IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3232 of 2009

Avinash s/o Gurusidhappa Choudhari,
Age 46 years, Occu. Agril.,
R/o Parali-Vaijinath,
Tq. Parali-Vaijinath,
District Beed. **...APPELLANT**
(Orig. Claimant)

Versus

1. The State of Maharashtra,
   Through : The Collector,
   Beed

2. The Executive Engineer,
   P.W.D. Department, Ambajogai,
   District Beed. **...Respondents**
   (Original Respondents)

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Mr. C.R. Bharaswadkar, Advocate for Appellant;
Mr. C.V. Dharukar, AGP for Respondent / State

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CORAM: P.R.BORA, J.

Date of reserving the judgment : 29th March, 2016
Date of pronouncing the judgment : 03rd May, 2016

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JUDGMENT :

1) By filing the present appeal, the appellant is seeking enhancement in the amount of compensation awarded by the Adhoc District Judge-1, Ambajogai, District Beed vide its Judgment dated 25.08.2009 in Land Acquisition Reference

No.1205/2005.

2) The appellant is the owner of the land Survey No.26 admeasuring 84 R situated at village Jalalpur, Tq. Parali-Vaijinath, District Beed. The said land was acquired by the respondents for the purpose of construction of approach road to the Government Rest House. The acquisition proceedings were initiated in the year 2001, and the award under section 11 came to be passed on 21.03.2003. The Special Land Acquisition Officer determined the price of the land at the rate of Rs. 9,360/- per R. whereas the appellant had claimed the compensation at the rate of Rs.50 per Sq. Ft. Being dissatisfied with the market rate awarded by the S.L.A.O., the appellant approached District Collector, Beed seeking enhancement in the amount of compensation. Accordingly, the reference was made under section 18 of the Land Acquisition Act and was forwarded to the Court having jurisdiction for deciding the same. Before the reference Court, it was the contention of

the appellant that, the land under acquisition was at a short distance from Parali-Vaijinath Railway Station and Bus Stand and was within the limits of Municipal Council of Parali-Vaijinath. It was the further contention of the appellant that, all amenities such as Drainage, Water, Electricity, Roads and other facilities were available for the beneficial use of the said land. It was the further contention of the appellant that, in some transactions occurred during the relevant period in respect of the adjacent lands, the price of Rs.50/- per Sq. Ft. was received to the said lands The appellant had therefore claimed the compensation for the land under acquisition at the rate of Rs.50/- per Sq. Ft.

3) The State resisted the claim so preferred by the petitioner on several grounds. According to the State, it was Jirayat land, and as such, its valuation in Sq. Ft. was unwarranted. The State has further contended that, the S.L.A.O. has correctly determined the market value of the land under

acquisition considering the circumstances, and as such, the claim of enhancement raised by the appellant was devoid of any substance.

4) In order to substantiate the contentions raised in the reference application, and to prove that, the compensation of the land under acquisition was liable to be determined at the rate of Rs.50/- per St. Ft., the appellant brought on record four sale instances and also examined two of such persons viz: Somnath Chaudhari and Vaijnath Chate as his witnesses who have purchased the adjacent lands during the relevant period. The appellant himself had also deposed before the Court. The appellant had also examined one Shaikh Younus Abbdul Majid, the Assistant Town Planner, Beed as his witness. No oral evidence was adduced on behalf of the respondent State.

5) The learned reference Court, on the basis of oral as well as documentary evidence, which was

brought before him, determined the market value of land under acquisition at the rate of Rs.14,000/- per R including the price determined and paid by S.L.A.O. The reference Court also held the appellant entitled to 12% component payable under Section 23(1)(A) of the Land Acquisition Act from 10.04.2001 till21.03.2003 i.e the date of award. The reference Court also held the appellant entitled to 30% solatium payable under section 23(2) of the Land Acquisition Act and and for the interest under section 28 and 34 of the Land Acquisition Act on the excess sum awarded from the date of possession i.e. 16.09.1995 at the rate of 9% for the first year and thereafter at the rate of 15% from the date of expiry of the said period of one year till payment. Dissatisfied with the award so passed, the appellant has preferred the present appeal, seeking enhancement in the amount of compensation determined by the reference Court in the aforesaid L.A.R.

6) Mr. Bharaswadkar, the learned Counsel

appearing for the appellant submitted that, the reference Court has failed in properly appreciating the evidence placed on record by the appellant and more particularly the sale instances brought on record by the appellant. Learned Counsel further submitted that, the reference Court has also failed in appreciating that, Vaidyanath Temple, S.T Bus Stand, Tahsil Office, Railway Station, Jayakwadi Vasahat and the main Market are at the distance of less than ½ k.m. From the land under acquisition. Learned Counsel further submitted that, the reference Court on some wrong notions has determined the market value of the land under reservation at lower rate.

7) Shri Dharurkar, the learned AGP submitted that, the Reference Court has rightly determined the amount of compensation after having considered the evidence on record. Learned AGP submitted that, some portion of the same survey No.26 was sold on 19.10.2000 at the rate of Rs.12,333/- per R and the said sale instance, therefore, is rightly relied upon

by the Reference Court and accordingly the compensation awarded to the claimant at the rate of Rs.14,000/- per R cannot be said to be inadequate or unjust. Learned AGP, therefore, prayed for dismissal of the appeal.

8) I have carefully considered the submissions made on behalf of the learned Counsel appearing for the appellant and the learned AGP appearing for the respondent State. I have also perused the impugned Judgment and Award and the evidence on record. As was deposed by the appellant before the Reference Court, the land under acquisition is adjacent to the State Highway and having N.A. potentiality. It was further stated by the appellant that, in survey No.21, which is just opposite to the land under acquisition, there is a Government building named as '*Sinchan Bhavan*' and the said land was acquired prior to about twenty years for constructing the said office building for the Irrigation Department. It has also come in the evidence of the

appellant that, the famous Vaijnath Temple, S.T. Bus Stand, Tahsil Office, Jaikwadi Vasahat and Railway Station as well as the Market area are at the distance of around 1/2 km. of the acquired land. It has also come in the evidence of the appellant that, four Acers land out of survey No.26 was got converted into non agriculture by his father in the year 1989 and some of the plots out of the said land have been sold. In his testimony before the Court, the appellant has provided all the particulars of the sale instances on which reliance was placed by him. The appellant had examined Somnath Gurusiddhappa Choudhari and Vaijnath Rameshwar Tate in order to prove the two sale instances on which reliance was placed by him. Through the evidence of aforesaid two witness, the concerned sale deeds were duly proved. The sale deeds are at Exhibit 17 to Exhibit 20. Appellant had also examined the Assistant Town Planner, Beed namely; Shaikh Yonus Abdul Majid so as to bring on record the fact that, the land under acquisition had come within the Municipal area since year 1975, when the development plan of Parali-Vaijnath was prepared.

9) On perusal of the impugned Judgment, it is apparently revealed that, the learned Reference court has not appropriately discussed as to why it has not relied upon the evidence produced by the claimant and more particularly the sale instances brought on record by him. It is observed by the Reference Court that, the sale instances on which reliance was placed by the claimant were entered into after the said lands were converted in non agriculture use. However, it was not the case of the claimant that, the land under acquisition is a N.A. Land. What was contended by the appellant was that the land under acquisition was having N.A. potentiality. It was the specific contention of the appellant claimant that, some of the portion of survey No.26 was already converted into non agriculture use and the land under acquisition was also possessing the N.A. potentiality. No doubt

the Reference Court has further observed that, in the event, the land under acquisition would have been converted in non agriculture use for laying of plots, 1/3rd of the area of said land was liable to be utilized for the approach roads, service lane etc. and some area was also required to be kept as open space. Learned Reference court has further observed that, excluding the said area, approximately 40 to 50 R area was available wherein the plots could have been laid. However, the learned Reference Court has not made any further discussion or provided any cogent reason as to why it has discarded the sale instances relied upon by the appellant claimant wherein the approximate rate received per square feet was around Rs.51.

10) There is no dispute that, Survey No.21 is just opposite to survey No.26 and survey No. 23 and 21/1 are also at a short distance from Survey No.26. The sale deed at Exhibit 18 pertains to a plot admeasuring 20 ft. x 50 ft. from survey No.26,

whereas the sale deed at Exhibits 20, 19 and 17 are pertaining to the lands out of survey No.21/1, 23 and 21 respectively. In the circumstances, if the learned Reference Court was of the view that, the sale instances so relied upon by the claimant cannot be of any use for determining the market price of the land under acquisition, he ought to have given cogent reasons therefor. The only reason provided by the Tribunal is mentioned by me herein before that, the sale instances were of the N.A. land after laying of the plots therein, whereas the land under acquisition was not converted for N.A. use. However, I have earlier also noted that, in such circumstances, the Tribunal must have considered the contention of the claimant that, the land under acquisition was having equal N.A. Potentials. This issue has not been properly dealt with by the learned Reference Court. The reference court seems to have implicitly relied upon the sale instance dated 19.10.2000 pertaining to some portion out of survey No.26, which was sold at the rate of Rs.12,333/- per R. Thus, the aforesaid is the solitary sale instance relied upon by the learned Reference Court while determining the amount of compensation.

11) In fact, the aforesaid sale deed dated 19.10.2000 could not have been relied upon by the Reference Court, since the same is not produced and proved before the Reference Court. No doubt, the said sale deed was relied upon by the S.L.A.O and the amount of compensation fixed by the S.L.A.O is based on the said sale instance. However, law is well settled that the reference Court cannot take into account the material relied upon by the Land Acquisition Officer in his award, unless the same material is produced and proved before the Court. Admittedly, neither the acquiring body, nor the State has produced and proved the aforesaid sale deed.

12) After having considered the material on record and more particularly the facts, which have

come on record through the evidence of the claimant and the witnesses examined by him demonstrating that, (i) the land under acquisition is within the Municipal area, (ii) the adjacent lands are substantially developed, (iii) S.T. Bus Stand, Tahsil Office, Railway Station are at the short distance from the subject land , (iv) some of the portion of Survey No.26 has already been converted for non agriculture use and the plots sold out of the said survey number have fetched price at Rs.51 per Sq. Ft, it appears to me that, the compensation awarded by the learned Reference Court is inadequate and needs to be enhanced.

13) Following are the factors in favour of the appellant:

i) That, the land under acquisition is within the Municipal area and has N.A. potentials.

ii) The lands adjacent to the land under acquisition are substantially developed.

iii) S.T. Bus Stand, Railway Station, Tahsil Office, Market Area, Vaijnath Temple are at the short distance from the subject land.

iv) Some of the portion of survey No. 26 has already been converted for non agriculture use and one of the plots sold out from the said survey number on 30.03.1998 has received the price at the rate of Rs.51/- per Sq. ft.

v) That the plots out of survey Nos.21/1, 23 and 21 have been sold at the price from Rs.35/- per Sq. Ft. to Rs100 per Sq. Ft.

vi) That the land under acquisition has been included in the Municipal area since year 1975 and the amenities like electricity, road and drainage are available for the beneficial use of the land under acquisition.

14) Following are the negative factors:

i) That the land under acquisition is yet to be converted into non agriculture use.

ii) That it is unlevelled and on a slope.

Iii) That the sale instances relied upon by the appellant are pertaining to small plots.

iv) That some of the portion of the said land was sold in the year 2000 at the rate of Rs.12,333/- per R.

15) As mentioned earlier, four sale instances were relied upon by the appellant before the Reference Court. The said four sale deeds are at Exhibit 18 to 21. The plot admeasuring 20 ft. X 50 ft i.e. total 1000 Sq. Ft. out of survey No.26 situated at village Jalalpur, sold at the price of Rs.51,000/- i.e. at the rate of Rs.51/- per Sq. Ft. was the subject matter of the sale deed at Exhibit 18. The sale deed at Exhibit 20 pertains to the plot admeasuring 40 ft. x 50 ft. i.e. total 2000 Sq. Ft. from survey No.21/1 from Jalalpur and it was sold for the value of

Rs.70,000/-. i.e. at the rate of Rs.35/- per Sq. Ft. Sale deed at Exhibit 19 was executed on 29.03.2001 and it pertains to the plot admeasuring 34 ft. x 32 ft. i.e. total 1088 Sq. Ft from out of survey No.23 situated at village Jalalpur and it was sold for the consideration of Rs.1,50,000/- i.e. at the rate of around Rs. 137 per Sq. Ft. The sale deed at Exhibit 17 was executed on 19.10.2001, whereby the plot admeasuring 40 ft x 50 ft i.e. Total 2000 Sq. Ft. out of survey No.21 situated at Jalalpur was sold for the value of Rs.90,000/- i.e. at the rate of Rs.45/- per Sq. Ft.

16) The plots which were subject matters of the sale deed at Exhibits 18, 20 and 19 were sold prior to 10.04.2001 i.e before issuance of notification under section 4 for acquisition of the land which is a subject matter of the present appeal. From the material on record, it is established that, survey No.21/1 and survey No.23 are adjacent to survey No.26. Even if, we keep aside the sale deed at

Exhibit 19, wherein the price received to the plot from survey No.23 is at the rate of Rs.137/- per Sq. Ft. assuming that, there may be special features attached to the said land for receiving such a higher price, the sale instances at Exhibits 18 and 20 certainly need to be considered for determining the market value of the land under acquisition. Further, even if the sale instance at Exhibit 18, pertaining to a plot admeasuring 1000 Sq. Ft., sold at the rate of Rs.51/- per Sq. Ft. is also kept out of consideration and even if a most conservative approach is adopted, there shall not be any difficulty in relying upon the sale instance at Exhibit 20 which evinces that the plot admeasuring 2000 Sq. Ft. was sold at the rate of Rs.35 per Sq. Ft. on 07.12.1999 for determining the market value of the land under acquisition. As discussed earlier, the land under acquisition was possessing N.A. Potentials. However, while considering the aforesaid aspect it also has to be taken into account that, in such a case 1/3rd area of the subject land was liable to be utilized for roads, service lanes and towards open space. Similarly, the development charges were liable to be deducted. Considering the aforesaid aspects and giving due weightage to the positive and negative factors noted hereinabove, it appears to me that, Rs.25,000/- per R. would be the true and correct market value of the land under acquisition. I accordingly determine the market value of the land under acquisition at the said rate of Rs.25,000/- and consequently held the appellant entitled to receive the compensation of the land under acquisition at the aforesaid enhanced rate. Hence, the following order:

ORDER

1) The amount of compensation payable to the petitioner is enhanced by Rs.11,000/- per R. and the respondents are directed to pay the aforesaid enhanced amount of compensation in addition to the compensation of Rs.14,000/- per R. awarded by the Reference Court.

2) The respondents shall also pay to the appellant all the statutory benefits on the enhanced amount of compensation and the proportionate cost of the appeal.

3) The appeal stands allowed in the aforesaid terms.

4) Pending Civil Application, if any, does not survive and stands disposed of.

(P.R.Bora)
Judge

SPR