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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2362 OF 2006

WITH

CROSS OBJECTION ST NO. 15404 OF 2012

The State of Maharashtra ...Appellant
Versus
Kesarinath M Choudhari & Anr ...Respondents

Mr YY Dabke, *AGP, for the Appellant-State.*
Mr SM Kamble, *for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 22nd June 2017

PC:-

1. Heard Mr Dabke for the State and Mr Kamble for the Respondents.

2. The Appeal is by the State Government in Land Acquisition Reference No. 60 of 2004. That was decided on 26th April 2005 by the Civil Judge Senior Division, Raigad at Alibag. The reference under Section 28-A(3) of the Land Acquisition Act 1894 was filed by the original Claimants Kesarinath Mahadu Choudhary and Nivrutti Mahadu Choudhary of Taluka Panvel, District Raigad for enhanced compensation. According to the Claimants, their lands at

Taloja are of greater value and in a prime location, justifying enhancement. The lands in question are Survey Nos. 270/1-2, 270/3B, 243/4, 246/1 and 247/2 at Village Taloja, Taluka Panvel. They admeasure an area of 3.29.4 hectares. The Claimants own the lands. "They are persons interested" within the meaning of the Land Acquisition Act 1894.

3. The lands were acquired by the State Government under a Notification dated 3rd February 1970 for the Navi Mumbai project. The Special Land Acquisition Officer (**"SLAO"**) passed an Award on 31st March 1986 under Section 11 of the Act. The State Government took possession on that very day. The Claimants did not immediately filed a reference seeking enhancement. However, on the basis of a decision in Land Acquisition Reference No. 472 of 1986 they filed an application under Section 28-A. This was decided by the SLAO on 19th November 2003. Notice under Section 12(2) of the Act was served on that day and this reference came to be filed on 12th December 2003, within time.

4. The Claimants contended that the SLAO did not fix the market value of their lands correctly. They say that other lands in the area had a rate fixed at Rs. 22/- to Rs. 30/- by various Courts. Their land, the Claimants said, had several advantages. There were civil amenities such as schools, college, hospitals, market etc within close proximity. Water and electricity were readily available. There are about 200 to 250 industrial units in the same area. Panvel city is only six kms away and transport is easily available between Taloja and Panvel. In Appeal No. 1369 of 2008, the High court had fixed a rate of Rs. 25/- per sq mtr for other lands in Panvel, near these lands. The Claimants sought a slightly higher rate.

5. The Government resisted this claim. It said the rate was too high and that the entire application was an afterthought. The Government said that the land was undeveloped as on the date of the Notification and the lands were all agricultural yielding only a single annual paddy crop. Then there came to be made a series of submissions which I will only note because it is to my mind incomprehensible that the State Government could cite its own inability to provide infrastructure as a reason for keeping down acquisition compensation rates. It seems that the State Government said that the Thane Creek Bridge was not open. There were not enough trains. The CBD and Kalamboli infrastructure was inadequate and markets were not sufficiently established. JNPT had not been developed. Therefore, the SLAO should have fixed a lower rate.

6. Having framed issues, the learned Judge proceeded to consider the evidence led before him. He found as a matter of fact that Mumbai-Pune National Highway was only 600 mtrs away from the lands in question. There was sufficient industrial development including the Taloja Industrial Estate, merely 2.5 kms away. There were sufficient gas stations. A detail cross-examination on behalf of the Government shows that the Government itself had provided higher education and medical facilities and several other civil amenities in that area. It was argued that the lands having been acquired for the Navi Mumbai Project had a non-agricultural potential. The learned Judge considered the evidence and documents on record. PW2 was an expert in civil engineering. He had prepared a valuation report and his oral evidence was also taken. The Civil Judge considered the village map drawn by the valuer and produced on record. This showed the lands in the vicinity for which this Court had previously fixed a rate of Rs. 25/- per sq mtr.

7. Ultimately concluding that the claim for even greater advantages was not justified, the learned Judge accepted the rate of Rs. 25/- per sq mtrs fixed by this Court for the lands in the vicinity and proceeded to make an order in these terms. With the total area of 32,940 sq mtrs, the amount awarded was Rs. 8,23,500/-. Then there was 12% capitalization from the date of Notification, 3rd February 1970, till the date of Award dated 31st March 1986, a period of 16 years, one month and 29 days which came to Rs. 15,97,315/- and solatium of 30% of Rs. 2,47,050/- was added to this making a total of Rs. 26,67,865/-. Of this an amount of Rs. 36,705/- was already paid and was deducted leaving a net amount payable is Rs. 26,31,160/-. The Court awarded interest at the rate of 9% for the first year, i.e. from 1st April 1986 (the land having already been acquired and possession taken) and thereafter at the rate of 15% till realization. The decree was drawn accordingly.

8. I will note at this stage that the Claimants have filed Cross Objection St No. 15404 of 2012. These Cross Objections are not pressed and are, therefore, dismissed as such.

9. Coming back to the First Appeal, having considered the material on record, it is difficult to see how fault can be found with the approach adopted by the learned Judge. Before him, the Claimants sought a rate even higher than the one fixed by this Court for nearby lands. The Claimants were unable to justify an enhanced claim and the evidence of their own expert Mr Vaidya led as PW2 does not of its own show that these lands have any additional or special advantages so as to justify award of a rate above Rs 25/- per sq mtrs. The rate that was taken by the Court was one that was decided by this Court for other lands in that area. This is the subject matter of the Cross Objections, which are not pressed today. Therefore, the Claimants now accept Rs.25 per sq mt and no further discussion regarding a higher rate is necessary.

10. The State Government has before it in this First Appeal a far more onerous task. It has to show why a rate of Rs. 25/- was exorbitant. Other than suggestions that I have noted above — its own failure to provide infrastructure principal among them — there is absolutely nothing led by the State Government on evidence to justify any lower rate. The physical proximity of the land on the Mumbai Pune Highway cannot be disputed. The fact that even at that time Taloja was well-established as an industrial belt is also not successfully controverted. Indeed, there is nothing shown why the rate previously fixed by the Court should be reduced. At the very least, the State Government should have been able to show that the lands were specially disadvantaged either by being at a distance, or having other significant adverse topographical or geomorphological features, rendering them of lesser value. But therein lies the paradox: if the lands were indeed so worthless as the Appeal suggests, it would be difficult to justify the acquisition in the first place. My attention is not drawn to any material on record by which it can be said that the State Government proved that a lower rate was justified, or that the rate fixed was too high.

11. I will make one further observation. When the High Court has, after a studied deliberation, fixed a unit rate for lands in a vicinity — and, generally, a range is fixed — and that order has attained finality, the State Government must not, as a matter of jurisprudential and administrative discipline, constantly in every succeeding matter impeach that rate or rate range. It is impermissible to do so. For lands in the very vicinity it amounts to saying that a successor court should sit in appeal over a previous, binding decision. Especially when the previous decision is rendered by a bench of higher strength, such arguments cannot be countenanced. It is permissible to argue that the rate should be at the lower end of the range fixed for certain demonstrated and proved reasons. It is impermissible to argue that the rate-range fixed previously by the Court, a matter that has attained finality, is entirely wrong and should be re-visited. Such an approach is to be deprecated and, in a given case, may even justify the additional imposition of costs. In this case, since Mr Dabke, with his usual fairness, has not demanded that the rate-range previously fixed for lands in this area be re-visited, there will be no order as to costs.

12. I see no reason to interfere with the impugned Order. The First Appeal is dismissed.

13. The original Claimants will be at liberty to withdraw the remaining entire amount deposited with accrued interest.

14. The bank guarantee furnished by the Claimants as security for the withdrawal of 50% of the amount previously permitted is also to be discharged.

15. The parties will appear before the Trial Court on 10th July 2017 with an authenticated copy of this order. The learned Civil Judge Senior Division will pass the necessary orders permitting discharge of the bank guarantee and withdrawal of the remaining amount with accrued interest acting on an authenticated copy of this order.

(G. S. PATEL, J)