

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 715 OF 2001

The State of Maharashtra	..	Appellant
vs.		
Sudam Shankarrao Pawar	..	Respondent

Mr. Yogesh Dabke – AGP for Appellant.
Mr. Gaurav H. Potnis for Respondent.

CORAM : M. S. SONAK, J.
DATE: 16 FEBRUARY 2017

P.C :

1] This appeal is directed against the judgment and award dated 31 January 2000 made by the Reference Court in Land Acquisition Reference No. 241 of 1993. The operative portion of the impugned award, reads thus :

“ORDER

- 1. The reference is partly allowed.*
- 2. The Claimants are entitled to the compensation for their acquired lands survey Nos. 13/0, 446, 453, 454/2A, 12/A/1B, 12/A/9 admeasuring 0.01.2R, 0.33R, 12.2R, 4.9R, 1.4R and 1.9R respectively at the rate of Rs.72,000 per hectare less already paid amount, together with the statutory allowance under section 23(2) and 23(1A) of the Land Acquisition Act, and future interest at the statutory rates and under the provisions of Section 28 of the Land Acquisition Act, with proportionate costs.*
- 3. The parties are directed to give calculations of the amount due in view of the above order. The calculations*

approved by this Court shall form part of this award. The award shall be drawn immediately after approval of calculations of due amount.

4. Award shall also contain statement regarding quantum of Court fee, if any paid as per the Bombay Court Fee Act, for future reference.

5. The Claimant has filed a common calculations as per Exh. 24/2 filed in L.R. No. 213/93. The Opponent sought time for say but did not file the same till today. Having regard to the calculations submitted by Claimants and also the discussed facts, I find that the Claimant is entitled to get enhanced compensation of Rs.31,777. (viz. Rs.39,312 sanctioned by the Court, Rs.7,535 awarded by the S.L.A.O. and thus now payable Rs.32,777 @ Rs.72,000 per hectare).

6. The Claimant is entitled to 30% solatium on market value under Sec. 23(2) of the Land Acquisition Act.

7. The Claimant is further entitled to 12% component from 17th July, 1984 to 14th June, 1989.

8. The Claimant is entitled to interest at the rate of 9% p.a. for one year from the date of award i.e. 15th June, 1989 and then 15% p.a. till the payment deposited in the Court under Sec. 28 of the Land Acquisition Act.

9. Decree be drawn up accordingly."

2] Mr. Dabke, learned AGP submitted that the Reference Court has erred in placing reliance upon the award in L.R. No. 89 of 1990 because, the lands involved in the said matter cannot be said to be comparable to the lands involved in the present case. Besides, he submits that in this case, the respondent failed to produce the sale

instances which were referred to in L.R. No. 89 of 1990. In the absence of such sale instances, there was no question of relying upon the award in L.R. No. 89 of 1990.

3] The identical contentions as aforesaid, raised in first appeal no. 1073 of 2000 has been rejected by the judgment and order made today i.e. on 16 February 2017. Similar contention was also raised in judgment and order dated 6 February 2017 made in First Appeal No. 298 of 2003 [***State of Maharashtra vs. Vithal Kondaji Kadlag***], again, in the context of reliance upon the award in L.R. No. 89 of 1990. Incidentally, the lands which form the subject matter of first appeal no. 1073 of 2000 are lands, which are virtually adjacent to the acquired lands in the present appeal.

4] Accordingly, there is no merit in the present appeal and for the reasons set out in the judgment and order dated 6 February 2017 in First Appeal No. 298 of 2003, this appeal is also required to be dismissed and is hereby dismissed.

5] Mr. Potnis, learned counsel for the respondent points out that the respondent in the present case, had also instituted first appeal no. 510 of 2002 to challenge the very same impugned award because, it is the contention of the respondent that the acquired

land is bagayat land and not semi-bagayat land as observed in the impugned award in the present case. However, Mr. Potnis agrees that the said appeal has been dismissed for non prosecution. In this appeal therefore, it is not possible to consider Mr. Potnis's submission that the lands which form the subject matter of present appeal, are bagayat lands and therefore, deserve additional compensation. If and when, the appeal instituted by the respondent is restored, such issue can be considered in accordance with law and on its own merits.

6] This appeal is therefore dismissed. There shall be no order as to costs.

7] Mr. Potnis submits that the compensation amount in this case has already been withdrawn by the respondent by furnishing a bank guarantee. Now, that this appeal is dismissed, the bank guarantee stands discharged.

(M. S. SONAK, J.)