

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

**FIRST APPEAL NO.45 OF 2017
WITH
CIVIL APPLICATION NO.887 OF 2002**

The State of Maharashtra
(Through the Special Land
Acquisition Officer No.15, Pune) ..Appellant/Applicant
V/s.
Preet Condominium ..Respondent

Mr.Y.Y.Dabke, AGP for the Appellant/Applicant-State.

Mr.S.S. Aradhya for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 20 FEBRUARY 2017.

P.C.

1. Heard learned counsel for the parties.
2. On 10 January 2017, at the stage of condonation of delay the following order was made :-

1] For the reasons set out in the civil application no. 886 of 2002, delay of 33 days in instituting the appeal is condoned. Civil application no. 886 of 2002 is disposed of.

2] Place the appeal for admission and final disposal on 31 January 2017 on Supplementary Board.

3] *By the next date, the appellant to ensure that the notes of evidence / paper book is kept ready. This is because the appeal is of the year 1999 and it is for the reasons attributable to the appellant, that the matter has been delayed so long. If the necessary paper book is not kept ready by the next date, this court may have to consider dismissing this appeal for non prosecution.*

3. Thereafter, on 31 January 2017 the following order was made :-

1. *Time limit for filing paper book/notes of evidence is extended upto the next date which shall be 20 February 2017. Place the matter on Supplementary Board. Since, this is a matter which relates to the year 1999, though appeal has been numbered in the year 2017 it is made clear that in case this direction is not complied within prescribed period of time the appeal have to be dismissed for non-prosecution.*

4. In compliance with the aforesaid, notes of evidence/paper book have been filed. Mr.Dabke the learned AGP appears for the appellant and Mr.Sarang Aradhya the learned counsel appears for the respondent (Original Claimants). As notified earlier, the appeal is taken up for final disposal, since, it relates to the year 1999.

5. The State questions judgment and award dated

25-02-1999 made by the Reference Court, the operative portion of which reads thus :-

“1. Reference is allowed with cost.

2. Opponent do pay Rs.98000/- (land acquired 490 sq. mtr, final Plot No.36 situated at Bombay-Poona Raod, amount awarded by the Court Rs.98000/-, amount paid by S.L.O. Rs.1/-. Hence amount payable Rs.98000/- @ 20 per sq.mtr.

3. Opponent do pay solatium @ 30% of the market value and 12% component from the date of notification till the date of Award.

4. Opponent do pay interest @9% p.a. from the date of possession for a period of 1 years and @ 15 p.a. from the date of expiry of 1 year till on amount paid by S.L.O. & Court us 28 and 34 of the Land Acquisition Act.

5. Award be drawn accordingly.”

6. In this case, the State acquired respondents final Plot No.36 to the extent of 490 sq.meters for the purposes of widening the Bombay Pune Road. The S.L.O., made award on 31-03-1989, in which, he determined compensation at the nominal rate of Rs.1/- for the entire plot of land holding that, such plot of land was of no use to the respondent-claimants. The respondent, lodged his protest and applied for the reference to determine the true and correct market value which according to the respondent was Rs.350/- per sq.ft. If, the application dated 04-05-1989, by which the

respondent, applied for reference is considered its entirety then, it becomes apparent, that the reference to Rs.350/- per sq.ft., is required to be read and construed as Rs.350/- per sq.meter. This is evident because in the application seeking reference, there is a ground raised that in respect of the nearby area, the rate determine by the S.L.O. is Rs.450/- per sq.meter. Further, there is also reference to award of compensation at the rate of Rs.165/- sq. meter in respect of final Plot No.35A, which, it appears, was also acquired for the same purpose. Finally, in the reference application dated 04-05-1989, the respondent has stated that minimum compensation payable should be Rs.2,00,000/- and it is on the basis of Court Fees of Rs.2,150/- has also been paid. Therefore, it is apparent that the claim of the respondents was Rs.350/- per sq.meter and this is the manner in which the same has been construed by the Reference Court. In the appeal memo as well, the state has not even raised any ground that the amount awarded by the Reference Court is in excess of the claim made by the respondent at the time of seeking reference.

7. In the Reference Court, one Mr.Ashok Kale the representative of the respondent's society examined himself. He stated that the Municipal Corporation, Pune by letter dated

13-05-1988 had given an option to the respondent either accept FSI or compensation. He stated that since FSI was not offered for the purposes of putting up construction of the ground floor, the same was not acceptable to the respondent, it was felt that any construction of the consisting building would unduly increase the pressure on the resources. He stated that the plot which was acquired, though, an open space, was used for receptions, for functions of the society, play ground and garden. He stated that the price of FSI itself was in the range of Rs.400/- to Rs.500/- per sq. meter and therefore, the award of compensation at the nominal rate of Rs.1/- was not proper.

8. In addition to Mr.Ashok Kale, respondent also examined from Mr.Sudhir Natekar, as expert/valuer. He has, in his deposition, however stated that if the property cannot be permitted to be used for the purposes and the valuation of the said land is to be recorded as zero. He has also deposed that where a party has decline to accept FSI, such party is entitled to claim compensation at the market rate.

9. The Reference Court, by the impugned award, has awarded compensation of Rs.98,000/- to the respondents which

corresponds to Rs.200/- per sq.meter. In addition to this statutory benefits and interest have also been awarded.

10. Mr.Dabke the learned AGP submits that admittedly, the acquired property, was demarcated as open space and therefore, was not used for any purpose. Further, submits that once the respondents decline to accept additional FSI they were not entitled to claim any further compensation. He submitted that in this case the valuation of the acquired property was not never done within a period of five years from the acquisition. In any case, the deposition of the expert/valuer completely supports the case of the State to the effect that since the land was not to be to any use the valuation must be zero. Mr.Dabke submits that no cogent evidence was produced by the respondent-claimant in support of the market rate claim or even otherwise. For all these reasons Mr.Dabke submits that the impugned award is liable to be set aside.

11. Mr.Aradye the learned counsel for the respondent submits that the proposition that where FSI is refused, the land holder cannot get compensation, is incorrect. A choice was offered to the respondent to accept either FSI or compensation. The respondent opted for compensation at the market rate and such

compensation could therefore, never have been denied to the respondent. Mr.Aradhya submits that fact that the FSI was offered itself indicates that the land was valuable and the award of nominal compensation at the rate of Rs.1/- per sq.meters was completely incorrect and virtually amounts to depriving the respondent of his property save by the authority of law. Mr.Aradhya submits that the evidence led by Mr.Kale was virtually unchallenged. Mr.Kale has deposed uses to which the property was put to. That a part Mr.Aradhya submits that in respect of the neighboring plot i.e. FP No.35A, the Land acquisition Officer had awarded compensation of Rs.165/- sq.meters, even though, the entire FSI in respect of the said plot had already been consumed. In the present case, since, there is no evidence that the entire FSI have already been consumed, the award at the rate of Rs.200/- per sq.meter is really be correct and ought not have to be interfered with.

12. Rival contentions now fall for my determination.

13. In this case, respondents final Plot bearing No.36 admeasuring 490 sq.meters has been acquired for the purposes of the widening of the Bombay Pune Road. There is no dispute that the respondent was given an option to accept either FSI in lieu of

the acquired land or compensation. For the reasons explained by Mr.Kale, respondent did not accept the FSI which was offered. There is no proposition of law that once, a party declines to accept the offer for FSI in lieu of compensation, such party, is required to be deprived the right to receive compensation. Otherwise, furnish of such option has no meaning whatsoever. There is no merit in the submissions that the respondent is not entitled to any compensation other than compensation at the nominal rate of Rs.1/-, since, it refused to accept offered FSI in lieu of compensation.

14. Mr.Kale has deposed that plot which was acquired was not entirely useless or worthless as was the case sought to be made out by the State. Admittedly, the plot had been demarcated as a open space. However, open space have also has its own value. Besides, the evidence that such open space was utilized as a garden and play ground, which cannot be said as impermissible, has not even been challenged in the course of the cross-examination. Accordingly, the award of nominal compensation at the rate of Rs.1/- per sq.meter was not at all proper in the facts and circumstances of the present case.

15. The Reference Court at paragraph No.6 has made the

following observations :-

“However, S.L.O. in Award at Page 17 has paid market price @ 165/- to Rs.400/- as per consumption fo FSI. S.L.O. has paid Rs.200/- per sq.meter to final Plot No.36, northern side at page No.17 of the Award.”

16. The learned counsel for both the parties were unable to throw much light upon the aforesaid quotation. However, it does appear that in respect of plot No.35A, which is in the vicinity of the acquired plot, the S.L.O. had awarded compensation at the rate of Rs.165/- per sq.meter. There is no evidence produced on record by the respondent-claimant to the effect that any FSI in respect of the acquired plot was unconsumed or unutilized. In absence of such evidence, the same principle adopted in respect of final Plot No.35A could always have been adopted for determine compensation in respect of acquired Plot No.36 admeasuring 490 sq. meters.

17. The claimant, in his application seeking reference made on 04-05-1989 has raised the following ground 'H'

“(h) The Special Land Acquisition Officer erred in fixing Rs.1/- as nominal market value of the land under acquisition on the ground that the full FSI of southern part is utilised. In fact though the Full FSI of F.P. No.35A its CTS No.14/A/2 is consumed the Special Land Acquisition Officer has awarded compensation at the rate of Rs.165 per Sq.Mtr. This act of the Special Land Acquisition Officer is discriminatory and therefore the

award passed by the Land Acquisition Officer is illegal.”

18. Similarly, the claimant, in the claim statement filed before the Reference Court on 30-01-1993 has also stated the following:

“It is very surprising to note that though full F.S.I. on Final Plot No.35-A, its C.S.No.14-A/2 was consumed earlier, the Special Land Acquisition Officer awarded compensation at the rate of Rs.165 per Sq.mtr. to the owner of the said land. Considering this aspect also the Claimant was entitled to get compensation at Higher rate. Such act of the Land Acquisition Officer is nothing but a discrimination and therefore the award passed is liable to be set set and the Claimant is entitled to get more compensation for the acquired land.”

19. Since, it is the case of the respondent-claimant that compensation at the rate of Rs.165/- per sq.meter was allotted to final Plot No.35A, which is in the vicinity of the final plot No.36 which has since been acquired, there is merit in the, without prejudice, submission made by Mr.Dabke the learned AGP that under no circumstances the compensation amount could exceed Rs.165/- per sq.meter.

20. Upon cumulative consideration of the aforesaid this appeal is required to be partly allowed. The compensation at the rate of Rs.200/- per sq.meter is reduced to Rs.165/- per sq.meter.

Insofar as the remaining portion of the impugned award is concerned there is no case made out for interference.

21. This appeal is therefore, partly allowed. The compensation is directed to be determined at the rate of Rs.165/- per sq.meter and not at the rate of Rs.200/- per sq.meter. Save and except such modification, rest portion of the impugned award stands confirmed.

22. The learned AGP states that the amount of compensation has determined in the impugned award has been deposited by the appellant-State before the Reference Court. If so, the respondent shall be entitled to withdraw the same in accordance with the now modified impugned award. In the facts and circumstances of the present case there shall be no order as to costs.

23. The Civil Applications, if pending, stand disposed of.

(M. S. SONAK, J.)