dapegaon. Further, it is important to note that purpose of acquisition of the lands of the claimants was for non-agricultural i.e. for building houses to the earthquake affected persons. Moreover, the SLAO, who was examined by the acquiring body also admitted in his cross-examination that Lamjana road passes through the acquired lands, which is situated at Latur-Bidar road. Moreover, the learned reference court has also observed that the land under acquisition had NA potential. Further, the location of the land on the road is not disputed and therefore, it was suitable for construction of houses. Further, it appears that large portions of the lands of the claimants have been acquired and therefore, they are deprived of their lands on permanent basis. Therefore, though there is no comparable sale instances for awarding the rate of Rs.7/- per sq. ft is available, but considering the other aspects on record, the said rate granted by the learned reference court appears fair and reasonable. Therefore, considering all these aspects, I come to the conclusion that the rate of Rs.7/- per sq. ft., granted to the claimants for acquisition of their lands, appears quite reasonable and appropriate and therefore, there is no need to interfere in the finding of the learned reference court in respect of determination of compensation of the acquired lands. Therefore, the appeals fled by the claimants for enhancement need to be dismissed. Likewise, the appeals fled by the State - Acquiring Body for challenging the aforesaid rate of compensation and for reducing the same, also need to be dismissed.

12. In view of the same, the First Appeal Nos.846 of 2002, 847 of 2002, 1869 of 2015 and 172 of 2020 stand dismissed.

13. Civil application pending if any, stands disposed of.

14. Parties to bear their own costs.