

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 305 OF 2001

Sunderrao S/o Narayanrao Narwade,
 Died, through L.Rs. (below mentioned)

1. Bhagwat S/o Sunderrao Narwade
 Age 37 years, Occu.: Agriculture,
 r/o. Pimpalner, Tq. and Dist. Beed.
2. Vishnu S/o Sunderrao Narwade,
 Age 32 years, Occu. Agriculture,
 r/o. As above
3. Padmakar S/o Sunderrao Narwade,
 Age 28 years, Occ. and r/o as above.
4. Gangubai w/o Sunderrao Narwade,
 Age 57 years, Occu. Agril
 r/o As above
5. Vidya w/o Wachishta Kawachat,
 Age 34 years, Occu. Agriculture
 R/o Kesapur (Parbhan), Tq. and
 District Beed. .. Appellants
 (Ori.Petitioner)

VERSUS

The State of Maharashtra
 through Collector, Beed .. Respondent

Mr. T.B. Bhosale, Advocate for the appellants
 Mr. S.P. Daund, AGP for the respondent/State

CORAM : M.T. JOSHI, J.

DATE : 28/01/2015

ORAL JUDGMENT :

1. Heard both sides.

2. Aggrieved by the lesser compensation awarded by the learned Additional District Judge, Beed in Land Acquisition Reference Application than claimed, the original land owners i.e. the petitioners are before this Court.

3. Land admeasuring 2 hectare and 2 ares bearing gat no. 358 of village Pimpalner, Tq. and Dist. Beed was acquired by the State for extension of village gaathan. Notification under section 4(1) of the Land Acquisition Act was published on 06/02/1990. The Land Acquisition Officer offered the price at the rate of Rs.92/- per are. According to the appellants, the prevailing market price of the land was Rs.1,500/- per are. Therefore, the reference application was filed. In the reference proceedings, the learned Additional District Judge came to the conclusion that the market price of the land during the relevant period was Rs.435/- per are. Thus, the reference application was partly allowed.

4. Learned counsel for the appellants Mr. Bhosale submits that during the same period, some property was acquired by the State for the purposes of construction of 33 KV Sub-Station at Pimpalner. The notification

under section 4 of the Land Acquisition Act was published on 29/09/1988 for acquisition of the land i.e. Survey No. 424, gat no. 881 of very same village Pimpalner. The matter went before the Additional District Judge in view of the land acquisition reference no. 532 of 1991. It was decided on 08/12/1999. The certified copy of the award would show that the learned Additional District Judge has come to the conclusion that the market value of the land in the year 1988 was Rs.730/- per are. He further points towards the sale instance at Exhibit 29 and Exhibit 31 and submits that the learned reference Court did not properly appreciate this documentary evidence.

5. On the other hand, learned A.G.P. submits that the reasons forwarded by the reference Court are proper.

6. On the basis of this material, following point arises for my determination:

I) Whether the award of the learned reference Court represents the true market price of the land?

My finding to the above point is in the negative. The

appeal is therefore partly allowed with proportionate costs for the reasons to follow.

R E A S O N S

7. Exhibit 29 is the true copy of the sale deed executed on 27.3.1987 i.e. three years prior to the notification issued under section 4 of the Land Acquisition Act in our case. It would show that 18.29 Meter X 7.62 Meter plot from gat no. 361 was sold for a price of Rs.5000/-. The boundaries would show that it was a open plot surrounded by open plot and roads. It is from the same village Pimpalner.

. Exhibit 31 is the true copy of the sale deed dated 30/3/1990. It would show that the plot from gat no.99 of the same village Pimpalner admeasuring 27.43 Meter X 24.38 Meter was sold on 30/3/1990 for a price of Rs.6000/-.

8. The certified copy of the award in L.A.R. 532 of 1991 is at Exhibit 34. It would show that 91 are of land from Survey No.424, gat no. 881 of the very same village was acquired for electric Sub-Station of

Pimpalner. The notification under section 4 of the Land Acquisition Act was issued on 29/9/1988. The learned Additional District Judge has fixed the market price of the land as Rs.730/- per are. The award of the learned Reference Court in the present case would show that the learned Additional District Judge has refused to rely on the earlier award. Upon taking into consideration the sale instances, the learned Court concluded that the market price of the present land was Rs.435/- per are.

9. It should be considered that the land was acquired for extension of the village gaathan. It was thus just adjacent to the village and therefore had the potentiality for converting it for non-agricultural purposes. The price of the non-agricultural plot was before the Court in view of the Exhibit 29 and Exhibit 31. The learned Reference Court on the basis of the Exhibit 29 found that on 26/4/1990, the price of the said plot would come to Rs.4197=07 Ps. So far as Exhibit 31 is concerned, by taking into consideration the measurements, it found that the price of the plot came to Rs.907=70 Ps. The said sale instance is just one month prior to the notification issued under the

Land Acquisition Act. The learned Additional District Judge however considered that while under Exhibit 29, the land that was sold was towards one side of the village, the present acquired land was on the different side of the village. So far as Exhibit 31 is concerned, the Reference Court observed that the said plot was surrounded by houses and already converted to non-agricultural user. Therefore, by granting reduction of 50% towards the potentiality of converting and thereafter by reducing 33% towards the development charges and other charges, the price was arrived at.

10. In my view, when the land was adjoining to the village abadi and was acquired for the very purpose of village extension, reduction of 50% from the price arrived at on the basis of Exhibit 29 and Exhibit 31 was not required.

11. It would have been taken into consideration that from the entire agricultural land, 33% land would have been expended for development of the land to non-agricultural land. Further, from the price that would come, for balance 67% of the land, reduction of 1/3rd of the same towards the betterment charges for developing

the land would be there and the rest of the amount would be the market price of the land.

12. Considering all these facts and more particularly as the sale instance at Exhibit 29 represents similar features that it was an open plot, the price of the said plot should have been the base price.

13. Exhibit 29 depicts that the plot was sold at the rate of Rs.3649=63 Ps. The sale deed was executed on 27/3/1987. The notification under section 4(1) of the Land Acquisition Act in the present case was published on 26/04/1990. Therefore, by granting escalation in the price, the learned Additional District Judge has rightly arrived at a conclusion that on 26/4/1990, the market price would be Rs.4197=07 Ps. per are.

14. Upon deduction of 1/3rd towards the development of road etc., the land that would have been available to the present appellants for sale was 1 hectare and 49 R. Thus, the market price of the land would come to Rs.4197/- X 149 = Rs. 6,25,353/-.

15. Upon deduction of 33% towards the development charges, the market price would come to Rs.4,16,902/- [i.e. Rs.6,25,353/- (-) Rs. 2,08,451/- (33% of Rs.6,25,353/-) = Rs.4,16,902/-]. The total compensation would come to Rs.4,16,902/-.

16. In the result, the following order:-

I) The appeal is partly allowed with proportionate costs.

II) It is hereby declared that the market price of the acquired land was Rs.4,16,902/-. The enhancement in the compensation shall carry the component plus interest as per the provisions of the Land Acquisition Act, 1894.

17. First Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

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