

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 879 OF 1996

The State of Maharashtra	..Appellants
vs.	
Shri Solapur Panjarpol and Shet	
Veerchand Deepchand Anathalaya	
& Ors.	..Respondents

Mr. Yogesh Y. Dabke – AGP for Appellants – State.
None for Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 06 January 2017

Date of Pronouncing the Judgment : 10 January 2017

JUDGMENT :-

1] The State appeals award dated 21 March 1995 made by the Illrd Jt. Civil Judge, Senior Division, Solapur (Reference Court) under Section 18 of the Land Acquisition Act, 1894 (said Act) enhancing the compensation in respect of the acquired land.

2] The State, in the year 1986, has acquired property bearing City Survey Nos. 8832 and 8833 in Final Plot No. 11, Solapur City admeasuring 883.30 sq. meters along with portion of existing building thereupon for the purposes of widening of Panjrapol Chowk, Solapur. The Special Land Acquisition Officer (SLAO), awarded the respondents / claimants compensation at the rate of Rs.300/- per sq. meter along with the statutory benefits as provided under the said Act. The respondents accepted such amount under

protest but applied for enhancement under Section 18 of the said Act. Land Acquisition Reference No. 185 of 1989, was accordingly made to the Reference Court, which has, by the impugned award dated 21 March 1995 disposed of the same. The compensation has been enhanced from Rs.300/- per sq. meter to Rs.1,000/- per sq. meter. Aggrieved by such impugned award, the State has instituted the present appeal.

3] Mr. Yogesh Dabke, learned Assistant Government Pleader has made the following submissions in support of the appeal :-

(A) That the material on record very clearly establishes that the building situated upon the property acquired was tenanted. This aspect has been ignored whilst determining the quantum of compensation;

(B) The sale instances relied upon by the claimant were inadmissible in evidence because neither the vendor nor the vendee were ever examined. Reliance was placed upon the decisions in ***Kummari Veeraiah & Ors. vs. State of A.P.*¹** and ***P. Ram Reddy & Ors. vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad & Ors.*²** in support of this proposition;

(C) Without prejudice, the sale instance was in relation to

1 (1995) 4 SCC 136

2 (1995) 2 SCC 305

a small plot admeasuring hardly 55 sq. meters. In contrast the acquired property admeasures 883.30 sq. meters. Therefore, the sale instance, was not a comparable instance;

(D) The Reference Court has proceeded, as if, it were deciding an appeal against the award made by the SLAO. This is an incorrect approach which vitiates the impugned award.

4] Although, the record indicates that the respondents have been duly served, there was no appearance on behalf of the respondents. The record also indicates that certain trustees of the respondent trust have expired during the pendency of the appeal and in their place, new trustees have been duly substituted.

5] The records and proceedings were called for and have been duly perused. On behalf of the respondent, one of the trustee Mr. Mr. N. K. Konapure came to be examined. He has deposed that the acquired property was owned by the trust. He has deposed that the acquired property was located near the S.T. Bus Stand in a very busy commercial area. He has described the acquired property as being '*in the heart of the Solapur city*'. He has stated that the market value of the acquired property on the date of acquisition was

in the range of Rs.150/- to Rs.200/- per sq. ft. He has placed on record certified copies of two sale deeds and four Index II documents recording the transactions of sale. He has stated that the sale instances are in respect of properties situated very close to the acquired property. He has admitted that if a house is occupied by a tenant, then, the value of such house becomes less than the market value, which house would otherwise fetch. He has also admitted that the building, the portion of which was acquired, was occupied by tenants. He has submitted that the sale instances relate to properties having houses thereon. He has denied the suggestion that there were no shopping complexes near the acquired property on the date of acquisition in the year 1986.

6] The State has not examined any witness in the course of the reference proceedings. The grounds urged in the appeal of memo state that the Reference Court ought to have appreciated that the SLAO had considered all the sale instances and had granted just and proper compensation.

7] There is really no dispute and in any case, there is overwhelming material on record as to the location of the acquired property. The acquired property, it is apparent, is located in the Panjarapole Chowk, very close to the Solapur S.T. Stand. In fact, the SLAO, in his award, has described the acquired property in the

following terms:-

“The land under acquisition is situated in Panjarapole Chowk which is one of the important Commercial squares in the Town. The property under acquisition is situated at the junction of Solapur – Tuljapur Road a State Highway, passing along the Eastern Boundary of the property and Pune-Hyderabad road the National Highway No. 9, passing along the South-Western boundary of the property under acquisition. There is S.T. Stand in the part of land under acquisition. It is situated at the Main Entrance to the Town. The Statue of CHHATRAPATI SHRI. SHIVAJI MAHARAJ is erected in this square. Many Commercial activities have been established in this square. The area under acquisition is at present in Commercial Use.”

8] The acquisition in this case, was for the purposes of widening the chowk since, this is a very busy commercial area. The acquired property admeasures 883.30 sq. meters and includes a portion of the existing building owned by the respondent – claimant. The circumstance that the building is occupied by tenants, is not, strictly speaking very relevant for the purposes of this appeal. This is because it appears that no substantial compensation has been awarded in respect of the portion of the acquired building. The compensation awarded is really in respect of 883.30 sq. meters of land admittedly owned by the respondent / claimant prior to the acquisition.

9] Learned AGP is right in his submission that the proceedings before the Reference Court are original proceedings and not proceedings in the nature of appeal against the award made by the SLAO. Although, some of the observations in the impugned award do suggest that some observations have been made by the Reference Court in respect of the findings recorded by the SLAO in his award dated 10 March 1987, upon a reading of the impugned award made by the Reference Court in its entirety, it cannot be said that enhancement in compensation has been ordered by treating the proceedings as an appeal against the award of the SLAO. The Reference Court has taken into consideration the material placed before it by one of the trustees, who was examined in the reference proceedings, and in support of the claim for enhanced compensation. Besides, even the appellants / State in its memo of appeal has relied upon the SLAO's award and contended that the Reference Court should have appreciated that SLAO had considered the sale instances and granted just and proper compensation. The observations in the impugned award are in the context of such submissions being made before the Reference Court for and on behalf of the State.

10] There is merit in the submission of the learned AGP that unless the vendor or the vendee of the sale deeds are examined,

there is no question of taking into consideration the sale deeds as evidence in the reference proceedings. However, in this case, the sale instance relied upon by the respondent / claimant, is also the very same sale instance relied upon by the SLAO in the award dated 10 March 1987. In such circumstances, it will not be appropriate to remand the matter to the Reference Court, only in order to enable the respondent / claimant to examine the vendor or vendee in respect of registered sale deed dated 19 July 1983. It is to be noted that the acquisition in this appeal, relates to the year 1986. This means that almost three decades have gone by. In the SLAO's award dated 10 March 1987, the SLAO, in relation to the sale deed dated 19 July 1983 has observed as follows:

*“(4) SALE INSTANCE NO. IV : (CTS No.8831/5, Final Plot No. 337 of Town Planning Scheme Solapur No. II) :-
Open Plot admeasuring 55.00 Sqmt. was sold for for Rs.40,000/- on 19.7.83 which gives the rate of Rs.727/- per Sqmt. This plot is situated on Bali Ves Road in Commercial locality at about 75 Mtrs. towards North-East of the land under acquisition and very near to it. After giving the consideration for time factor the market value of this plot as on 25.11.1986 works out to Rs.1000/- per Sqmt.”*

11] From the material on record, it is quite evident that the acquired property had a much better location than the property which forms the subject matter of sale deed dated 19 July 1983. Besides, the acquisition involves a portion of a building located

upon the acquired property. Such does not appear to be the position in so far as the property which is subject matter of sale deed dated 19 July 1983 is concerned. The property is described as an open plot.

12] No doubt, the sale deed dated 19 July 1983 is in respect of a small plot and therefore, suitable deductions are necessary if such instance is to be compared with the acquired property. Correspondingly however, additions are necessary taking into consideration the location of the acquired property and the circumstance that a portion of a building thereon is also the subject matter of acquisition. In peculiar facts and circumstances of the present case, these two factors, if set of against each other, are sufficient to sustain the enhancement granted by the impugned award. Ultimately, it is to be noted that the acquired property was situated virtually in the heart of the Solapur city. The acquired property is located very close to the Solapur S.T. Bus Stand. There is material on record which indicates that the acquired property was put to commercial use and there are several shopping complexes and other commercial structures in and around the acquired property. Taking into consideration all these factors cumulatively, it cannot be said that the enhanced compensation is unduly excessive or that it is not supported by evidence on record.

13] There is accordingly, no case made out to interfere with the impugned award. This appeal is therefore dismissed. There shall be no order as to costs.

14] In view of dismissal of the appeal, interim order, if any stands vacated.

Chandka

(M. S. SONAK, J.)