

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3564 OF 2016

WITH

FA/3565/2016 WITH FA/3566/2016 WITH FA/3567/2016
WITH FA/3568/2016 WITH FA/3569/2016 WITH
FA/3570/2016 WITH FA/3571/2016 WITH FA/3572/2016

THE EXECUTIVE ENGINEER, KUKADI DISTRIBUTION AND
CONSTRUCTION, DIVISION KOLWADI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Appellant : Mr. Rajale Gulab B.
Mr. SN Morampalle, AGP for Respondent No.1;
Mr.MR Sonawane, Adv. For Respondent/s – claimants

CORAM : P.R.BORA, J.

DATE : 29th September, 2016.

PER COURT :

1) Heard. With the consent of learned counsel appearing for the parties, taken up for final disposal. Since all these matters are arising out of the common Judgment and Award passed by Civil Judge, Senior Division, Shrigonda on 23rd January, 2009 in LAR No.424/2003 with other eight Land Acquisition References, I have heard the common arguments in these appeals and I deem it appropriate to decide all these appeals

by a common reasoning.

2) The lands, which are the subject matters in the present appeals, were acquired for Kukadi Canal to be constructed at village Wadgaon Tanpura, Tq. Shrigonda, District Ahmednagar. Notification under Section 4 of The Land Acquisition Act, 1894 (for short, the Act) in that regard was published in the Official Gazette on 21st October, 1994; whereas an Award under Section 11 of the Act came to be passed on 25th October, 1996.

3) The Special Land Acquisition Officer (for short, S.L.A.O.), had fixed the price of the acquired lands @ Rs.22700/- per hectare for non-irrigated land, (i.e. Rs.227/-per Are) and Rs.24,050/-, i.e. Rs.241/- per Are for the irrigated land and has accordingly offered the amount of compensation to the respective claimants.

. Dissatisfied with the amount of

compensation so offered, the claimants had preferred the application under Section 18 of the Act to Collector, Ahmednagar and all these applications were forwarded by Collector, Ahmednagar to the Civil Court (hereinafter referred to as Reference Court) for adjudication.

4) Before the Reference Court, the claimants had claimed the compensation @ Rs.1,00,000/- per acre for non-irrigated land whereas Rs.2,00,000/- per acre for irrigated land. In order to substantiate the contentions raised in the reference applications, Manjur Shahabuddin Jarekari, who was one of the claimants in LAR No.424/2003, deposed on behalf of all the claimants. In addition to evidence of said Manjur Shahabuddin, the claimants had commonly relied upon the sale instance executed on 18.11.1993 which pertains to 60 Ares land situated at village Wadgaon Tanpura, which was sold for the consideration of Rs.5,50,000/-, i.e. @ Rs.916/- per Are. No evidence, either oral or

documentary, was adduced on behalf of the State.

5) Admittedly, the acquiring body was not party to the Reference Court proceedings. The learned Reference Court, after having assessed the oral and documentary evidence brought before it, determined the market value of the acquired lands @ Rs.1,007/- per Are for irrigated land and Rs.504/- for non-irrigated land and accordingly enhanced the amount of compensation payable to the respective claimants. Aggrieved by the Award so passed, the acquiring body has filed the present appeals.

6) Shri Rajale, learned Counsel for the appellant, submitted that the Reference Court has implicitly relied upon the sale instance placed on record by the claimants at Exh.15. The learned Counsel further submitted that the claimants did not examine the vendor or the vendee or any attesting witness of the sale deed on which reliance was placed by the claimants.

. The learned Counsel further submitted that had any of such witness been examined, perhaps few more facts would have come on record, showing special features as about the lands which was the subject matter of the said sale deed, which had received that price because of said special features.

. The learned Counsel further submitted that unfortunately, the acquiring body was not made party before the Reference Court and as such, no evidence could be placed on record by the acquiring body. The learned Counsel further submitted that the S.L.A.O. had determined the market value of the acquired lands by adopting a scientific method and the settled norms by actually visiting the acquired lands and as such, no interference was warranted in the amount of compensation so determined by the S.L.A.O.

. The learned Counsel further submitted that without considering the plus and minus factors attached to the acquired lands, the Reference Court had mechanically determined the

market value of the said lands on the basis of the price received to the lands which were the subject matter of Exh.15.

7) Learned AGP submitted that the enhancement so made by the Reference Court in the amount of compensation is arbitrary and deserves to be quashed and set aside. The learned AGP, therefore, prayed for allowing the appeals by setting aside the impugned Judgment and Award.

8) Shri Sonawane, learned Counsel appearing for the claimants in all these matters, has supported the impugned Judgment and Award. The learned Counsel submitted that the appellant has admittedly not adduced any oral or documentary evidence. The learned Counsel further submitted that the claimants had brought on record the sale instance pertaining to the land situated at village Wadgaon Tanpura and of the period prior to one year of issuance of Section 4 notification, whereby the subject lands were acquired by the State for the said project. The

learned Counsel submitted that in all respects, the sale instance which was brought on record, was a comparable sale instance for determining the market value of the acquired lands. The learned Counsel further submitted that having regard to the fact that the acquired lands are situated at village Wadgaon Tanpura and the land which was the subject matter of Exh.15, was also from the same village and the concerned sale deed was executed prior to one year of issuance of Section 4 notification, no error seems to have been committed by the learned Reference Court in determining the market value of the acquired lands on the basis and at par with the value or consideration received to the land involved in sale deed at Exh.15. The learned Counsel, therefore, prayed for dismissal of the appeals.

9) I have carefully considered the submissions advanced on behalf of the learned counsel appearing for the acquiring body and learned counsel appearing for the original

claimants. On perusal of the impugned Judgment and Award and the discussion made by the Reference Court in Paras 9 onwards, and more particularly in Para 13 thereof, it does not appear that the Reference Court has committed any error in determining the market value of the acquired lands @ Rs.1,007/- per Are for the irrigated land and Rs.504/- per Are for non-irrigated land. Admittedly, no evidence was adduced on behalf of the State. Though all sorts of objections seem to have been raised in the written-statement filed by the State opposing the claim made by the claimants, neither the Special Land Acquisition Officer entered into the witness box nor any other documentary evidence in the form of comparable sale instance was placed on record. In the aforesaid circumstances, the only option before the Reference Court was to determine the market value of the acquired lands on the basis of sale instance, which was brought on record by the claimants and by doing some guess work as about the date of sale of the land,

which was the subject matter of sale instance and the date of issuance of Section 4 notification in respect of the acquired lands.

10) On perusal of the discussion made by the Reference Court, it is quite evident that the Reference Court has objectively assessed the evidence which was brought on record before it and has accordingly determined the market value of the acquired lands. The land which was the subject matter of the sale deed at Exh.15 was admeasuring 0.60 Are situated at village Wadgaon Tanpura. It was sold for the consideration of Rs.55,000/- i.e. at the rate of Rs.916 per Are vide the Registered sale deed executed on 18-11-1993. The aforesaid sale transaction was thus of the period prior to about one year of the issuance of notification u/s.4 of the Act in respect of the acquired lands. Considering the facts as aforesaid by giving 10% increase in the price received to the land involved in sale deed at Exh.15, the Reference Court determined the

market value of the acquired lands at the rate of Rs.1007/- per Are for irrigated lands and at the half of the said rate i.e. Rs.504/- per Are for non-irrigated lands. After having considered the entire material on record, it does not appear to me that the market value, as has been determined by the Reference Court, is, in any way, arbitrary or on higher side. Further, it cannot be said that the market value so determined is contrary to the evidence on record or not in consonance with the evidence on record. In the present appeals the acquiring body has not brought on record any such material or has brought to the notice any apparent or inherent mistake committed by the Reference Court so as to cause interference in the impugned Judgment and Award.

11) In the circumstances, I do not see any reason for causing any interference in the impugned Judgment and Award. In the result, the appeals, being devoid of merit deserve to be dismissed and are accordingly dismissed, however,

without any order as to costs. Pending civil applications if any stand disposed of.

(P . R . BORA)
JUDGE

bdv/