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

FIRST APPEAL NO. 820/2009

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**

...V E R S U S...

1. Kisanrao Nathuji Kakade
(Died, through its legal heirs)

1A Ramesh Wamanrao Kakade,
aged 40 years,

~~1B. Smt. Durgabai Wamanrao Kakade~~
(Deleted)

Both r/o Tondgaon, Tq. Achalpur,
Dist. Amravati.

2. Land Acquisition Officer,
Achalpur, Dist. Amravati. ...**RESPONDENTS**

Mr. M. M. Agnihotri, Advocate for appellant.
Mr. P. S. Patil, Advocate for respondent no.1A.
Ms D. I. Charlewar, A.G.P. for respondent no.2.

CORAM:- ANIL L. PANSARE, J.
DATE OF RESERVING THE JUDGMENT : 06.03.2024
DATE OF PRONOUNCING THE JUDGMENT: 08.03.2024

JUDGMENT

1. Heard.

2. The appellant – Maharashtra Industrial Development Corporation (For short, "MIDC"), is aggrieved by the judgment and award dated 28.08.2008 passed by Civil Judge Senior Division, Achalpur in Land Acquisition Case No.2/1998. The Reference

Court has enhanced the compensation from Rs.18,000/- per hectare to Rs.500/- per R i.e. Rs.50,000/- per hectare.

3. The contention of the appellant is that the rates awarded by the Land Acquisition Officer were legitimate and, therefore, the Reference Court ought not to have enhanced the market value.

4. The notification under Section 32(2) of the Maharashtra Industrial Development Act, 1961 (For short the, "Act") was published in Government gazette some time in the year 1989-90. The respondents-claimants' lands bearing Gat Nos.399 and 403 admeasuring 3.81 HR and 62 R respectively situated at mouja Tondgaon, Tq. Achalpur, Dist. Amravati, were acquired. The claimants appeared before the Land Acquisition Officer and raised objections to the proposed rate and claimed compensation at the rate of Rs.40,000/- per Acre. The Land Acquisition Officer, vide award dated 21.07.1995 granted Rs.18,000/- per hectare. The respondents filed reference for enhancement in compensation. The Reference Court has enhanced the same to Rs.500/- per R i.e. Rs. 50,000/- per hectare.

5. Having heard both sides, the only point, that arises for consideration, is whether the Reference Court has committed error

in assessing the market value. The answer is in the negative for the reasons to follow.

6. The Reference Court has considered the evidence tendered by both the sides. The first witness examined by the respondents is respondent no.1A. His evidence show that the Sub Divisional Officer, Achalpur had sent a report Exh.-45 to the State Government stating therein that Gat Nos. 363, 364, 365 and some more of village Tondgaon should be omitted from acquisition proceedings because the acquisition of these fields will cost extra burden of Rs.50,00,000/- on the State. The Reference Court noted that the acquired land is adjacent to survey no.396 which has been enlisted by the Sub Divisional Officer. This fact has been not disputed by the appellant. The Reference Court, therefore, took a view that the acquired land had a good quality and potential.

7. The respondents' witness has then deposed that the respondents used to take irrigated crops. There was a well and water arrangement, pipeline, etc. This part of evidence has been also not controverted by the appellant. Thus, it appears that the acquired land was fertile and had good potential.

8. The Reference Court then took into account sale instance at Exh.-51. Land admeasuring 66 R was sold for

Rs.40,000/-. This sale instance, however, was of the year 1995 i.e. five years subsequent to the date on which notification under Section 32(2) of the Act was published.

9. Mr. Agnihotri, learned counsel for the appellant, is right in submitting that the Reference Court has committed an error of law by relying upon the sale instance that was subsequent to the date of notification published under Section 32(2) of the Act. He has invited my attention to the judgment of the Supreme Court in the case of ***A Natesam Pillai .Vs. Special Tahsildar, Land Acquisition Tiruchy, (2010) 9 SCC 118,*** wherein the Supreme Court noted that the result of acquisition is increase in market value of adjacent land and, therefore, held that such post-notification transaction may not be a sound criterion to determine and assess the value of the acquired land. Thus, the sale instance at Exh.-51 ought not to have been considered to decide the market value of the acquired lands.

10. However, even if such sale instance is given a go bye, in my view, the value assessed by the Reference Court appears to me to be reasonable and fair. Mr. Patil, counsel for the respondent no.1A, has rightly pointed out that the assessment is also based on the report filed by the Sub Divisional Officer. As noted above, the report Exh.-45 submitted by the Sub Divisional officer clearly spelt

out that the survey numbers ranging from 363 to 439 should be omitted from acquisition as it would put extra burden of Rs.50,00,000/- on the Sate. The report Exh.-45 indicates that the land under such survey numbers was admeasuring 26.45 HR. Thus, by arithmetical calculations, if the total costs of the acquisition of the lands is Rs.50,00,000/-, the valuation per hectare would be just below Rs.2,00,000/- per hectare.

11. There is no dispute that the acquired land was situated adjacent to survey numbers 396, which is one of the survey numbers referred by the Sub Divisional Officer in report Exh.-45. Thus, there is every reason to believe that the acquired land had a good potential value. The Reference Court has awarded Rs.50,000/- per hectare. This value, if compared with valuation of omitted land, I do not find that the Reference Court has committed any error in assessing the market value of the acquired land.

12. Mr. Agnihotri, learned counsel for the appellant, has argued that the author of the report Exh.-45 i.e. Sub Divisional Officer has been not examined and, therefore, the report is not proved. I do not find any merit in the aforesaid submission. Firstly the document belongs to the MIDC. Secondly, it is a report submitted by public servant and, therefore, has presumptive value as regards its genuineness, unless otherwise proved. It is further

well settled that the strict rules of the evidence are not applicable to the cases under Land Acquisition Act. That apart, the appellant has examined Sub Divisional Officer, who happened to be the Land Acquisition Officer. The witness has admitted that Gat No.396 was omitted from acquisition. In the cross-examination, the witness admitted that the acquired lands are situated adjacent to the lands omitted by the MIDC. The above evidence would support the contents of report Exh.-45.

13. The Reference Court, therefore, has rightly relied upon the said report to assess the market value of the acquired property. It is well settled that the burden to assess the fair market value is upon the authority, which has acquired the property. Thus, the appellant was duty-bound to award the fair market value to the respondents, which it failed to do. The mistake committed by the Land Acquisition Officer has been rightly corrected by the Reference Court. No interference is called for in the impugned award. The appeal is, therefore, dismissed.

(Anil L. Pansare, J.)

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