

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.345 OF 1994

State of Maharashtra
(Through the Special Land Acquisition Officer,
Ratnagiri).

... Appellant.

vs-

Moreshwar Waman Sane
since deceased Through his legal heirs :

1. Pushpa Balwant Prabhudesai
Daughter 63 years,
R/at Bhatali, Rajapur, Dist. Ratnagiri,
2. Shubhada Madhukar Natu
Daughter 61 years,
R/at 3/8 Chintamani Building,
Near Thane Station, Thane,
3. Shital Kavishwar Bapat
Daughter, 57 years,
R/at Devrukh Bazarpeth
4. Madhuri Shashikant Mandape,
Daughter, 55 years,
State Bank Building. Chinchnaka, Dhiplun
5. Anuradha Anand Bhadbhade
Daughter, 53 years,
R/at Varadnand Housing Society,
Near Mrutyunjay Colony, Kothrud, Pune.
6. Hemant Ramchanda Sane,
61 years, R/o Deorukh Bazarpeth,
Tal. Sangameshwar, Dist. Ratnagiri

... Respondents.

Shri A. R. Patil, Assistant Government Pleader, for appellant.
Shri Prashant Chawan, Advocate with Ms Reshmarani Nathani, Advocate
i/by Shri V. M. Bhate, Advocate for respondent Nos.1 to 6.

CORAM : A. S CHANDURKAR, J.

DATE : December 20, 2018

Oral Judgment :

This appeal under Section 54 of the Land Acquisition Act, 1894 (for short, the said Act) has been preferred by the State of Maharashtra as it is aggrieved by the judgment of the Reference Court dated 30/03/1992 thereby granting compensation for acquired land at the rate of Rs.2000/- per acre.

2. By Notification dated 13/09/1984 land admeasuring 64 R belonging to the respondent herein was acquired by the Irrigation Department for construction of a building for Government office. Prior thereto the possession was taken on 16/08/1982. The Land Acquisition Officer passed his award on 10/06/1987 and granted compensation at the rate of Rs.1000/- per acre for about 0.43 acre land and at the rate of Rs.2/- per acre for 0.21 acre land which was potkharab land. The respondent being aggrieved filed a reference under Section 18 of the said Act seeking enhancement in the amount of compensation. The claimant examined himself in support of the reference application. By the impugned judgment the amount of compensation was enhanced to Rs.2000/- per acre. Hence

this appeal.

3. Shri A. R. Patil, learned Assistant Government Pleader for the appellant/State submitted that the evidence on record brought by the claimant was not sufficient to warrant enhancement in the amount of compensation. According to him sale instances at Exhibits-34, 35 and 36 were photocopies of the sale-deeds and in absence of there being any certified copy of those sale-deeds, they could not have been taken into consideration for enhancing the amount of compensation. In that regard he relied on the decisions in *Cement Corpn. Of India Ltd. vs. Purya and ors. (2004) 8 SCC 270.* and *R. L. Jain (D) by LRs. vs. D.D. A. and ors. AIR 2004 SC 1904.* It was further submitted that in the light of adjudication of Land Reference No.14/1984 the enhancement as awarded was on higher side in view of the fact that the Notification dated 13/04/1981 was under consideration in those proceedings. The Reference Court therein had granted compensation of Rs.1000/- per acre. It was then submitted that under provisions of Section 23 (1A) of the said Act, as possession was taken prior to the Notification issued under Section 4 of the said Act, interest would be payable from the date of Notification under Section 4 of the said Act and not from the date when possession was taken. On these counts it was submitted that the impugned judgment was liable to be set aside.

4. Shri P. Chawhan, learned counsel for the respondents supported the impugned order. According to him the evidence on record was rightly considered by the Reference Court while enhancing the amount of compensation. He submitted that the sale-deeds at Exhibits-34 and 36 were executed by the claimant himself as a vendor. It was therefore not necessary to place on record the certified copies thereof. Moreover, no objection was raised by the present appellant when the photocopies were exhibited. According to him as per those sale-deeds the enhancement as granted was just. He then submitted that even if under provisions of Section 23(1A) of the said Act interest was liable to be paid from the date of Notification under Section 4 of the said Act, the claimant was entitled for compensation as the possession was taken before issuance of that Notification. He thus submitted that there was no reason to interfere in the impugned judgment.

5. I have heard the learned counsel for the parties at length and with their assistance I have perused the evidence on record. The claimant examined himself at Exhibit-27 and in his deposition he referred to photocopies of three sale-deeds at Exhibits-34 to 36. The same indicate that the claimant himself was the vendor as he had sold his lands under those sale-deeds. In *Cement Corpn. Of India Ltd.* (supra) the Honourable Supreme Court while considering the provisions of Section 51-A of the said

Act has held that production of certified copy of the sale-deeds is sufficient evidence of the sale transaction and it would not be necessary to examine the parties to the transactions. In the present case however, the claimant himself is a vendor and he placed on record the photocopies of those sale-deeds. The appellant did not raise any objection at that stage to the consideration of those photocopies. There is also not cross-examination challenging the genuineness of those transactions. In the light of the fact that the claimant himself was the vendor, it cannot be held that the certified copies of the sale-deeds as required under Section 51-A of the said Act ought to have been placed on record. That contention therefore cannot be accepted.

6. The sale-deed at Exhibit-34 is dated 24/05/1984 by which 405 sq.mt land was sold at Rs.10,000/-. The other two sale-deeds are dated 20/06/1988 and 30/07/1988. These two sale-deeds at Exhibits-35 and 36 are post Section 4 Notification. It is thus found that the sale-deed at Exhibit-34 which is prior to the said Notification can be taken into consideration. The claimant in his deposition has stated that he had taken steps for conversion of his land for non-agricultural use and when that application was pending, the Notification under Section 4 of the said Act came to be published. The earlier award at Exhibit-33 also indicates that lands were acquired for the same purpose for which the present land was acquired.

The non-agricultural potential of the acquired land is therefore obvious. As per the earlier Notification dated 13/04/1981 amount of Rs.1000/- per acre came to be granted. The present Notification under Section 4 is about 3 and half years thereafter. Considering these facts as well as the consideration for which the sale-deed at Exhibit34 was executed as well as the size of the land as acquired, it cannot be said that the compensation as enhanced by the Reference Court is on a higher side. It is thus found that the enhancement as granted is supported by the material on record especially its non-agricultural potentiality.

7. In so far as grant of interest under Section 23(1A) of the Act is concerned, the learned Assistant Government Pleader is justified in relying upon decision in *R.L. Jain (D) by L.Rs* (supra). The interest thereunder would thus be payable from the date of the Notification under Section 4 of the said Act and not from the date when the possession was taken. To that extent the impugned judgment is liable to be modified. Needless to state that the claimant can always claim rental compensation for the period for which possession of land was taken till issuance of Notification under Section 4 of the said Act.

8. In the light of aforesaid discussion, following order is passed :

(i) The judgment of the Reference Court dated

30/03/1992 in so far as it has granted enhancement for the value of the land is concerned, the same stands maintained. However, interest under Section 23(1A) of the said Act would be payable from the date of issuance of Notification under Section 4 of the said Act and not from the date of taking possession.

(ii) Subject to aforesaid modification and with liberty to the claimant to take steps for seeking rental compensation in accordance with law, the First Appeal is partly allowed in aforesaid terms. Parties to bear their own costs.

(A. S. CHANDURKAR, J).