SUPREME COURT OF INDIA

Mahesh Dattatray Thirthkar

Vs.

State of Maharashtra

C.A.No.1526 of 2009

(Tarun Chatterjee and V.S.Sirpurkar JJ)

04.03.2009

JUDGEMENT

TARUN CHATTERJEE, J.

1. Leave granted.

2. This appeal has been filed by the appellant to challenge the judgment and order dated 6th of December, 2004 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.875 of 2003 reversing the order dated 27th of April, 1994 of the Reference Court, under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the `Act') whereby the High Court had reduced the quantum of compensation, as enhanced by the Reference Court from Rs.83,000/- to Rs.40,226/-.

3. The relevant facts as arising from the case made out by the parties, leading to filing of this appeal, and which will help us in understanding the controversy involved, can be summarized as follows.

The property in acquisition belonged to the appellant, bearing House No. 100/5 at village Deolali, Tal. & District Osmanabad (hereinafter referred to as the `acquired property'). The same was sought to be acquired by the State Respondent for the Ruibhor Medium Project. On 10th of September, 1985, the State Respondent issued a notification under section 4 of the Act regarding the need of the acquired property for purposes mentioned in the notification. This notification was published on 16th of October, 1985. On 17th of March, 1986, the State Respondent issued a notification under section 6 of the Act regarding the need of the acquired property for purposes mentioned therein. Thereafter, on 30th of March, 1988, the Land Acquisition Officer passed an award of compensation under section 11 of the Act, granting an amount of Rs.40,226/- as compensation to the appellant, the said amount being inclusive of statutory benefits under Section 23 of the Act.

4. Dissatisfied with the quantum of compensation awarded to him, the appellant in 1991 filed a Reference case under section 18 of the Act. On 27th of April, 1994, the learned Civil Judge, Senior Division, Osmanabad, on hearing the parties, held that the compensation awarded by the Land Acquisition Officer was inappropriate and, therefore, increased the same to Rs.83,000/-, in addition to Rs.5,000/- towards the loss and damages incurred by the appellant. He also awarded other statutory benefits under Section 23 of the Act. Being aggrieved by this order of the Reference Court, the State Respondent filed an appeal before the Aurangabad Bench of the High Court of Bombay in

December 1996. By the impugned Judgment dated 6th of December, 2004, the High Court had set aside the order of the Reference Court and reduced the compensation in respect of the acquired property from Rs.83,000/- to Rs.40,226/- as granted by the Land Acquisition Officer.

5. For the purposes of deciding this appeal, it is pertinent to note the grounds on which the High Court had set aside the order of the Reference Court, so that the same is kept in consideration while appreciating the contentions of both the parties and finally adjudicating on the issues involved.

6. The High Court was of the opinion that the evidence produced by the appellants for proving their claim of inadequacy of the compensation awarded was insufficient. The High Court also held that the witnesses produced for examination by the appellant were inconsistent in their testimony, especially Dattatraya Trimbakrao Tirthkar, father of the appellant, and Ramchandra Shankarrao Baraskar, an engineer and also the valuer in respect of the market value of the acquired property.

As per the High Court, the father of the appellant was unable to show how the acquired property was mutated in the name of the appellant, whether by partition or purchase by his guardian. Further, the valuer was unable to say in his deposition the date of his visit to the acquired property for the purpose of valuation. The evidence on record adduced by the claimant was also unsatisfactory, as he could not prove the factum of having answered the notice under Section 9 of the Act and his claim for Rs.7000/- for the vacant plot. Moreover, the third witness, Tanaji Madhukar Kshirsagar, who claimed to have purchased property in the vicinity of the acquired property, was unable to prove that the property purchased by him was adjacent to the acquired property and that the transaction of its purchase could be considered similar to the acquisition of land of the appellant. Thus, the High Court was of the view that there was nothing to support reliance on his testimony.

7. Given these findings, the High Court held that evidence adduced by the appellant was unsatisfactory, on which the Reference Court ought not to have placed reliance. The High Court has even held that the deposition of the father and the expert seems to be concocted merely in order to garner support for the claimant's case. Upon the aforesaid findings arrived at by the High Court, it has set aside the order of the Reference Court and held that the order of the Land Acquisition Officer valuing the acquired property at Rs.40,226/- was just, reasonable, proper and adequate.

8. Feeling aggrieved by this judgment and order of the High Court, the appellant has filed the present special leave petition, which was heard by us on grant of leave in the presence of the learned counsel for the parties.

9. The first question that arose for our consideration in this appeal is whether the High Court was justified in reversing the finding of fact arrived at by the Reference Court on reappreciation of evidence under Article 136 of the Constitution of India.

10. If the first question is answered in the affirmative, the next issue is with respect to the sufficiency and reliability of the evidence adduced by the appellant to discharge his burden of proving that the compensation awarded by the Land Acquisition Officer was inadequate, thus justifying enhancement as ordered by the Reference Court.

11. The learned counsel for the appellant submitted that the impugned judgment and order of the High Court was passed not after considering the fact that the appellant had proved through examination of three witnesses and production of the sale deed of a sale transaction in the vicinity that he was legally entitled to an enhanced compensation, and that the order of the Reference Court

was fully justified. Further, he contended that the High Court had failed to consider the fact that the Respondent was unable to produce for examination any witness or any other evidence to rebut any of the submissions of the appellant. The contention of the learned counsel for the appellant was also that the High Court did not give proper weightage to the fact that the acquired property was situated near Osmanabad Latur Road and that the Aurangabad Solapur Highway is just 3 k.m. from it, indicating that it was in an area which was developed, lucrative from the point of view of further development and hence capable of yielding a high price for the owner on its sale. The learned counsel for the appellant has brought to our notice the aforesaid factual situation of the acquired property and then relying on the principles laid down by this Court in Suresh Kumar v. Town Improvement Trust, Bhopal [AIR 1989 SC 1222], submitted that "in order to ascertain the market value of the land taking into consideration the special value which ought to be attached to the special advantage possessed by the land; namely, its proximity to develop urbanized area, the Court has to ascertain as best as possible from the materials before it what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with that particular potentiality. The value of the potentiality has to be determined on such materials as are available and without indulgence in fits of imagination." According to the learned counsel for the appellant, the High Court also ignored the ratio in Bhag Singh & Ors. v. Union Territory of Chandigarh (AIR 1985 SC 1576) in giving importance to technicalities in a matter of land acquisition by relying on minor inconsistencies in the testimony of the witnesses. It was also the contention of the learned counsel for the appellant that the claim of the State Respondent regarding absence of permission from the gram panchayat for construction of the property cannot be accepted. This was because the claimant had specifically deposed that such permission was obtained. Further, this was evident from the fact that the property was numbered as house no 100/5 by the gram panchayat. There is nothing to suggest that no permission has been obtained and the respondent has not examined anybody from the gram panchayat to substantiate its assertion.

Further, the learned counsel for the appellant contended that the High Court was not justified in allowing the appeal in the first instance merely on suggestions made by the respondents in cross-examinations, when they had failed to derive any admissions on the basis of these suggestions. The learned counsel for the appellant submitted that the High Court was not justified in considering grounds that were not at all raised by the State Respondent in the appeal before it. Lastly the 9 learned counsel for the appellant argued that judgment of the High Court was not, therefore, at all a proper judgment of reversal.

12. On the other hand, the learned counsel for the State Respondent submitted that there was no documentary evidence to prove that the appellant submitted a reply under section of the Act. Further, he contended that the Reference Court enhanced the award of compensation without considering the true nature of the evidence, which was rightly set aside by the High Court after properly considering the evidence brought in by the appellant and the actual distance of the acquired property from the developed organized area and the allegedly similar sale. On the issue of sufficiency of the evidence adduced by the appellant, he submitted that the appellant could not produce any material evidence in support of his claim for enhanced compensation and the Reference Court was thus wrong in placing reliance on the same. More specifically, according to the learned counsel for the State Respondent the testimony of the expert, the father of the appellant and Tanaji (who allegedly purchased proximate property) was fabricated and hence unreliable. He contended that there was no evidence to prove that the construction on the acquired property was done with the permission of the gram panchayat, as required.

Learned counsel further contended that since the High Court had reversed the finding of the

Reference Court after considering the materials on record, it was not open for this Court to interfere with the findings of fact under Article 136 of the Constitution of India.

13. We have heard and considered all these contentions of the learned counsel for the parties and also perused the materials on record including the Judgment of the Reference Court and also the impugned Judgment.

14. It is not in dispute that the High Court, in the exercise of its first appeal jurisdiction, was entitled to come to a different findings of fact and after considering the evidence and materials on record can come to a different conclusion based on such consideration. Accordingly, we are of the view that in the event we hold that this Court would not be permitted to interfere with the findings of fact arrived at by the High Court on consideration of the materials on record, oral and documentary, in that case, the question of going into the other aspects of the matter, which was argued by the learned counsel for the parties, would not arise at all. In this view of the matter, before we proceed further, we may take note of the fact that whether this court, in the exercise of its power under Article 136 of the Constitution of India, would be entitled to examine the findings of fact arrived at by the High Court while reversing the findings of fact arrived at by the Reference Court and whether this Court in the exercise of its power under Article 136 of the Constitution of India is also entitled to set aside the findings of fact arrived at by the High Court on the ground that the judgment of the High Court was not a proper judgment of reversal. Accordingly, let us first examine whether in the exercise of our power under Article 136 of the Constitution of India, we can upset the judgment of reversal on facts and come to a finding that on the evidence already on record, the order of the Reference Court was just, proper and adequate. Therefore, let us examine whether this Court would be entitled to examine the findings of fact arrived at by the High Court on consideration of evidence on record and the power to set aside the findings of the High Court under Article 136 of the Constitution of India in the matter of reversal of findings of fact.

15. It is not in dispute that power under Article 136 of the Constitution of India is exercisable not only against a judgment of reversal on facts but also in cases of concurrent findings of fact and such powers are wide enough. This view was expressed by this Court way back in the year 1958 in the case of State of Madras v. A.Vaidyanatha Iyer (AIR 1958 SC 61). In Para 13 at page 64 of the aforesaid decision, this Court observed as follows "in Article 136 the use of the words `Supreme Court may in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India' show that in criminal matters no distinction can be made as a matter of construction between a judgment of conviction or acquittal."

[Underlining is ours] A reading of this observation of this Court, as quoted herein above and considering the expressions used in Article 136 of the Constitution, it would not be difficult to understand that this Court in its discretion may grant leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India which would be apparent also in cases of judgment of reversal and affirmance in civil proceedings. It is true that the aforesaid observation was made by this Court while dealing with a criminal case but the scope of Article 136 of the Constitution of India cannot be different in civil or criminal proceedings. It is also true that this Court while exercising its power under Article 136 of the Constitution of India will not readily interfere with the findings of fact given by the High Court but it can interfere with such findings of fact if the High Court acts perversely or otherwise improperly.

16. Again in Himachal Pradesh Administration v. Shri Om Prakash ((1972) 1 SCC 249), this Court while considering its power under Article 136 of the Constitution of India on the question of interference with the findings of fact, observed as follows:

"in appeals against acquittal by special leave under Article 136, this Court has undoubted power to interfere with the findings of the fact, no distinction being made between judgments of acquittal and conviction though in the case of acquittals it will not ordinarily interfere with the appreciation of evidence or on findings of fact unless the High Court "acts perversely or otherwise improperly."

17. In Arunachalam v. P.S.R. Sadhanantham & Anr.

((1979) 2 SCC 297), this Court while agreeing with the views expressed in the aforementioned decisions of this Court stated thus:

"The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the court to set limits to itself within which to exercise such power. It is now the well-established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the court. But within the restrictions imposed by itself, this Court has the undoubted power to interfere with the findings of fact, making no distinction between judgments of acquittal and conviction, if the High Court, in arriving at those findings, has "acted perversely or otherwise improperly."

18. Again in State of U.P. v. Babul Nath ((1994) 6 SCC 29), this Court observed as follows:

"At the very outset we may mention that in an appeal under Article 136 of the Constitution this Court does not normally reappraise the evidence by itself and go into the question of credibility of the witnesses and the assessment of the evidence by the High Court is accepted by the Supreme Court as final unless, of course, the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record."

19. In Pattakkal Kunhikoya (Dead) by LRs. v.

Thoopiyakkal Koya & Anr. ((2000) 2 SCC 185) it was held that when an appeal arises under Article 136 of the Constitution of India, "it is not the practice of the Supreme Court to reappreciate the evidence for the purpose of examining whether the findings of fact arrived at by the High Court and the subordinate court is correct or not. Exception can only be taken in the event of serious miscarriage of justice or manifest illegality but not otherwise."

20. In Mithilesh Kumari & Anr. v. Prem Behari Khare ((1989) 2 SCC 95) this court has held that where findings of subordinate courts are shown to be "perverse or based on no evidence or irrelevant evidence or there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in unduly excessive hardship, the Supreme Court could not decline to interfere merely on the ground that findings in question are findings of fact."

21. As noted herein earlier, this Court does not normally reappreciate evidence under Article 136, but when the High Court has redetermined a fact in issue in a civil appeal, and erred in drawing

interferences based on presumptions, the Supreme Court can reappreciate the evidence to prevent further delay instead of remanding the matter (See : Dr.N.G. Dastane v. Mrs.S. Dastane, (1975) 2 SCC 326).

22.From a close examination of the principles laid down by this Court in the aforesaid series of decisions as referred to herein above on the question of exercising power to interfere with findings of fact by this Court under Article 136 of the Constitution, the following principles, therefore, emerge:

7 The powers of this Court under Article 136 of the Constitution of India are very wide.

7 It is open to this Court to interfere with the findings of fact given by the High Court if the High Court has acted perversely or otherwise improperly.

7 When the evidence adduced by the parties in support of their respective cases fell short of reliability and acceptability and as such it is highly unsafe and improper to act upon it.

7 The appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record.

7 The appreciation of evidence and finding results in serious miscarriage of justice or manifest illegality.

7 Where findings of subordinate courts are shown to be "perverse or based on no evidence or irrelevant evidence or there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in unduly excessive hardship.

7 When the High Court has redetermined a fact in issue in a civil appeal, and erred in drawing interferences based on presumptions.

7 The judgment was not a proper judgment of reversal.

(Underlining is ours) 23.Keeping the aforesaid position as enunciated and settled by the aforesaid series of decisions of this Court on the question of the power of this Court to interfere with the findings of fact on reversal in the exercise of our power under Article 136 of the Constitution of India, we shall now proceed to examine the evidence as well as reasonings given by the Reference Court and the High Court and the materials on record to find out whether the findings of fact arrived at by the High Court while reversing the findings of fact arrived at by the Reference Court had satisfied the basic principles as noted herein earlier.

24. In our view, in the facts and circumstances of the present case and evidence and materials before us, which was duly considered by the Reference Court, the High Court was not justified in interfering with the findings of the Reference Court based on mere suggestions made by the State Respondent and setting aside its order. In our view, the findings made by the High Court were arbitrary and improper inasmuch as the High Court had failed to consider the total lack of evidence adduced by the State Respondent and disregarded the witnesses produced before it without sufficient justification for doubting their credibility. Such arbitrariness in findings has caused serious miscarriage of justice as against the appellant by denying him a just and reasonable

compensation for property acquired from him by the State Respondent.

25. The High Court upheld the contentions of the State Respondent even though there was no evidence adduced by the State Respondent to support the same. Thus, its findings are based on no evidence at all.

26. Keeping this in mind, we are inclined to reconsider evidence on record in this appeal and assess the findings of fact made by the courts below.

27. We now turn to the issue of sufficiency of evidence adduced by the appellant to prove its claim of enhancement of compensation. It is a well-established proposition of law that the burden of proving the true market value of acquired property is on the State that has acquired it for a particular purpose (See Land Acquisition Officer & Mandal Revenue Officer v. V. Narasaiah, (2001) 3 SCC 530). It appears from the record that the State had only produced a valuers' report of a government engineer in order to substantiate its claim of market value, whereas the claimant has produced a valuation report and sale transaction from which it will appear that the claimant has successfully proved the market value of the acquired property as determined by the Reference Court. Therefore, it can be legitimately concluded that the burden of proving inadequacy of the amount which lay on the claimant was successfully discharged by him.

28. In Special Land Acquisition Officer v. Sidappa Omanna Tumari & Ors. (1995 Supp (2) SCC 168) it was held that a report of an expert for establishing the market value can be acted upon by the Court if "relevant factual data or material which constituted basis for the report is also produced and the same is proved to be genuine and reliable and the method adopted by the expert is found to be recognized and correct." In this appeal, the report of the engineer engaged by the appellant to prove the market value of the acquired property, is based on his personal visit to the site of the acquired property, the map drawn by him after taking the measurements of the acquired property and the valuation report made by him after deducting the cost of depreciation. The valuer of the appellant has also submitted a map as well as the cost of depreciation report and the valuation report. He has also given details of the date of his visit to the said property in 1985. Further, it is not disputed that he has used the PWD practice and standard engineering norms while deciding the value of the acquired property. All these factors seem to make the valuation of the expert valuer worthy of credence, as per the ratio of the above-stated case.

29. Given that the appellant has been able to show, by the testimony and valuation report of the expert valuer, that the award of compensation passed by the Land Acquisition Officer was inadequate, the onus now shifts on the Respondent to adduce sufficient evidence to sustain the award, as was held clearly in the case of Special Land Acquisition Officer v. Sidappa Omanna Tumari (1995 Supp (2) SCC 168). We firmly feel that the State Respondent has completely failed to discharge this burden. The Respondent has been unable to produce any evidence at all to support its claim of sufficiency of the award and the High Court judgment, leave alone the question of having adduced sufficient evidence.

30. It is clear that the High Court has completely overlooked the lack of evidence in support of the contentions of the Respondent and the conclusion of the High Court is backed only by assertions rather than by acceptable reasoning based on proper appreciation of evidence. This being the case, the order of the High Court cannot be sustained, as held in the case of Othayath Lekshmy Amma & Anr. v. Nellachinkuniyil Govindan Nair &

Ors. ((1990) 3 SCC 374). We are thus inclined to accept the contention of the appellant that the High Court has relied merely on suggestions made by the State- Respondent in cross-examinations, when they have failed to derive any admissions on the basis of these suggestions.

31. As regards the evidence of Mr. Tanaji, who claimed to have purchased property in the vicinity of the acquired property, it is held that section 51A of the Act permits acceptance of the certified copy of the sale transaction, as produced by the witness in this case, even without examination of the vendor or vendee. However, the use of the term "may" in the said provision shows that there is discretion with the court to the extent of reliance to be placed on the same. This has been explicitly held in the case of Cement Corpn. Of India Ltd. V. Purya & Ors.

((2004) 8 SCC 270). This Court in the abovenamed decision also held that such a sale deed is to be believed only if there is no contrary evidence to rebut its contents.

Given that the State Respondent has been unable to adduce any evidence to rebut this sale deed, we are inclined to place reliance on the same and consider it genuine.

32. Coming to the findings of the High Court regarding the inconsistency and infirmity in the testimony of the witnesses produced by the appellant for examination, it is emphasized that the burden of proof in civil cases is that of "balance of probability" and not that of "beyond reasonable doubt". Thus minor inconsistencies in evidence are not relevant in civil cases in considering the question of discharge of this burden. This principle has been reiterated by this Court in a number of decisions namely Sarjudas & Anr. v. State of Gujarat (AIR 2000 SC 403) and State of Rajasthan v. Netrapal & Ors.

((2007) 4 SCC 45). Further, all inconsistencies in evidence cannot impeach the credit of the witness and hence reliability of its testimony. It has been held by this Court in Rammi alias Rameshwar v. State of Madhya Pradesh ((1999) 8 SCC 649) that only contradictory statements would so affect the witnesses' credit. We are of the opinion that the inconsistencies pointed out by the High Court in the evidence adduced by the appellant are only minor inconsistencies and do not warrant non- reliance on the same.

33. The High Court held that there is inconsistency in the testimony of the father of the appellant and that of Mr.

Tanaji in so far as the distance between the acquired property and the property purchased by Mr. Tanaji in Kajali is concerned because the former witness claims the distance as 0.5 kms, while the latter has stated that it is

1.5 to 2 kms. We are of the opinion that this inconsistency is insignificant since both the statements go on to prove that the two properties are close to each other and are hardly contradictory.

34. Further, the inconsistency pointed out in the testimony of the expert valuer is that he stated in the cross- examination that it is necessary for valuation of the acquired property to consider the type of material used in 26 the construction of the same and the place from which the materials were procured and in the examination-in-chief, he agreed that he did not see any report regarding the same. These statements are, however, not contradictory.

While it might be necessary for the valuer to consider the abovementioned factors in the process of his valuation, it is not necessary for him to rely on the report of another person with regard to the

same. He, being an expert in his field, can rely on his own knowledge, experience and judgment to come to conclusions regarding these aspects of the acquired property. Thus, the testimony of the expert valuer is not rendered discredited on this ground.

35.The reasons given by the High Court for setting aside the order of the Reference Court were limited to inconsistency and unreliability of the testimony of the witnesses produced by the appellants and on the grounds that were clearly argued by the State Respondent.

36. It appears that the High Court found doubts in the evidence adduced by the appellants when none existed.

Thus, there is a patent error in rejecting the appellant's evidence. The High Court sought "consistence in the evidence forsaking the sense the evidence conveyed and the effect it produced." Such an approach renders the reasoning of the High Court unsustainable, as held by this Court in State of Karnataka v. Appa Balu Ingale & Ors. (AIR 1993 SC 1126).

37. Finally, it is pertinent to note that the appellants have correctly brought out the opinion of this Court in the case of Suresh Kumar v. Town Improvement Trust (Supra) and Bhag Singh v. Union of India (Supra). The former case clearly lays down that proximity to develop urbanized area needs to be necessarily considered, while deciding on the compensation to be paid for acquisition of land, on the basis of evidence available. The High Court seems to have ignored that based on the evidence put forth before it by the appellant, the acquired property is situated near Osmanabad Latur Road and Aurangabd Solapur Highway, and the Respondent has not given any evidence to rebut this contention. Thus, the High Court has overlooked the proximity of the acquired property to a developed area.

Further, while this Court clearly cautioned against taking up of "technical pleas to defeat a just claim to enhanced compensation" under the Act in Bhag Singh v. Union of India (supra), the High Court set aside the order of the Reference Court merely on grounds of minor inconsistencies and technicalities. It seemed to have disregarded the fact that the compensation provision of the Act is in the nature of a welfare stipulation and thus the State government must be just and fair to those whose land it acquires. It is not just and fair to deprive the owner of any property without payment of its true market value, especially when the law provides that the same shall be paid.

38. Before parting with this judgment, we may also state here that the entire compensation money given by the Reference Court has been allowed to be withdrawn and therefore, this is one of the aspects that should have been kept in mind.

39. For the reasons above-stated, we set aside the impugned judgment of the High Court, thereby restoring the judgment of the Reference Court awarding enhanced compensation to the appellant.

40. The appeal is accordingly allowed. There is no order as to costs.