IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.182 OF 1995

The State of Maharashtra at the instance of the Special Land Acquisition Officer No.15, Pune …Appellant

Versus

Municipal Corporation of the City of Pune and ors. ...Respondents

…..

Ms Tanaya Goswami, AGP for the Respondent-State.
None for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 7th MARCH, 2019.

JUDGMENT :-

. The Appellant herein has challenged the judgment and award dated 29/10/1988 in Reference No.17 of 1979 under Section 18 of the Land Acquisition Act and Reference No.2 of 1979 under Section 30 of the Land Acquisition Act.

2. By the impugned judgment and award the Reference Court has enhanced the compensation awarded by the Land Acquisition Officer from Rs. 43 per sq. mtr to Rs. 48.44 per sq. meters in respect of the acquired land admeasuring 13 R from Survey No. 154/2. The Reference Court has also allowed Reference No.2 of 1979 and has

apportioned the amount of Rs.27,445/- in favour of the Respondents -Claimants. Being aggrieved by this judgment and award, the Appellant-State has preferred this appeal.

3. The records indicate that the Survey No.154/1 and part of survey No.154/2 was reserved for construction of Municipal Primary School. The Corporation took possession of the land under Survey No. 154/1 and also took a decision to acquire the land admeasuring 13 R from Survey No.154/2. Notification was issued under Section 126(4) of the Maharashtra Regional and Town Planning Act on 18/12/1975 followed by notification under Section 6 of the Land Acquisition Act. The award was passed on 15/12/1978. The Land Acquisition Officer valued the land admeasuring 13 R @ of Rs. 43/- per sq. meter and the structure alongwith fencing was valued at 1,45,950/-. The Respondent (original claimant) claimed Rs.50,000/- in respect of the said structure. The Land Acquisition Officer deducted an amount of Rs.21656.25/- payable by the Respondent to the appellant in terms of the decree of the Civil Court and deposited the balance amount of Rs.27445.62/- before the Reference Court.

4. Dissatisfied with the quantum of compensation awarded by the

Land Acquisition Officer, the Respondent filed an application under Section 18 of the Land Acquisition Act claiming compensation of Rs.48.44 per sq. meters in respect of acquired land admeasuring 13 R from Survey No.154/2. The Land Acquisition Officer also made a reference under Section 30 of the Land Acquisition Act in view of the dispute over apportionment of compensation towards the structure existing in the acquired land.

5. The Reference Court after considering the oral as well as the documentary evidence adduced by the parties held that the market rate of the acquired land as on the date of the notification was Rs.4.50 per sq.ft i.e. Rs.48.44 per sq. mtr. The Reference Court further held that the Respondent had become the owners of the said structure in terms of the order of the Civil Court in S.C. Suit No.147 of 71, which had attained finality. The Reference Court further held that the Land Acquisition Officer was not entitled to deduct the amount of Rs.21,656.25, which the Respondent-Claimants were liable to pay to the Corporation. The Reference Court therefore held that the Claimants are entitled to receive the amount of Rs.21,445.62 towards the value of the structure.

6. Heard Ms Tanaya Goswami, the learned AGP for the Appellant-State. I have perused the records. The records indicate that the adjoining land admeasuring 46 from Survey No.154/2 was earlier acquired and Section 4 notification in respect of the said land was published on 31/12/1971. In a land reference No.48 of 1978 filed by the Claimants, the District Court had valued the adjoining land @ of Rs.3.50 per sq.ft i.e. 37.60 per sq. met. The Reference Court has observed that the Appeal filed by the acquiring body against the said judgment and award in Land Reference No.48/78 has been dismissed and that the judgment and award dated 06/11/1982 has attained finality. Considering these aspects, the Reference Court has relied upon previous award in determining the market rate of the acquired land in the present reference.

7. Undisputedly, the adjoining land possessed similar advantages and disadvantages as the acquired land. There was no difference in the nature and potentiality of the previously acquired adjoining land viz.a.viz. the acquired land which is the subject matter of the reference. Under the circumstances, the award in respect of the adjoining land would be the best piece of evidence to determine the market rate of the acquired land after making suitable adjustment.

8. The records reveal that the earlier acquisition was of the year 1971 whereas the acquisition, which is the subject matter subsequent reference was of the year 1975. It is a well known fact that there has been a steep rise in the price of land. The Reference Court has taken note of this fact and after considering the increase in the price of land at 10% per annum, the Reference Court has fixed the market rate @ of Rs.4.50 per sq.ft. i.e. Rs.48.44 per sq.meter. There is absolutely no infirmity in assessing the market rate on the basis of the previous award. Hence, I am not inclined to interfere with the impugned judgment and award in Land Reference No.17 of 1979.

9. The records reveal that the Appellant / Corporation had constructed a school building in the property of the claimant. The claimants had filed a Civil Suit No.242/1965 seeking removal of the encroachment. The said suit was disposed of on the basis of the terms filed by the parties. Under these terms, the Appellant / Corporation was to acquire land admeasuring 13R on which the school building was constructed. The Appellant / Corporation had paid an amount of Rs.21656.25/- as advance installment of the price of the land which was proposed to be acquired. The Appellant / Corporation did not initiate acquisition proceedings and hence, the claimants issued a

notice to hand over possession of the land admeasuring 13R wherein the suit building was constructed. Failure on the part of the Appellant / Corporation to hand over possession of the subject land resulted in filing of Special Civil Suit No.147/1971. The said suit was decreed in favour of the Respondent / Claimant, by judgment and decree dated 31/10/1973. By the said judgment, the Appellant / Corporation was directed to hand over the possession of the subject land to the Respondent / Claimant. Opportunity was given to the Appellant / Corporation to dismantle the structure and remove the material and on failure to do so, the respondent / claimant was permitted to take possession of the said structure with further direction to retain the said structure in the same condition for a period of three years. During these three years, the ownership of the structure was to continue with the Appellant / Corporation. The respondent / claimant was also directed to maintain accounts of the income derived from the subject structure and to refund an amount of Rs.21656.25/- to the Appellant / Corporation.

10. The aforesaid judgment and decree, which has attained finality clearly indicate an opportunity was given to the Appellant / Corporation to remove the material from the structure and dismantle

the structure. Since the Appellant / Corporation has failed to dismantle and remove the material of the structure, the respondent / claimant, in terms of the judgment and decree, obtained possession of the subject structure.

11. The records indicate that the Land Acquisition Officer has not disputed the claim of the respondent / claimant in respect of the subject structure. The Land Acquisition Officer has taken note of the fact that under the decree, the respondent / claimant was liable to refund to the Appellant / Corporation sum of Rs.21656.25/-. The Land Acquisition Officer has deducted the said amount of Rs.21656.25/- from the amount payable to the respondent / claimant towards the value of the subject structure. As rightly observed by the Reference Court, the duty of the Land Acquisition Officer, who was discharging functions of the Collector under the Land Acquisition Act, was to access the compensation in respect of the acquired land and not to act as a Recovery Officer to collect the dues payable to the Government or the other statutory authorities. Under the circumstances, the Reference Court was perfectly justified in holding that the Land Acquisition Officer has erred in deducting Rs.21656.25/- from the amount payable towards the value of the structure and consequently apportioning the

said amount in favour of the Respondents-Claimants. The impugned judgment and award in Land Reference No. 2/1979 does not suffer from any infirmity and illegality and hence does not warrant interference.

12. Under the circumstances and in view of discussion supra, the First Appeal is dismissed. No orders as to costs.

(SMT. ANUJA PRABHUDESSAI, J.)