

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL No. 851 OF 2015

The State of Maharashtra	...Appellant
Vs.	
Shri Kondiba Ambadas Pawar	...Respondent

Mr. A.R. Patil -AGP for the Appellant
Mr. R.S. Alange for the Respondent

CORAM: K.K. TATED, J.

DATED : JUNE 19, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By consent of both the parties, matter is taken for final hearing at the stage of admission.
3. Both the counsels submit that it is not necessary to call R & P and place on record the paper-book.
4. The learned AGP for the Appellant submits that they are challenging the judgment and award dated 23rd July, 2010 passed by the Civil Judge, Senior Division, Barshi, Dist. Solapur in L.A. R. No. 93 of 2004 holding that the Respondents/Claimants are entitled for compensation in respect of acquired land admeasuring 0.78 R from Gat No. 318 at the rate of 59,000/- per hector i.e. additional compensation of Rs.31,200/- .

5. The learned AGP for the Appellant submits that in the present proceeding the Special Land Acquisition Officer issued Notification under Section 4 of the Land Acquisition Act for acquiring Respondent's'/Claimant's land bearing Gat No. 318, admeasuring 0.78 R. situated at , Village Mahagaon, Tal. Barshi, Dist. Solapur for Pimpalgaon Dhale Medium project. He submits that after following due process of law, the Land Acquisition Officer declared award dated 6th March, 2002 under Section 11 of the Land Acquisition Act and granted compensation of Rs.12,439/- to the Respondent/Original Claimant. He submits that being aggrieved by the said award, the Claimant preferred Reference under Section 18 of the Land Acquisition Act for additional compensation of Rs.2,00,000/-

6. The learned AGP submits that the Reference Court by its judgment and award dated 23rd July, 2010, held that the Respondent/Original claimant are entitled compensation in respect of acquired land @ Rs.59,000/- per hector i.e. additional compensation of Rs.31,200/-. He submits that the Reference Court failed to consider the evidence on record at the time awarding compensation. The Reference Court ought to have held that the Special Land Acquisition Officer, at the time of passing the award under Section 11 of the Land Acquisition Act, considered the evidence on record and awarded the market value of the acquired land, prevailing on the date of Section 4 of the said Act. Therefore, there is no question of additional compensation. He submits that on the basis of the same, the impugned judgment and award passed by the Reference Court has required to be set aside.

7. On the other hand, learned counsel Mr. R.S. Alange appearing on behalf of the Respondent /Claimant vehemently opposed the present First Appeal. He submits that in the present proceeding, the Appellant-State of Maharashtra relied on the previous judgment in LAR No. 813/02 and 54/04 in which the Reference Court awarded compensation @ 59,000/- per hector for a land from same village. He submits that the Learned Government Pleader before the Reference Court, has made a statement that they have no objection to rely on the judgment in L.A.R. No. 54/04 for determining market value of land. He submits that this statement is recorded by the Reference Court in paragraph 13 of the judgment and award. He submits that there is no substance in the present First Appeal and same is required to be dismissed with costs.

8. On the basis of the submissions made by both the counsels, following issue arises for determination:

(i) Whether the compensation awarded by the Reference Court is on higher side? No.

9. It is to be noted that in the present proceeding, both the parties are relied on previous judgments, in which the Reference Court decided the market value of the land from the same zone. The Reference Court specifically recorded in paragraph 21 that in L.A.R. No. 813/02 and 54/04, Reference Court has determined the price of acquired land @ Rs.59,000/- per hectare. Those judgments were not challenged by the State of Maharashtra in the Higher Court. Therefore, the Reference

Court decided that, the Respondent is entitled compensation in respect of acquired land @ 59,000/- per hector. Apart from that, the total additional compensation payable to the Respondent/Claimant is only Rs.31,200/-.

10. Our High Court in the matter of **Bayaji Tatya Kalunge vs. State of Maharashtra**¹ held that if the lands situated in same village, acquired for same purpose under same notification then claimants are entitled to compensation at the same rate on the ground of parity. Paragraph 5 of the said judgment reads thus:

“5. In this group matter, one appeal came to be filed (First Appeal No. 50/1993) against the order passed by the Reference Court in Land Acquisition Reference No.97/1985. This Court (Coram: D.S. Zoting, J.) held that, the claimants, in that appeal, were entitled to receive compensation at the rate of Rs.35,000/- per Hectare, in case of Bagayat land and, at the rate of Rs.17,500/- per Hectare in case of Jirayat land on the basis of award passed by the Reference Court either in L.A.R. NO. 101/1985. In the present case before us also, as all these lands are situated in the same village and, were acquired for the same purpose, under the same notification, the appellants (claimants) are entitled to compensation at same rate, as it was awarded in L.A.R. No. 101/1985, on the ground of parity. Learned Judge was wrong in not awarding compensation to the

¹ (2007) 2 ALL MR 316

appellants (claimants), at this rate. Therefore, it is necessary to interfere with the findings and the order recorded by the learned Judge.”

The Apex Court in the matter of **Special Land Acquisition Officer, Malaprabha Dam Project, Saundatti and Others vs. Madivalappa Basalingappa Melavanki and Others**² held that if the small piece of land is acquired and meager amount is awarded by the Reference Court then there is no question of interference at the hand of High Court. In similar way, Apex Court in the matter of **Airports Authority of India vs. Sayagopal Roy and Others**³ held that considering the small amount of compensation awarded to the claimant, there is no question of interference in the order passed by Court below Paragraph 16 of the said judgment reads thus:

“16. In the present case also, considering the small amount of compensation awarded to the claimants, we do not think that this would be a fit case for interference in this appeal. Hence, the appeal is dismissed with no order as to costs.”

11. I am of the opinion that the Appellant failed to make out any case for entertaining the First Appeal. The compensation awarded by the Reference Court is according to market value. Hence, following order:

(A) First Appeal stands rejected.

(K. K. TATED, J.)

² (1995) 5 SCC 670

³ (2002) 3 SCC 527