

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1835 OF 2016

1. The State of Maharashtra,
through the Collector, Ahmednagar,
through the Special Land Acquisition
Officer, No.3, Aurangabad road, Ahmednagar.
2. The Executive Engineer,
Minor Irrigation (EGS) Division-1,
Dist. Ahmednagar.

.. Appellants
{ Ori. Respondents)

Versus

1. Kisan Baburao Bodke,
Age 80 years, Occ. Agriculture,
2. Raghu Baburao Bodke
Age 75 years, Occ. Agriculture.

Both R/o. Village Mhaswandi, Tq. Sangamner,
District Ahmednagar.

.. Respondents.
{ Ori. Claimants).

Mr. B.V. Virdhe, AGP for appellants
Mr. D.A. Bide, Advocate for respondents.

CORAM : K.K. SONAWANE, J.

RESERVED ON : 6th December, 2017.

PRONOUNCED ON : 22nd December, 2017.

JUDGMENT :-

1] This appeal is directed against the judgment and award dated 9.11.2011 passed by the learned Civil Judge (S.D.), Sangamner in LAR No.106 of 2001 (old 226 of 2001) filed for enhancement of compensation under

Section 18 of the Act 1894, 1894 (for short, “Act 1894”).

2] The agricultural land Gat No. 345 admeasuring 0.75 R and Gat No. 349 admeasuring 1.00 R belonging to the claimants were acquired by the appellant/State of Maharashtra for construction of “Mhaswandi Percolation Tank” at village Mhaswandi, Taluka Sangamner, Dist. Ahmednagar. The notification under Section 4 of the Act 1894 was published in the Govt. Gazette on 10.4.1997. After compliance of procedural formalities prescribed under the Act 1894, the SLAO No.3, Ahmednagar declared the award under section 11 of the Act 1894 and determined the market value of the land under acquisition @ Rs. 36,700/- Per Hectare as well as 41,700/- Per Hectare. The claimants did not accept the market value calculated by the SLAO and accepted the compensation under protest. Thereafter, claimant preferred the Reference Petition under section 18 of the Act 1894 for enhancement of compensation.

3] According to claimants their lands under acquisition were fertile and irrigated lands but the Land Acquisition Officer failed to appreciate quality and yielding capacity of the lands. There was an water source available in the agricultural lands of the claimants under acquisition. According to claimants, the Land Acquisition Officer did not appreciate those circumstances in proper manner and committed error by awarding meager compensation amount. The claimants claimed market value @ Rs. 2 Lakhs per hectare for their acquired lands. The claimant Kisan

Bodke adduced his evidence on oath. He also produced certified copy of comparable sale instance executed in the year 1992 in respect of agricultural land Gat NO. 48, of village Mhaswandi, In refutal, the Land Acquisition Officer stepped in to the witness box and supported the award declared by him under Section 11 of the Act. The learned Reference Court considered the attending circumstances on record in the light of evidence adduced on record and arrived at the conclusion that acquired lands of the claimants should get market value of Rs. 2 Lakhs per hectare, which would be reasonable and proper market value for the lands located within the vicinity of Mhaswandi village. Accordingly, the learned Reference Court, passed the impugned judgment and award the legality, validity and propriety of which is under challenge in this appeal.

4] The learned AGP on behalf of appellant vehemently submitted that the Reference court did not appreciate entire circumstances on record in its proper perspective and committed error while determining the market value of agricultural lands of the claimants. The learned Reference Court granted exorbitant and excessive market value. The sale instance relied upon by the Reference Court was not comparable sale instance. No vendor or vendee of the documents of sale (Exh.23) came to be examined on behalf of claimant. Therefore, explicit reliance can not be kept on the said sale deed being a comparable sale instances for calculating market value of the acquired lands in this case. The learned AGP explained the circumstances about quality and potentiality of the acquired lands of claimants and submits that the market value arrived at by the Reference Court be upset

and the Reference Petition filed on behalf of the claimants be rejected.

5] Admittedly, while fixing the market value of acquired lands, comparable sale method for valuation was preferred by the Reference Court. It is to be noted that the amount of compensation cannot be ascertained with mathematical accuracy. The comparable sale instances have to be identified by its proximity with the period of notification under section 4 of the Act 1894 as well as its proximity with the location of acquired lands. It is to be borne in mind that the principle for determination of market value of the acquired lands would be the willingness of purchaser to offer the price. Market value is ordinarily known as the price of the lands which it would fetch in open market if sold by the willing seller, unaffected by the special needs of a particular purchase. In short, it connotes the price of the lands which a willing seller reasonably expects to fetch in the open market from a willing purchaser. Section 23 of the Act 1894 enumerates the circumstances for appreciation while determining the amount of compensation. The basic criteria for consideration is that the market value of the land under acquisition should be taken into consideration on the basis of market value prevailing over within the vicinity, at the date of publication of notification under Section 4 of the Act 1894. The law postulates that market value is essential to be determined in proper manner so that there would be neither unjust enrichment on the part of acquiring body nor undue deprivation on the part of owner. The circumstances of the disinclination of vendor to part with his land and

urgent necessity of purchaser to buy should be discarded while ascertaining the market value of the land. In the case of ***ONGC vs. Sendhabhai Vasiram Patel (2005) 6 SCC 454***, it has been delineated that some amount of guess work is permissible for computation of just and proper market value payable for the lands under acquisition. There would be no straight jacket formula for universal application to all cases under the Act 1894.

6] Keeping in mind the aforesaid propositions of law, it would be apposite to explore the evidence adduced on behalf of claimants in this case. The claimant Kisan Bodke adduced the evidence by filing an affidavit in lieu of examination-in-chief on record at (Exh.19). He deposed that their lands under acquisition were fertile and irrigated lands. There was a well in the lands for irrigation purpose. But, the Land Acquisition Officer classified the lands as “Jirayat Lands” for the purpose of calculation of market value. The claimants produced the 7 x 12 extract of the lands on record. In support of his claim, the claimants relied upon the sale instance of land Gat No. 48, admeasuring 0.24 R located at village Mhaswandi, which was sold in the month of October 1992, for a lump-sum consideration of Rs. 30,000/-. The claimants produced the certified copy of the sale deed on record.

7] The respondent SLAO also stepped into the witness box and deposed that the market value of the acquired land calculated @ Rs.36,700/- and Rs. 31,700/- per hectare was just and reasonable market value. The SLAO considered the sale instance of village Mhaswandi and determined the

market value. Unfortunately, he has not produced any documents on record in support of his evidence.

8] The attending circumstances on record adumbrate that the lands under acquisition were located within the vicinity of village Mhaswandi, Taluka Sangamner, Dist. Ahmednagar. The lands were at a distance of 10 to 12 Kms. from Pune - Nasik National Highway and half kilometer from Gaothan area of village Mhaswandi. There were conveyance facilities as well as basic amenities available in the village. According to claimants, lands under acquisition were rich, fertile and irrigated lands having water source from the well. The claimants claimed the valuation of their lands as "Bagayat Lands". There is no doubt that in view of location and other surrounding factors, the lands of the claimants under acquisition did possess future potentiality. The revenue assessment also indicate that those lands were of good fertile quality. However, the contention about the water source appears not sustainable and considerable one. The claimants produced 7x12 extracts of acquired land Gat No. 345 for the year 1997-98 on record. There was a mutation entry of well in the other rights column of 7x12 extract, but the well was shown belonging to Shivaji Bodke, Narhari Bodke and Dashrath Bodke, who purchased the portion of land for well in the acquired land Gat No. 345 from the claimant Kisan Bodke. Therefore, it is hard to believe that the concerned lands of the claimants were irrigated lands. The classification of lands as "Jirayat Lands" by the Land Acquisition Officer at the time of his award seems to be just, proper and reasonable

one. Therefore, the lands under acquisition could be valued as “Jirayat Lands” instead of “Bagayat Lands”. Be that as it may, the lands under acquisition were having potentiality to get good and reasonable market value prevailing over in the vicinity at the time of notification under section 4 of the Act 1894 which came to be published in the year 1997.

9] Now, turning to the pivotal issue of evaluation of concerned lands of claimants, it is imperative to take into consideration the general legal guidelines delineated under law for dealing with the mode and manner as well as methodology for determination of market value of the lands under acquisition. Their Lordships of Apex Court in the case of “*Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poone and another and Vijay Singh Liladhar vs. Special Land Acquisition Officer and Nathumal Rajmal Baldota vs. Special Land Acquisition Officer* “ reported in *AIR 1988 SC 1652*, observed in para.4 as below :-

4. The following factors must be etched on the mental screen : -

(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the 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.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the court to sit in appeal against the

Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

- (5) XXX XXX XXX XXX
XXX XXX XXX XXX”

10] It is evident from the aforesaid judicial pronouncement that the Reference under Section 18 is not an appeal against the award passed by the Land Acquisition Officer. The reference cannot be treated as a judgment of the trial court open or exposed to agitate it before the court hearing the reference. The Reference Court has to deal with it as an independent and separate original proceeding filed before it. The position of the claimant before the Reference Court is alike plaintiff in the civil suit and he has to prove that price offered for his land by the Land Acquisition Officer in his award is inadequate. The claimant has to establish his case on the basis of material produced in the court. Moreover, the material produced and proved on behalf of other side is also essential to be taken into consideration while calculating the market value of the acquired land.

11] In order to ascertain the market value of the lands, the

claimants heavily relied upon the sale instance of Gat No.48 admeasuring 0.24 R executed in the year 1992 for a consideration of Rs. 30,000/-. The land under sale was situated in the same village Mhaswandi of the acquired land. The claimants produced the certified copy of sale deed on record (Exh.23). According to claimants, lands under acquisition were capable of fetching more market value than the price of the lands prevailing over in the vicinity of village Mhaswandi during the period 1992 of execution of sale deed (Exh.23).

12] The learned AGP assailed that the claimants did not examine the vendor or vendee to prove the genuineness of the sale instance prior to consider it as evidence in this case. This particular kind of argument on behalf of learned AGP appears to be based on figment of imagination for the reason that there were no cross-examination on this particular aspect to the claimant Kisan, who stepped into witness box and deposed before the Reference Court by producing the certified copy of sale deed (Exh.23) on record.

13] Undisputedly, the provision of Section 51A of the Act of 1894 prescribes that a certified copy of the sale instance registered under the Registration Act, 1908 has to be accepted as evidence of the transactions recorded in such documents. However, it is open for the Court to keep reliance on the certified copy of the sale deed without examining its vendor or vendee. The word, “may” used in Section 51-A gives discretion to the

Reference Court to act upon it, though the certified copy of the sale deed came to be accepted as evidence of the transaction recorded in it. The Honourable Apex Court, in the case of ***“Land Acquisition Officer and Mandal Revenue Officer Vs. Narsaiah”***, reported in AIR 2001 Sc 1117, held that the certified copies of the sale deed relating to the similar lands situated within the vicinity of lands under acquisition can be relied upon even without examining its vendor or vendee or anybody else connected with the sale to prove its genuineness.

14] As referred supra, claimants kept implicit reliance on the sale instance produced on record (Exh.23). According to claimants, it is a comparable sale instance to ascertain the correct market value of the lands under acquisition. It would be reiterated that the proceedings before the Reference Court under Section 18 of the Act 1894 was an independent and original proceeding. In view of ratio laid down in the ***Chimanlal's case (Supra)***, it was incumbent on the part of claimants as well as respondent State, to prove its case by adducing separate evidence with reliable material on record. In the instant case, the claimants produced the certified copy of sale instance (Exh.23). Moreover, there was no cross-examination on behalf of respondent State of Maharashtra to the claimant on the particular aspect of its genuineness or voluntariness. The respondent State did not prefer to adduce evidence by production of any other kind of sale instance on record to counter the claim of the claimants. As per the settled position of law, the material utilized by the Land Acquisition Officer for making his valuation at

the time of award, can not be utilized by the Court unless it is produced and proved before the concerned court. (Emphasis supplied to Chimanlal's case) Therefore, the evidence of concerned LAO in the instant case would not advance to the contentions propounded on behalf of appellant/State for lack of documentary evidence on record. The LAO made reference in his evidence, about the sale instance of village Mhaswandi, considered by him at the time of award. But those sale instances were not produced before the Reference Court and consequently, the entire evidence of LAO would render otiose in this case.

15] Admittedly, the Land Acquisition Officer, while award under Section 11 of the Act 1894 has considered the sale instances of village Mhaswandi executed prior to 3 years of the notification under Section 4 of the Act of 1894. The claimants produced certified copy of the sale deed (Exh.23) of land Gat No. 48 admeasuring 0.24 R for a consideration of Rs. 30,000/-. The sale deed was executed in the year 1992 i.e. much prior to publication of notification under section 4 of the Act 1894 in this case. Therefore, there is no impediment to appreciate the sale deed (Exh.23) as a comparable sale instance for making valuation of the lands under acquisition. The Land Acquisition Officer has awarded market value @ 367 and 417 per R, whereas, the lands under sale in the transaction (Exh.23) was sold at a price of Rs.30,000/- i.e. @ Rs. 1250/- per R in the year 1992. Pursuant to exposition of law laid down in the case of **ONGC Vs.Sendhabai Vasiram Patel (cited supra)**, reasonable guess work is permissible while

computation of market value of the acquired land. The sale instance (Exh.23) if taken into consideration for market value of lands within the vicinity of village Mhaswandi in the year 1992 it would accrued around Rs.1250/- per R. After guess work on the basis of escalation of price of the lands in the vicinity, it would be concluded that the Reference Court has correctly appreciated the circumstances calculating the market value of the acquired lands @ Rs. 2,000/- per R. The escalation in the price of lands of village Mhaswandi @ 10 to 15% per year since 1992 till the year 1997 of notification under Section 4 would be reasonable and appropriate in this case. In the result, the findings of the Reference Court cannot be faulted in regard to determination of market value of the lands under acquisition. Therefore, there is no propriety to cause any interference in the conclusions drawn by the Reference Court for computing the market value of lands of claimants under acquisition.

16] In such circumstances, there is no impediment to arrive at the conclusion that the market value determined by the Reference court for the lands under Acquisition appears to be just, proper and reasonable one. There are no errors in the findings of learned Reference court. The comparable sale instance (Exh.23) considered by the Reference court for determination of market value seems to be genuine and voluntary sale for calculating the market value of the lands under acquisition. It would be reiterated that there is no other evidence produced on record on behalf of respondent SLAO to facilitate Reference Court for evaluating the

circumstances to ascertain the market value of lands under acquisition. There is no legal infirmity in the impugned judgment and award. Therefore, interference is unwarranted in the findings of the learned Reference Court. In contrast, the same are liable to be made confirmed and absolute.

17] In the result, in view of the aforesaid discussion, the appeal stands dismissed. No orders as to costs.

[K.K. SONAWANE]
JUDGE.

grt/-