
(2009) 01 BOM CK 0094
In the Bombay High Court
Case No : First Appeal No. 633 of 1992

Western Coalfields Limited	Vs	APPELLANT
Shri Zitru Vithal Pimpalkar		RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 14, 20, 4, 9

Citation : (2009) 01 BOM CK 0094

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : S.C. Mehadia, for the Appellant; Thakare, holding for K.R. Lambat, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—All these appeals are filed u/s 20 of Coal Bearing Areas (Acquisition & Development) Act, 1957 (hereinafter referred to as Act of 1957) by the acquiring agency i.e. Western Coalfields Limited. It is not in dispute that first seven appeals mentioned above have been disposed of by Special Tribunal by common judgment while remaining appeals have been disposed of by separate but identical judgments. The matters were, therefore, placed for final hearing together. The necessary paper book for consideration of these matters is placed in First Appeal No. 636 of 1992. The lands of respective respondents have been acquired under the above mentioned Act of 1957 and initial Notification u/s 4 was published on 2.5.1987 and then final notification u/s 9 was published on 15.2.1990. The Land Acquisition Officer delivered the award and determined the compensation @ Rs. 20,000/- per Hectare for Wawari (dry crop land) and @ Rs. 20,000/- or Rs. 25,000/- or Rs. 30,000/- for Paddy land and irrigated land depending upon its quality. The Special Tribunal in proceedings filed before it u/s 14 of Act of 1957, has enhanced the rate further and granted different rates. These rates are being questioned by the appellants by pointing out that sale instance at Exh. 19 was not relevant and further by contending that the awards

published by the Land Acquisition Officer vide Exhs. 24 and 25 on 20.4.1988 have not been considered.

2. In this background, I have heard Shri Mehadia, learned counsel for the appellants and Smt. Thakare, Advocate holding for Shri Lambat, learned Counsel for the respondents in all the appeals.

3. Shri Mehadia, learned Counsel has contended that the appreciation of evidence by the Special Tribunal is erroneous and reliance upon sale deed Exh. 19 by it is unwarranted. He has invited attention to consideration of this aspect in paragraphs 17 & 18 by the Special Tribunal. According to him, 10% annual rise as granted is unwarranted considering the location of the area. He also invites attention to consideration of this aspect in paragraphs 20, 21 and 22 to point out the relevance of two awards published by the Land Acquisition Officer. He states that the rates were comparative and ought to have been accepted by the Special Tribunal.

4. Smt. Thakare, learned Counsel for the respondents, on the other hand contends that reliance upon awards of Land Acquisition Officer at Exhs. 24 and 25 is totally unwarranted in present circumstances because those awards were not relevant and even the present appellant did not chose to rely upon it. In support of her contentions, she invites attention to paragraph 22 of the judgment delivered by the Special Tribunal. She further states that the Special Tribunal has rightly appreciated sale deed at Exh. 19 and it was the only comparable sale deed available on record. As the said sale deed was of the year 1985 and Notification u/s 4 in this case was of year 1987, 10% increase in market price has been properly granted. According to her, there is no substance in arguments advanced and appeals need to be dismissed.

5. With the assistance of both learned Counsel, I have perused the records. The consideration of sale deed at Exh. 19 in the light of evidence which has been brought on record by the Special Tribunal in paragraph 17 onwards up to paragraph 19 does not appear to be either erroneous or perverse. The revenue of the lands and the material gathered through said sale instance because of evidence of purchaser Tukaram Pinge (PW-5) shows that the Tribunal has correctly applied its mind. He has deposed that his land was Wawari land i.e. dry crop land and he was not subjected to any cross examination in this respect. The non applicants before the Special Tribunal filed 7/12 extracts of said land at Exh. 27 wherein it was shown as non irrigated land but in the year 1985-86, paddy was sown in 0.30 R and Jawas was sown in 0.38 R. The Special Tribunal, therefore, concluded that it is partly paddy land. It, therefore, found that sale consideration was settled at Rs. 17,000/- and it was composite one. It then found that difference in market price of Wawari land and dry crop land was Rs. 5,000/- per Hectare and therefore, it found that the market price as mentioned in Exh. 19 also appeared to be reasonable. It was also noticed that said land was adjacent to the gaathan and therefore, had an added advantage. In view of this position, as the lands with which the Special Tribunal was concerned were away

from gaathan, the Tribunal arrived at price of Rs. 20,000/- per Hectare in the year 1985 and then by adding 10% as market price every year, it fixed the market price of land before it on 2.5.1987 at Rs. 24,000/- per Hectare. This application of mind is also carried further and after considering the land revenue of paddy lands, the rate of Rs. 29,000/- per Hectare for paddy land and Rs. 33,000/- for irrigated paddy land has been worked out. This consideration is neither erroneous nor perverse and, therefore, does not warrant any interference in First Appeal.

6. However, Shri Mehadia, learned Counsel has strongly relied upon Exhs. 24 and 25 to urge that the compensation awarded there was Rs. 18,725/- and Rs. 20,421.28 ps. per Hectare for Wawari land. The Special Tribunal has found that this award was published on 20.4.1988 i.e. one year after Section 4 Notification in present matter and under award at Exh. 24, 1.35 Hectare of land from several survey numbers was acquired for construction of PWD road. Under Exh. 25, 1.50.60 Hectare of land from various survey numbers of different village was acquired again for construction of road. It was noticed that under Exh. 24, no specific claims were preferred for land values by the owners and no evidence was adduced. In Exh. 25 land owners filed claim jointly and asserted rate of Rs. 15,000/- per Hectare for Wawari land but again there was no specific evidence. It is in this background that the situation is considered and it was noticed that in matters before it, the non-applicants had fixed rate of Rs. 20,000/- per Hectare minimum in the year 1987. In view of this position, it was noticed that non-applicants (present appellants) could not have relied upon Exhs. 24 and 25. This consideration again does not show any perversity or error.

7. It is to be noticed that the rate has been worked out by the Special Tribunal after considering sale instance and also oral evidence and other documents. In such circumstances, award at Exhs. 24 and 25 which determine compensation at a lesser rate than awarded in award impugned before it, have not been rightly accepted by the Special Tribunal. I, therefore, find that no case is made out warranting any interference in these appeals. All these appeals are, therefore, dismissed. However, in the circumstances of the case, there shall be no order as to costs.