IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.984 OF 2002
WITH
CROSS-OBJECTIONS ST. NO.48201 OF 2002

The State of Mahabharata and Another. .. Appellants

Vs

1. Shri Rustom Burzor Joshi,
Since deceased through his L.Rs:
1.a. Sherin Rustom Joshi
1.b. Framroj Rustom Joshi,
1.c. Zarir Rustom Joshi,
1.d. Burzor Rustom Joshi

2. Shri Darasha Burzor Joshi,
Since deceased through his Lrs.

2.a. Margaret Darabsha Joshi,
2.b. Burzor Darabsha Joshi
2.c. Bakhtavar Darabsha Joshi

3. Smt. Aloo Jal Chibber,
4. Homi Jal Chibber,
5. Parshi Jal Chibber,
6. Darayas Jal Chibber. .. Respondents

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Shri A.R. Patil, AGP for the Appellant No.1 in the FA and for the Respondent in the Cross-objections.
Shri M.L. Patil for the Appellant No.2 in the FA.
Shri Aneel J. Ahuja along with Mrs. Bhavana Khemani for the Respondent in FA and for the Appellant in Cross-objections.

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CORAM : A.S. OKA &
K.R.SHRIRAM, JJ
DATED : 28TH AUGUST 2015

ORAL JUDGMENT (PER A.S. OKA, J)

. By this Appeal, the first Appellant State of Maharashtra and the second Appellant the Nashik Municipal Corporation (which is the Acquiring Body) have taken an exception to the judgment and award dated 31st August 2000 passed by the learned Joint District Judge, Nashik in a Reference under Section 18 of the Land Acquisition Act, 1894 (for short “the said Act of 1894”).

2. The acquired lands subject matter of the Reference are bearing Gat Nos.112-4-B and 112-5-2 admeasuring 17,000 sq. metres and 10,600 sq. metres respectively at Deolali, Taluka and District Nashik. The Notification under Sub-section (1) of Section 4 of the said Act of 1894 in respect of the acquired lands was published in the Government Gazette on 2nd July 1987. A declaration under Section 6 of the said Act was published in the Government Gazette on 10th December 1987 and the award under Section 11 of the said Act of 1894 was declared on 8th December 1989. Under the said award, the market value was offered at the rate of Rs.110/- per sq. metre. The Respondents Claimants did not accept the said award and at their instance, a reference has been made under Section 18 of the said Act of 1894 which is decided by the impugned judgment and award. Market value at the rate of Rs.300/- per sq. metre has been fixed under the impugned Judgment and Award.

3. The learned counsel appearing for the second Appellant has taken us through the evidence on record. His submission is that without relying upon a specific sale instance, on the basis of surmises and conjectures, the Reference Court arrived at the market value at the rate of Rs.300/- per sq. metres. He pointed out that the Respondents Claimants relied upon the two sale instances. The first one was in the form of an award in relation to the land bearing Survey No.118 owned by them. The second instance relied upon was of Sale Deed dated 13th December 1987 in respect of a small plot of land admeasuring 88.17 per sq. metre in the same village Deolali within the limits of Nashik Municipal Corporation. He pointed out that it was a sale instance of a developed plot of land forming a part of the sanctioned layout. Inviting our attention to the recitals in the Sale Deed dated 13th October 1987, he pointed out that there was a permission granted to construct a row bungalow and in fact, when the sale transaction took place, the construction was in progress and had come up at the plinth level. He invited our attention to the evidence of Shri Prakash Kachardas Sanklecha, who is the Vendor under the Sale Deed. The submission is that the witness falsely stated that the plot was vacant on the date of the Sale Deed. He invited our attention to the cross-examination of the witness. He pointed out that when he was confronted with the contents of the Sale Deed, he accepted that there was a construction going on. As far as the Survey No.118 is concerned, he invited our attention to the

maps on record of the Reference Court which are at Exhibit 78 and Exhibit-81. He pointed out that the Survey No.118 had a direct access to the jail road whereas, as far as the acquired land bearing Survey No.112 is concerned, on the relevant date, there was no direct access to the Nashik Pune Road and it was in the interior area. He urged that there are several negative factors associated with the acquired lands as compared to the land bearing Survey No.118. His submission is that the Survey No.118 was better located than the acquired lands. He would, therefore, urge that even assuming that the market value fixed by this Court in respect of the land bearing Survey No.118 is to be taken as the basis for determination of the market value of the acquired lands, considering the negative factors, the market value will have to be less than Rs.150/- per sq. metre. The learned AGP adopted the submissions of the learned counsel appearing for the second Appellant- the Nashik Municipal Corporation.

4. The learned counsel appearing for the Respondents Claimants invited our attention to the description of the acquired lands in the award under Section 11 of the said Act of 1894. He pointed out the evidence of the Claimants and urged that the acquired lands had enormous potential for commercial use. He urged that the close proximity of Nashik Pune Road is a strong positive factor in favour of the acquired lands. He pointed out that only a small portion of Survey

No.118 had a direct access to the jail road. He submitted that the close proximity to major highway like Nashik Pune Road will make the market value of the acquired lands much higher than the market value of the land bearing Survey No.118. His submission is that even according to the case of the State Government, the acquired lands were in a plush locality and thus, the market value of Rs.300/- per sq. metre arrived at by the Reference Court is just and proper. He would, therefore, submit that no interference is called for with the impugned Award. His submission is that in fact, the market value of the acquired lands is much more than Rs.300/- per sq. metre and that is how he preferred the Cross-objections for enhancement of the market value.

5. We have given careful consideration to the submissions. We have perused the record. The Respondents Claimants have relied upon the Sale Deed 13th October 1987 in respect of the layout plot No.30/11 out of Survey No.122/1+2 at Village Deolali within the limits of the second Appellant Nashik Municipal Corporation. The acquired land subject matter of this Appeal bearing Survey No.112 is also situated within the limits of Deolali Village. The total area of the acquired lands is 27,600 sq. metres. The Sale Deed at Exhibit-69 discloses that the area of the plot subject matter of the same is 88.17 sq. metres. We have perused the recitals in the Sale Deed. The recitals show that on 9th March 1987, a layout plan was approved by the Nashik

Municipal Corporation for sub-dividing the Plot No.30 into 14 sub-plots. It also records that the Vendor had sponsored a row-house scheme to construct 14 row bungalows through M/s. Vijay Housing Private Limited which is shown as the Confirming Party to the Sale Deed. The recital record that the Vendor Shri Prakash Sanklecha had given all the rights of development and booking to the said Confirming Party on the basis of the Agreement dated 9th December 1986. What is material is the further recital which records that what was agreed to be purchased by the Purchaser was the proposed row bungalow No.30/11 from the Confirming Party. Clause (3) of the Sale Deed specifically records that the Confirming Party had already started construction of row-houses and the construction work upto the plinth level was already completed. In fact, it is stated that as the built-up structure was already in existence on the said plot, the permission of the Competent Authority under the Urban Land (Ceiling and Regulations) Act, 1976 is not required.

6. At this stage, we must consider the evidence of the Vendor Shri Prakash Sanklecha, who was examined by the Claimants. He accepted that the plot sold was a layout plot. He claimed that the plot sold was a vacant plot of land. However, when the attention of the witness was invited to the relevant recital in the Exhibit-69, which records that there was already a plinth constructed on the plot, he accepted the correctness of that part of the Sale Deed.

7. The question is whether the plot which is the subject matter of the Sale Deed dated 13th October 1987 can be said to be comparable with the acquired lands. Firstly, the area of the acquired lands was 27,600 sq. metres. Secondly, the sale instance is of a plot which is a sub-divided plot admeasuring 88.17 sq. metres out of a sanctioned layout. The plot No.30 was divided into 14 different plots to enable the Confirming Party to construct row bungalows. Moreover, the layout plan was approved by the Nashik Municipal Corporation and there was already a permission granted to construct row-houses. As disclosed in the recitals, on the date of the Sale Deed, the plinth was already constructed on the sub-plot and further construction was in progress. On the other hand, it is admitted in the evidence that even a layout plan in respect of the acquired lands was not submitted for approval prior to the acquisition. It was not converted for non-agricultural use. The size of the plot subject matter of the Sale Deed is very small as compared to the area of the acquired lands. Moreover, it was a fully developed plot on which the construction of plinth was already made. It was a plot on which a row-bungalow was being constructed. Therefore, the sale instance cannot be said to be comparable with the acquired lands. Therefore, the Sale Deed at Exhibit-69 has to be kept out of consideration.

8. The second piece of evidence relied upon by the Respondents Claimants was the judgment and award dated 31st November 1999 of the Reference Court in relation to the land bearing Survey No.118 admeasuring 28,747 sq. metre at Deolali situated within the limits of the second Appellant Nashik Municipal Corporation. Under the said judgment and award, the market value of the land bearing Survey No.118 in the village Deolali was fixed at the rate of Rs.200/- per sq. metre. The certified copy of the judgment and award of the Reference Court was produced at Exhibit-57.

9. We must note here that the State of Maharashtra had challenged the said judgment and award dated 31st November 1999 by filing First Appeal No.974 of 2000. By the judgment and award dated 9th April 2015, the said Appeal was partly allowed and the market value was fixed at the rate of Rs.150/- per sq. metre. In the said case, the relevant date was 26th February 1987 which is in the close proximity of the relevant date in the present case (2nd July 1987). The area of the land bearing Survey No.118 which was the subject matter of the said Case was 28,747 sq. metres which is comparable with the area of the acquired lands in the case in hand. Both the lands are situated in the same village Deolali on the relevant date. From the plans which are on record, both the lands are situated in the same locality. Therefore, the

market value of the acquired lands can be certainly determined on the basis of the market value of the land bearing Survey No.118 for which the market value of Rs.150/- per sq. metre has been fixed by this Court. As far as the positive factors in respect of the Survey No.118 are concerned, in the judgment and order dated 9th April 2015 passed in First Appeal No.974 of 2000, this Court observed that the India Security Press was half furlong away from the acquired lands and the Currency Note Press is 40 to 50 feet away from the acquired lands. The acquired lands were abutting the jail road which is one of the main roads in the City of Nashik and there were two other roads abutting the land. Moreover, St.Philomena High School was close to the acquired lands.

10. As far as the positive and negative factors in relation to the acquired lands subject matter of this Appeal are concerned, firstly it will be necessary to consider the description of the acquired lands in the award under Section 11 of the said Act of 1894. Though the award under Section 11 is in the nature of an offer, it is well settled that the statements made in the award bind the State Government. In the present case, the Second Appellant being the Acquiring Body has not challenged the award by invoking writ jurisdiction of this Court. What is stated in the award is that the acquired lands are situated in a "posh" locality exactly behind the Birla Baug. It is also noted that the acquired lands are situated at Shikhare Wadi. It is stated that the said Shikhare

Wadi ends at Nashik Pune National Highway. Thus, the locality of the acquired lands is a positive factor apart from the fact that the acquired lands though not abutting the Nashik Pune Highway were slightly in the interior area.

11. In the examination-in-chief of the Respondent No.1C, he has not stated that there is a direct access road to the acquired lands from the Nashik Pune Highway. However, he has stated that the Nashik Pune Highway is at a distance of 2 to 5 minutes walk from the acquired lands. This statement is not challenged in the cross-examination. He further stated that the Shikhare Wadi ends at the Nashik Pune Road. He has stated that the BYTCO point is at a distance of one furlong from the acquired lands. Thus, the lands being at the walking distance of 2 to 5 minutes from the Nashik Pune Highway is a positive factor. In the same deposition, he has stated that in the year 1987, there was no development on the jail road but Shikhare Wadi area was well developed. Apart from the basic amenities, such as roads, drainage, water etc, there were shops, hospitals etc. in the Shikhare Wadi area. He deposed that the acquired lands had non-agricultural potentiality, but the land bearing Survey No.118 which is owned by him was a residential land. In the cross-examination, it is brought on record that on both the sides of the Nashik Pune Highway, there is a full commercial development and on the northern side of the Nashik Pune Highway, there are more hotels and on the southern side, there are

hospitals. It is stated that on the northern side of the road, there are residential areas. It is stated that there are banks nearby it. He stated that the Shikhare Wadi is situated to the northern side of Nashik Pune Road.

12. The positive factors in respect of the acquired lands are that the same is in a close proximity of Nashik Pune Highway and the acquired lands had potentiality for non-agricultural use. Even the Land Acquisition Officer has stated that the acquired lands are situated in a "posh" area. Moreover, the acquired lands are on the northern side of the Nashik Pune Highway in which there were many hotels as well as residential buildings. In Shikhare Wadi area, there are shops and offices. The negative factors in respect of the acquired lands are that it has no direct access from Pune Nashik Highway and a layout plan in respect of the acquired lands was not even submitted for sanction before the acquisition.

13. Considering these positive factors and potentiality for the commercial use, in our opinion, for computing the market value of the acquired lands on the basis of the market value of the acquired lands bearing Survey No.118 fixed at Rs.150/- per sq. metre, 40% enhancement will have to be granted and accordingly, the market value will have to be fixed at the rate of Rs.210/- per sq. metre.

14. The learned counsel appearing for the Respondents Claimants pointed out that the statutory benefit of interest under Section 28 of the said Act has been denied to the Respondents on the components of solatium under Sub-section (2) of Section 23 and interest under Sub-section (1-A) of Section 23 of the said Act. To that extent, the Cross Objections will have to be allowed as there cannot be a dispute about the entitlement of the Respondents Claimants to the said benefits.

15. Hence, the Appeal succeeds in part and so also the Cross-Objections. Accordingly, we pass the following order:-

ORDER :

(a) The impugned Judgment and Award dated 31st August 2010 is modified by directing that the market value of the acquired lands is fixed at the rate of Rs.210/- per sq. metre instead of Rs.300/- per sq. metre;

(b) In addition to the market value, the Respondents Claimants will be entitled to the statutory benefits under Section 23(1-A), Section 23(2) and Section 28 of the Land Acquisition Act, 1894;

(c) We make it clear that the interest under Section 28 of the said Act shall be payable on all the three components of the compensation viz. the market value of the acquired lands, solatium under Sub-section (2) of Section 23 and the interest Sub-section (1-A) of Section 23 of the said Act;

(d) The Claimants will be entitled to proportionate costs of the Reference;

(e) The Cross-Objections filed by the Respondents Claimants are allowed to the extent to which the interest under Section 28 of the said Act was denied to the Respondents Claimants on the last two components;

(f) The Respondents Claimants shall be entitled to proportionate costs of the Reference from the State Government. However, there will be no orders as to costs both in the Appeal as well as in the Cross-Objections;

(g) The compensation payable as per the modified Award shall be determined by the Reference Court within a period of two months from the date on which the writ of this Judgment is received by the Reference Court along with the record and proceedings;

(h) The Appellants and the Respondents Claimants shall be heard by the Reference Court before determining the quantum of compensation payable to the Respondents Claimants;

(i) After the quantum of compensation payable to the Respondents Claimants is determined, the appropriate order shall be passed by the Reference Court;

(j) We are informed that the compensation amount deposited in terms of the impugned Judgment and Award is still lying deposited with the Reference Court. If that be so, the Reference Court after determining the quantum of compensation payable as per the modified Award, shall pass an appropriate order permitting withdrawal/ disbursement of the compensation amount in terms of the modified Judgment and Award;

(k) The Appeal as well as the Cross-Objections are allowed on above terms with no order as to costs.

(K.R. SHRIRAM, J) (A.S. OKA, J)

Certified to be true and correct copy of the original signed Judgment/Order.