

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

957 FIRST APPEAL NO. 266 OF 2006

PRATAP SHAMRAO DESHMUKH.

VERSUS

STATE OF MAH.THURU COLLECTOR,NANDED AND ANR.

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Advocate for Appellant : Mr.S. K. Adkine

AGP for Respondents: Mr. S.P.Sonpawale

CORAM : A. M. BADAR, J.

DATE : 17th December, 2015

PER COURT :

1. This is an appeal under section 54 of the Land Acquisition Act by original claimant feeling aggrieved by judgment and award passed by the learned Civil Judge, Senior Division, Nanded in LAR No.183/1995 on 17.07.1997.

2. Facts leading to the institution of the present appeal are thus:

i. For extension of Gavthan of village Irapur in Hadgaon Taluka of District Nanded, 5 H 50 R land from Gat No. 53 of vilalge Shivur came to be acquired by the State. Though notification under section 4 of the Land Acquisition Act, was issued on 11.03.1993, possession of the acquired land was taken on 08.09.1992. The Special Land Acquisition Officer, vide award dated 10.02.1995,

was pleased to determine market value of the acquired land at Rs.12,000/- per acre i.e. Rs.30,000/- per hectare.

ii. Feeling dissatisfied with this award of Special Land Acquisition Officer, the appellant/original claimant preferred a Reference under section 18 of the Land Acquisition Act for enhancement of compensation by lodging a claim of Rs.2.40 lakhs per hectare i.e. Rs.6 lakhs per hectare for the acquired land. According to claimant, the award of the Land Acquisition Officer is not reflecting true market price of the acquired land and the Land Acquisition Officer has overlooked potentiality, fertility, further use, location and situation of the acquired land. The same was adjacent to Gavthan of village Irapur and it was put to non agricultural use as per order of the Tahsildar. It is case of appellant/claimant that village Shivur is on Shembalpimpri -Pusad road having Grampanchayat as well as facilities of education and transportation.

iii. Respondent/State opposed the Reference by filing written statement, denying each and every adverse averments made therein. According to respondents, the Land Acquisition Officer has awarded suitable

compensation to claimant reflecting the market value of the acquired land.

iv. On the basis of rival pleadings, issues were framed and parties were put to trial.

v. In support of his claim, appellant/claimant Pratap Deshmukh examined himself and he was cross examined by the State. Reliance was placed on documentary evidence by both the parties.

vi. After hearing the rival submissions, learned Civil Judge, Senior Division, Nanded by the impugned judgment and award dated 17.07.1997 passed in LAR No. 183/1995 between the parties, was pleased to allow the Reference partly, thereby enhancing the amount of compensation and fixed market value of the acquired land at Rs.20,000/- per acre i.e. Rs.50,000/- per hectare.

3. Heard Shri Adkine, learned counsel appearing for the appellant/original claimant. He placed reliance on judgment in the matter of **Mehrawal Khewaji Trust (Regd) Firodkot and ors. Vs. State of Punjab and others**, reported in **AIR 2012 SUPREME COURT 2721** and submitted that the learned Reference Court ought to have relied on

sale instance reflecting the highest market value in order to determine the market value of the acquired land. Therefore, in his submission, sale instances at Exh. 18, Exh.20 and Exh. 21 ought to have been relied by the learned Reference Court.

4. Shri Adkine, learned counsel further argued that sale instance at Exh.17 was reflecting the market value at Rs.6 lakhs per hectare, whereas sale instance at Exh.20 and 21 were reflecting market value of the land under the sale deed at Rs.7 lakhs per hectare. As such, according to Shri Adkine, learned Reference Court ought to have fixed market price of the acquired land at Rs.6 lakhs per hectare and the Reference ought to have been decided accordingly.

5. As against this, by relying on the judgments of the Supreme Court in the matter of **Hookiyar Singh and others Vs. Special Land Acquisition Officer, Moradabad and another** reported in (1996) 3 Supreme Court Cases 766 and in the case of **Deputy Collector and (S.D.O.) and another Vs. Diogo Piedade Inacio Falcao & others** reported in 2006 (2) Bom. C.R. 769, learned AGP supported the judgment and award by contending that it was the duty of the claimant to prove the claim in respect of the market

value of acquired land by relying on bona fide transaction in respect of similarly situated lands. Learned AGP further argued that the sale instances relied by the claimant were not comparable and as such, the learned Reference Court has rightly assessed the market value of the land in question.

6. I have carefully gone through the record and proceedings including oral evidence of claimant Pratap as well as sale instances relied on by both the parties. It is well settled that the award of the Land Acquisition Officer is merely an offer to the claimant. Burden always rest upon the claimant to prove the market value of the acquired land. In the matter of **Hookiyar Singh and others**(supra) this aspect is dealt with in following words :

“It is settled law that burden of proof of market value prevailing as on the date of publication of Section 4(1) notification is always on the claimants. Though this Court has time and again pointed out the apathy and blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of interest on the part of the counsel for the State to cross-examine the witnesses on material facts, it is the duty o the court to carefully

scrutinise the evidence and determine just and reasonable and adequate compensation. If the sale deeds are found to be genuine, the market value mentioned therein must be presumed to be correct. If the genuineness is doubted, it cannot be relied upon. The proper tests and principles laid down by this Court must be applied to determine compensation. Since the LAO as well as the High Court placed reliance on the sale deed which commanded market value of a maximum of Rs.15,000/- and odd, the question is: what would be the just and adequate compensation to be paid in respect of the lands ? The Court must not indulge in feats of imagination but, sit in the armchair of a prudent purchaser in open market and to put a question to itself whether as a prudent purchaser, it would offer the same price in the open market as is to be determined? This should be the acid test."

7. It is thus clear that while assessing the market value of the acquired land, such transaction is required to be taken into consideration which reflects the correct market price of the acquired land and standard which needs to be applied for such exercise is, standard of a prudent purchaser. Thus, evidence for determination of market value of acquired land could be an authentic transaction of sale relating to very similar land which could be favourably compared with acquired land.

Comparable sale method is the most favoured method. Such sale deed must have been taken place at the proximate time to the date of publication of notification under Section 4 of the Land Acquisition Act. Lands sold under the same must be similar to the acquired land. It must be in the vicinity of the acquired land. The sale must be genuine. Location, size, shape, tenure, user, potentiality of land under comparable sale has to be taken into account. At this juncture, it is also relevant to note that in terms of Section 24 of the Land Acquisition Act, 1988, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired needs to be ignored while assessing the market value of the acquired land. I am deliberately coating his provision as claimant has relied on sale instances at Exhs 20 and 21 which are dated 23.12.1992 and 14.2.1993 i.e. of post notification period in respect of his own land which was not acquired. Keeping in mind these aspects, let us examine whether the claimant has proved that his acquired land was capable of fetching market value of Rs.2.40 lakhs per acre i.e. Rs.6 lakhs per hectare on as on the date of notification i.e. on 11.03.1993. His acquired land is from village Shivur. The acquisition was for extension

of Gavthan of village Irapur. Therefore, it hardly needs to be mentioned that acquired land must be in the vicinity of village Irapur. The claimant ventured to state that acquired land had been put to non agricultural use. However, careful perusal of his testimony coupled with the documents placed on record does not enable me to endorse this version of the claimant. 7/12 extract of the acquired land is at Exh. 32. It shows that land at Gat No. 53 which was under acquisition was used for the purpose of agriculture in the year 1992-93. The claimant had sown hybrids and other crops in the said land as seen from this 7/12 extract. Therefore, it cannot be said that the land under acquisition was put to non agricultural use at the relevant time. One more factor is relevant in this regard. As per case of the claimant himself, his land at Gat No. 53 was taken in possession by the State on 08.09.1992. In the wake of this taking over of possession of the acquired land, subsequent development in the vicinity are required to be judged.

8. Claimant is relying on the order dated 24.09.1993 at Exh.22 by which his remaining land from Gat No. 53 was converted into non agricultural use by order

of the Tahsildar. This order at Exh. 22 shows that remaining 31 R land from Gat No.53 owned by the claimant was permitted to be used for non agricultural purpose. In pursuance to this N.A. Permission, it appears that the claimant had sold the same 200 square feet land each vide sale instances Exhs.20 and 21. These sale instances reflect price of Rs.7 lakhs per hectare. However, these sale instances are in respect of post notification period. By that time, as seen from the version of the claimant, his acquired land was already put to beneficiaries t who have constructed their houses on the same. This must have been done immediately after 08.09.1992 when possession of the land put up for acquisition was taken. Because of such development by construction of houses on the acquired land, price of the remaining land which was not acquired, was increased. This increase in value in of the remaining land cannot be considered for assessing market value of the acquired land. As such, sale instances at Exh. 20 and 21 which are of post notification period showing increased price of the land because of the use to which acquired land was put, needs to be ignored.

9.It is seen that sale instanced at Exhs. 20 and 21

cannot be relied upon for enhancing compensation in respect of acquired land. Only sale instance remains is of sale instance of Exh.18. This sale instance is in respect of village Shivur itself. The land is from Gat No. 145. Only 5 R land is covered by this sale instance. It was sold for Rs.30,000/- reflecting the price at Rs.6 lakhs per hectare. In my opinion, this sale is not at all bona fide sale instance. No prudent person would purchase only 5 R agricultural land for agricultural purpose. Recitals in sale deed Exh. 18 itself goes to show that this 5 R land was sold only because entire village was coming in benefited zone. Moreover, this sale took place because 5 R land covered by this sale deed was found to be not suitable by the owner. It was sold to adjoining owner. Apart from small size of this land under sale deed at Exh. 18, the transaction itself does not appear to be bona fide because sale was made with a recital that it is effected as the village is coming under the benefited zone. Hence, though in the matter of **Mehrawal Khewaji Trust (Regd) Firodkot**(supra) it is held that sale instance reflecting the highest market value needs to be considered, sale instance at Exh. 18 cannot be considered for enhancing the market value as the same cannot be said to be a bona fide

transaction.

10. In the result, it needs to be held that the learned Reference Court has rightly assessed the compensation by enhancing the market value to Rs.20,000/- per acre i.e. Rs.50,000/- per hectare. As such, the appeal is devoid of merit and the same is dismissed with no order as to costs.

(**A. M. BADAR, J.**)

JPC