



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2129 OF 2018

Murlidhar S/o Dasrao Bokil,
Age: 71 years, Occu: Agriculture,
R/o. Vaijantikunj, Signal Camp,
Latur

...Appellant

Versus

1. The State of Maharashtra
Through the Collector,
Dist. Latur

2. The Executive Engineer,
Public Works Division,
Latur, Tq & Dist. Latur

....Respondents

Mr. R. P. Adgaonkar, Advocate for Appellant

Mr. M. L. Sangit, Advocate for Respondent No. 1 - State

CORAM : R.M. JOSHI, J.

DATE : FEBRUARY 16, 2024

JUDGMENT

1. Original claimant in LAR No. 104/2015 has preferred this Appeal under Section 54 of Land Acquisition Act (for short 'the Act') against the judgment and award dated 06.03.2018.

2. Parties are referred to as claimant and Respondents for the sake of convenience.

3. The facts which led to the filing of present

Appeal can be narrated in brief as under:

Claimant is the owner of the two plots situated at block no. 163 total admeasuring 341 sq.mtr. Respondents have acquired the said plots from total area of 605.2 sq mtr for the purpose of construction of Pakharsangvi approach road to Harangul (Bk) Railway Station. Notification of acquisition under Section 4 of the Act was issued on 15.12.2007. Claimant upon receipt of the notice under Section 9 of the Act raised objection claiming compensation @ Rs. 2,000/- to 2,500/- per sq.ft. The Special Land Acquisition Officer awarded an amount of Rs. 155/- per sq.mtr by award dated 16.11.2010. Being aggrieved by the said award, reference bearing LAR No. 104/2015 came to be filed before the competent Court under Section 18 of the Act. Before filing proceedings, claimant has withdrawn the amount of compensation under protest. Apart from claiming compensation for the acquired portion of the land, for remaining portion of the plot i.e., 2830 sq.ft. which has rendered useless for the reason that no construction is possible over the remaining portion due to rules restraining construction of any nature from 30 meters from the mid point of the road,

additional compensation is sought.

4. Learned Judge of the reference Court by impugned judgment and award granted compensation by fixing marked price of acquired plot @ Rs. 200/- per sq.ft. Being aggrieved by the said judgment and award, this Appeal is filed.

5. Learned Counsel for the Claimant submitted that undisputedly the acquired plot is non-agricultural land and portion of two adjoining plot were acquired for the expansion of road. According to him, reference Court has committed error in considering the said acquisition from village Phakharsavangi though the plots in question fall within the jurisdiction of village Harangul. Claimant placed reliance on sale instance of the plot no. 177, which is in the close vicinity of the plots in question. According to him, the said sale instance being genuine ought to have been relied upon and as the sale is of the year 2005 the increase @ 15% pa ought to have been given considering the fact that the plot comes under urban area. By referring to the another sale instance relied upon by claimant of plot no. 133 it is sought to be argued that

the same is not comparable as is not abutting to the road and is far inside with no immediate approach to the road. It is his further submission that in view of Section 23(3) of the Act for the purpose of deciding the compensation, the land wasted on account of acquisition needs to be considered and as in this case there would not be any permission to carryout any construction within 50 mtr from the center of the road, unacquired land has become useless. In support of its submissions, he relied on following judgments: Om Prakash v. State of Haryana and Ors Udho Dass v. State of Haryana and Ors, 2010 AIR SCW 5655, Mehrawal Khewaji Trust, Faridkot and Ors Vs. State of Punjab and Ors, MANU/SC/0349/2012 & Madhusudan Kabra and Ors Vs. The State of Maharashtra and Ors, MANU/SC/1435/2017. He, therefore, seeks enhancement of the compensation.

6. Learned AGP opposed the said contention by submitting that the land in question is not situate within the city of Latur and in fact is at quite a long distance therefrom. It his also contention that claimants has withdrawn the compensation without registering the protest and as such, the reference

ought not to have been allowed by the referral Court. It is submitted that the compensation is claimed @ 2,000/- to 2,500/- per sq ft, as such, now it is not open for the claimants to seek higher compensation than the one claimed. Learned Counsel relied upon the observations of the reference Court in paragraph 9 and 10 in order to oppose the prayer for enhancement of the compensation. Learned Counsel relied upon judgment in case of Chandaba w/p Gangaram Pauyed Vs. The State of Maharashtra and Ors, WP/13332/2022.

7. There are few undisputed facts which need reference at the outset. The claimant is the owner of two adjoining plots from block no. 163 which admeasures in total 341 sq mtr. Claimant had relied upon sale instances including sale instance of plot nos. 177 and 133 (Exh. 31 and 32 respectively). Perusal of the record (village map) indicates that plot no. 177 is abutting to the road and is just after about two plots from the plots acquired of the claimant. There is no dispute made with regard to the fact that the sale instance of plot no. 177 is a genuine transaction. The said sale deed is executed on 02.12.2002. Though area

of plot no. 177 indicates that it admeasures 86.19 sq mtr, the plots of the claimants are two in number and its total are admeasures 341 sq mtr. It is thus clear that even considering the size of the plots each in question and sale instance becomes comparable.

8. It is settled law by the judgment of Hon'ble Apex Court that in case of sale instance of the property prior to the date of acquisition, 10% pa increase deserves to be granted in case of rural area whereas the said increase would be 15% pa for urban area. Claimant has placed on record Exh. 34 which indicates that the plots in question fall in urban area. The sale transaction is of year 2002 whereas the acquisition notification is issued of 15.12.2007. Thus, from 2003 onwards i.e., for 5 years increase of 15% pa deserves to be granted to the claimants. Hence, per square foot rate would come to Rs. 877.11/-.

9. Perusal of the impugned judgment shows that the learned Referral Court though has taken note of the said evidence laid by the claimant, however, in paragraph 10 of the judgment it has simply decided the rate @ 200 per sq ft with observation that in LAR No.

221/2015 similar rate was given to the claimants therein. This Court tried to ascertain whether any findings are recorded justifying grant of rate of Rs. 200 per sq ft at least in LAR No. 221/2015. Perusal of the said judgment also does not show any reason/justification provided in the said judgment but it is simply stated that "further this Court finds it justifiable to grant Rs. 200 per sq ft for the land acquired in the present reference". In considered view of this Court, said determination of compensation is on whims and fancies rather than decision on consideration of evidence on record. Such findings, therefore, cannot sustain.

10. Once it is held that the sale instance relied upon by the claimant is genuine and is comparable, there remains no reason or justification for the Court not to apply same to the case in hand and to determine compensation on the basis of same.

11. As far as the contentions of the claimant with regard to the land which is not acquired but has become waste on account of restrictions to carryout any construction within 50 meters from the centre of the

road is concerned, though Exh. 37 placed on record to indicate so, no such claim to that extent was made before referral Court. In any case, perusal of the provision of Section 23(3) of the Act only indicates that for the purpose of deciding the compensation of the land, the wasted land on account of acquisition also needs to be considered. This means that if the compensation is to be determined and where the claimant is in a position to show that on account of acquisition certain land has become waste, the said factor would be taken into consideration by the Court. This Court finds no provision under the Act whereby this Court can direct the payment of any compensation for such unacquired land independently.

12. In considered view of this Court, if the sale instance of plot no. 177 is applied and compensation is granted by giving increase of 15% pa for the period of 5 years to the claimant, grievance sought to be made with regard to the wasting of the land on account of acquisition of the remaining portion can be taken care of. Needless to say that it would be open for the claimant to seek any other remedy, if provided by law

independently, in respect of compensation of unacquired, which according to the claimant is wasted land.

13. In view of above, First Appeal is allowed with modification of judgment and award as discussed herein above. Hence, the order:

O R D E R

- (a) First Appeal is allowed.
- (b) Impugned judgment and award dated 06.03.2018 passed in LAR No. 104 of 2015 is modified. Claimants to receive compensation at the rate of Rs. 877.11/- per square foot.
- (c) Claimants to pay Court fee on enhanced compensation as per rules.
- (d) Rest of judgment and award to remain unchanged.
- (e) No order as to costs.
- (f) In view of disposal of Appeal, pending application, if any, is also disposed of.

(R. M. JOSHI, J.)

Malani