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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.5 OF 2006

The Special Land Acquisition Officer (7)
And
Pundalik Raghunath Mahulkar ...Claimant
And
The Commissioner of Gr. Mumbai,
Municipal Corporation, Mumbai – 400 001. ...Acquiring Body

Mr. Rajiv J. Mane, Addl. Govt. Pleader for SLAO
Mr. P.G. Lad with Mr. R.Y. Sirsikar for MCGM/Acquiring Body
Ms. R.C. Nichani Claimant

CORAM : MRS. ROSHAN DALVI, J.

Date of Reserving the Judgment : 22nd January, 2015
Date of Pronouncing the Judgment: 2nd March,2015

JUDGMENT:

1. This land acquisition reference is taken out under Section 18 of the Land Acquisition Act 1882 (LAR) for enhancement of compensation. The acquisition of land is not in dispute. It has been acquired for a Municipal retail market and for municipal housing. The compensation paid has been claimed to be inadequate by the claimant. The claimant would have to prove the inadequacy. The claimant has not led evidence of any sale instance in the vicinity during the period of acquisition. The claimant has led

evidence on the inadequacy of the compensation granted. He would also contend that the land acquired on CTS No. 151 admeasuring 572.50 m^2 has been acquired of which is the owner and the entire land has not been taken into consideration for the payment of compensation. The acquiring body which is a municipality has also led evidence on the precise position of the land to show that the compensation which has been granted by the SLAO is adequate and sufficient. The case is entirely dependent upon oral evidence in view of the admitted position of the land, its situation, and the position of the facilities and amenities around the land. It would therefore have to be determined, taking into account the oral evidence led by the parties as to whether additional compensation is required to be granted.

2. The material issues between the parties are :

1. Whether the compensation fixed by the SLAO is adequate and sufficient.

2. Whether the claimant is entitled to any additional compensation.

3. What relief, if any, is the claimant entitled to ?

3. The claimant has led evidence and has been cross-examined. The claimant has also led evidence of an expert witness to show the value of the acquired land. The officer of the acquiring body has also led evidence on behalf of the acquiring body. These witnesses are cross-examined with regard to the exact position of the suit land alongside the other lands in the vicinity.

4. The issues shall have to be decided upon such oral evidence. Issue numbers 1 and 2 shall be decided together.

5. Issue Nos.1 and 2: The claimant has claimed that the entire land is 572.50 m^2. He has claimed that the 3 instances cited by the SLAO are not comparable with his land.

6. With regard to the features of his land, he has deposed that it is in the heart of Mahul village. The entire surrounding area is developed. There are market facilities, school facilities, and transport facilities in and surrounding his plot. All the other facilities are available at a short distance. The market rate in the ready reckoner was Rs.5400 per square metre at the relevant time. He, therefore, claims that the SLAO wrongly awarded compensation at the rate of 2970 per sq.mtr., though his

land is developed with structures, fencing and trees. He has made grievance that the SLAO has not considered the valuation report which he submitted to him for calculating the market value. He has challenged the valuation of the trees in the acquired land.

7. He claims that he has fruit bearing trees and fuel bearing trees. He has disputed the valuation of the structures on the acquired land at Rs.1.31 lakhs fixed by the SLAO without reasons. He claims that the executive engineer, PWD valued the structures at Rs.3.82 lakhs which was not considered by the SLAO. He claims that the structures are prior to 1960 and have been assessed by the BMC. He is aggrieved that he used the acquired land for his residence and had to shift along with his household articles and materials. He also had a Wakhar on the suit land from which he earned an income of Rs.1.50. He had 20 tenanted structures on the suit land from which he received a rental income of Rs. 2 lakhs. He relied upon his income tax returns for the relevant years. He had put up a compound with 47 iron bars and iron rope, had pumps and water storage tank on the acquired land.

8. He claims that his land was slightly encroached upon by the occupant of the adjoining land. That encroachment is 3.75 m^2 which took place whilst the land was in the

possession of the respondents. He, therefore, claims that the land of which possession was taken was 572.50m^2. He has taken exception to the SLAO reducing the compensation to the extent of Rs.18761 on account of the encroachment on 3.75 m^2 of land.

9. He, therefore, claims the market price of 6480 per square metre taking into account the cost of the structures, trees, and expenses for change of his residence, loss of income, rental income for 10 years and the compound wall.

10. He has been cross-examined by the acquiring body. His cross-examination reveals that there are government lands on the east and south of the acquired land. The land on CTS No.150 which is adjoining his land is half encroached. The land on CTS No. 152, which is also adjoining his land, is fully encroached. He claims that the structures on CTS No.150 are temporary structures and structures on CTS No.152 are temporary but pucca structures. He says that those structures are not regular ground +1 storey structures, but an extension of ground storey having access from the outside (which would show the construction of the first floor). He has admitted that there is an unathorised wall on the North of the acquired land and the property to the south and west of his property are in “no development” zone. On the East there is a

refinery. There is only one approach road to Mehul village from Chambur which is a 60 feet wide road and allows only one vehicle each way. Chembur is 4 miles from the acquired land. In the entire area there are no high – rise structures; the structures are of 2 or 3 storeys. There are no hospital facilites in Mehul village, but there are clinics and dispensaries. There are no reputed schools. His land is 5 miles from Kurla Railway Station. There is a Marathi College and Chumbur High School which a reputed school, close to the acquired land. He has also admitted that he has not approached the BMC for development of the acquired land. He has admitted the encroachments on the acquired land. The plan produced by him is an admitted plan showing the boundaries of the acquired land. There are 2 structures which are chawls on it. He has given the measurements of the chawls. There is a strip of land for passing and re-passing on the East side boundary line of the acquired land.

11. The claimant admits that the structures on the acquired land are prior to 1962. He has not produced any assessment of the Municipality. He has refuted that the depreciated value of the structures would be zero and that the SLAO has taken possession of the acquired land along with the occupants on "as is where is" basis. Though the claimant claims that the occupants had vacated, he has not produced the letter of surrender from the occupants. The

structures on the acquired land must be taken to be fully occupied. The possession receipt does not speak of vacant possession of the structures. Hence the fact that the possession has been taken as claimed by the respondent has to be accepted. The total area of the land of the claimant is 572.50 m^2. Upon encroachment being seen on the acquired land, the valuation of $368.25m^2$ has been done by the SLAO deducting $3.75m^2$ from the land. The possession of the acquired land was not taken or by the acquired body before the award was passed. The claimant does not have documentary evidence to show otherwise. The possession of the acquired land was given to the acquiring body after an inventory. Hence the encroachment is not shown by the claimant to be after possession was taken.

12. The joint inventory taken by the parties has shown 29 fruit trees and 11 fuel trees on the acquired land. The crop of the fruit and a fuel entries was not disclosed by the claimant to the SLAO. The value of the fruit bearing trees is more than the fuel trees yet the demand is admitted by the complainant to be the same. Consequently it is also admitted that the yield of the trees vary.

13. Though the claimant claims that he handed over the vacant possession after taking possession from the occupants, the names of the occupants were neither given by

the claimant nor remembered by him in the cross-examination. No letter of surrender or any such document is produced by the claimant. The acquired land remained in the possession of the claimant until 2001 – 2002. The claimant shows rent received from the acquired land as also the acquired land to be valued at only Rs.1.52 lakhs in his income tax returns.

14. Considering the evidence of the claimant it is seen that the acquired land has no access from Chembur or Kurla Railway station except through adjoining lands to the East and South which are fully encroached. The encroachments are also of structures of the first floor having entry from outside and showing independent occupation. There are no specific facilities in or around the encroached land for education, health, market, etc. The access road is narrow.

15. The fact that there is further encroachment before possession was taken is also seen to be admitted to the claimant. The land is seen to be having structures which are not vacated, no evidence having been produced by the claimant showing the tenants having vacated the structures, the claimant being the only person who could produce such evidence. Consequently the claimant's land could be acquired only on “as is where is” basis and it would lie upon the acquiring body to expend further amounts for and on

account of the occupants on the acquired land in the admitted structures which are on the acquired land. In fact, the acquiring body has got the tenants vacated from the land.

16. The claimant has not led evidence of any positive valuation. He has not produced any instance of sale in the vicinity at the time of acquisition. Upon such evidence of the claimant his case that the land is clear and valuable cannot be accepted.

17. In view of the above evidence the claim that the compensation granted by the SLAO which is less than the amount shown in the ready reckoner and for $568.5m^2$ of land is seen to be adequate and reasonable though if any positive evidence was led the valuation of the land would have been seen from such evidence and the valuation of the SLAO based upon 3 instances may itself not have been considered.

18. The claimant has led evidence of an expert witness. Though the integrity of the expert witness cannot be questioned, his report leaves much to be desired. His evidence shows that for his valuation he considered the value of the land plus the depreciated cost of construction. He enumerated the methods of calculation of the valuation

of the land by viz., comparable sale instances, development method and capitalisation method.

19. He had taken search in the office of the sub registrar in respect of the acquired land, which was indispensable. He deposed that he himself did not carry out the search. His assistant did. He knows that a fee is to be paid and a receipt is given for such search. He could not produce it. He did not know how many sub registrar's offices are concerned with the property. He did not remember whether his assistant was sent to the place where the property was situated. He did not know where his assistant was directed to attend. He did not know the sub registrar's jurisdiction. He did not know whether the sub registrar's offices at Chembur would have jurisdiction in respect of the acquired land or whether that office had started at the relevant time.

20. He agreed that the valuation of the property depends upon its location, size and condition and those details would be required to be ascertained. His evidence shows that he had visited the property at the time of making his report and had not seen the structures. He failed to obtain details about the use of the structures and the encumbrance by the tenants. He did not know that the plans of the property would be available with the TLR's office. What he knew was that the occupants were not permanent tenants. He was

informed by the owner that it was something like guest house. Though he knew that the information about the tenants could be available from the municipal assessment department, he did not obtain it. He admitted that he would require to value the property not upon what he saw at the time of his visit, but at the time of the notification for acquisition. Yet he had not verified the documents.

21. His observations were on the basis of what he saw when he visited the suit property to prepare his report. Accordingly he observed that the plot was levelled, that there were no structures and he did not know the precise measurement. His entire report is based only on information given by the client which he had not verified though it was verifiable from the municipal records. His entire valuation report without accounting for the size, type and extent of the structures is, therefore, completely flawed. He admitted and accepted that the valuation of a structure would be different if it was authorised or not authorised and that the authorisation could be seen from the plan of the structures or of the suit property. Though being a professional architect, he did not demand the documentation, but relied upon the information of his client alone. He, therefore, could not account for the fact whether the occupants were "temporary or permanent". Though admitting that the cost of construction varies with the nature of construction, he has

not accounted for the construction. He only accepted the information of the claimant with regard to the structures and consequently he did not know the age of the structures or its valuation with regard to the materials used for the construction.

22. Though there were no trees when he visited the suit property on the acquired land he has given valuation of the trees. Despite admitting that the age and the yield of the trees is important he has not taken any steps to ascertain either. He has made the valuation on the basis of his own judgment and without accounting for the age, size or the yield of the trees. He has admitted that since there were no trees on the acquired land when he inspected it, he only relied upon the information of the claimant without even verifying the report of the joint inspection.

23. He has mentioned about the movables on the acquired land being the tank, fencing, pump etc. He has not verified any documentary evidence with regard to these items. He took no steps to collect those details. He knew that when an electric meter is installed, it belongs to the electric company and that the deposit would be refunded when the meter is surrendered. He claimed for the meter without verifying the refund obtained by his client. He disputed that it was the property of the electric company. He claimed compensation

for 2 water tanks also on the oral information of the claimant without verification of the nature and size of the tank, the material used for its construction or the date of its purchase.

24. He claimed for the fencing on the basis of the information given by the claimant alone.

25. He claimed an area of 572.50 m^2 without physically measuring the same and from the property register.

26. He admitted the concept of developed land. He deposed that the acquired land is almost in the centre of the developed area in the development plan. He was not shown the joint inventory though he was aware that joint survey was carried out. He did not verify the report of the joint survey which is a public document and could be applied for by him. Because at the time of his inspection there were no structures on the land he concluded that the land was not encroached upon.

27. He did not call for the income tax returns, the rent received, the assessment bills, the plan of the land or any such documentary evidence which would be easily available with the claimant or which could be obtained from the public authorities.

28. He has provided for loss of business for which he has shown the value of the business, but he had not taken any steps to ascertain what business the claimant was carrying on on the acquired land. He would need the figures of the income of the last 3 years prior to the acquisition. Since in his opinion no other details to assess the compensation for loss of business was necessary, he did not verify any documents showing the business of the claimant to compute its loss. He did not know that the claimant had claimed an income of Rs.9000/- p.a from fire wood business and Rs.15,000/- p.a as rent from the residential premises. He computed the profits of the business of the claimant only from the information given by the claimant.

29. He has admitted that he could not find any new development around the acquired land at the time of his visit also or the fact of no access to the land which is admitted by the claimant as also the encroachments along the east side of the land also admitted by the claimant. Consequently these are the aspects not accounted for by him in his report.

30. He admitted that the Mahul village road was not fully developed, and was to be widened in the revised sanctioned development plan.

31. He claimed 30% advantage in respect of the acquired land. For that purpose he has not compared the acquired land with any other land to verify the physical condition. He relied upon only his visit to the suit land at the time of the report.

32. Upon seeing the evidence of the claimant and the expert witness no case for interfering with the valuation put by the SLAO is made out.

33. The acquiring body has also examined its witness. It is for the claimant to prove his case. The evidence of the acquiring body is immaterial.

34. The witness on behalf of the acquiring body has set out the procedure that has been adopted for acquisition which is not disputed. He has shown from the plan of the acquired land the extent of the land that would go into road. He has also produced a list of occupants / tenants on the acquired land and 2 assessment bills – cum – receipts of 1950 – 1955 of the acquiring body. The acquired land had a number of occupants a list of 21 occupants is signed by both the parties. The acquiring body has had to get the occupants vacated. They would have incurred expenses for that purpose because it is an admitted fact that the chawls /structures on the

acquired land were there prior to 1962 and were hence tolerable and accordingly compensation would have to be paid to those occupants for getting the land vacated. It is the land thus vacated that has been seen by the valuer without reference to those documents.

35. Miss. Nichani only sought to read through the cross examination of that witness. She has not shown any particular aspect in such evidence which would show or prove the case of the claimant in the face of the above admissions of the claimant meticulously elicited in the cross examination of the claimant and his expert witness. The cursory reading of the cross examination of the witness of the acquiring body shows no aspect worth detailing. The cross examination of the witness of the acquiring body shows the admission of the 3 chawls with 20 rooms as also 2 fire-wood depots on the acquired land. The witness also admits that there was a water tank but he does not know that the water was supplied to the chawls from that tank. The witness admits that there was rental income of the claimant but makes a reference to the remarks given by the Executive Engineer. The witness admits that there was farming around the land and that the acquiring body has not obtained any independent value as report. He has also not personally ascertained the nature and position of the comparable lands though instances of sale of 2002-2005 have been given. The

witness has, however, denied the income of the claimant from rent or from the wood business or the fact that the land is in the heart of Mahul village or the case about comparable instances.

36. The entire cross examination with regard to the structures, the income, the access to the land, the adjoining lands, facilities, if any, the occupation in the chawls is wholly irrelevant since the witness of the acquiring body is an officer and would not have personal knowledge of the fact of the land of the claimant. In fact his cross examination proceeds initially on that basis.

37. The claimant must make out the case of enhancement. The above evidence shows that no such case is made out.

38. In the case of **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona & Anr. AIR 1998 SC 1652** the principals for acquisition are set out and which have been followed in a number of cases since. The factors which are required to be kept in mind are :

1. The award is not a judgment which can be considered as in appeal – The above facts which have emanated from the cross examination would show why this Court cannot sit an appeal as the claimant would

want.

2. The Court has to determine the market value on the basis of material produced before it – No separate material is produced to verify any market value in this case.

3. The claimant has to show that the price offered for his land is inadequate – this the claimant has completely failed to do.

4. The market value would be what a hypothetical purchaser would pay in an open market as a reasonable price – such reasonable price has been offered by the SLAO.

5. Only genuine comparable instances may be considered – these would have to be shown by the claimant; none is shown.

6. The proximity from the time and the situation would be considered – the acquired land shows no proximity to railway stations or other facilities for education and / or the health.

7. The deduction of the market value would be upon

making adjustment for the plus and minus factors – which has been amply done. The balance-sheet of such plus and minus factor would show that the suit land would fetch less than the base value reflected in a ready-reckoner, which also is not to be accepted as correct. (see **P. Ram Reddy & Ors. Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad & ors. 1995 (2) SCC 305** and **Krishi Utpadan Mandi Samiti Sahaswan District Badaun Vs. Bipin Kumar & Anr. 2004(2) SCC 283**.

8. There is no particular characteristic of the land shown by the claimant which can demand or merit higher compensation.

9. In the case of **Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others etc. AIR 1997 SC 2625** it has been held that a fair and reasonable and adequate market value is a question of fact depending upon the evidence adduced, circumstantial evidence and the probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions. The Judge should sit in the arm chair and

seek an answer to the question relating to the market value.

The best evidence of the value of the property are the sale transaction in respect of the acquired land at the time of which it is sold, the purpose for which it is sold, the nature of the consideration and the manner in which the transaction came to be brought out. A bonafide sale transaction relating to the neighbouring lands in the vicinity would be of help. Such land should be similar to the acquired land and possess similar features of the land acquired or land adjacent to the land acquired. In this case the claimant has led no evidence of any sale transaction, the proximity in point of time or proximity to the land itself.

It is further observed that treating the entire village as one unit and uniformly determining compensation on that basis not sustainable in law. This is precisely what the SLAO has not done as he has verified the value taking into account the plus and minus factors of the acquired land more specially the fact that it is away from Chembur and Kurla Railway stations and has no particular amenities and facilities around it.

The ultimate test laid down in the judgment is that the market value should be just, adequate and reasonable, which in this case is apparent.

Consequently, it is held in the judgment that the burden of proof always is on the claimant to establish that the land is possessed of advantageous features and are therefore, capable of fetching higher market value.

39. Considering the facts of this case alongside the settled law it is seen that the SLAO has given a reasonable market value by way of compensation. The claimant has not discharged the onus which lies upon him to show any advantageous factors of his land to merit any higher compensation. The claimant has not roduced a single instance of the sale of land in the vicinity at the relevant time. The compensation is indeed a reasonable market value.

40. Though the claimant claims compensation for $3.75m^2$ of land deducted upon encroachment, the claimant has also not proved that the acquired land was not encroached upon at the time the possession was handed over to the extent of $3.75\ m^2$ and that there was encroachment after possession was taken. Hence he cannot obtain any value for such land also. Hence the <u>Issue No.1 is answered in the affirmative</u> and <u>Issue No.2 is answered in the negative</u> .

41. <u>Issue No. 3</u>: Consequently the claimant is not entitled to any enhancement.

42. Hence the following order:

1. The claim for higher compensation is dismissed. The Reference is answered accordingly.

(ROSHAN DALVI, J.)