IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1390 OF 1996
WITH
CROSS OBJECTION (ST) NO. 26091 OF 1997

The State of Maharashtra and anr. ..Appellants/Applicants
V/s.
Bhagwati J. Dhengale and ors. ..Respondents

Mr. A.A. Palkar, Asst. Government Pleader for the Appellants.
Mr. A.B. Tajane for the Respondents.

CORAM : M. S. SONAK, J.
Date of Reserving the Judgment : 13 January 2017.
Date of Pronouncing the Judgment : 10 March 2017.

<u>P.C.:</u>

1] This appeal is directed against the judgment and award dated 21 April 1994 made by 6th Joint Civil Judge, Senior Division, Solapur (Reference Court). The operative portion of which reads thus:

> *"(1) The application is partly allowed.*
> *(2) The Petitioner are entitled to get additional compensation Award Rs.1,84,780 (Rs. One lakh eightyfour thousand seven hundred and eighty only) for the land Gat No.215, situated at village Sarole and on the amount of Rs.1,84,780 solatium at the rate of 30 per cent and component interest at the rate of 12 per cent per annum for 75 months.*
> *(3) The Petitioners are entitled to get additional compensation award Rs.2,730 (Rs. Two thousands seven hundred and thirty only) for land Gat No. 431, situated at village Jawalgaon on the amount of Rs 2,730. Solatium at rate of 30 per cent and component interest at the rate of 12 per cent per annum for 75 per months.*
> *4. The State is directed to pay the additional Compensation Awards as above to the Petitioners with interest*

at the rate of 9 per cent per annum for period of one year from date of possession i.e. 3rd March 1986 and thereafter, at the rate of 15 per cent per annum till the additional Compensation Award to paid by the State Government to the Petitioners.

5. State is directed to pay additional Compensation Award to the Petitioners as above with proportionate costs to the Petitioners and bear its own.

6. Prepare bill of costs accordingly."

2] The appellants - State, in this appeal contend that the compensation determined is excessive, whereas, the respondents -landlosers, have lodged their cross-objection to contend that the compensation awarded, has much less than the market price, which according to them, must be assessed at Rs.3,60,854/-.

3] On behalf of the landlosers, the following persons came to be examined:

(i) Bhagwat J. Dhengale (respondent No.1);

(ii) Subhas P. Gambhire- Accountant in Bhogawati Sugar Factory; and

(iii) Mahadev S. Bachuwar- Valuer.

4] No evidence was led on behalf of the State, though respondent No.1 and the witnesses examined on behalf of the respondents were duly cross-examined. The claim of the respondents was an amount of Rs.3,60,854/-. However, after excluding the amount awarded by the Special Land Acquisition Officer (SLAO), the Reference Court has awarded additional compensation of Rs.1,84,780/- in respect of land bearing Gat No. 215 and Rs.2730/- in respect of land bearing Gat No.431, together with statutory benefits and interest.

5] Mr. A.A. Palkar, learned Asst. Government Pleader (AGP) for the appellants-State has made the following submissions in support of the appeal :

a] That the sale instances relied upon by the respondents were inadmissible in evidence or in any case, should not have been relied upon since, neither the vendor nor the vendee came to be examined. In support, reliance was placed upon the decisions of the Hon'ble Supreme Court in ***Kummari Veeraiah and ors. vs. State of A.P. - (1995) 4 SCC 136*** and ***A.P. State Road Transport Corporation, Hyderabad vs. P. Venkaiah and ors. - (1997) 10 SCC 128;***

b] There was no material on record to hold that the acquired lands were "*Bagayat lands*";

c] The award of separate compensation in respect of wells and trees is improper and contrary to the law laid down by the Hon'ble Supreme Court in ***State of Bihar vs. Madheshwar Prasad – (1996) 6 SCC 197;*** and

d] The Reference Court has grossly erred in relying upon the valuation report, particularly since the valuer had failed to even inspect the acquired land at or around the time of the issuance of the notification under section 4 of the Land Acquisition Act, 1894. The Reference Court was not entitled to rely upon the comparative sale instances method as well as capitalization method one and the same time in order to determine the compensation.

6] Mr. A.B.Tajane, learned counsel for the respondents, submitted that on the basis of the evidence on record, the Reference Court was duty bound to award the entire compensation claimed by the respondents. He submits that there is ample material on record to establish that the acquired lands were Bagayat lands. The sale instances produced on behalf of the respondents related to Jirayat lands and therefore, the appropriate increase was necessary in determining the compensation in respect of Bagayat lands, which are much superiors. The sale deeds produced relate to period prior to the issuance of section 4 Notification. The proportionate enhancement was also necessary on this count. The compensation was also due for works undertaken by the respondents, upon the acquired lands. For all these reasons, Mr. Tajane submits that the appeal is liable to be dismissed and the cross objections allowed.

7] By Notification issued under section 4 of the Land Acquisition Act, 1894 dated 15 December 1979 and published on 3 January 1980, the State proposed the acquisition of the respondents following properties:

(a) Property admeasuring 5 Hectares, 58 Ares bearing Gat No. 215, village Sarole, Taluka Barshi, District Solapur ; and

(b) Property admeasuring 21 Ares bearing Gat No. 431, village Sarole, Taluka Barshi, District Solapur.

8] The Notification under section 4 of the Land Acquisition Act, 1894 was ultimately followed by the award dated 5 September 1986, by which, the SLAO determined compensation for the property bearing Gat No. 215 as Rs.14/- per sq. meters and for the property bearing Gat No. 431 at Rs.75/- per sq. meters. The respondents dissatisfied with the rate proposed in the award applied for the reference, which were numbered as Land Acquisition Reference Nos.1103 of 1990 and 1104 of 1990 before the Reference Court.

9] The Reference Court, as is cleared from the impugned award, framed five issues and recorded findings thereon, which are as follows:-

ISSUES (at Exhibit 6)

(1) Do the Petitioners prove that land Gat No. 215 was Bagayat land and there was Bandhs and Shindi's trees and other trees in the land.

(2) Do the Petitioners prove that they entitled to get additional compensation claim ? If yes, what amount ?

(3) Do the Petitioners prove that the well situated in Gat No. 430 was of value Rs.60,000 and the Petitioners are entitled to get the additional compensation amount Rs. 1,315 for their 1/4th share in the well and additional compensation for the land Gat No. 431.

(4) Are the Petitioners entitled to get additional compensation for land Gat No. 431 , if yes, what amount ?

(5) What Order ?

FINDINGS

(1) In the affirmative. Rs. 1,84,780.

(2) Yes.

(3) In the negative.

(4) Yes, Only Rs. 2730.

(5) As per final Order."

10] There is no merit in the submission of Mr. Palkar that the sale deeds tendered by the respondents in the course of their evidence should not have been relied upon, since neither the vendor nor vendee were examined. No doubt, the propositions advanced by Mr.Palkar finds support in the decisions of the Hon'ble Supreme Court in *Kumari Veeraiah (supra)* and *P. Venkaiah (supra)*. However, the law laid down in the said two decisions was found to be in conflict with the law laid down by the Hon'ble Supreme Court in ***Land Acquisition Officer and Mandal Revenue Officer vs. V. Narasaiah – (2001) 3 SCC 530.*** In order to resolve the conflict, the reference was made to a Larger Bench in ***Cement Corporation of India Ltd. vs. Purya and ors. - (2004) 8 SCC 270.*** The Larger Bench, upon consideration of conflicting views has affirmed the law laid down in *Narasaiah (supra),* thereby impliedly over ruling the view in *Kummari Veeraiah (supra) and P. Venkaiah (supra)*. The two decisions relied upon by Mr. Palkar, therefore, stand over ruled by the decision of the Larger Bench in *Cement Corpn. of India Ltd. vs. Purya (supra)*.

11] The Larger Bench in *Cement Corpn. of India Ltd. vs. Purya (supra),* has however, held that the evidence tendered that the evidence tendered by way of certified copies of sale deeds may not be mandatorily binding upon the authority, but is only an enabling provision. Therefore, the certified copies of the sale deeds are admissible in evidence but the value to be adopted to such evidence, is ultimately the matter ultimately for the court to decide by adopting well settled principles with regard to appreciation of documentary evidence. The submission of Mr. Palkar, based upon the decision in *P. Venkaiah (supra)* and *Kummari Veeraiah (supra)*.

12] There is also no merit in the contention of Mr. Palkar that there was no material on record to sustain the finding that the acquired lands were Bagayat lands. In ***State of Gujarat vs. Gujarat Revenue Tribunal – AIR 1976 SC 1721,*** it is held that Bagayat lands are those which have got irrigational facilities by water from well, kundi etc.. In this case, there is ample evidence, both documentary as well as oral to sustain the finding that the acquired lands were indeed Bagayat lands. In respect of property bearing Gat No. 215, bills and receipts and other documents have been produced to indicate the sale of sugarcane cultivated from such property. There are also bills as regards to other agricultural products such as onions, groundnuts and jowar, which indicate such produce to the acquired property. Mr. Subhas Gambhire, an Accountant/Clerk at Bhogwati Sugar Factory has also deposed to the purchase of sugarcane from the acquired property from the respondents. The revenue extracts also substantially support this position. In fact, the revenue records in respect of property bearing Gat No.430, which is immediately adjacent to the property bearing Gat No. 431 specifically indicates the existence of the well, from which water is used for irrigation purposes. The revenue records also indicate that the cultivation of Kharif Jowar as well as Rabbi Jowar upon acquired property. Such cultivation also supports the finding that the acquired lands were Bagayat lands. The evidence on record, in any case, was more than sufficient for the onus to shift upon the State, if indeed, the State was serious in its contention that the acquired property was not Bagayat land. In this case, no evidence has been led on behalf of the State and therefore, the onus which has shifted upon the State remains undischarged. The Reference Court, in these circumstances, was clearly right in holding that the acquired lands are Bagayat lands.

13] Insofar as the third contention raised by Mr. Palkar is concerned, from the perusal of the impugned judgment and award, it does not appear that any compensation has been awarded towards the respondents' 1/4th share in the well. Issue No.4, which was framed in this regard has been answered in the negative. In any case, what was claimed was an amount of Rs.1315/- in its entirety. Mr. Palkar is right in his submission that when compensation is awarded on the basis that the land is a Bagayat land or an irrigated land, there is no question of award of separate compensation in respect of the well. In *State of Bihar vs. Madheshwar Prasad (supra),* the Hon'ble Supreme Court has held that the claimants are not entitled to separate valuation of the well, where they are compensated for the land on the basis that the same was irrigated land.

14] This is also not the case where the Reference Court has placed reliance upon the valuation report and therefore, there is no necessity to decide the contentions of Mr. Palkar on the issue of valuation report. The Reference Court, in this regard, has basically relied upon sale instances in respect of comparable lands. The Reference Court, has taken into consideration that most of the sale instances related to Jirayat land and accordingly, necessary appreciation has been awarded to the respondents, since, the acquired lands in this case has been established to be Bagayat lands. Further, necessary appreciation has also been awarded, since the sale instances in some cases pertained to sales, which had taken place prior to issuance of section 4 Notification. There is evidence of comparability and therefore, there is really no case made out to interfere with the impugned judgment and award at the behest of the either appellants or the respondents.

15] The cross objections raised by the respondents proceed on the basis that no proper appreciation has been awarded when comparing sale instances of Jirayat land and where sale has taken place much prior to issuance of section 4 of the Notification. However, upon perusal of the impugned judgment and award, it is seen that such appreciation has been granted and there is really no case to interfere with the impugned judgment and award.

16] Accordingly, the appeal as well as cross objections are liable to be dismissed and the same are hereby dismissed.

(M. S. SONAK, J.)