

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

FIRST APPEAL NO. 417 OF 2009

APPELLANT : Bachhumal s/o Arjundas Vadhawani,
A/a 37 years, Occu: Business,
through Devidas Pohumal Goplani,
R/o Gondia, Tah. & Dist. Gondia,
Holding Power of Attorney.

..V E R S U S..

RESPONDENTS: 1. State of Maharashtra, through ,
Collector, Gondia (old district Bhandara).

Deleted as per Court's order dt. 11/02/09
Sd/-A.R. 2. The Special Land Acquisition Officer,
(~~Shri D.V. Dudhalkar~~) Gondia.

3. Chief Officer, Municipal Council,
Gondia.

Mr I.S. Charlewar, counsel with Mr R.K. Boarkar, counsel for the
appellant.

Mr K.L.Dharmadhikari, AGP for the respondent No.1.

CORAM : URMILA JOSHI-PHALKE, J..

DATE : 21/04/2023

ORAL JUDGMENT :

1. The present appeal is preferred under Section 54 of the
Land Acquisition Act, 1894 against the judgment and award passed

by the learned Civil Judge, Senior Division, Gondia in LAC No. 07/1999 by which the learned Civil Judge, Senior Division, Gondia dismissed the reference filed by the claimant by passing the judgment and award on 23/12/2005. The parties are hereinafter referred to as per their original nomenclature in the reference petition.

2. Brief facts which are necessary for the disposal of the appeal as under:-

The petitioner/appellant was the owner of the land Gat No.539/2A admeasuring 0.24 HR i.e. 2400 sq.mt. of Mauza Kudva. The notification under Sections 4 and 6 of the Land Acquisition Act was published in Government Gazette and the award was passed on 17/09/1998 and it came to the knowledge of the appellant on 14/02/1999. The said land was acquired by Municipal Council, Gondia, through the State of Maharashtra for a development scheme under the Town Planning Act for Garden and Road. As per the contention of the appellant, the land acquired was Agricultural land, situated in the close vicinity of the Gondia Township and there was T.B. Hospital on one side of the land, and on the other side, there was Tirora Road and the land was having more residential potential value. The Land Acquisition Officer had called the report of Talathi and Sub-Registrar, Gondia for the years 1991 to 1995. As per the said reports, the value of the land was Rs. 24 per sq.mtr. to 261 per sq.mtr. But the Special Land Acquisition Officer has wrongly determined the value of the land at Rs. 130/- per sq.mtr. The appellant had claimed compensation @

Rs. 200/- per sq.mtr. The applicant was paid Rs. 4,41,698/-. In fact, the applicant had claimed compensation of Rs. 19,20,000/- @ Rs.800/- per sq.mtr. including interest and solatium, he had claimed Rs.33,52,800/-. As the Land Acquisition Officer has paid inadequate compensation, he filed a reference for the enhanced amount of compensation.

3. The Respondent No.3/Chief Officer failed to appear in the proceeding and the proceeding proceeded ex-parte against him. Respondent No.2 resisted the claim on the ground that the Land Acquisition Officer has rightly assessed the amount of compensation on the basis of the material produced before him and prayed for the dismissal of the reference.

4. The reference Court framed the necessary issues and the matter was kept for evidence. The appellant filed an affidavit on examination in chief, however, failed to appear for cross-examination. As the appellant has not adduced any evidence, the reference petition of the claimant was rejected by the Reference Court by assigning the reason that after sufficient opportunity, no evidence was adduced by the claimant to prove that the compensation awarded by the Land Acquisition Officer is inadequate. The claimant has not placed on record any sale instance to show the market value and failed to prove that he is entitled to receive the enhanced amount of compensation.

5. Being aggrieved and dissatisfied with the judgment and award passed by the Reference Court, the present appeal is preferred

by the appellant on the ground that in fact, he has engaged the counsel who has joined as a Public Prosecutor but has not informed the claimant regarding the status of their case before the court. Therefore, the claimant could not ascertain the status of their case and he failed to adduce the evidence. The claimant by preferring this appeal prayed for remand of the matter before the Reference Court.

6. Heard learned counsel Mr I.S. Charlewar with Mr R.K. Borkar for the petitioner/appellant who submitted that in fact, the reference Court has acted like an appellate Court which is not permissible. He invited attention towards the judgment of the learned Reference Court wherein the learned Reference Court has considered that the appellant/petitioner failed to adduce the evidence to show that she is entitled to receive the compensation at the enhanced rate.

7. The reference Court has observed that there is no evidence on record to show that the compensation awarded by the Land Acquisition Officer is inadequate. The applicant has not placed on record any sale instance to show the real market value and not offered himself to be cross-examined by the respondents. The reference Court further held that it would be legitimate to draw the presumption that the averments made by the appellant is not correct and baseless. The reference Court further held that the Special Land Acquisition Officer has rightly determined the value of the land acquired at Rs. 135/- per sq.mtr, therefore, the appellant is not entitled to get an enhanced amount of compensation. The learned

counsel for the appellant placed reliance in the case of ***Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona and another reported in AIR 1988 SC 1652*** wherein the Hon'ble Apex Court has held the reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

8. None appeared for respondent No.3/the Chief Officer, Municipal Corporation, Gondia. Mr K.L.Dharmadhikari, learned A.G.P. supported the judgment of the learned Reference Court and submitted that the learned Reference Court has rightly dismissed the claim and no interference is called for.

9. After hearing both the sides, the following points arise my consideration :

a) Whether the learned Reference Court is justified in dismissing the reference Petition of the claimant?

10. There is no dispute that the petitioner/appellant is the owner of Gat No. 539/2A, admeasuring 0.24 H.R. It is further not disputed that the Special Land Acquisition Officer has acquired the said land for the purpose of Garden and Road. Respondent No.3 has acquired the said land through the State of Maharashtra. The Land Acquisition Officer has called the report of the Talathi and Sub-Registrar, Gondia for the years 1991 to 1995. The claimant has

adduced the material before the learned Special Land Acquisition Officer which was not considered. It is further contention of the appellant that the report of Talathi and Sub Registrar shows that the value of the land was from Rs. 54 Per Sq.mtr to Rs. 261/- per sq.mtr but the Land Acquisition Officer had not considered the same and awarded the compensation which is inadequate.

11. It is submitted by Mr Charlewar, learned counsel for the appellant that the appellant preferred this appeal as the reference Court erroneously relied upon the award passed by the Land Acquisition Officer, though the respondents have not adduced any evidence. In support of the contention that, the Land Acquisition Officer has assessed the amount of compensation on the basis of material placed before him. The learned Reference Court dismissed the reference as no evidence is adduced.

12. He submitted that the learned reference Court completely ignored the judgment of the Hon'ble Apex Court wherein the Hon'ble Apex Court held that reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

13. It is further held by the Hon'ble Apex Court that the Award of Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the

learned Land Acquisition Officer and the material utilized for the valuation cannot be used by the Court unless produced and proved before it. It is not the function of the Court to sit in an appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify, or reverse the conclusion reached by the Land Acquisition Officer as if it were an appellate Court. It is further held that the Court imposed ready reference as the original proceedings before it and determined the market value afresh placed on the material produced before it.

14. In this case, the learned Reference Court's reasoning is precisely contrary to what has been held with the Hon'ble Apex Court in the case of *Chimanlal Hargovinddas* (supra). He further placed reliance on the judgment of this Court in the Aurangabad Bench in Writ Petition No. 13332/2022 decided on 02/02/2023, wherein it is held that the finding of the learned Reference Court that in spite of giving opportunities, the claimant, respondents, and their learned counsel remained absent. Therefore, the reference was kept for determination of the claim in the absence of the claimant and the claimant has not produced documentary evidence in support of his claim and has failed to discharge the burden of proof cast upon the claimant, the claimant is not entitled for enhancement with the amount for compensation. The reference was thereby dismissed and the award was directed to be drawn up accordingly. The finding of the learned Reference Court regarding the absence throughout the proceedings and neither the claimant nor respondent has adduced any evidence and as the burden of proof

that compensation awarded was inadequate and insufficient lies upon the claimant, this burden has not been discharged by the claimant, the claimant is not entitled for enhancement in the amount of compensation. The reference was dismissed and the award was directed.

15. This Court has held that settled position as per the decision of the Hon'ble Apex Court in the case of ***Chimanlal Hargovinddas*** (supra) which sets out the manner in which a reference under Section 18 of the Land Acquisition Act is required to be decided by the reference Court. In particular, Sub-Para-3 of Para-4 sets out that the Reference Court has to treat reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

16. It is settled law that while fixing the market value of the acquired land, the Land Acquisition Officer is required to keep in mind the following factors- (i) the Existing geographical situation of the land. (ii) Existing use of the land. (iii) Already available advantages, like proximity to National or State Highways or roads and/or developed areas. (iv) Market value of the other land situated in the same locality/village/area or adjacent or very near the acquired land. Section 23 of the Land Acquisition Act, 1894 specifies the matters required to be considered in determining the compensation; the principal amongst which is the determination of the market value of the land on the date of the publication of the notification under Section 4(1). One of the principles for the determination of the amount of compensation for the acquisition of

the land would be the willingness of an informed buyer to offer the price, therefore market value is ordinarily the price the property may fetch in the open market if sold by a willing seller to the willing buyer.

17. Here in the present case, the judgment and award passed by the learned Reference Court show that the reference was dismissed, merely because the claimant failed to adduce the evidence. At this stage, it is to be noted that the object and provision of the Land Acquisition Act is to enable the State to acquire the land for a public purpose and on payment of reasonable compensation in terms of the provisions of the Act. Section 18 of the Land Acquisition Act entitles a landholder, whose land has been acquired and who is not satisfied with the award of the Land Acquisition Officer whether on the ground of measurement of the land, amount of compensation or apportionment of the compensation to make an application to the reference Court. The provision of Section 23 of the Land Acquisition Act provides for the matters to be considered in determining the compensation and Section 24 provides for the matters to be neglected in determining the compensation. Section 26 of the Land Acquisition Act specifies the form and contents of the award.

18. It is apparent that the learned Reference Court has completely ignored the observations of the Hon'ble Apex Court in the case *Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona and another reported in (1988) 3 SCC 751* wherein the Hon'ble Apex Court has held that a reference under Section 18

of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court. So also, the award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilized by him for making his valuation cannot be utilized by the Court unless produced and proved before it. It is not the function of the Court to sit in an appeal against the Award, approve or disapprove its reasoning, correct its error, or affirm, modify, or reverse the conclusion reached by the Land Acquisition Officer as if it were an appellate Court. The Hon'ble Apex Court further held that the Court must treat the reference as the original proceeding before it and determine the market value afresh based on the material produced before it.

19. In this case, the reference Court reasoning is precisely contrary to what has been held by the Hon'ble Apex Court in *Chimanlal Hargovinddas (supra)*. In the judgment of ***Raja Harish Chandra Raj Singh vs The Deputy Land Acquisition Officer and another reported in AIR 1961 SC 1500***, wherein also, it is held by the Hon'ble Apex Court by the award of the Land Acquisition Officer is an offer unless and until it is accepted by the other side and it is communicated then it will be considered as a contract, it is not a judgment.

20. After considering the law laid down by the Hon'ble

Apex Court in respect of the award passed by the Land Acquisition Officer which is at the reference against the same is not an appeal. In the present case, the reference Court has completely ignored the same. The reference Court has considered that the documents filed on record indicate that the non-applicant has made proper calculations of the valuation of the acquired land. It is further considered by the learned Reference Court that therefore, it is very difficult to hold that the compensation awarded by the non-applicant is inadequate. The learned Reference Court has considered the evidence which is not proved and produced before the learned Reference Court.

21. It is settled by the Hon'ble Apex Court in the case of *Chimanlal Hargovinddas* (supra) that reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award, unless the same material is produced and proved before the Court. So also, the award of the Land Acquisition Officer is not to be treated as a judgment of the learned trial Court opened or exposed to challenge before the Court in the reference. It is merely an offer made by the Land Acquisition Officer. The learned Reference Court has considered the evidence which is proved and produced. Thus, the award passed by the learned Reference Court appears to be erroneous and arbitrary which is liable to be set aside. As the learned reference Court held that the compensation assessed by the Land Acquisition Officer is correct without any evidence produced by the Special Land

Acquisition Officer, it is necessary to remit back the reference, to the Reference Court for re-appreciation and decide it afresh, giving an opportunity to the claimants as well as the respondents.

Both parties are at liberty to adduce the required evidence before the learned reference Court. In the result and in view of the above facts, I proceed to pass the following order:

- (a) The first appeal is **allowed**.
- (b) The judgment and award passed by the learned Civil Judge, Senior Division, Gondia Dist. Gondia in LAC No. 07/1999 is hereby quashed and set aside.
- (c) The reference is remitted back to the learned Reference Court i.e. the learned Civil Judge, Senior Division, Gondia for deciding it afresh.
- (d) The parties are at liberty to adduce the evidence.
- (e) The learned Reference Court shall give sufficient opportunity to both parties to adduce the evidence before the learned Reference Court.
- (f) The reference Court shall expedite the reference by giving sufficient opportunity and shall decide within a stipulated period.

JUDGE

RKN

Signed By: RAJESH K
NANDURKAR

Signing Date: 17.05.2023 11:15