IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.457 OF 2016

Subhash s/o Daulatrao Maske,
Aged 42 years, Occu. Agriculture,
resident of Telhara, Tahsil and
Dist. Nagpur … Appellant

-vs-

1. Chief Engineer (MIHAN),
Maharashtra Airport Development
Company Ltd. Nagpur
Central Facility Building, First Floor,
MIHAN SEZ, Khapri (Railway),
Dist. Nagpur

2. State of Maharashtra
Thr. District Collector, Nagpur
District Nagpur

3. Special Land Acquisition Officer No.3,
V.I.D.C. Collectorate Building, Nagpur … Respondents

Shri U. P. Dable, Advocate for appellant.
Shri S. Y. Deopujari, Advocate for respondent No.1.
Smt Sangita Gaikee, Assistant Government Pleader for respondent Nos.2 and 3.

CORAM : A. S. CHANDURKAR AND N. B. SURYAWANSHI JJ.
Date on which the arguments were heard : 2nd February, 2021
Date on which the judgment was pronounced : 11th February, 2021

Judgment : (Per : A. S. Chandurkar)

This appeal filed under Section 54 of the Land Acquisition Act, 1894 (for short, the said Act) takes exception to the judgment dated 07/12/2015 passed in L.A.R. No.95/2011 by the Reference Court. By the said judgment the Reference Court has partly enhanced the amount of compensation for the acquisition of the appellant's land to Rs.18,00,000/- per hectare with other statutory benefits. The appellant not being satisfied with the quantum of enhancement has preferred the present appeal.

2. The facts relevant for adjudicating the present appeal are that the appellant is owner of field Survey No.33/2 admeasuring 3H 90R. The said land is situated at mouza Telhara, District Nagpur. The notification under Section 4 of the said Act was issued on 08/06/2007 and the said land was proposed to be acquired for development of MIHAN project. The Land Acquisition Officer passed his award on 28/06/2010 and granted compensation for the acquired land at the rate of Rs.6,00,000/- per hectare. While granting this compensation the land was treated as seasonally irrigated land. The appellant not being satisfied with the compensation as awarded preferred a reference under Section 18 of the said Act. The Reference Court after considering the evidence on record proceeded to enhance the amount of compensation to Rs.18,00,000/- per hectare. This judgment is the subject matter of challenge in the present appeal.

3. Shri U. P. Dable, learned counsel for the appellant in support of the prayer for enhancement in the amount of compensation submits that the appellant had brought on record substantial evidence to indicate that the

amount of compensation awarded by the Reference Court was less. Various sale instances of land from nearby villages were placed on record which indicated that the area in question had great commercial potentiality and it was for this purpose that the lands came to be acquired. He submitted that the acquisition in question was for the MIHAN project which itself indicated that the appellant's land had great non-agricultural potentiality due to its location. He referred to the sale instances at Exhibits-24 to 27 in that regard and submitted that the appellant was justified in seeking enhancement to the extent of Rs.1,00,00,000/- per hectare. Referring to the maps at Exhibits-22 and 23 it was submitted that the same indicated the location of various adjoining villages as compared to village Telhara. This indicated that the acquired land had much value than that awarded by the Reference Court. Referring to the 7/12 extract at Exhibit-21 it was submitted that in the acquired land there was a well and therefore that land had to be treated as irrigated land and not perennial irrigated land. The Reference Court committed an error in not considering the evidence on record in the proper perspective thereby resulting in grant of lesser compensation to the appellant. Moreover the Land Acquisition Officer as well as the Reference Court failed to assign any reason for not granting compensation for the well. Placing reliance on the decisions in ***Special Land Acquisition Officer and anr. vs. M. K. Rafiq Saheb (2011) 7 SCC 714, Land Acquisition Officer Revenue Divisional Officer, Chittor vs. L. Kamalamma (Smt) Dead by LRs and ors. K. Krishnamachari***

and ors. (1998) 2 SCC 385 and ***State of Maharashtra vs. Bhaskar Namdeo Wagh and ors. 2009 (1) Mh.L.J. 299*** it was submitted that on a proper appreciation of the entire material on record it was clear that the appellant was entitled for higher compensation as claimed in the reference proceedings.

4. On the other hand Shri S. Y. Deopujari, learned counsel appearing for the respondent No.1-acquiring body submitted that though the Reference Court partly enhanced the amount of compensation from the one granted by the Reference Court, the acquiring body had accepted the said judgment though the increase in compensation as granted was not justified. In support of the impugned judgment he submitted that the sale instances relied upon by the appellant related to land situated in various distant villages. These sale instances could not be said to be comparable sale instances inasmuch as the distance of the acquired land with those villages was not brought on record. On the contrary the map at Exhibit-22 clearly indicated that the acquired land was surrounded by various agricultural lands. This fact therefore did not indicate any commercial potentiality of the acquired land. It was then submitted that though the appellant's land was agricultural in nature and was lying barren prior to its acquisition the appellant was claiming compensation at the rates of non-agricultural land. Moreover considering the distance of the acquired land from the highway and other developed villages it could not be said that the acquired land had

great commercial potentiality. He referred to the provisions of Sections 23 and 24 of the said Act to substantiate his contention. Referring to the award at Exhibit-19 it was submitted that during the course of joint measurement no well was found located in the acquired land. Hence the Land Acquisition Officer did not grant any compensation for the well neither did the Reference Court. In support of his submissions the learned counsel placed reliance on the decisions in ***K. Posayya vs. Special Tahsildar AIR 1995 (SC) 1641, Gurlingappa and ors. vs. Assistant Commissioner and Land Acquisition Officer, Gulbarg (1997) 3 SCC 627*** and ***Panna Lal Ghosh vs. Land Acquisition Collector AIR 2004 SC 1179***. It was thus submitted that the appellant was not entitled to any enhancement in the amount of compensation.

Ms Sangita Gaikee, learned Assistant Government Pleader appeared for the respondent Nos.2 and 3 and supported the impugned judgment.

5. In the light of the rival submissions the following point arises for adjudication :

> *“ Whether the appellant has proved that he is entitled to further compensation for the acquired land ? ”*

6. We have heard the learned counsel for the parties at length and with their assistance we have also perused the records of the case. Before the Reference Court the claimant examined himself at Exhibit-13. In his

deposition he claimed that the land in question was being used for agricultural purposes and he was taking kharip as well as rabbi crop. According to him on account of the location of the acquired land it was likely to fetch rate of Rs.1,00,00,000/- per hectare. The villages of Khapri, Shivangaon, Chichbhavan and Khadka were surrounding village Telhara. He relied upon four sale instances as well as two maps to support his claim for enhancement in compensation. In his cross-examination he stated that he was unable to produce any material to show that he was receiving income of Rs.3,15,000/- per year by using the land for agricultural purposes. He did not maintain the record of the receipts from sale of crops nor did he maintain the bills of purchase of seeds and fertilizers. He further admitted that his land was situated in Nagpur Tahsil.

The claimant examined one Narayan Dhage at Exhibit-35 as his second witness. He supported the case of the claimant that the value of the acquired land could be Rs.1,00,00,000/- per hectare. In his cross-examination he admitted that he had not referred to any map to substantiate the distance of the acquired land from the various villages mentioned in his affidavit.

The acquiring body did not lead any evidence.

7. At Exhibit-21 is the 7/12 extract of the acquired land of the claimant which indicates that it was being used for agricultural purposes till

the issuance of notification under Section 4 of the said Act. At Exhibit-22 is a consolidation map of mouza Telhara which indicates the location of the claimant’s field. It can be seen that the acquired land is surrounded by various agricultural lands. The villages of Isasani, Shivangaon, Kalkuhi, Dahegaon and Sumthana are shown as adjoining village Telhara. At Exhibit-23 is a map prepared by Nagpur Regional Planning Board. This again shows the area proposed to be acquired for the MIHAN project. At Exhibit-24 is a sale-deed dated 14/08/1997 of land admeasuring 1500 sq. feet bearing plot No.14. The consideration mentioned therein is Rs.1,30,000/-. The land is situated at mouza Khapri Railway. At Exhibit-25 is another sale instance dated 21/03/2007 with regard to agricultural land situated at mouza Khadka, Tahsil-Hingna admeasuring about 2.08 hectares. The rate per hectare of this land comes to approximately Rs.86,49,038/-. Thereafter at Exhibit-26 is another sale-deed dated 15/10/1997 of land admeasuring 1H 28R located at mouza Jamtha. This land has been sold for a consideration of Rs.33,00,000/-. The sale instance at Exhibit-27 relates to sale of agricultural land admearusing about 16 hectares 66 R. On 30/04/2007 this land situated at Chichbhavan, Tahsil Nagpur was sold for a consideration of Rs. 6,30,00,000/- per hectare. It is on the basis of these sale instances that the claimant has sought enhancement in the amount of compensation.

8. Considering the entire material on record it can be seen the claimant's land till it was acquired remained agricultural land. The claimant used to take crops therein and other agricultural lands of mouza Telhara were surrounding it. The award at Exhibit-19 states that no sale instance of mouza Telhara was available. The claimant by relying upon the sale instances at Exhibits-24 to 27 seeks enhancement in the amount of compensation. As stated above Exhibit-24 pertains to land located at mouza Khapri Railway. Exhibit-25 relates to land located at mouza Khadka, Tahsil Hingna. Exhibit-26 relates to lands located at Jamtha, Tahsil Nagpur and Exhibit-27 relates to land at Chichbhavan, Tahsil Nagpur. On a perusal of the map at Exhibits-22 and 23 the villages of Khadka, Tahsil Hingna, mouza Khapri Railway, Jamtha and Chichbhavan are not shown as adjoining or in the near vicinity of village Telhara. The claimants have deposed that Jamtha is at a distance of about 3 km from the entire land. The villages shown adjoining to village Telhara are Isasani, Shivangaon, Kalkuhi, Dahegaon and Sumthana. There are no sale instances from these adjoining villages brought on record by the claimant to support the prayer for enhancement in the amount of compensation.

9. When enhancement in the amount of compensation is sought by relying upon sale instances the same should be comparable in nature to enable the Court to consider the rates quoted in the sale instances for

applying those rates while determining the market value of the acquired land. We find from the evidence on record that the sale instances at Exhibits-24 to 27 cannot be said to be comparable in nature for determining the true market value of the acquired land situated at mouza Telhara. The distance of the lands shown in the sale instances with the acquired land cannot be gathered from the record even to apply some guess work. Such exercise if done would merely be a conjecture on our part. Moreover, it is seen that mouza Khadka is part of Tahsil Hingna while mouza Telhara falls in Nagpur Tahsil.

The learned counsel for the claimant sought to rely upon the decisions in ***M. K. Rafiq Saheb, L. Kamalamma (Smt) Dead by LRs and ors. K. Krishnamachari and ors.*** and ***Bhaskar Namdeo Wagh and ors.*** (supra). There can be no quarrel with the legal position laid down therein. However while applying the said legal position to the case in hand, the evidence on record will also have to be kept in mind. We find that the evidence on record brought by the claimant is insufficient to justify the prayer for further enhancement in the amount of compensation from what has been granted by the Reference Court.

10. In the impugned judgment the Reference Court has considered the fact that the acquired land was near to the limits of the Municipal Corporation as well as the highway. It is on that basis that the Reference

Court proceeded to enhance the amount of compensation from Rs.6,00,000/- per hectare as granted by the Special Land Acquisition Officer to Rs.18,00,000/- per hectare. We however find that on the basis of the evidence on record further enhancement in the amount of compensation would not be possible as this evidence falls short on the ground that the sale instances cannot be treated to be comparable for that purposes. Though it was urged by the learned counsel for the acquiring body that even the enhancement granted by the Reference Court was unjustified, in absence of any cross appeal or cross objection by the acquiring body that contention cannot be gone into.

11. Thus in the light of aforesaid reasons the point as framed is answered by holding that the claimant has failed to prove his entitlement to any further enhancement in the amount of compensation. As a result of the aforesaid discussion the judgment of the Reference Court in L.A.R. No.95/2011 dated 07/12/2015 does not call for any interference.

The First Appeal is accordingly dismissed leaving the parties to bear their own costs.

Asmita Bhandakkar Digitally signed by Asmita Bhandakkar Date: 2021.02.11 15:06:35 +0530

JUDGE **JUDGE**

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