

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.298 OF 2003

The State of Maharashtra Through the Special Land Acquisition Officer No.18, Pune V/s. Vithal Kondaji Kadlag	..Appellant ..Respondent
--	---------------------------------

Mr.Yogesh Y. Dabke, AGP for the Appellant-State.

Mr.Gaurav Potnis i/by Mrs.P.H. Potnis for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 06 FEBRUARY 2017.

P.C.

1. This appeal is directed against judgment and award dated 31-07-2002 (Impugned award) made by the VII Additional District Judge, Pune (Reference Court) in Land Acquisition Reference no.9 of 1991. By the impugned award, the Reference Court has enhanced compensation from Rs.16,629/- per hectare to Rs.60,000/- per hectare in respect of the land acquired by the respondents i.e. land bearing Survey No.11/2 at Village Surkondi, Taluka-Khed, District-Pune admeasuring 2 hectares and 63 are.

2. Mr.Yogesh Dabke, the learned Assistant Government

Pleader submitted that the enhancement is excessive and contrary to the weight of evidence on record. He submits that the reference Court has merely placed reliance upon certain earlier awards without there being any evidence that the awards offer any comparable instances. He submits that in this case the respondent did not produce any sale instances and merely because some sale instances may have been referred to in the awards made, the same, does not obviate the necessity of production and proof of such sale instances in the present reference proceedings. He submits that the evidence on record has not been considered by the Reference Court in its proper perspective. The awards related to bagayat lands whereas, the acquired property in the present case was a jirayat land. If the material on record were to be considered in the proper perspective, there was no case made out for grant of any enhancement, and in any case, enhancement to the extent to which the same has been granted. For all these reasons Mr.Dabke submits that this appeal is liable to be allowed and the impugned award is liable to be set aside.

3. Mr.Potnis, the learned counsel for the respondent however submits that the awards of the Reference Court produced on record constitute valid and relevant evidence in the matter of this

nature. He submits that the award relate to the acquisition of the lands for the very same project, though, from the neighboring villages. In particular, Mr.Potnis refers to the award of the Reference Court in LAR No.89 of 1990, which relates to a village Bibi which is at a distance of hardly two kilo meters from the acquired land. He submits that in this award, compensation at the rate of Rs.48,000/- per hectare was awarded in respect of acquisition of the year 1981. Relying upon the decision of the Division Bench of this Court in First Appeal No.240 of 2000 Mr.Potnis submits that the award in LAR No.89 of 1990 has been upheld by the Division Bench of this Court. He submits that there ought to have been appreciation of the rate by at least 12% each year and on such basis, the respondent was entitled to much higher compensation then what has been awarded. He submits that no cross-examinations were filed, since the respondent could not offer payment of Court Fees. For these reasons Mr.Potnis submits that the appeal is liable to be dismissed.

4. The rival contentions now fall for my determination.

5. In this case, Section 4 notification under the Land Acquisition Act, 1894 for the acquisition of respondents land bearing

Survey No.11/2 at Village-Surkondi, Taluka-Khed, District-Pune admeasuring 2 hectares and 63 are was received on 17-09-1987. As per the Section 4 notification, the acquisition is for the public purpose of "Chaskaman Project". The Land Acquisition Officer by award dated 31-03-1989 determined compensation at the rate of Rs.16,629/- per hectare. The respondent accepted such compensation under protest and applied for enhancement under Section 18 of the Land Acquisition Act 1894 claiming compensation at the rate of Rs.75/- per hectare.

6. The Reference Court, as noted earlier, has determined compensation at the rate of Rs.60,000/- per hectare. In doing so, the Reference Court has relied upon the evidence laid on behalf of the respondent, since, no oral/documentary evidence was laid by the appellant-State before the Reference Court. The respondent has produced on record several awards in relation to acquisition of land in the neighboring villages for the very same Chaskaman Project. One such Reference Court award produced by the respondent was the award in LAR No.89 of 1990. This award, relates to the lands in village Bibi which are stated to have been at the distance of about two kilo meters from the acquired land. The respondent has deposed that the lands which form the subject matter of several

Reference Court awards produced by the respondent are comparable lands. If the cross-examination is perused, it is evident that there is no serious dealt made to this statement on behalf of the appellant-State. In LAR No.89 of 1990, the lands involved were jirayat, semi bagayat and also bagayat. In respect of jirayat lands the rate awarded was Rs.48,000/- per hectare. In the present case there is no dispute that the acquired land was jirayat land.

7. In judgment and order dated 20 September 2007 delivered by the Division Bench of this Court in First Appeal No.240 of 2000, again, concerning lands acquired for the Chaskaman Project, there was specific reference made to the award in LAR No.89 of 1990, since, in the 24 reference with which the Division Bench was concerned, same evidence was produced by the claimants and the state in LAR No.89 of 1990, which came to be considered. As noted earlier in the impugned award, the reliance is mainly upon the Reference Court award in LAR No.89 of 1990. In that, since, the decision of the Division Bench dated 20 September 2007 is quite relevant.

8. In paragraphs 9 and 12 of the judgment and order dated 20 September 2007, the Division Bench, in terms, has held

that the reasoning given by the Reference Court in LAR No.89 of 1990 is correct and does not call for any interference by this Court in the First Appeal. It is further, held that the oral and documentary evidence clearly demonstrates that the sale instances taken into consideration by the Trial Court fell within the ambit of the admissible and relevant evidence. In the light of such categorical findings, no fault can be found in the award made by Reference Court, in the present case, placing reliance upon the award in LAR No.89 of 1990.

9. There is material on record to sustain the finding that the acquired land was very much comparable to the jirayat land which was the subject matter of LAR No.89 of 1990. In respect of jirayat land, the compensation determined in LAR No.89 of 1990 was Rs.48,000/- per hectare. Such award compensation was specifically upheld by the Division Bench of this Court in its order dated 20 September 2007, since, it is observed that the reasoning in LAR No.89 of 1990 is correct and does not call for any interference. In fact, in paragraph 12, the Division Bench has observed the compensation determined by the Reference Court in LAR No.89 of 1990 is just, fair and in accordance with law.

10. The determination of compensation in LAR No.89 of 1990 pertains to the year 1981, since, the lands which were the subject matter of the said reference were acquired in pursuance of Section 4 notification dated 19-11-1981. In the present case, we are concerned with acquisition in pursuance of Section 4 notification dated 17-09-1987. Normally, an upward increase of 10% can always be considered. On such basis, the rate would far exceed Rs.60,000/- per hectare. In this case, however, the impugned award has determined the rate at Rs.60,000/- per hectare and the same, does not warrant any interference. The material on record has been considered by the Reference Court in its proper perspective and the findings recorded are sufficiently brought now by the material on record. There is, accordingly, no case made out to interfere with the impugned award.

11. This appeal is therefore dismissed. The interim order, if any, stands vacated.

12. In the facts and circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)