IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 FIRST APPEAL NO. 3507 OF 2011

BALBHIM SAYBANNA PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ORS
...
Advocate for Appellant : Mr. M.P. Tripathi
AGP for Respondent/State : Mr. S.N. Morampalle
Advocate for Respondent 3 : Mr. S.G. Sangle
...
WITH
CIVIL APPLICATION NO. 7293 OF 2017 IN FA/3507/2011
WITH
CIVIL APPLICATION NO. 11192 OF 2026 IN FA/3507/2011
...

CORAM : SIDDHESHWAR S. THOMBRE, J.

Dated : October 08, 2026

PER COURT :-

1. As the acquisition proceeding is initiated in the year 1997, heard finally with the consent of learned counsel for the respective parties.

2. By this appeal, the appellant/original claimant assails the judgment and order 29.1.2010 passed by the learned Civil Judge, Senior Division, Omerga in LAR No. 750/2005 (Old No. 186/2001), whereby the learned reference court has enhanced the compensation, but not granted as claimed by the appellant/original claimant.

3. The lands of the claimant admeasuring 3 H. 93 R. from Gat No. 369 situated at village Kesarjawalga was acquired for Kesarjawalga Storage Tank at village Kesarjawalga. Notification under section 4 of the Land Acquisition Act came to be published on 21.4.1997. Declaration under section 6 of the Act came to be published on 28.1.1999. The Special Land Acquisition Officer (SLAO) has declared the award under section 11 of the Act on 27.12.1999 and granted compensation at the rate of Rs.31,000/- per H. and also

granted compensation towards the acquired trees. The claimant after accepting the amount under protest filed references under section 18 of the Act by contending that the SLAO has granted very meager compensation. After considering the evidence on record, the learned reference court enhanced compensation at the rate of Rs.45,000/- per H. Being dissatisfied with the same, the present appeal is filed by the original claimant.

4. Mr. Manish Tripathi, learned counsel for the appellant/claimant submits that during the pendency of the present appeal, the reference court has granted rate of Rs.827/- per R. for Jirayat land in LAR No. 892/2005 which arises from the same project, from the same notification and the lands involved are also from the same village. He therefore submits that the claimant is also entitled to receive the same rate on the ground of parity. As of now, as per instructions, he submits that the order passed in LAR No. 892/2005 is not assailed by the other side or modified by this Court. Therefore, he submits that in the present matter also, on the ground of parity, the claimants are entitled to receive the same rate as was granted in LAR No. 892/2005.

5. Per contra, Mr. S.G. Sangle, learned counsel for the acquiring body/ respondent No. 3 and the learned AGP Mr. S.N. Morampalle for State submit that as far as the rate enhanced by the reference court in the present first appeal is concerned, it was just, proper and reasonable. They also fairly submit that they have no instruction whether the order passed by the reference court in LAR No. 892/2005 was challenged before this Court or set aside by this Court. Mr. Sangle, learned counsel submits that in that matter the learned reference court has relied upon the earlier order passed in LAR No. 120/2008 and other connected matters decided on 3.6.2016. Mr.

Sangle, learned counsel further submits that even in LAR No. 120/2008, the reference court has relied upon the sale instance, which was considered by the SLAO and the rate was determined. He further submits that in LAR No. 120/2008 (supra) the sale instance which was relied by the reference court was not proved and thus, by relying upon the order passed in LAR No. 120/2008 (supra) the reference court has passed order in LAR No. 892/2005 and therefore, the same cannot be made applicable in the present matter. He further submits that as regards placing reliance on the order in other LARs is concerned, that cannot be readily placed before this Court. In support of his contention he relied upon para Nos. 14 to 17 in the case of **Manoj Kumar Etc. Vs. State of Haryana, reported in AIR 2018 (Supp) 247** :-

> "14. In our opinion, the High Court could not have placed an outright reliance on the decision of Swaran Singh's case, without considering the nature of transaction relied upon in the said decision. The decision could not have been applied ipso facto to the facts of the instant case. In such cases, where such judgments/awards are relied on as evidence, though they are relevant, but cannot be said to be binding with respect to the determination of the price, that has to depend on the evidence adduced in the case. However, in the instant case, it appears that the land in Swaran Singh's case was situated just across the road as observed by the High Court as such it is relevant evidence but not binding. As such it could have been taken into consideration due to the nearness of the area, but at the same time what was the nature of the transaction relied upon in the said case was also required to be looked into in an objective manner. Such decisions in other cases cannot be adopted without examining the basis for determining compensation whether sale transaction referred to therein can be relied upon or not and what was the distance, size and also bonafide nature of transaction before such judgments/awards are relied on for deciding the subsequent cases. It is not open to accepting determination in a mechanical manner without considering the merit. Such determination cannot be said to be binding. We have come across several decisions where the High Court

is adopting the previous decisions as binding. The determination of compensation in each case depends upon the nature of land and what is the evidence adduced in each case, may be that better evidence has been adduced in later case regarding the actual value of property and subsequent sale deeds after the award and before preliminary notification under section 4 are also to be considered, if filed. It is not proper to ignore the evidence adduced in the case at hand. The compensation cannot be determined by blindly following the previous award/judgment. It has to be considered only a piece of evidence not beyond that. Court has to apply the judicial mind and is supposed not to follow the previous awards without due consideration of the facts and circumstances and evidence adduced in the case in question. The current value reflected by comparable sale deeds is more reliable and binding for determination of compensation in such cases award/judgment relating to an acquisition made before 5 to 10 years cannot form the safe basis for determining compensation.

15. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequal's. As per situation of a village, nature of land its value differ from the distance to distance even two to three-kilometer distance may also make the material difference in value. Land abutting Highway may fetch higher value but not land situated in interior villages.

16. The previous awards/judgments are the only piece of evidence at par with comparative sale transactions. The similarity of the land covered by previous judgment/award is required to be proved like any other comparative exemplar. In case previous award/judgment is based on exemplar, which is not similar or acceptable, previous award/judgment of court cannot be said to be binding. Such determination has to be out rightly rejected. In case some mistake has been done in awarding compensation, it cannot be followed on the ground of parity an illegality cannot be perpetuated.

Such award/judgment would be wholly irrelevant.

17. There is yet another serious infirmity seen in following the judgment or award passed in acquisition made before 10 to 12 years and price is being determined on that basis by giving either flat increase or cumulative increase as per the choice of individual Judge without going into the factual scenario. The said method of determining compensation is available only when there is absence of sale transaction before issuance of notification under section 4 of the Act and for giving annual increase, evidence should reflect that price of land had appreciated regularly and did not remain static. The Recent trend for last several years indicates that price of land is more or less static if it has not gone down. At present, there is no appreciation of value. Thus, in our opinion, it is not a very safe method of determining compensation."

He further relied upon para 19 of the order passed by the Division Bench of this Court in **First Appeal No. 253/2015 (The Executive Engineer Vs. The State of Maharashtra and Ors.) and other connected matters decided on 4.5.2023**, which is as under :-

"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 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."

He further placed reliance on the law laid down by the Apex Court in the case of **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poon reported in (1988) 2 SCC 751**, which reads as under :-

"4. The following factors must be etched on the mental screen:

> (1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition officer in his Award unless the same material is produced and proved before the Court.
>
> (2) So also the Award of the Land Acquisition officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition officer, as if it were an appellate court.
>
> (3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it. "

Thus, he submits that the order passed in LAR No. 892/2005 cannot be accepted as it is as the claimants are required to prove the same.

6. Having heard the learned counsel for respective parties, I have gone through the record and proceedings. The issue involved in the present appeal is under very narrow campas. There is no dispute about the fact that the land in the present matter was acquired from village Kesarjawalga for Kesarjawalga Storage Tank and the land from the LAR No. 892/2005 was also acquired for the same project and from the same village, but by way of different notification under section 4 i.e. 29.5.1997, which came to be issued after one month of the notification issued in the present matter. It appears that during the pendency of the present appeal, LAR No. 892/2005 which arises from the same project, from the same village, the reference court has enhanced compensation by relying upon the order passed in LAR No. 120/2008 (supra), which also arise from the same project, from the same village and from the same notification as was involved in LAR No. 892/2005. One thing need to be kept in mind that the lands involved in the present matter and the above LARs are acquired for the same project, from the same village, though by the different notifications.

7. As regards reliance placed upon by the learned counsel for the appellant on the order passed in other LAR is concerned, the application under Order 41, Rule 27 of CPC was filed and therefore that was judicial pronouncement. Even it was not brought to my notice that order passed in both the LARs was challenged or set aside by this Court. Therefore, once the judicial pronouncement from the same project is available, by way of application under Order 41, Rule 27 of CPC, the said order was placed on record and that there is no difficulty to consider the same and therefore, the contention of the learned counsel Mr. Sangle in respect of above contention is rejected for the reason that in those cases the order passed in LARs were

directly tendered before the reference court. Here in this case, that is not fact. Hence, this court is of the view that the claimant is entitled to receive the compensation as was granted in L.A.R. No. 892/2005 i.e. Rs.827/- per R. Hence, Civil Application No. 7293/2017, seeking production of documents under Order 41, Rule 27 of C.P.C. is allowed considering the averments made in the application and disposed of. Applicant is permitted to produce on record the copy of judgment and order dated 28.6.2016 passed in LAR No. 892/2005 (Old No. 422/2001) by the learned Civil Judge, Senior Division, Omerga, Dist. Osmanabad. Hence, the order.

O R D E R

(i) The first appeal is partly allowed.

(ii) The appellant/claimant is entitled to receive compensation at the rate of Rs.827/- per R. for his acquired Jirayat land.

(iii) The claimant shall be entitled to all statutory benefits on the enhanced compensation, in accordance with the provisions of the Land Acquisition Act, 1894.

(iv) The impugned judgment and awards is modified accordingly.

(v) The rest of the impugned judgment and award shall remain unaltered.

(vi) The claimants shall pay the deficit court fees, if any, on the enhanced amount.

(vii) The modified Awards be drawn accordingly.

(viii) Pending Civil Applications, if any, stand disposed of.

(SIDDHESHWAR S. THOMBRE, J.)

ssc/