

(1996) 10 BOM CK 0039
In the Bombay High Court
Case No : First Appeal No. 189 of 1989

Western Coalfields Limited

APPELLANT

Vs

Vasanji Suchak and others

RESPONDENT

Date of Decision : 09-10-1996

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 14, 20, 4
Land Acquisition Act, 1894 — Section 23(1), 26, 30(2), 4, 54

Citation : (1998) 1 BomCR 538

Hon'ble Judges : B.U. Wahane, J

Bench : Single Bench

Advocate : J.P. Pendsay, for the Appellant; Smt. K.V. Sirpurkar, for the Respondent

Judgement

B.U. Wahane, J.—The appellant-Western Coalfields Limited, Wardha Valley Area, Chandrapur, in the instant First Appeal u/s 20 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, questioned the final order passed by the learned Special Tribunal, dated 11th day of January 1988, assessing the compensation @ Rs. 1.50/- per sq. ft.

2. The facts, in short, are as under :

In pursuance of the Notification u/s 4(1) of the Act, published on 10-4-1975, the lands of the respondents including Shri Vasanji Suchak, came to be acquired for the development of Coal Quarries. The respondent No. 1 Shri Vasanji Suchak owned the land Kh. No. 107/41 admeasuring 2.05 acres, situated in mouza Dewai-Govindpur, Tah. and Distt. Chandrapur. The land, as alleged by the respondent No. 1 is near Shastri Nagar, Chandrapur and contiguous to Shri Din Dayal Upadhyaya Housing Society. The respondents 2 to 5, had purchased different plots from the respondent No. 1 Shri Vasanji Suchak under registered sale-deeds. Prior to the acquisition by the appellant/original non-applicant, the land was diverted to non- agricultural purposes vide order dtd. 10-1-1974 passed by the Sub Divisional Officers, Chandrapur, in Revenue Case No. 4/2/73-74. The

possession of the land in question was taken some times in the year 1981. The respondent No. 1 Vasanji Suchak claimed the compensation @ Rs. 3/- per sq. ft- which was the market rate since 1979-80.

3. The appellant/original non-applicant filed the Reply and denied the claim of the respondent No 1 Vasanji Suchak. It is specifically denied by the appellant/ original non- applicant that the market value of the land at the time of Notification u/s 4(1) of the Act, was Rs. 3/- per sq.ft. It is specifically pleaded by the Western Coalfields Limited, that the transactions of sales of the land from Survey Khasara No. 107/41 purchased and subsequently sold by the respondent No. 1 - Vasanji Suchak and the lands in the neighbour area during the period of 1973-74, reflected an average price of Rs. 827.99/- per acre. The Western Coal Fields in it's reply itself quoted some sale transactions.

In the year 1975, the Zilla Parishad, Chandrapur had acquired lands for percolation tank in Durgapur and the compensation was paid @ 1427/- per acre. Considering the materials collected as regards the sale transactions and the land revenue, the Western Coal Fields Limited proposed that the land in question being an agriculture land, the market pries would be at Rs. 2875/- per acre, be just and fair market price. Thus, the Western Coalfields Ltd. tendered a total compensation of Rs 5893.75/- for 2.05 acres of land as reasonable and just.

4. The respondent No. 1 - Vasanji Suchak not being satisfied with the compensation proposed, approached the Special Tribunal constituted u/s 14(2) of the Coal Bearing Areas (Acquisition & Development) Act, 1957. The case was registered as Compensation Case No. 6/82. The respondent No. 1 Vasanji Suchak claimed the compensation @ Rs. 3/- per sq. ft. treating his land as non-agriculture land.

5. The other claimants whose lands also acquired by the Western Coalfields Ltd., filed compensation cases before the Special Tribunal, Nagpur. With the consent of the parties, all the Compensation Cases No. 5/82, 6/82, 7/82, 10/82 and 12/82 were consolidated and oral evidence was recorded in Compensation Case No. 4/82 and is read over in all the above cases. Similarly, the documents which were placed on record in Compensation Cases 6/82 and 10/82 were also read and considered while passing the impugned award dtd. 11-1-1988.

6. The parties led oral as well as documentary evidence. After scrutinising the evidence led by the parties, the learned Special Tribunal, in para 21 of it's Award assessed the compensation @ Rs. 1.50/- per sq. ft.

7. Shri Pendsay, the learned Counsel for the appellant submitted that the learned Special Tribunal considered the sale-transactions which were proved by examining the vendors or vendees. The discussion begins from para 8 onwards and the learned Tribunal considered the sale-deeds Exhs. 40 and 41. The said sale-transactions are dtd. 15-5-1974 i.e. just before a year of the Notification u/s 4(1) of the Act. This land was purchased by the respondent No. 1 - Vasanji Suchak, admeasuring 2 acres of Survey No. 107/41 (1 acre diverted and 1 acre

undiverted) from Nago, for the consideration of Rs. 7000/- per acre.

One Smt. Anarbai (petitioner in Compensation Case No. 5/82) had also purchased one acre diverted land from this survey number at the same rate. Similarly vide sale-deeds dtd. 10-6-1974 and 6-7-1974 (Exhs. 43 and 44), the land admeasuring 3240 sq. ft. was purchased by the respondents 4 and 5 jointly from the respondent No. 1 for Rs- 1,000/-. The Special Tribunal also considered the sale transaction dtd. 2-2-1977 by which the land admeasuring 3240 sq. ft. out of Survey No. 107/41 was purchased by one Madhao (petitioner in Compensation Case No. 9/82) from the respondent No. 1 - Vasanji Suchak.

8. The learned Special Tribunal rejected the evidence led by the respondent No. 1 Vasanji Suchak on the grounds which have been specified in paras 8 onwards where the sale-transactions have been considered.

9. Shri Pendsay, the learned Counsel appearing for the appellant very rightly submitted that the Special Tribunal after considering the evidence led before the Tribunal arrived at the conclusion that considering the potentiality of the non-agriculture use, the land would fetch the price between Rs. 11,000/- to Rs. 14,000/- per acre. But, inspite of this conclusion, the learned Special Tribunal jumped and assessed the compensation @ 1.50 per sq. ft., without any discussion as to what made him to award such compensation.

10. With the assistance of Shri Pendsay, the learned Counsel for the appellant and Smt. Sirpurkar, the learned Counsel for the respondents, I perused the evidence led by the parties, documents placed on record, Schedules "A & B" and the findings recorded by the Special Tribunal. The submissions of Shri Pendsay find considerable strength. The assessment of the compensation @ 1.50 per sq. ft. has no basis at all as there is no discussion in para 21 of the order.

Smt. Sirpurkar, the learned Counsel for the respondents submitted that the learned Special Tribunal committed no error as in para 16 of the impugned Award, Schedules "A and B" were considered. Smt. Sirpurkar, the learned Counsel for the respondents further submitted that under this Act, it is not necessary to examine the vendor, vendee or attesting witnesses to prove the documents. The index from the office of the Registrar and the schedules have been rightly considered to assess the compensation @ Rs. 1.50/- per sq. ft. According to her, the learned Special Tribunal has committed no error in recording such findings. Smt. Sirpurkar, the learned Counsel for the respondents further submitted that the Special Tribunal is constituted u/s 14(2) of the Coal Bearing Areas (Acquisition and Development) Act, 1957, and the procedure being prescribed u/s 14 itself, and under subsection (7), discretion being given to the Special Tribunal how to determine the price of the land acquired, it is the summary proceedings and as such need not to examine the witnesses to prove the documents. I do not agree with the submissions made by Smt. Sirpurkar, the learned Counsel for the respondents even after considering that the proceeding may be summary proceedings.

Section 14 of the Coal Bearing Areas (Acquisition And Development) Act, 1957, deals with the method of determining compensation, which reads as under :

"Section 14(1) Where the amount of any compensation payable under this Act can be fixed by agreement, it shall be paid in accordance with such agreement.

(2) Where no such agreement can be, reached, the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a judge of a High Court for the purpose of determining the amount.

(3) The Central Government may in any particular case nominate a person having expert knowledge in mining to assist the Tribunal, and where such nomination is made, the person or persons interested may also nominate any other person for the same purpose.

(4) At the commencement of the proceedings before the Tribunal the Central Government and the person interested shall state what in their respective opinions is a fair amount of compensation.

(5) The Tribunal shall after hearing the dispute, make an award determining the amount of compensation which appears to it to be just, and specify the person or persons to whom the compensation shall be paid; and in making the award the Tribunal shall have regard to the circumstances of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined in so far as the said provisions or any of them may be applicable.

(6) Where there is a dispute as to the person or persons entitled to compensation and the Tribunal finds that more persons than one are entitled to compensation, it shall apportion the amount thereof among such persons and in such manner as it thinks fit.

(7) Nothing in the Arbitration Act, 1940, shall apply to any proceedings under this section.

(8) The Tribunal, in the proceedings before it, shall have all the powers which a Civil Court has while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters namely :-

- i) summoning and enforcing the attendance of any person and examining him on oath;
- ii) requiring the discovery and production of any document;
- iii) reception of evidence on affidavits;
- iv) requisitioning any public record from any Court or office; and
- v) issuing commissions for examination of witnesses."

Sub-section (5) of section 14 specifies that;

"The Tribunal shall after hearing the dispute, make an award determining the amount of compensation."

Hearing the parties means granting audience to the claimant and non-applicant. In other words, the parties have to detail and to state what evidence on facts, the parties want to lead to substantiate their claim. The burden lies on both the parties to substantiate their claim by producing documents and leading evidence.

The phrase "hearing" is considered in a case of *Manohar Dass v. Birandari Sheikhupurain*, AIR 1936 Lah 280, in which it is observed that;

"The hearing of the suit is meant the hearing at which the Judge would be either taking evidence or hearing arguments or would have to consider questions relating to the determination of the suit which would enable him finally to come to an adjudication upon it."

11. Shri Pendsay, the learned Counsel appearing for the appellant rightly submitted that unless and until the sale-deeds are proved examining the vendor, vendee or attesting witnesses, the contents of the documents can not be read to appreciate and to determine the market price of the land. The purpose of examining the vendee, vendor or attesting witnesses is to know the location of the land, potentiality of the land and the bona fides of the transactions amongst the vendee and vendor. This is the intention of the provisions of sub-section (8) of section 14 of the Coal Bearing Areas (Acquisition and Development) Act, 1957. This aspect has been considered in a case of *The Collector, Raigarh Vs. Harisingh Thakur and Another*, . In para No. 6 Their Lordships observed:

"Moreover, the sale statement by itself without examining either the vendors or the vendees or the persons attesting the sale-deeds is not admissible in evidence and can not be relied upon."

In a case of *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and another*, in para No. 4, Their Lordships given the factors which must be etched on the mental screen while determining the market value of the land at the relevant time of the Notification u/s 4 of the Land Acquisition Act. Their Lordships very specifically observed that;

"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 materials placed and proved by the other side can also be taken in to account for this purpose." In a case of *Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.*, (Five Judges), Their Lordships have elaborated the factors to be considered while determining the compensation.

In a case of *Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri*, , Their Lordships observed that:

"It is settled law by catena of decisions that the market value postulated in

section 23(1) of the Act designed to award just and fair compensation for the lands acquired. The word "market value" would postulate price of the land prevailing on the date of the publication of the notification u/s 4(1). This Court repeatedly laid the acid test that in determining the market value of the land, the price which a willing vendor might reasonably expect to obtain from a willing purchaser would form the basis to fix the market value. For ascertaining the market rate, the Court can rely upon such transactions which would offer a reasonable basis to fix the price. The price paid in sale or purchase of the land acquired within a reasonable time from the date of the acquisition of the land in question would be the best piece of evidence."

Their Lordships also referred the Judgment in *Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala*, wherein K. Ramaswamy, J., was a member surveyed all the relevant precedents touching the points. In the case before Their Lordships, the Notification u/s 4(1) of the Land Acquisition Act, 1894, was published on November 21, 1963, to acquire five acres of land. Out of the same survey number, about 9 months before, the claimant sold one acre of land on January 24, 1963 @ Rs. 5/- per sq. yard. Considering the evidence, Their Lordships observed that :

"The aforesaid sale-deeds Exhs. B-6, B-7, B-8 and B-10 will reflect the prevailing market value of the land in question. The claimant claimed compensation @ Rs. 10/- per sq. yard. Considering the sale transaction of the self same land, the sales of other lands can not be considered and particularly if the land is of large extent."

Considering the facts and circumstances as also the evidence on record, Their Lordships concluded that the compensation would be awarded @ Rs. 6/- per sq. yard, the prevailing market value of the land on the date of the Notification.

12. In a case of *Gulzara Singh and Others Vs. State of Punjab and Others*, Their Lordships in para 3 held that;

"To determine the market value of the land u/s 23(1) of the Act the sales of the land under requisition, if any, or the sales in the neighbourhood lands that possessed of same or similar potentialities or fertility or other advantageous features would furnish basis to determine just and fair market value on the premises of a hypothetical willing vendor and willing vendee. The willing vendor who would offer the land and willing vendee who would agree to purchase the land as a prudent man in normal market conditions as on the date of the notification or near about the date of the notification is the acid test. If sale transactions relate to the lands under acquisition and if found to be genuine and bona fide transactions between willing vendor and vendee then it may be considered but reasonable margin must be given in fixing wholesale price. The sale and purchase of lands at a throw away price at arm's length or depressed sales or facade of sales brought into existence in quick succession to inflate the market value would not offer any basis to determine just market value. In order

to adjudge whether sales are bona fide sales between willing vendor and willing vendee and whether the consideration mentioned in the deed was, in fact and really passed on under transaction; whether the lands covered by sale deeds and relied on, possessed of same or similar potentialities or fertilities or advantageous features would be brought on record only by examining the vendor or the vendee or if neither of them is available, the attesting witness who has personal knowledge of the bargain and passing of the consideration are mandatory. Every endeavour would be made to fix fair and reasonable market Value."

In a case of Parameshwari Devi (dead) by L.Rs. etc. Vs. Punjab State Electricity Board and Another, , how to determine the just, fair and reasonable price has been discussed in para 3 as under :

"It is well settled law that it is the duty of the claimant to prove the sale deeds by adducing evidence either of the vendor or vendee or attesting witness of passing of the consideration under the sale-deed, to prove that the sale transactions are genuine transactions between the willing vendor and willing vendee; that the consideration had in fact been passed under the document duly registered, represent the prevailing market value; and also the lands under acquisition and the lands concerning the sale are similarly situated and possessed of same or similar nature, advantages etc. The burden is always on the claimant. In this case that attempt was not made. Therefore, the High Court is right in rejecting the sale deeds relied on by the appellant. Since the Court has got to find whether the lands are possessed of potential value or any other advantageous features to determine the prevailing market value as on the date of the notification u/s 4(1). When the similar lands situated very nearby i.e. 1500 sq. yards away from the lands acquired and has been awarded at Rs. 82,000/- per acre, the market value of the acquired land need to be determined. Since the lands under acquisition are of the same nature and possessed of the same potentialities, the claimants in these appeals also are entitled to similar treatment and award of proper compensation. In this case the appellants were awarded Rs. 25,600/- per acre by the Civil Court. Therefore, the interference by the High Court in this behalf is clearly illegal. The appeals are accordingly allowed and award of the Civil Court is restored but under the circumstances without costs."

13. In a case of Land Acquisition Officer, Eluru and Others Vs. Jasti Rohini (Smt) and Another, , Their Lordships have indicated the method to arrive at the reasonable price and specified that the sale transactions are the best mode to determine the market value of the land and that the sale-transactions may be produced and proved.

14. In a case of The Special Land Acquisition Officer (7) Bombay and Bombay Sabarban District Municipal Corporation Vs. Vishanji Virji Mepani and another, Their Lordships specified that ;

"The burden casts on the claimant to prove or to substantiate his claim by leading evidence."

In para 29, Their Lordships observed as under :

"From the conspectus of the ratios of the various decisions referred to here in above it emerges :

- i) Advantage or benefit of awarded provisions of said Act (1984 amendment) would not be available in case of Award made before 30th April, 1982.
- ii) The Court has no power to enlarge the scope of section 30(2) of the said Act for according the benefit of the amended provisions.
- iii) Solatium is not part of market value awarded as compensation and as such not component u/s 23(1) of the said Act.
- iv) The liability of payment of interest is only on the excess amount of compensation determined u/s 23(1) and not on the amount already determined u/s 11 and paid to the party or deposited into the Court or determined u/s 26 or 54 and deposited into the Court or on solatium u/s 23(2) and additional amount u/s 23(1-A)."

15. Admittedly, in the instant case, the evidence documentary and oral led by the respondent No. 1 -claimant is considered by the Special Tribunal. The sale transactions pertaining to the year 1974 in respect of the plots sold by the respondent No. 1, two in numbers have been considered. The respondent No. 1 - Vasanji Suchak himself purchased two acres of land for consideration of Rs. 7000/- per acre. Out of the same land, he sold plots to respondents 4 and 5 vide sale-deeds Exh. 43 and 44. According to the learned Special Tribunal, the prevailing market value at the time of issuance of the Notification u/s 4 of the Act, was between Rs. 11,000/- to Rs. 14,000/ - per acre. If the price is calculated in terms of sq. ft., the two transactions Exh. 43 and 44 being of the small plots, the price would come to Rs. 30 paise per sq. ft. The learned Special Tribunal has discussed the sale transaction of 2-2-1977. The respondent No. 1- Vasanji Suchak had sold 3240 sq. ft. of land out of Survey No. 107/41 for Rs. 3,000/-. If the said sale-transaction is considered to determine the market value of the land in question, it would come to Rs. 1/- per sq. ft. Though the respondent No. 1 Vasanji Suchak examined himself as a witness, there is no whisper as regards this transaction of 1977. One Madhao purchased this land who is the claimant in Compensation Case No. 9/82. He was not examined to prove the sale-transaction dtd. 2-2-1977. Considering this fact, in para 14, the learned Special Tribunal observed as;

"Madhao did not enter the witness box nor proved his document of title. However, assuming that he purchased the land from the same survey number at much a high rate, this transaction can not serve any purpose; firstly because it was two years later and secondly, it was a small piece of land measuring in sq. ft. and lastly because this was a transaction which took place after this very land

was included in the Notification u/s 4 and there was already the expropriation of the rights of the vendor."

Considering the sale transaction of 1978 and subsequent sales, the learned Special Tribunal observed that ;

"The market price of 1978 determined at Rs. 20,000/- per acre on the basis of the Judgment placed on record could not be taken as a safe guide for determining the market price of the year 1975, as admittedly during these years the upward journey of land price in this part was incredible."

Again in para 18, the learned Special Tribunal observed that :

"This might be the result of acquisitioned activities of the two Governments requiring lands from this part for Thermal Power Station and for Coal Mining. There is then a sudden and steep rise in prices after 1977 probably because the lands left over had gained an excellent potential as building sites as a result of industrial development in the close vicinity."

The learned Special Tribunal in the end of para 20, considering the evidence adduced by both the parties observed that;

"The fair market price of lands from this village at the relevant time would be between Rs. 11,000/- to Rs. 14,000/- per acre."

Considering the evidence and tribunal's observations, para 21 begins with the words "between this range what rate should be adopted in this particular case is the only question". It is apparent that without discussing any evidence led by the parties, the learned Special Tribunal assessed the compensation @ 1.50/- per sq. ft.

In view of the discussions above, considering the evidence on record and the principles laid down by Their Lordships of the Supreme Court in the cases cited supra," according to me, there is no basis to assess the compensation @ Rs. 1.50/- per sq. ft. Consequently, this finding recorded by the learned Special Tribunal is quashed and set aside.

16. Shri Pendsay, the learned Counsel for the appellant vehemently submitted that the respondent No. 1 - Vasanji Suchak is entitled to the compensation for 2 acres of the land at the rate between the range of Rs. 11,000/- to Rs. 14,000/- per acre and not on the basis of sq. ft. which comes to 30 paise per sq. ft. Smt. Sirpurkar, the learned Counsel for the respondents submitted that admittedly the respondent No. 1 - Vasanji Suchak purchased the land from Nago (1 acre diverted land and 1 acre agriculture land). The order dtd. 10th January 1974 passed by the Sub Divisional Officer, Chandrapur in Rev. Case No. 4/2/73-74 specifically speaks that;

"6.05 acres of land of village Dewai Govindpur, belonging to Nago Soma Tekam of Dewai Govindpur is permitted to divert for residential purpose in accordance with the approved lay out which was enclosed with the application preferred by

Nago."

It is, thus, clear that the Notification u/s 4 of the Act, was issued on 10th April, 1975. According to Vasanji Suchak, he purchased 1 acre diverted land from Kh. No. 107/41 from Nago. It is, thus, clear that there was a lay out in the year 1974 itself when the respondent No. 1 Vasanji Suchak sold the plots vide Exh. 43 to 49 in the year 1974. The Notification u/s 4 of the Act, indicates that it was issued after about 10 months after the purchase of the land out of Survey No. 107/41. The respondent No. 1 -Vasanji Suchak purchased two acres of land in the month of May 1974 and sold some plots out of this land in the month of June and July 1974 and received the price in between Rs. 11,000/- to Rs. 14,000/- per acres. Considering the sale of plots, it comes to 30 paise per sq. ft. However, considering the potentiality of the land and that 1 acre of the land was already diverted for the residential purpose, I feel that the compensation @ 60 paise per sq. ft. would be just, fair and reasonable.

17. Shri Pendsay, the learned Counsel for the appellant submitted that as large extent of land was acquired by the Western Coalfields Limited. For the housing scheme, laying of roads, setting apart the drainage and other amenities are essential. Under the circumstances, the compensation can not be awarded to the claimant on the entire land acquired by the Western Coalfields Limited either on the basis of acres or sq.ft. According to Shri Pendsay, the learned Counsel for the appellant, it is the settled principle that at least 1/3rd of the amount should be deducted towards laying the roads, setting apart the drainage and other amenities. A reliance is placed on a case of Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, . In para 4 of the Judgment, various earlier precedents have been considered. In most of the cases referred in para 4 of the Judgment of the case cited supra at least 1/3rd of the market value is deducted. Their Lordships of the Apex Court made a reference that if the land acquired is in the midst of already developed land with amenities of roads, drainage, electricity etc., then the deduction of 1/3 would not be justified.

In the case in hand no evidence has been led to indicate that the surrounding areas have been already developed having all the amenities. Under the circumstances, the respondent No. 1 - Vasanji Suchak is not entitled to get the above benefits.

18. I have already held that the rate of 60 paise per sq. ft. would be just, fair and reasonable price of the land at the time of issuance of the Notification u/s 4(1) of the Act. 1/3rd deduction comes to 20 paise per sq. ft. Thus, the compensation for the land acquired by the Western Coalfields Ltd. be granted @ 40 paise per sq. ft.

19. In the result, the instant first appeal is partly allowed. The appellant is directed to calculate the compensation @ 40 paise per sq. ft. for the land acquired and pay the same to the respondent No. 1 - Vasanji Suchak with interest (c) 5% p.a. from the date of possession i.e. 1-4-1981, till it's

realisation. No order as to costs.

20. In view of the findings recorded as above, there being no merit in the cross-objection, the same is dismissed.

21. Appeal partly allowed.