Bombay High Court
Balawant S/O Rabhau Shingare ... vs The Executive Engineer ... on 4 May, 2023
Bench: V. V. Kankanwadi, Abhay S. Waghwase

fa-253-2015 with 252-2015.od

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.253 OF 2015
WITH CA/1223/2022 IN FA/253/2015
WITH CA/275/2019 IN FA/253/2015
WITH CA/196/2015 IN FA/253/2015

The Executive Engineer,
Construction (Civil)
Maharashtra State Electricity
Distribution Company Ltd.,
Mandal Vibhag, Latur .. Appellant

Versus

1. The State of Maharashtra
Through the Collector, Osmanabad.

2. The Special Land Acquisition Officer,
and Sub Divisional Officer, Osmanabad.

3. Dagdu s/o Namdeo Shingare,
Age: 58 years, Occu.: Agri.,
R/o. Shekapur, Tal. And
Dist. Osmanabad. .. Respondents

...

WITH
FIRST APPEAL NO.252 OF 2015
WITH CA/610/2019 IN FA/252/2015
WITH CA/197/2015 IN FA/252/2015
WITH CA/49/2021 IN FA/252/2015

The Executive Engineer,
Construction (Civil)
Maharashtra State Electricity
Distribution Company Ltd.,
Mandal Vibhag, Latur .. Appellant

Versus

1. The State of Maharashtra
Through the Collector, Osmanabad.

(1)

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2. The Special Land Acquisition Officer, and Sub Divisional Officer, Osmanabad.

3. Balwant s/o Rambhau Shingare, (Died Through Legal heirs)
3-a) Shahaji s/o Balwant Shingare Age: 52 years, Occ.: Agri.,

3-b) Vilas s/o. Balwant Shingare Age: 38 years, Occu.: Agri., R/o. As above. .. Respondents

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Mr. P. B. Paithankar, Advocate for appellant in both the appeals.
Mrs. P. V. Diggikar, AGP for respondent Nos.1 and 2 - State.
Mr. K. S. Patil, Advocate h/f Mr. S. S. Choudhari, Advocate for respondent No.3 in both the appeals.

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CORAM : SMT. VIBHA KANKANWADI AND ABHAY S. WAGHWASE, JJ.

RESERVED ON : 23rd January, 2023.
PRONOUNCED ON : 4th May, 2023.

JUDGMENT :- (Per Smt. Vibha Kankanwadi, J.)

. Both the appeals are arising out of the judgment and award

passed in Land Acquisition Reference Nos.497 of 2012 and 498 of 2012 by learned Civil Judge Senior Division, Osmanabad on 05.04.2014, thereby allowing the reference under Section 18 of the Land Acquisition Act filed by the present respondents.

2. We would like to say that the claimants have come with the case that they are the owners of land Survey No.154 admeasuring 1 fa-253-2015 with 252-2015.odt 47 R and Survey No.152 admeasuring 3 H 45 R respectively situated at village Shekapur, Taluka and District Osmanabad. The lands were acquired for construction of godown of then Maharashtra State Electricity Board. (for short "M.S.E.B.") The date of Notification under Section 4 of the Act was 15.09.1993, but prior to that the possession was taken by negotiation on 25.03.1992. The Special Land Acquisition Officer had passed

the award on 25.06.1996, which was at the rate of Rs.240/- per R and Rs.270/- per R, however, the claimants felt dissatisfied with the said award passed by the Special Land Acquisition Officer and, therefore, they filed reference under Section 18 of the Land Acquisition Act.

3. In the petition, the petitioners contended that they were not given opportunity to lead evidence and the award has been declared ex-parte/arbitrarily. Though the possession was taken much earlier, no amount was paid as rent or damages. The market price of the acquired lands in the year 1992-1993 was much more than the price calculated by Special Land Acquisition Officer. The Special Land Acquisition Officer had not considered the location of the acquired land and its potentiality to convert it into non agriculture. In fact, the lands are situated 2-3 kilometers from Osmanabad - Tuljapur State Highway. The adjoining lands are used for residential purposes. Some lands were meant for education and commercial activities.

fa-253-2015 with 252-2015.odt Under such circumstance, the Special Land Acquisition Officer ought to have granted adequate amount of compensation. The amount of compensation that has been granted is very meager and the claimants, therefore, sought enhancement at the rate of Rs.100/- per square feet.

4. The respondent Nos.1 to 3 before the reference Court submitted their written statements at Exhibit-7 and 15 respectively. It was contended that proper opportunity was given to the claimants to support their claim. However, no such concrete evidence was led. Whatever evidence was led before the Special Land Acquisition Office, he has considered it. Then prevailing market value, topography, fertility and quality of the lands have been taken into consideration. The acquired lands are the part of rural area and, therefore, whatever amount has been given is adequate. The respondents, therefore, prayed for the rejection of the reference.

5. Taking into consideration the rival contentions, issues came to be framed. Claimants have led oral as well as documentary evidence. There was no evidence on behalf of the respondents. After hearing both sides and perusing the documents on record, the learned reference Court allowed the references. It was held that the claimants are entitled to receive the enhanced compensation at the fa-253-2015 with 252-2015.odt rate of Rs.100/- per square with 30% solatium and 12% additional component on enhanced amount. So also 9% interest from the date of acquisition till one year i.e. 15.09.1994 and, thereafter at the rate of 15% from 16.09.1994 to 25.06.1996, has been awarded under Section 34 of the Land Acquisition Act. This judgment and award is under challenge in these appeals.

6. Heard learned Advocate Mr. P. B. Paithankar for the appellant in both the appeals, learned AGP Mrs. P. V. Diggikar for respondent Nos.1 and 2 - State in both the appeals and learned Advocate Mr. K. S. Patil holding for learned Advocate Mr. S. S. Choudhari for respondent No.3.

7. It has been vehemently submitted on behalf of the appellants that Section 6 Notification was published on 03.11.1994 and that of Section 11 on 25.06.1996. The possession of the land was taken by negotiations prior to the Notification under Section 4 of the Act. It is not in dispute that the land was acquired for the erection of godown of then Maharashtra State Electricity Board, present

Maharashtra State Electricity Distribution Corporation Limited (for short "M.S.E.D.C.L."). If we consider the evidence that was adduced by the claimants, then it can be seen from the cross-examination of claimant - Dagdu that he had filed sale instances before the Special fa-253-2015 with 252-2015.odt Land Acquisition Officer in support of his claim for enhancement or award of appropriate compensation. In respect of those sale instances, they were not adjoining in order to prove that the agricultural land was NA potential. The claimants have relied on valuer's report. As regards the valuer's report is concerned, the claimants have examined one Ramchandra Shankarrao Baraskar, who was the government approved valuer, however, it is to be noted that his inspection of the spot was without intimation to the Government authorities i.e. respondents and, therefore, that valuer's report is not binding on the appellants. P.W. Ramchandra has failed to explain as to why he has not given notice of his visit to the house property. Valuer's report is not binding on the Courts.

8. Learned Advocate for the appellants has further submitted that the learned Trial Judge has not considered the legal position. In Jafarali Mithabhai Hirani and Ors. Vs. State of Maharashtra and Ors., [2009 (5) Bom.C.R. 862], it has been held that the sale deeds which were produced before the reference Court were in respect of small plots of lands and further it has been held that they can be considered for fixing market value of acquired land after deducting some development charges, smallness of plot and other facilities. When Land Acquisition Officer considers, while passing his award, that the land in question was agricultural on the date of fa-253-2015 with 252-2015.odt Notification under Section 4 of the Land Acquisition Act, but it was situated near developed area, then under Section 11 of the Land Acquisition Act, the Special Land Acquisition Officer can pass the award, but considering potentiality of the acquired land, valuation to can be done on the basis of non agricultural land, but development charges will have to be excluded.

9. Further, reliance has been placed by him on the decision in Bhule Ram Vs. Union of India and another, [2014 (11) SCC 307], wherein it has been held that :-

> "16. In view of the above, the law can be summarised to the effect that the market value of the land is to be assessed keeping in mind the limitation prescribed in certain exceptional circumstances under Section 23 of the Act. A guesswork, though allowed, is permissible only to a limited extent. The market value of the land is to be determined taking into consideration the existing use of the land, geographical situation/location of the land along with the advantages/disadvantages i.e. distance from the national or State highway or a road situated within a developed area, etc. In urban area even a small distance makes a considerable difference in the price of land. However, the court should not take into consideration the use for which the land is sought to be acquired and its remote potential value in future. In arriving at the market value, it is the duty of the party to lead evidence in support of its case, in absence of which fa-253-2015 with 252-2015.odt the court is not under a legal obligation to determine the market value merely as per the prayer of the claimant.
>
> 17. There may be a case where a huge tract of land is acquired which runs though continuous, but to the whole revenue estate of a village or to various revenue villages

> or even in two or more States. Someone's land may be adjacent to the main road, others' land may be far away, there may be persons having land abounding the main road but the frontage may be varied. Therefore, the market value of the land is to be determined taking into consideration the geographical situation and in such cases belting system may be applied. In such a fact situation every claimant cannot claim the same rate of compensation."

10. It has been clearly stated that the market value of the land should be determined taking into consideration the existing geographical situation of the land, existing use of the land, already available advantages like proximity to National or State Highway or road and/or notionally or intentionally renowned tourist destination or development area and market value situated in some locality or adjacent or very near to acquired land and also the size of such land.

11. Further, reliance has been placed on the decision in Kolkata Metropolitan Development Authority Vs. Gobinda Chandra Makal and another, [AIR 2011 (SC) 3834], wherein it has been held that :-

> fa-253-2015 with 252-2015.odt "One of the principles in regard to determination of market value under section 23(1) is that the rise in market value after the publication of the notification under section 4(1) of the Act should not be taken into account for the purpose of determination of market value. If the deeming definition of 'publication of the notification' in the amended section 4(1) is imported as the meaning of the said words in the first clause of section 23(1), it will lead to anomalous results. Owners of the lands which are the subject matter of the notification and neighbouring lands will come to know about the proposed acquisition, on the date of publication in the gazette or in the newspapers. If the giving of public notice of the substance of the notification is delayed by two or three months, there may be several sale transactions in regard to nearby lands in that period, showing a spurt or hike in value in view of the development contemplated on account of the acquisition itself" and therefore it was further held that "in section 23(1), the words "the date of publication of the notification under section 4(1)" would refer to the date of publication of the notification in the gazette."

Therefore, we are required to consider the position on 15.09.1993 and beyond that, in the present case.

12. He further relied on the decision in Executive Engineer Vs. Uttamrao Bapurao Raut, 2010 (2) Bom.C.R. 204, wherein also development charges as well as other expenses and time consumed for the purpose of development, were deducted. It was therefore fa-253-2015 with 252-2015.odt submitted that when the lands were acquired those were agricultural lands and their compensation could not have been enhanced in the rate of per square feet by the reference Court. The enhancement that has been granted is huge and excessive. The learned Advocate for the appellants, therefore, prayed for setting aside the award passed by the learned reference Court and restoration of the order and award passed by the Special Land Acquisition Officer.

13. Per contra, the learned Advocate appearing for the original claimants supported the reasons given by the learned reference Court. He submitted that the surrounding locations have been brought on record by the claimants as well as in their cross- examination. It is also stated in the award passed by the Special Land Acquisition Officer. The acquired land is at a distance of 8 to 9 kilometers from district place Osmanabad i.e. beyond the Nagar Parishad area. State Highway Osmanabad - Solapur is towards the eastern side of the said land. Sale instances were also produced on record and taking into consideration those sale instances i.e. dated 31.12.1996 and 18.03.1994, proper compensation has been awarded. The acquisition was for non agriculture purpose i.e. godown of M.S.E.D.C.L. The adjoining area was NA potential and, therefore, even taking into consideration the fact that it was acquired for the purpose of go-down, even M.S.E.D.C.L. would have got it converted (10) fa-253-2015 with 252-2015.odt for the non agricultural purpose and, therefore, the compensation paid in square feet rate, is appropriate. The valuer's report has been produced and P.W.2 Ramchandra Baraskar has been examined to prove his report. According to Baraskar, the acquired land's value was Rs.650/- per square meter. Further the learned reference Court has also relied on the decision in Land Acquisition Reference No.131 of 1997 which was from the same area. There was strong evidence to support the claim of the claimants and, therefore, no interference is required in the first appeals.

14. Taking into consideration the submissions on behalf of both the sides, following points arise for determination in the first appeals. Findings and reasons for the same are as follows :-

POINTS

(i) Whether the learned reference Court was justified in relying upon the evidence led by the claimants including the valuer's report to grant enhancement?

(ii) Whether the said judgment suffers from illegality of not taking into consideration various decisions by the Apex Court?

(iii) Whether case is made out for interference? If yes, to what extent?

(11) fa-253-2015 with 252-2015.odt REASONS

15. Since the above points are interconnected and to avoid repetition, all the points are taken up together for discussion for the sake of convenience.

16. Perusal of the record would show that in L.A.R. No.497 of 2012, claimant Dagdu Namdeo Shingare was examined at Exhibit-18, whereas on behalf of the claimants in L.A.R. No.498 of 2012, one Vilas Balwant Shingare was examined. With their respective changes, the affidavit-in-chief of both of them is almost similar. The cross- examination is almost same. They both have admitted that they have received notice under Section 4 and 9 of the Land Acquisition Act. They denied that they had not filed reply to the Special Land Acquisition Officer. They both have admitted that they have not filed any documentary evidence to show that their land is irrigated and they used to take crop like sugarcane. They both have admitted that the sale instances which they have produced or

relied upon are in respect of those lands which are not either touching or at a close distance from the acquired land. They were unable to tell the location and the four boundaries of the land referred in the sale instances. Thus, except barely supporting what they intended to say in their claim petition, there is nothing. Here, in this case, the possession of the land was taken by negotiation on 25.03.1992, but the Notification under Section 4 of the Land Acquisition Act was (12) fa-253-2015 with 252-2015.odt issued on 15.09.1993. Thereafter, Section 6 Notification was issued on 03.11.1994 and under Section 11 it was on 25.06.1996. Notice under Section 12(2) was issued on 02.05.1997. All these dates were important taking into consideration the fact that the sale instances those were produced were Exhibit-29 and 30 in L.A.R. No.498 of 2012. Exhibit-29 was of the plot which was beyond the Nagar Parishad area i.e. Plot No.8 admeasuring East-West 14 meters and South-North 9 meters i.e. 126 square meters in Survey No.377/3 in Osmanabad. It was executed on 18.03.1994. That means it was after Notification under Section 4 of the Land Acquisition Act was issued. The location is not in village Shekapur, where the property is situated. The distance between the Plot sold in Exhibit-29 and the land acquired in question has not been told and when the said sale deed is of the period after the issuance of Notification under Section 4 of the Land Acquisition Act, it cannot be considered. We would like to rely on Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and , AIR 1988 SC 1652, wherein the methodology of determination of market value was indicated and it was observed that the determination of the market value of the land must be determined as on the crucial date of publication of the Notification under Section 4 of the Land Acquisition Act. In Bhule Ram (Supra) also the same ration had been laid down. Possibility of hike in price (13) fa-253-2015 with 252-2015.odt after the Notification under Section 4 of the Land Acquisition Act cannot be ruled out and, therefore, the said price/market value should be considered from the period, which is just preceding Section 4 notification. The Claimant has relied on the sale deed Exhibit-30, which is a house property from village Shekapur. The said house property was sold at Rs.2,35,000/-, which was admeasuring 148.71 square meters, however, we would say that Exhibit-30 was executed by the claimant himself i.e. Dagdu Namdeo Shingare, but the date is again important. He had sold it on 31.12.1996. Therefore, those sale instances were absolutely not proper to rely. The claimant in another case i.e. L.A.R. No.497 of 2012 also relied on these two sale instances.

17. Further, we would like to say that the land in question was NA potential and it was demonstrated from the NA order Exhibit-31 and Exhibit-26 respectively. The NA order was in respect of Gut No.154 from Shekapur, which is the land in question. Definitely the reference Court would be justified in considering the NA order. Further, it is to be noted that there was no evidence adduced by the claimants to show that the lands were irrigated lands. Though they contended that they were taking sugarcane crop, yet the record and proceedings would show that they had not even filed the 7/12 extract. Rather the 7/12 extract appears to be not even got exhibited.

(14) fa-253-2015 with 252-2015.odt Therefore, there was no support to their contention about taking sugarcane crop, still we maintain that the potentiality of the land to put it for non agriculture purpose should have been considered.

18. Thereafter, the claimants are relying on the testimony and report of P.W.2 Ramchandra Shankarrao Baraskar, the valuer, who had valued the lands and told that the valuation of the lands

acquired is Rs.1,50,24,750/- and 47,11,850/- respectively. However, it is to be noted from the examination-in-chief of this witness that he had considered the three sale deeds of the nearer area plots. However, he had not produced those sale deeds on record. Mere statement then to that effect is not sufficient. His examination-in- chief also does not contain the details of those sale deeds. He has, however, stated that the land acquired has NA potentiality. In the vicinity, the number of housing societies have come up and many persons were ready to purchase the land for residential purpose around the acquired land. Even the claimant had prepared layout plan and started to divide the plots by converting the land into non agriculture purpose. The NA order passed in respect of Gut No.154 produced in both the cases is in fact the NA order of adjoining person. Therefore, we would say that only the fact has been brought on record that the land had NA potentiality, but the other details have not been brought on record. Further, it can also be said that the (15) fa-253-2015 with 252-2015.odt appellant had acquired the land for erecting godown. That means they had the intention to put it for commercial use. It may not be strictly commercial, but ultimately by erecting the godown, they would be as per the material that is required by them and ultimately, it could be used for the electricity supply, which is definitely a commercial activity. They would have also required to convert the use of land from agriculture to non agriculture before erecting the godown. This aspect appears to be not considered by the Special Land Acquisition Officer.

19. Now, the question would be what could be the adequate compensation. We have already held that the sale instances were not proper and sufficient to grant the rate of the land as demanded by the claimants. Certainly the reference Court erred in this aspect. Another fact to be noted is that reliance has been placed on some other decision i.e. L.A.R. Nos.216 of 2010 as well as 131 of 1997. The first and the foremost fact which has to be mentioned here that the certified copy of the judgment in L.A.R. No.131 of 1997 appears to be not produced by the claimants, as it is not on record and it has not been marked exhibit. The trial Court totally erred in considering that evidence, which was not produced by either parties. The reference Court on its own and without bringing the fact to the notice of the parties cannot rely upon a piece of evidence by either calling the (16) fa-253-2015 with 252-2015.odt original record from the another matter or by any other means. If an opportunity would have been given to both sides to put forth their say on the said judgment in L.A.R. No.131 of 1997, they would have brought on record something in their support. We do not know which land was acquired in L.A.R. No.131 of 1997. It appears that in the course of arguments, the learned Advocate for the claimants had made the said prayer that the earlier award in L.A.R. No.131 of 1997 should be considered. The procedure that is adopted by the learned reference Court is totally wrong. At the cost of repetition, we would say that the reference Court erred in considering that piece of evidence which was not led by both the claimants. If such shortcut is allowed to be adopted, then we may not even require provisions of Indian Evidence Act. The evidence has to be led by any party to a litigation within the four corners of the Indian Evidence Act and then only the same can be considered by the Courts of law.

20. We find much substance in the submissions on behalf of the appellant that it ought to have been considered by the learned reference Court that the instances for bulk land ought to have been considered and not the small pieces and if the small pieces are required to be considered, then the decision in Jafarali Mithabhai Hirani (Supra) would be relevant. There has to be deduction of 40% for development and further 40% for smallness of plots.

(17) fa-253-2015 with 252-2015.odt

21. In the present cases, now affidavit-in-reply to the application for withdrawal of amount filed by the original claimants is given. That means, the affidavit-in-reply is by the Executive Engineer of the appellant and along with his affidavit, certain documents have been produced i.e. sale deeds. It is now orally submitted that in the year 2015 and 2017 also the price in the said area is not more than Rs.25,000/- for 5 R and Rs.1,90,000/- for 1 H 46 R and therefore, it is submitted on behalf of the appellant that the said enhancement by the reference Court is exaggerated. With respect to the learned Advocate for the appellant, we would like to say that this is the first appeal and, therefore, the provisions of Civil Procedure Code are applicable. There was no hurdle for the appellant to file an application under Order 41 Rule 27 of the Code of Civil Procedure for allowing it to produce documents. If the application within the four corners of Order 41 Rule 27 of Code of Civil Procedure is not filed, then those documents cannot be considered, if produced otherwise.

22. As aforesaid, we have stated that proper evidence is not produced by the claimants by giving appropriate sale instances, but still the NA potentiality of the plots/lands would be a relevant factor. In Trishala Jain Vs. State of Uttranchal, 2011 (6) SCC 47, the Hon'ble Supreme Court has accepted that recourse to some guess work while determining the fair market value of the land and (18) fa-253-2015 with 252-2015.odt consequential amount of compensation that is is required to be paid to the persons interested in the acquired land, is inevitable. Now, the fact is left for guess work as evidence is not properly adduced. As aforesaid, we are of the opinion that the Special Land Acquisition Officer has not fixed the proper market value of the said lands. The evidence of the valuer i.e. P.W.2 Ramchandra Baraskar is also not helpful. His examination-in-chief would show that his calculation was not based on proper evidence collected by him. The geographical situation is, near Hyderabad-Badoda via Aurangabad National Highway, there is internal road also to go to the said land. Therefore, taking into consideration these aspects, ratio in Jafarali Mithabhai Hirani (Supra) and other citations relied upon by the appellants and also in Revenue Divisional Officer-cum-LAO Vs. Shaikh Azam Saheb, (2009) 4 SCC 395, wherein the Hon'ble Supreme Court had considered the determination of the market value of the acquired land which was situated about 4 kilometers away from the Highway and then 10% extra deduction was given on account of that, we are of the opinion that the claimants should receive the amount of compensation as is granted on square feet basis. If we consider Exhibit-24 i.e. the sale instance dated 18.03.1994 (after Notification under Section 4 of this case i.e. 15.09.193), which was in respect of small plot, the amount would be Rs.44/- per square feet, then the (19) fa-253-2015 with 252-2015.odt claimants should receive compensation at the rate of Rs.40/- per square feet. Accordingly, the findings are answered. The enhancement that was granted by the learned reference Court is exorbitant and, therefore, it needs to be reduced. Hence, the following order is passed :-

ORDER I) Both the appeals are partly allowed.

II) The Award passed in L.A.R. Nos.497 of 2012 and 498 of 2012 by the learned Civil Judge Senior Division, Osmanabad on 05.04.2014 is hereby set aside. Both the Land Acquisition References are partly allowed.

III) The claimants are entitled to receive enhanced compensation at the rate of Rs.40/- per square feet in respect of the acquired lands proportionate to their shares and the area so acquired with 30% solatium as per the Land Acquisition Act and 12% additional component on enhanced compensation amount for the period of 15.09.1993 to 25.06.1996.

IV) The compensation received from Special Land Acquisition Officer be deducted from the amount so (20) fa-253-2015 with 252-2015.odt enhanced and the balance amount to be paid to the respective claimants along with interest at the rate of 9% per annum for the period from 16.09.1993 to 15.09.1994 and at the rate of 15% per annum from 16.09.1994 to 25.06.1996, in the light of Section 34 of the Land Acquisition Act.

V) Further, excess compensation will carry interest at the rate of 9% per annum from 26.06.1996 to 25.06.1997 and 15% per annum from 26.06.1997 till satisfaction of the Award, as per Section 28 of the Act.

VI) The amount so arrived at, be calculated and original claimants would then be allowed to withdraw the said amount from the Court, where the amount is deposited. The excess amount be refunded to the appellants after the appeal period is over.

VII) Decree be prepared accordingly.

VIII) Pending civil applications, if any, stand disposed of.

[A. S. WAGHWASE] JUDGE

[SMT. VIBHA KANKANWADI] JUDGE

scm

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