(2010) 01 BOM CK 0065

In the Bombay High Court

Case No : First Appeal No. 327 of 2001

Western Coalfields Ltd. APPELLANT

Vs

Subhash Dhondopant Deshmukh and State of Maharashtra RESPONDENT

Date of Decision : 06-01-2010

Acts Referred:
Land Acquisition Act, 1894 — Section 28A, 4

Citation : (2010) 2 ALLMR 74 : (2010) 1 BomCR 642 : (2010) 3 MhLj 156

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : S.C. and A.S. Mehadia, for the Appellant; Abhay Sambre in First Appeal Nos. 95 and 96/2002 and A.M. Deshmukh and M.M. Agnihotri for Respdt. Nos. 1 and 2 in First Appeal Nos. 327 and 328/2001, for the Respondent

Judgement

A.B. Chaudhari, J.—Acquiring body - Western Coalfields Limited has put to challenge the common judgment and award dated 30.4.2001 made in Land Acquisition Case Nos. 73/1992 and 74/1992 passed by the 2nd Jt. Civil Judge (J.D.), Yavatmal and dated 11.1.2002 In Land Acquisition Case Nos. 165/1992 and 166/1992 passed by the 2nd Jt. Civil Judge (Senior Division), Kalamb enhancing compensation to Rs. 55,000/- per hectare and Rs. 50,000/- per hectare respectively in respect of lands of the claimants-respondents which were acquired.

The claimants in First Appeal Nos. 327/2001 and 328/2001 have also filed Cross-Objection St. No. 3590/2002 and Cross-Objection St. No. 3596/2002 claiming higher compensation at Rs. 75,000/- per hectare feeling aggrieved by the grant of lower compensation. Hence, all these four appeals as well as cross-objections are taken up together for final disposal.

2. In support of First Appeal Nos. 327/2001 and 328/2001, learned Counsel for the appellant in all appeals argued that notification u/s 4 of the Land Acquisition Act was issued on 26.6.1988 and the acquisition was for construction of railway siding for Western Coalfields Limited (W.C.L.). The Land Acquisition Officer had

granted rate of Rs. 20,000/- per hectare but that has been enhanced to Rs. 55,000/- per hectare by the reference Court which is totally illegal and contrary to the evidence on record so also the law that is applicable. He then argued that going by method of applying multiplier the Hon''ble Supreme Court has consistently held the multiplier of 10 to be adequate and just compensation. For this purpose he relied on the following decisions.

(i) Krishi Utpadan Mandi Samiti v. Malik Sartaj Wali Khan and Ors., 2001 (10) SCC 660 .

(ii) Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others, .

(iii) Assistant Commissioner-cum-Land Acquisition Officer, Bellary Vs. Sri S.T. Pompanna Setty, .

(iv) Special Land Acquisition Officer, Kalinadai (Hydro-Electric) Project, Dandali, Uttra Kannada District Vs. Vasant Gundu Bale, .

3. He then argued that besides Income Capitalization Method; looking at sale instances has been found to be more accurate by the Hon''ble Apex Court and when sale instances are available nearby to the date of notification they should be the basis for awarding compensation. Inviting my attention to the sale instances (Exh.73 to 76) which are the index entries he argued that these entries relate to the same village, namely, Niljai and the reference Court ought not to have ignored them since they represented the correct price being of the same village and since the same were rejected on the ground that they were not admissible in evidence this Court should consider them in the light of the latest Supreme Court decision holding that the same was admissible in evidence and can be read without examination of vendor/vendee. According to learned Counsel for the appellant all these sale instances from Exh.73 to 76 show that the maximum average price per acre could be worked out at Rs. 8,500/- i.e. Rs. 20,000/- per hectare and therefore, the learned reference Court acted illegally in enhancing the compensation. Stressing his argument further learned Counsel for the appellant contended that Exh.73 to 76 are the entries which are most relevant in the sense that they are nearer to notification u/s 4 of the Land Acquisition Act i.e. 26.6.1988. He thus argued that this best piece of evidence has been ignored by the reference Court which is illegal. Learned Counsel for the appellant then argued that the sale instances relied upon by the claimants were related to the village Ukni and the said village being at some distance from Niljai the reference Court erred in placing the reliance thereon since the appellant had placed on record the sale instances from village Niljai and the cases in question are related to village Niljai only. Summing up his argument, learned Counsel for the appellant thus prayed for allowing the appeals by setting aside the judgment and award made by the reference Court impugned in these appeals.

4. Per contra, learned Counsel for respondents - claimants argued that distance between village Ukni and Niljai is 1 k.m.. As a matter of fact these villages are

almost one and the same village but for the different name. The quality of the lands acquired being superior and lands being situated near Wardha river the yield was far superior compared to the lands of village Niljai. Therefore, the sale instance filed by the claimants on record from Exh.66, Exh.70 (Sale-deed), Exh.68 and Exh.69 indicated average rate per acre of Rs. 20,000/- and more and therefore, the sale instances relied upon by the appellants will have to be ignored. According to learned Counsel for the claimants as a matter of fact the compensation awarded by the reference Court is on lower side and that is why they have filed cross-objections in the present First Appeal Nos. 327/2001 and 328/2001. The cross-objections deserve to be allowed in entirety. Learned Counsel for the claimants then argued that 15 years multiplier has also been applied and giving allowance for inflation at 12% as was done by the Supreme Court the award for compensation should have been at higher rate. Learned Counsel for the appellant heavily placed reliance on Exh.70 (sale-deed) and sale instance Exh.68 and argued that the said sale instance Exh.68 though of village Ukni shows the rate of Rs. 20,000/- per acre and the said sale instance is nearer to notification u/s 4 of the Land Acquisition Act. Inviting my attention to the evidence of the claimants he argued that the said evidence was not put to challenge and rather the appellant - acquiring body did not even participate in the proceedings of the reference Court. At any rate the evidence of Subhash Deshmukh in paragraph Nos. 8, 11, 12, 13 and 14 has gone unchallenged and therefore, it will have to be held that the lands belonging to the respondents - claimants are situated on the bank of Wardha river and are highly fertile. No evidence in rebuttal was at all led by the appellant and therefore, relying on the Division Bench decision of this Court in the case of State of Maharashtra v. .Pandurang J. Patil and Ors. reported in 2007 (6) Bom. C.R. 234 (paragraph No. 5) learned Counsel argued that the appellant cannot be given advantage of its own wrong in not leading evidence in rebuttal. In extension of the above argument, learned Counsel further argued that the appeals consequently are required to be dismissed and cross-objections deserve to be allowed in entirety with costs. Learned Counsel for respondents relied on the following decisions.

(i) 2005 (6) Scc 454 (ONGC Ltd. v. Sendhabhai Vastram Patel and Ors.).

(ii) 2007 (6) Bom. C.R. 234 (State of Maharashtra v. Pandurang J. Patil and Ors.).

(iii) 2005 (9) Supreme Court Cases 594 (Land Acquisition Officer and Revenue Divisional Officer v. Ramanjulu and Ors.).

(iv) Union of India and Another Vs. Shanti Devi and Others, .

(v) Cement Corporation of India Ltd. Vs. Purya and Others, .

(vi) Om Prakash (D) by Lrs. and Others Vs. Union of India (UOI) and Another, .

(vii) Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others, .

5. Following points arise for my determination.

(1) Whether the reference Court erred in refusing to see the evidence of index entries filed by both the parties in view of the Constitution Bench decision of the Supreme Court in the case of Cement Corporation of India Ltd. Vs. Purya and Others, ?

(2) Whether the reference Court erred in awarding compensation @ Rs. 55,000/- per hectare in place of Rs. 25,000/- per hectare as awarded by the Land Acquisition Officer ?

(3) Whether the claim made in the cross-objections by the respondents-claimants claiming compensation @ Rs. 75,000/- per hectare deserves to be granted ?

(4) What order ?

6. I have gone through the common impugned judgments and awards so also the entire record and evidence tendered by the parties documentary as well as oral. I have also carefully seen the various decisions cited before me by learned Counsel for the parties. At the outset, I find that the finding recorded by the reference Court that the index entries from Exh.63 to 69 and Exh.73 to 76 could not be taken into consideration for want of proper proof and proper evidence of its contents is wrong in the light of the Constitution Bench judgment of the Supreme Court in the case of Cement Corporation of India Ltd. etc. etc. v. Purya and Ors. etc. etc., cited supra. I, therefore, hold that the index entries from Exh.63 to 69 and Exh.73 to 76 being admissible in evidence can be read in evidence and will be read by me in the present matter. The decision cited by learned Counsel for the appellant on the question of use of multiplier of 10 and the consistent legal position set up by the Hon''ble Supreme Court is accepted and will have to be applied, but then since I have decided to go by the best method recognized by the Hon''ble Supreme Court, namely, reference to the earlier sale instances, I may not be required to refer to the theory of multiplier.

For convenience respective survey numbers acquired, respective Land Acquisition Cases and the First Appeals before this Court are suitably described below.

7. In so far as decision cited by learned Counsel for the claimants about the allowance for inflation is concerned, there should be no difficulty for me in accepting allowance for inflation @ 10% per year.

8. In the case of P. Ram Reddy and Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Ors. reported in 1995 (2) Supreme Court Cases 305 the Hon''ble Supreme Court has led stress on the situation of the acquired land vis-a-vis the city or the town or village etc. for any other kind of importance. In the said decision the Hon''ble Supreme Court also led emphasis testing the evidence on probabilities and experience of Court main and matters etc.. In the case of ONGC Ltd. v. Sendhabhai Vastram Patel and Ors. reported in 2005 (6) Scc 454, the Hon''ble Supreme Court in paragraph No. 11 held thus ;

11. While determining the amount of compensation payable in respect of the lands acquired by the State, indisputably, the market value therefore has to be ascertained. Although, there exist different modes for arriving at the market value for the land acquired; the best method, however, as is well known would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by the deeds of sale....

9. Keeping in mind the above legal principles, the facts and evidence on brought on record in these cases will have to be appreciated. At the outset, it cannot be forgotten that in the Wani area where the lands in question are situated the appellant - W.C.L. has many coal mines from which the black gold is extracted and the appellant earns huge profits therefrom. The land in question was acquired for railway siding for carrying coal which is obviously integral part of the business of the appellant - W.C.L. and therefore, I fully agree with the following reasons extracted in paragraph No. 52 of the judgment of the reference Court.

52. It is a matter of record that the petitioner''s lands are acquired under the compulsory acquisition by the L.A.O. for the purpose of coal mines project. It is certain that the purpose of respondents and acquiring body is for the coal mines purpose and therefore, I am of the opinion that the Court should be liberal in determining compensation at least in such cases where the purpose of respondents and acquiring body is for commercial or business purpose....

There is no doubt in my mind that the appellant - W.C.L. was bound to be hugely enriched with the acquisition of the suit lands. I, therefore, hold that the potential of the suit lands having black gold within it and the object for which the same was acquired i.e. for commerce and due to which acquiring body would be hugely benefited is a relevant factor for determining the just compensation. Merely because the lands were acquired by public sector enterprises or a Government company as against the private enterprises there is no justification in awarding less compensation to the affected people. Looking at Exh.65 which is a map of Mauja Niljai and in particular the locations of the fields acquired, it is crystal clear that all these lands which are the subject matter of these appeals are located on the bank of river at Wardha or just at a very small distance from the said bank. Survey numbers involved in these appeals are 130 and 134. Survey No. 130 is just on the bank of the river while survey No. 134 is after distance of 1/4th of field survey No. 129/3 and 129/5 which are again located on the bank of the said river. Now to support this observation made by me there is oral evidence of two witnesses and they have clearly stated accordingly and this evidence has not been put to challenge in the cross-examination. I have therefore no reason to hold otherwise and therefore, I hold that the fact that these fields are located on or close to the bank of Wardha river is fully established by oral as well as documentary evidence. Consequence of this finding is and as is borne out from the oral evidence that these lands on the bank of river were fertile and giving very high yield of crops. There is only one sale-deed which is relevant in my opinion and that is Exh.70 which has been duly exhibited and proved on record and the contents thereof can be read. This sale-deed is in relation to Survey No. 135 of village Niljai which is again on the bank of Wardha river towards southern side of Survey No. 130 which is clear from the map Exh.65. Now the sale-deed of this Survey No. 135 is dated 5.5.1984 and three acres of land was sold for Rs. 60,000/- four years before notification u/s 4 of the Land Acquisition Act. According to me this would be the genuine sale-deed since it is difficult to imagine that four years before notification u/s 4 of the Land Acquisition Act one could think of deliberately making sale-deed to show higher rate. There is absolutely no reason for me not to follow the same rate as is mentioned in Exh.70 and therefore, I prefer to accept this sale instance Exh.70 as true, correct and genuine sale-deed and the market value indicated therein i.e. Rs. 60,000/- per hectare means Rs. 26,000/- per acre. The survey numbers which are the subject matter of the present appeals, namely, 130, 134, 129/3 and 129/5 must also be given the same rate as in Exh.70. Now since the sale-deed Exh.70 is of the year 1984 and notification u/s 4 of the Land Acquisition Act was issued on 26.6.1988, 10% allowance for inflation per year also will have to be given in the light of the judgment of the Supreme Court. Giving 10% allowance for inflation the amount per acre towards inflation comes to Rs. 2,000/- per acre. The rate of the land therefore will have to be worked out at Rs. 28,000/- per acre. The rate of land per hectare, therefore, comes to Rs. 67,200/- per hectare. I, therefore, hold that the claimants in these appeals were entitled to compensation @ Rs. 67,200/- per hectare. The other sale instances relied upon by the claimants i.e. Exh. 66, 68 and 69 therefore need not be discussed since according to me the sale instance giving higher benefit to the affected claimant because of the acquisition of his superior land will have to be preferred in the facts and circumstances of these cases and for one more reason that they relate to some other village though they may be nearer to village Niljai. Hence, I am of the opinion that the compensation @ Rs. 67,200/- per hectare ought to have been allowed for the lands acquired.

10. I have carefully seen the sale instances pointed out by learned Counsel for the appellant which were filed on record i.e. from Exh.73 to Exh.76 and there is no doubt that these sale instances are from village Niljai only and the said lands are also from the same village. There is no further doubt that the said sale instances are nearer to notification u/s 4 of the Land Acquisition Act. There is also no doubt that the average rate for these sale instances pointed out by learned Counsel for the appellant is not more than Rs. 20,000/- per hectare. It is not in dispute that neither the appellant nor the State examined single person in support of its case before the reference Court nor any evidence in rebuttal was at all adduced by it. In other words, the appellant went merely by relying upon Exh.73 to 76 and remained confident. The survey numbers in these Exhibits 73 to 76 are as under.

11. Survey No. 118 is shown in Exh.65 (map). Looking to the location of this survey No. 118, it is clearly seen that it is at the other end of Wardha river and far away from the village settlement towards northern side. Survey No. 118/2

must be adjacent to the said Survey No. 118. Survey No. 53 obviously is on extreme western side and rather on the opposite side of Wardha river though the same has not been indicated in the map. Survey No. 135/4 is not seen in the map but it appears that it must be down below and one does not know the nature and the quality of the said field under Exh.76 since no evidence has come on record about the said survey No. 135/4. This is the major reason why I will have to reject the contention of learned Counsel for the appellant that these survey numbers under Exh.73 to 76 cannot at all be compared to the fields which were acquired. There cannot be any comparison of the lands which have no benefit of the river at all as against the survey numbers which are situated on the bank of the river. The submission made by learned Counsel for the appellant is, therefore, rejected and consequently, having come to the conclusion that the rate of these lands under these appeals should have been Rs. 67,200/- per hectare, the appeals filed by appellant - W.C.L. will have to be dismissed and the cross-objections filed in First Appeal Nos. 327/2001 and 328/2001 will have to be allowed. In the result, I make the following order.

ORDER

(i) First Appeals filed by appellant - Western Coalfields Limited are dismissed with costs.

(ii) Cross-objection St. Nos. 3590/2002 and 3596/2002 filed by the respondents - claimants are allowed with costs. In place of award of Rs. 55,000/- per hectare in Land Acquisition Case Nos. 73/1992 and 74/1992 the same shall be substituted and read as Rs. 67,200/- (Rupees Sixty Seven Thousand Two Hundred Only) per hectare. Rest of the award is confirmed and the statutory benefits etc. payable on the enhanced compensation by this Court shall obviously be payable in addition.

(iii) Since in First Appeal Nos. 395/2002 and 396/2002 there is no cross-objection filed by the respondents - claimants, filing of claim by them u/s 28A of the Land Acquisition Act, if otherwise tenable in law, is left open.

Decree be drawn up accordingly.

