

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 353 OF 2003

Maharashtra Industrial Development
Corporation,
Through its Regional Officer
MIDC, Nashik

Appellant

Versus

1. Shri Dhanraj Gorakh Patil
age 47 years, occ. agriculture
r/o Avdhan, Tq. & Dist. Dhule
2. The Special Land Acquisition Officer
/SDO, Dhule

Respondents

Mr. S.S. Dande, advocate for appellant.
Mr. B.R. Warma, advocate for respondent no. 1.

CORAM : M.S. SONAK, J.
DATE : 16th JANUARY, 2018

JUDGMENT :

1. Heard Mr. Dande, learned counsel for appellant and Mr. Warma, learned counsel for respondent-claimant.
2. This first appeal challenges the judgment and award dated 04.05.2002 made by the reference Court in LAR No. 160/1997 by which, the reference Court, has determined compensation in respect of the acquired land at Rs. 50,000/- per Hectare.
3. Learned counsel for appellant submits that in respect of acquisition under the same notification and for the same purpose, this Court, in several matters, has determined compensation at the

rate of Rs.42,000/- per Hectare. In this regard, he relies upon judgment order dated 27.10.2015 in First Appeal No. 592/2002 and connected matters. He also relies upon common judgment and order dated 19.06.2017 in First Appeal No. 35/2003 and connected matters. He points out that in all these matters, compensation has been determined on the basis of sale-deed dated 14.08.1980 of the village Avdhan, which sale-deed, is also exhibited in the present matter and marked as Exh. 21. He submits that even in the present matter the Reference Court has relied upon Exh. 21 but determined compensation at Rs. 50,000/- per Hectare. Learned counsel for appellant submits that in case, the compensation is reduced to Rs. 42,000/- per Hectare, the appellant will have no serious objection since, this is the rate determined in several matters in relation to acquisition under the same notification and in the same village and locality. He further submits that there are no special features so as to determine compensation at the rate of Rs.50,000/- per Hectare and, the principle of uniformity will also warrant reduction of rate to Rs.42,000/- per Hectare.

4. Mr. Warma, learned counsel for respondent-claimant points out that this matter ought not to be decided on the basis of decisions in group of matters referred to by learned counsel Mr.Dande. Mr. Warma points out that infact these references have been independently considered and adjudicated even by the reference Court. He points out that in this matter separate evidence was lead. He submits that this is because the acquired land in the present case stands on a much better footing than the lands acquired in other cases referred to by Mr. Dande.

5. Mr. Warma points out that in this case, respondent-claimant has infact taken out cross objection seeking enhancement of compensation from Rs. 50,000/- per Hectare to Rs. 1,50,000/- per Hectare. In this case, the reference Court has unjustifiably excluded from consideration evidence in the form of Exh. 23, which is a sale-deed dated 08.12.1975. Mr. Warma points out that by this sale-deed, the vendor sold 17804 sq. ft. of land to Patanpure Bhaskaran Malbari for consideration of Rs. 2,00,000/- per Hectare. Mr. Warma submits that the acquired land in this case is abutting Bombay-Aurangabad highway and is surrounded by petrol pump and other commercial structures. Mr. Warma submits that the potentiality of the acquired land has been completely ignored by the reference Court. Mr. Warma also submits that 12% component in terms of Land Acquisition Act, 1894 has not been awarded by the reference Court and to that extent, the impugned award warrants interference.

6. Mr. Dande points out that cross objection in the present case came to be instituted after delay of 12 years 310 days. He points out that there is hardly any reason to explain such inordinate delay. All that the civil application states is that one Adv. Jalte had taken entire responsibility of the matter and since, he passed away, there was delay in instituting cross objection. Mr. Dande points out that cross objections in which, there was delay of about six years, were not considered by this Court in its judgment and order dated 27.10.2015 by which, First Appeal No. 592/2002 and connected matters came to be disposed of in similar circumstances. In any case, Mr. Dande submits that respondent-claimant has made out no case to warrant any differential

treatment or award of compensation at any rate higher than Rs. 42,000/- per Hectare.

7. There is no dispute that the acquired land in the present case and the lands which form subject matter of several decisions including judgment and order dated 27.10.2015 in First Appeal No. 592/2002 and judgment and order dated 19.06.2017 in First Appeal No. 35/2003 and connected matters, came to be acquired under one and the same notification. The material on record also establishes that the lands are situated either in the same village or in the same vicinity and, the acquisition is for one and the same purpose. In the decision relied upon by Mr. Dande, this Court, relying upon sale transaction dated 14.08.1980, which sale transaction has been relied upon even in the impugned award at Exh. 21, has determined compensation at Rs. 42,000/- per Hectare. Infact, this Court noted that in some land acquisition references, the reference Court had awarded compensation at the rate of Rs.45,000/- per Hectare but, the same was reduced by this Court to Rs. 42,000/- per Hectare. Mr. Warma was not able to point out any significant distinguishing feature insofar as land which forms subject matter of the appeal is concerned. Therefore, there is no reason to reject Mr. Dande's contention that for sake of uniformity and consistency, compensation, in this case, is also required to be determined at Rs. 42,000/- per Hectare.

8. Insofar as cross objections are concerned, it is to be noted that the same came to be filed after delay of 12 years and 310 days. If application for condonation of delay is perused, all that is stated is that Adv. Mr. Jalte had agreed to take care of these appeals and

the applicants therefore, reasonably expected that Adv. Mr. Jalte would do the needful by filing cross objection. This explanation does not deserve consideration considering the fact that there is inordinate delay of almost 13 years in filing cross objection. Court fees are also required to be paid. It was the responsibility of respondent-claimant to pursue the matter with the assistance of his advocate and see whether any cross objections were necessary to be filed and if so, whether they are filed or not.

9. This Court, in its judgment and order dated 27.10.2015 by which, First Appeal No. 592/2002 and batch of matters came to be disposed of, did not take into consideration cross objections which were lodged after delay of about 5 to 6 years. In this regard, observations of this Court at paragraph no. 10 of the judgment are relevant, which read thus :

10. As far as cross objections are concerned, there is inordinate delay in filing the same. Delay is almost of five to six years. The learned counsel relies on the judgment of the learned Single Judge of this court in case of State of Maharashtra Vs. Kalu Ladkku Mhatre, reported in 2012(4) Mh.L.J. 741. I have considered the said judgment also. Though it is said that there is o requirement of establishing sufficient cause within the meaning of section 5 of the Limitation Act in the application for seeking extension of time to file cross objection, brief reasons for delay will have to be set out. Even on the basis of touchstone of the said judgment, no reasons have been set out. The claimants have appeared in the matter in the year 2009 and the cross objections are filed in the year 2015. Time to time, they have appeared in the matter

but no cross objection was filed. The only ground mentioned is about poverty, illiteracy etc. The claimants were represented by their lawyers in the appeal since beginning. But only when the matters were taken up for final hearing, cross objections are filed with condonation of delay application. Considering the above, I am not inclined to entertain the application for condonation of delay. As such the applications for condonation of delay in filing cross objections are rejected.

10. For these reasons, cross objections in this case cannot be taken into consideration. Even if, the cross objections were to be taken into consideration, there is really nothing on record to justify determination of compensation at the rate of Rs.1,50,000/- per Hectare. This claim is entirely based upon sale-deed Exh. 23. The sale-deed is in respect of non-agricultural property which was abutting highway and surrounded petrol pump, restaurant and other commercial structures. The acquired land in the present case is located in village Laling whereas, the land which form subject matter of Exh. 23 is located at village Avdhan. Even assuming that the two villages are in close proximity with each other, the locational features of the land forming subject matter of Exh. 23, cannot be said to be similar with the land of respondent which has been acquired. Insofar as sale-deed at Exh. 26 is concerned, reference Court, has rightly rejected the same as not useful evidence for the purpose of determination of compensation in the present case.

11. The impugned award specifically states that 12% component is being awarded to respondent-claimant. However, Mr. Warma

points out that though this is stated in the award, while making calculations in the operative portion, this has been excluded. The issue of award of statutory benefits cannot be gone into even if there being any cross objection on the part of respondent-claimant. Although the impugned award is not quite clear, it is necessary to clarify that respondent-claimant is entitled to all statutory benefits including 12% component if indeed, the same has not been awarded to the respondent-claimant. Mr. Dande, learned counsel for appellant does not dispute that the respondent-claimant is entitled to statutory benefits in case, the same has not been awarded or paid to the respondent-claimant.

12. Taking into consideration aforesaid aspects, the appeal is partly allowed. Compensation amount is reduced to Rs. 42,000/- per Hectare. It is clarified and directed that respondent-claimant will be entitled to and will be paid all statutory benefits including 12% component, if not already paid.

13. Out of the compensation amount deposited by appellant in this Court, respondent-claimant will be entitled to withdraw compensation as also statutory benefits on the basis of computation of rate at Rs. 42,000/- per Hectare. Balance amount can be refunded to the appellant. The Registry to work out the details and do whatever is necessary for facilitating such payments within a period of two months from today.

14. Appeal and cross objections are disposed of in the aforesaid terms. There shall be no order as to costs.

15. Pending civil application, if any, does not survive and stands disposed of.

(M.S. SONAK, J.)

dyb