

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.1270/2008
in
LAND ACQUISITION CASE NO.50/1998

Maharashtra Industrial Development
 Corporation having its office at
 Marol Industrial Estate, Andheri East,
 Mumbai and having its Regional Office at
 By Pass road, Amravati
 through its Chief Executive Officer

... Appellant.

-Versus-

On RA

Shankar Tukaram Tayade
 (Dead through Legal heirs)

Ori. Claimant
 No.1 On R.A.

1] Sushila wd/o Keshavrao Taide,
 Aged about 37 years,
 R/o.-House No.33, near Rangoli Vastralay,
 Zilla Parishad Colony, Amravati.

Ori. Claimant
 No.2

2] Ravi Shankar Taide,
 Aged about 40 years,
 R/o.-Gopal Nagar, Amravati.

Ori. Deft. No.1

3] State of Maharashtra,
 through Collector, Amravati.

Ori. Deft. No.2

4] Sub-Divisional Officer and
 Special Land Acquisition Officer, Amravati Respondents.

Mr. Mayank Agnihotri, Advocate h/f Mr. M.M. Agnihotri, Advocate for
 appellant.

Mr. S.O. Tapdiya, Advocate h/f Mr. A.H. Lohiya, Advocate for resp. no.1.

Mr. M.A. Kadu, AGP for resps. no.3 and 4.

CORAM : ABHAY AHUJA, J.

Judgment reserved on : 23-09-2022.

Judgment pronounced on : 10-11-2022.

JUDGMENT

. This appeal has been preferred by the Appellant-Corporation against the award and decree dated 28-04-2008 passed by the Ad-hoc District Judge-2, Amravati in Land Acquisition Case No.50/1998.

2. The *lis* arises pursuant to the acquisition of 5.62 HR of land of the respondents bearing Gat No.162, in village Wagholi by the appellant-Corporation. Notification under Section 32(2) of the Maharashtra Industrial Development Corporation Act, 1961 (for short 'M.I.D.C. Act') (*pari materia* to Section 4(1) of the Land Acquisition Act, 1894) was published on 14-01-1994. Notification under Section 18 of the M.I.D.C. Act (which is *pari materia* to Section 6 of the Land Acquisition Act, 1894) was published on 02-06-1994). The Special Land Acquisition Officer passed an award on 28-03-1997 and granted compensation at the rate of Rs. 37,900/- PH for 0.41 HR for cultivable land and Rs. 1500/- PH for the remaining 5.21 HR being the 'Pot Kharab' land (arid land). The respondents filed reference under Section 18 of the Land Acquisition Act claiming enhancement to the tune of Rs. 2 Lacs PH before the Ad-hoc District Judge-2, Amravati. The Reference Court vide its judgment dated 28-04-2008 granted compensation of

Rs.1 Lac PH. Considering that the amount awarded by the Reference Court to be exorbitant, the Acquiring Body has preferred this Appeal in the year 2008.

3. On 06-02-2009, the entire decretal amount of Rs. 22,53,357/- was deposited by the Appellant-Corporation. On 12-04-2010, the respondents were permitted by an order of this Court to withdraw an amount of Rs.14 Lacs subject to the conditions imposed therein.

4. Mr. Agnihotri, learned Counsel for the appellant-Acquiring Body would submit that the Reference Court has relied upon the sale instances which are post the Notification under Section 32(2) of the M.I.D.C. Act i.e. sale instances after 14-01-1994 and therefore the same cannot be relied upon. Mr. Agnihotri, would submit that the location of the land in question and the lands under the Sale Deeds and awards which have been relied upon by the respondents have to be considered while assessing the market value of the land. He would submit that village Wagholi is on Morshi road which is on a State Highway whereas, the comparable instances of awards passed under the earlier land acquisition proceedings viz; L.A.C. No.211/1999 pertains to Nandgaon Peth and L.A.C. No.38/1998 pertains to Sawardi, both of which are on the Highway which is on the Nagpur road. Learned Counsel would submit that Nandgaon Peth is nearer to Municipal limits of Amravati. He further submits that the land in question is unirrigated land and at a long distance from Nandgaon Peth and

Sawardi and therefore not comparable.

5. He submits that the Reference Court had erred in solely relying upon the two judgments with respect to Nangaon Peth and Sawardi in determining the quantum of compensation of the subject acquired land.

6. Learned Counsel would submit that the best piece of evidence on record was the sale instance below Exhibit-59 which was a Sale Deed dated 13-06-1991 from village Wagholi under which 1.41 HR of land was sold for Rs. 53,000/- and therefore the per hectare price was Rs. 37,589/- close to what has been awarded by the Land Acquisition Officer in the present case. He would submit that since the present acquisition is of 14-01-1994 and that too from a rural area, as per paragraph 16 of the judgment of the Hon'ble Apex Court in *G.M. Oil and Natural Gas Vs Rameshbhai Jivanbhai Patel and another*¹, the inflation at the rate of 7.5% could have been considered which comes to Rs.46,047/- PH (Rs.289 per year x 3 =8457.44 + 37,589 =46,047/-). He would submit that therefore Exhibit-59 was the only document which was relevant for determining the fair compensation as the subject land under acquisition is also from village Wagholi. He submits that Exhibit-59 is the best piece of evidence placed on record and the Reference Court ought to have considered the said exhibit for determining the rate of compensation in the present case. He would submit that therefore the impugned order/judgment is unsustainable in law and

¹ 2008 (14) SCC 745.

deserves to be quashed and set aside.

7. He would submit that in view of the above discussion at the most the respondents would be entitled to a compensation at the rate of Rs. 46,047/- PH as per the sale instance under Exhibit-59 dated 13-06-1991 from the same village Wagholi. That therefore this Appeal be allowed on this ground alone.

8. Mr. Agnihotri, learned Counsel for the appellant-Acquiring Body also points out that the Reference Court has erroneously placed reliance on Exhibit-61 being the award passed in earlier Land Acquisition Proceeding No.211/1999 with respect to Nandgaon Peth. He submits that the said Land Acquisition Number pertains to Gat No.328 of village Nandgaon Peth wherein the Reference Court has granted Rs.1 Lac PH. He would submit that there is no evidence adduced on record to make a comparable assessment of the subject land with the said evidence with respect to its location and potentiality. Learned Counsel would also submit that the map (at page 80 of the record and proceedings) demonstrates that village Wagholi is very far from village Nandgaon Peth as well as village Sawardi. He would submit that even the learned Judge while passing the impugned award has not made any attempt for a comparative assessment of the lands in question and the lands covered under the judgments relied upon. He submits that therefore it was erroneous on the part of the Reference Court to rely upon Exhibit-61 for enhancing the land in the said award could not have been taken into consideration. Learned Counsel would submit

that therefore the impugned order deserves to be quashed and set aside.

9. With respect to the reliance placed by the Reference Court on L.A.C. No.38/1998 with respect to Gat No.134 of village Sawardi, it is submitted that the said village as mentioned above is also on Nagpur road which is a National Highway. He once again referred to map at Exhibit-80 to demonstrate the distance between the two villages. He submits that there is no evidence adduced on record by the respondents as to how these lands can be compared for assessing the market value. He would submit that even the trial Court has not made any attempt to make a comparative assessment in regard to land in question and the land in village Sawardi in L.A.C. No.38/1998. He submits that therefore even the said instance cannot be relied upon.

10. Mr. Agnihotri, learned Counsel for the appellant-Acquiring Body submits that as per the settled law the burden to establish the comparability of lands acquired and the land under the sale instance is upon the claimants viz; respondents herein. He would submit that the respondents have failed to place on record any evidence to demonstrate that lands under the awards relied upon and the sale instances at the same location and potentiality. He submits that only the sale instance of land at Wagholi under Exhibit-59 is comparable. Learned Counsel would submit that the Reference Court has also not made any attempt to draw comparative assessment as required by the Hon'ble Apex Court in *Isabela Gama*

(deceased) represented by legal heirs Vs Special Land Acquisition Officer² (paragraphs 2, 3 and 6 therein). He submits that therefore also the impugned judgment be quashed and set aside.

11. Learned Counsel for the acquiring body also draws the attention of paragraph 3 of the decision of Hon'ble Apex Court in *Shaji Kukriakose and another vs Indian Oil Corpn. Ltd and others*³ to submit that the following four factors have to be considered by which the Sale Deeds can be compared.

- "a. The sale must be genuine transaction;
- b. The sale must have been executed at the time proximate to the date of issuance of notification under section 4 of the Act,
- c. The land covered by the sales must be similar to the acquired land.
- d. The size of the plot of the land covered by the sales be comparable to the land acquired."

12. He would further submit that only if the aforesaid conditions are satisfied that the instance can be considered whereas the sale instance and the award relied upon by the respondents do not satisfy the said criteria. He reiterates that only sale instance under Exhibit-59 would fall within this criteria. He submits that therefore also the impugned decision dated 24-08-2008 passed by the Reference Court be quashed and set aside.

13. Mr. Agnihotri, learned Counsel for the appellant-

² 2012(1) Mh.L.J. 206

³ (2001) 7 SCC 650.

Acquiring Body referring to paragraphs 25 to 36 of the decision of the Hon'ble apex Court in the case of *Surender Singh Vs State of Haryana and others*⁴ would submit that fair market rates of the acquired land cannot be based on absence of relevant evidence for determining the market value of the property under acquisition. That several material issues such as locality, shape, size or nature of land would need to be considered, which he submits that the claimants have failed to adduce. He reiterates that the reliance of the Reference Court solely on Exhibit-61 and Article 'A' pertaining to the awards with respect to land acquisition proceedings in village Nandgaon Peth and Sawardi where the Reference Court had granted the rate of Rs. 1 Lac PH for the acquired land is unsustainable in law and deserves to be quashed and set aside.

14. On the other hand, Mr. Tapdiya, learned Counsel for the respondents would submit that because the sale instances of the same village under the same Notification and the same award were not available, the land acquisition instances of the neighbouring villages were considered. He submits that this is in accordance with the law settled by the Hon'ble Apex Court. He would further submit that if one would consider the sale instances as submitted by the claimants, the average of all the said instances would be more than Rs. 1 Lac, where as the Reference Court had only granted Rs.1 Lac PH.

4 (2018) 3 SCC 278.

15. Learned Counsel for the respondents rebutting the submission of learned Counsel for the Acquiring Body as factually incorrect, would submit that the map shows that the two judgments considered by the Reference Court and the subject lands are of within the same district of Amravati and that they are all adjoining villages.

16. Learned Counsel relies upon two decisions, has tender across the bar two decisions of this Court; first, the decision of this Court dated 30-09-2019 in First Appeal No.5/2012 to submit that in the case of the same village Wagholi with respect to the same project i.e. the acquisition for the industrial and development purpose, under the same Notification dated 14-01-1994 and the same award dated 28-03-1997 granting compensation at the rate of Rs 37,900/- PH for cultivable land and Rs. 1500/- PH for Pot Kharab land acquired by the Appellant-Corporation, this Court had upheld the compensation of the Reference Court granted at the rate of Rs.80,000/- PH and dismissed the Appeal of the Acquiring Body. Second, the decision dated 22-05-2017 of this Court in First Appeal No.922/2007 along with other connected Appeals which he submits is with reference to LAC No.38/1998 which is Article 'A' relied upon by the Reference Court to state that the First Appeal with reference to the said Land Acquisition Case filed by the Appellant has been dismissed by this Court. He would submit that as such the judgment relied upon by the Tribunal and the compensation granted have been upheld by this Court. He would

submit that to his knowledge this decision has not been challenged by the Acquiring Body and the said decision has attained finality.

17. Learned Counsel would submit that as per the decision of the Hon'ble Apex Court in *D. Eswara Vs Special Deputy Collector*⁵ in the case of similarly situated persons covered by the same very Notification, no discrimination should be made. He therefore submits that the compensation of Rs. 1 Lac granted by the Reference Court be upheld and the Appeal filed by the Acquiring Body be dismissed.

18. With respect to the submissions of learned Counsel for the appellant that village Nandgaon Peth and Sawardi are at a distance from Wagholi, learned Counsel would submit that apart from the factual submissions made above with respect to the adjoining nature of the subject village along with the instances relied upon, as per the law settled by the Hon'ble Apex Court a pragmatic view has to be taken for fixing the market value of land forming subject matter of the acquisition proceedings at a uniform rate. He submits that in the case of *Union of India vs Harinder Pal Singh and others*⁶, the Hon'ble Apex Court while considering the lands in five different villages on the basis that the entire area was in a stage of development and the different villages who are capable of being developed in the same manner be consolidated the same into one single unit, the uniform rate applied by the Punjab and Haryana

5 (2019) 13 SCC 785.

6 AIR 2006 SC 447.

High Court was confirmed by the Apex Court.

19. Learned Counsel for the respondents has also relied upon the decision of the Hon'ble Apex Court in the case of *Thakarsibhai Devjibhai and others Vs Executive Engineer, Gujarat and another*⁷, to drive home the point that the distance between two classes of lands by itself cannot derogate the claim by the claimants unless there is some such other material to show that the quality and potentiality of such land is inferior. Learned Counsel submits that in that case the Hon'ble Apex Court held that the difference of land compared and the subject land even if were at a distance of five kilometers the distance was not such lead to reduce the rate of compensation.

20. I have heard the learned Counsel for the parties and with their able assistance I have perused the papers and the proceedings relied upon by them.

21. The Hon'ble Apex Court in the case of *D. Eswara vs. Special Deputy Collector* (supra) has observed thus :

"Needless to say that in case similarly situated persons covered by the very same notification have been granted compensation @ Rs. 4,000/- per lemon tree, the petitioners herein may not be discriminated on the ground of delay. However, in the event of grant of enhancement, they shall not be entitled for interest for the period of delay."

(emphasis supplied)

22. The Hon'ble Apex Court in the case of *Ram Chander (Deceased) through his legal representatives and others Vrs. Union of India and another*⁸ has observed that if the similarly situated land owner has received higher compensation then the benefits of such higher compensation should be allowed to the appellants. Paragraph no.3 is usefully quoted as under :-

"3. If a similarly situated landowner i.e. in [Rameshwar Solanki v. Union of India](#) has received higher compensation, which fact the High Court had noted, the High Court should have allowed the benefit of such higher compensation to the appellants, if required, by making it clear that for the period of delay no interest shall be payable to the appellants-landowners. The above course of action has, in fact, been adopted by this Court in several other cases where compensation at par has been awarded minus interest for the period of delay in approaching the Court."

(emphasis supplied)

23. This Court in the case of Executive Engineer, Lower Wardha Project, Wardha, Tah. & Dist. Wardha vs Manik Shamrao Chore and another (First Appeal No.318/2017 with Cross Objection No.30/2021) vide its decision dated 10-10-2022, observed that the Hon'ble Apex Court has laid stress on parity between similarly situated persons covered by the same Notification. Paragraph 17 of the said decision is usefully quoted as under :-

"17. As noted above, the Cross Objector has limited his claim to the denial of enhanced compensation with respect to the 150 orange trees only. The Apex Court as

set out above, has laid stress on parity between similarly situated persons covered by the same notification. It is not in dispute that the decisions of this Court in the case of Executive Engineer, Lower Wardha Project Vs. Shantabai wd/o Dadaraoji Kale and others (supra) as well as in the case of Anil s/o Namdeo Khonde Vs. The State of Maharashtra and Ors. (supra) are not only in respect of the same notification dated 03.02.1999, under Section 4(1) of the said Act, as in the case at hand, but also in respect of the land acquired in the same village Wathoda for the submergence of the Lower Wardha project. As such, the 150 orange trees in question situated on the acquired land deserve similar treatment and cannot be discriminated. The cross objector is therefore, entitled to enhanced compensation for the 150 orange trees @ Rs.6,311/- per orange tree."

(emphasis supplied)

24. It is not in dispute that the land admeasuring 5.62 HR, Gat No.162 as pertains to Wagholi village for the purposes of setting up industrial area at Amravati. It is also not in dispute that the Notification under Section 32(2) of the M.I.D.C. Act which was published on 14-01-1994 and the award dated 20-03-1997 granting compensation at the rate of Rs. 37,900/- PH for irrigated land and Rs. 1500/- PH for the arid (Pot Kharab) land, is the same as in the case of L.A.C. No.42/1998 with respect to Gat No.198 in Wagholi village where an area admeasuring 0.81 HR was acquired by the MIDC for the industrial and development purpose, First Appeal filed by the Acquiring Body in respect whereof has been dismissed by this Court by an order dated 30-09-2019 in First

Appeal No.5/2012. The only difference in that case and in this Appeal is that in that case the Reference Court had granted compensation of Rs.80,000/- PH whereas in this case the Reference Court has granted compensation of Rs. 1 Lac PH. These facts are not in dispute. Mr. Agnihotri, has not been able to distinguish the decision of this Court dated 30-09-2019 in First appeal No.05/2012 nor has he made any distinction with respect to type and quality of land acquired in that case and in the facts of this case. As such, the facts of this case and the facts in First Appeal No.05/2012 are similar and the claimants in both the cases appear to be similarly placed.

25. I, therefore, see no reason to take any other view. The judgment of this Court in First Appeal No.92/2007 and other connected Appeals pertaining to L.A.C. No.38/1998 which refers to the rate of Rs. 1 Lac PH pertaining to Sawardi village dismissed the Appeal filed by the MIDC also fortifies the view taken by this Court.

26. It therefore cannot be said that the compensation of Rs. 1 Lac PH granted by the Reference Court with respect to the acquisition in question is exorbitant. No case is made out warranting any interference. The controversy is squarely stands covered and concluded by the decision referred to above. It would therefore not be necessary to deal with the arguments and counter arguments put forward by the counsel for the parties.

27. The decisions relied upon by the counsel no doubt enunciate the well settled principles of law in land acquisition matters, with which there cannot be any dispute, however, in view of what has been observed by this Court in the light of the decisions referred to and relied upon by this Court and particularly the decision of this Court dated 30-09-2019 in First Appeal No.05/2012, it would not be necessary to dwell on them.

28. Let the compensation amount lying in this Court be withdrawn by the respondent-claimants. Registry to act accordingly. Balance, if any, be refunded to the appellant.

29. The Appeal stands dismissed with no order as to costs.

JUDGE