

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO.123 OF 2003
IN
LAR NO.96 OF 1994

AND

FIRST APPEAL NO.124 OF 2003
IN
LAR NO.97 OF 1994

AND

FIRST APPEAL NO.125 OF 2003
IN
LAR NO.98 OF 1994

State of Maharashtra
V/s.
Bama Ziparya Patil

... Appellant

... Respondent

Mr. A. R. Patil, AGP for the Appellant.
None for the Respondent.

CORAM: K.K. TATED, J.
DATED : FEBRUARY 26, 2015

PC. :

1. Heard the learned AGP for the Appellant. None for the Respondent though duly served.

2. These three appeals are preferred by the State of Maharashtra challenging the common judgment and award dated 24/04/1998 passed by the Civil Judge, Senior Division, Panvel in LAR Nos.96/1994,

97/1994 and 98/1994.

3. The First Appeal No.123/2003 arises from LAR No. 96/1994, the First Appeal No.124/2003 arises from LAR No.97/1994 and the First Appeal No.125/2003 arises from LAR No.98/1994.

4. By the impugned common judgment and award dated 24/04/1998, the Reference Court awarded enhanced compensation in respect of the acquired land @ Rs.25/- per sq.mtr. Hence, the State of Maharashtra preferred the present appeals.

5. Few facts of the matter are, as under:

The Special Land Acquisition Officer, (SLO) issued Notification under section 4 of the Land Acquisition Act (said Act) dated 04/02/1970 for acquiring the Respondent – claimants land for New Bombay Project from village Kamothe, Tq. Panvel, Dist. Raigad. After following due process of law, the SLO has awarded compensation for acquired land @ Rs.3/- per sq.mtr.

6. In First Appeal No.123/2003 the SLO has acquired land bearing Sy.No.273/2B -7-8P admeasuring 2370 sq.mtr., in First Appeal No.124/2003, admeasuring 6440 sq.mtr. from land bearing Sy.No.21/7 and in First Appeal No.125/2003 land admeasuring 8200 sq.mtr. from Sy.No.38/1 and 2610 sq.mtr. from Sy.No.351/1A situated at village Kamothe, Tq. Panvel Dist. Raigad.

7. Against the said award, the claimants have not made any

Reference for enhancement of compensation. As soon as they learnt that the District Court at Raigad in LAR No.87/1987 granted enhanced compensation in respect of the acquired land arising from the same Notification under section 4 of the said Act, they filed Application under section 28A of the said Act for enhancement of the compensation. On the basis of the said Application, the SLO passed award under section 28A of the said Act dated 4/09/1994 and awarded compensation @ Rs.6/- per sq.mtr.

8. Being aggrieved by the said award, the claimants preferred Reference under section 28A (3) of the said Act claiming compensation @ Rs.50/- per sq.mtr. In the said Reference, the Reference Court, by common judgment and award dated 24/04/1998 awarded compensation @ Rs.25/- per sq.mtr. Hence, the present appeals.

9. The learned AGP for the State submits that the Reference court erred in coming to the conclusion that the Respondent claimants are entitled to compensation in respect of the acquired land @ Rs.25/- per sq.mtr. He submits that the Reference Court failed to appreciate that the claimants failed to adduce cogent evidence to show that they are entitled to compensation in respect of the acquired land @ Rs.25/- per sq.mtr. He further submits as per the valuation report submitted by the Valuer Manjiri S. Joshi in LAR No.96/1994 shows that the distance of important land marks in development have taken place around Kamothe is as under:

1	Panvel City	3.12 km. (towards SE)
2	Kamothe Gaothan	190 mtrs.(towards SE)

3	Taloja Industrial Estate	About 4.96 km (towards NE)
4	City of Bombay	40 km
5	Bombay Pune Highway	3.28 km (towards east)
6	Jawahar Industrial Estate Kamote	2.27 km (towards NE)
7	Sion Panvel Expressway	2.4 kms (towards NE)

10. The learned AGP submits that, in the Valuer report, it is specifically stated that the suit property is situated at 3.28 km. towards East from Mumbai Pune highway. He submits that the Reference Court failed to consider that on the date of issuing Notification under section 4 of the said Act, the land was agricultural land without any potentiality. He submits that the Division Bench of this court in the matter of *State of Maharashtra Vs. Prakash Vasudeo Deodhar, 2008 (5) Bom C.R. 708* held in respect of the lands from Kamote the claim @ Rs.25/- per sq.mtr. if the lands fell within 750 mtrs of the National Highway, Rs.23/- per sq.mtr. if the land fell within 750 to 1500 mtrs. of National Highway and Rs.21/- per sq.mtr. if land fell beyond 1500 mtr. of the National Highway. He submits that in that matter also the Notification under section 4 of the Act was issued on 03.02.1970 for acquiring the land from Kamothe village. He submits that on the basis of the Division Bench Judgment of this court in the matter of Prakash Deodhar (Supra), the judgment and award passed by the Reference Court requires to be modified to the extent of Rs.21/- per sq. mtr. for the acquired land. He submits that in the case in hand, admittedly the lands are situated on Mumbai-Pune High way at the distance of 3.28 k.m. i.e. more than 3000 mtrs. from the Bombay Pune National

Highway. On the basis of this submission, the learned AGP submits that the impugned judgment and award dated 24/04/1998 be modified at least awarding the compensation in respect of the acquired land @ Rs.21/- per sq. mtr.

11. On the basis of submission of the learned AGP, after going through the impugned judgment and award dated 24/04/1998 and other relevant documents from the record and proceedings, the issue involved in the present appeal is “whether the Reference Court was right in holding that the claimants are entitled to compensation in respect of the acquired land @ Rs.25/- per sq.mtr.”

12. With the assistance of the learned AGP, I have gone through the impugned order passed by the Reference Court, the claim Application filed by the claimants, deposition of the parties, valuation report filed by the Valuer and other documents.

13. There is no dispute that the lands were acquired by the State of Maharashtra by Notification under section 4 of the said Act dated 04/02/1970 for New Mumbai Project from village Kamothe, Tq. Panvel Dist. Raigad. This court, in the matter of Prakash Deodhar (supra) held that the land falling beyond 1500 mtrs. of the National Highway from village Kamothe is entitled to compensation @ Rs.21/- per sq.mtr.

14. Considering the evidence on record, valuation report submitted by the Valuer and the Division Bench judgment of this court in the matter of Prakash Vasudeo (supra), I am of the opinion that the

compensation awarded by the Reference Court is slightly on higher side. Hence, considering the parity, the claimants are entitled to compensation in respect of the acquired land @ Rs.21/- per sq.mtr. The First Appeals are required to be partly allowed.

15. Hence, the following order:

- a) The First Appeal Nos.123/2003, 124/2003 and 125/2003 are partly allowed.
- b) The impugned common judgment and award dated 24/04/1998 passed by the Civil Judge, Senior Division, Panvel in LAR Nos.96/1994, 97/1994 and 98/1994 is modified to the extent that the Respondent claimants are entitled to compensation in respect of the acquired land @ Rs.21/- per sq.mtr. instead of Rs.25/- per sq.mtr.
- c) Rest of the order shall remain as it is.
- d) No order as to costs.
- e) First Appeals stand disposed of accordingly.

(K.K. TATED, J.)