

SUPREME COURT OF INDIA

Chindha Fakira Patil

Vs.

Spl.Land Acquisition

C.A.No.5475 of 2007

(G.S.Singhvi and H.L.Dattu,JJ.,)

01.11.2011

JUDGMENT

G.S.Singhvi,J.,

1. These appeals are directed against judgment dated 9.11.2006 of the Division Bench of the Bombay High Court whereby the appeals preferred by the respondent under Section 54 of the Land Acquisition Act, 1894 (for short, 'the Act') were allowed and the amount of compensation determined by Civil Judge, Senior Division, Jalgaon, (hereinafter described as, 'the Reference Court') was substantially reduced.

2. By notification dated 14.3.1996 issued under Section 4 (1) of the Act, the Government of Maharashtra initiated the proceedings for the acquisition of various parcels of land including those belonging to the appellants situated in villages Deoli Bhoras and Bilakhed, Taluka Chalisgaon, District Jalgaon for Minor Irrigation Tank, Deoli Bhoras. The declaration under Section 6 was issued sometime in April 1997. Special Land Acquisition Officer, Jalgaon (respondent) passed award dated 31.3.1999 and fixed market value of the acquired land by dividing the same into three groups. For land falling in Group I, i.e. Jirayat land, the respondent fixed market value at Rs.68,000/- per hectare. For Group II and Group I lands he fixed market value at the rate of Rs.58,000/- and Rs.54,000/- per hectare respectively. For pot kharab land, market value was fixed at Rs.15,00/- per hectare.

3. The appellants accepted the compensation under protest and then filed applications under Section 18 of the Act for determination of the compensation by the Court. On a reference made by the Collector, the Reference Court examined the pleadings of the parties and framed the following issues:

"1) What is the market price of the land on the date of notification u/Sec. 4 of L.A. Act?

2) Does the petitioner prove that he accepted the amount of compensation under protest?

- 3) Does the petitioner prove that the market price of land determined by the L.A.O. is inadequate?
- 4) Is the petitioner entitled to enhance compensation?
- 5) What order?"

4. The Reference Court then considered the evidence produced by the parties including sale deed Exhibit 28 by which 92 ares Jirayat land comprised in Gat No. 97/1 was sold at the rate of Rs.2,76,041/- per hectare, 7/12 extracts marked as Exhibits 13 to 27 and fixed market value of Jirayat land at the rate of Rs.3 lacs per hectare. The Reference Court also referred to the statement of Arjun Sukdeo Patil who deposed that there were wells in the acquired land and fixed market value of such land at the rate of Rs.6 lacs per hectare by treating the same as Bagayat land. The Reference Court then adverted to the testimony of Shri Ravindra Ghanshyam Chaudhari, Agriculture and Horticulture Consultant and accepted the valuation made by him in respect of the trees standing on different portions of the acquired land. The Reference Court also held that for pot kharab, the land owners are entitled to 50% of the compensation determined for Jirayat land.

5. While dealing with the appeals filed by the respondent, the High Court referred to the award passed by the respondent, the evidence produced by the parties and held that the Reference Court committed a serious error by recording a finding that the acquired land included Bagayat land. The High Court refused to rely upon Exhibit 28 by observing that there must be some special reasons for payment of higher price by the purchaser because various other sale instances of two villages indicated that the cost of land was between Rs.23,438/- and Rs.1 lac per hectare. As regards the trees, the High Court discarded the report of the valuer on the premise that the same had been submitted after the award was passed by the respondent.

6. Shri Pallav Shishodia, learned senior counsel appearing for the appellants assailed the impugned judgment mainly on the ground that the reasons assigned by the High Court for discarding Exhibit 28 are not only irrelevant but are based on pure conjectures. He emphasized that while determining the amount of compensation, the Reference Court was entitled to take into consideration the sale instance which represented highest value paid for similar land and the High Court committed an error by basing its judgment on the average value of the sale instances referred to in the award passed by the respondent. In support of this argument, Shri Shishodia relied upon the judgments of this Court in *M. Vijayalakshamma Rao Bahadur v. Collector¹*, *State of Punjab v. Hans Raj²*, and *Anjani Molu Dessai v. State of Goa and another³*, Learned senior counsel further argued that the finding recorded by the Reference Court on the issues of the nature of land and valuation of the trees was based on correct appreciation of the evidence produced by the parties and the High Court was not at all justified in reducing the amount of compensation by treating the entire land as Jirayat. In the end, he submitted that the appellants have already received the

amount of enhanced compensation and keeping in view the fact that they have virtually been made landless, this Court may set aside the impugned judgment and restore the award passed by the Reference Court.

7. Shri Sanjay Kharde, learned counsel appearing for the respondent supported the impugned judgment and argued that the High Court rightly reduced the compensation determined by the Reference Court by taking into consideration average of various sale instances produced on behalf of the acquiring authority and in exercise of power under Article 136 of the Constitution, this Court may not interfere with the finding of fact recorded by the High Court that the entire acquired land was Jirayat and no portion thereof was Bagayat.

8. We have considered the respective arguments and carefully perused the record. Admittedly, the appellants had produced and proved Exhibit 28 vide which 90 ares of Jirayat land of village Bilakhed was sold on 2.2.1995, i.e. prior to the acquisition in question at the rate of Rs.2,76,041/- per hectare. The Reference Court applied the rule of 10% annual increase in the prices of land and concluded that the appellants would be entitled to market value at the rate of Rs.3 lacs for Jirayat land. The Reference Court also referred to the statement of Arjun Sukdeo Patil who was examined on behalf of the appellants, 7/12 extracts marked Exhibits 13 to 27 and held that they have been able to prove that parts of their land were Bagayat and for such land they are entitled to compensation at the rate of Rs.6 lacs per hectare. As regards valuation of trees, the Reference Court referred to the testimony of Shri Ravindra Ghanshyam Choudhari and observed:

"So far as the valuation of trees are concerned, the claimant have examined valuer Shri Ravindra Gahnshyam Chaudhari at Exh. 33. He passed M. Sc. (Agri.) in the year 1978. He is working as Agri. & Horticulture consultant since 1993. He has produced attested certified copy of certificate at Exh. 34 and 35. It is in his evidence that on 16.5.1996 to 21st May 1996, he visited the acquired lands and identified with the help of 7/12 extract, village Sarpanch and claimants. The reports placed on record at Exh. 36 to 41 respectively. He has given the details of number of trees, present and future age, general condition, height, width, spread, annual fruit production capacity. From the wholesale market and fuel value in details in the report, and calculated the value on the basis of Miram's table laid down by the Agri. And Horticulture Deptt. Govt. of Maharashtra. Nothing much damaging to the evidence of this valuer is disclosed in the cross-examination. Considering all the factors and further considering the valuation of Shri Ravindra G. Chaudhari, which is supported by the claimants evidence to who the market rates of fruits value and other factors. I hold that the valuation made by the claimant's valuer is more effective. Hence, considering these factors on record and assessing the valuation made by the calimant's valuer. I fixed the market value of the respective fruit trees as follows.

| Serial. | Gat Nos. | Types of Trees | Valuation of trees @ 80% |
|---------|----------|----------------|--------------------------|
|---------|----------|----------------|--------------------------|

Nos. of valuation made by

claimant's Valuer.

| | | | |
|-----|-----------|------------------|-----------------|
| 01) | 87/B | 7-Jujubee | Rs. 53,620.00 |
| | | 7 x 7660 | |
| 02) | 42/A/2 | 5-Jujubee | Rs. 35,375.00 |
| | | 5x7075 | |
| 03) | 9/2 | 10-Jujubee | Rs. 76,560.00 |
| | 10 x 7656 | 01 Lime | Rs. 13,469.00 |
| 04) | 151/1 | 21-Jujubee | Rs. 1,35,030.00 |
| | | 21 x 6430 | |
| | | 07-Tambrine | Rs. 1,06,897.00 |
| | | 7 x 6430 | |
| | | 03-Mango | Rs. 77,007.00 |
| | | 3 x 35669 | |
| 05) | 57 | 08-Jujubee | Rs. 52,920.00 |
| | | 8 x 6615 | |
| | | 06-Custard Apple | Rs. 36,258.00 |
| | | 6 x 6615 | |

02 Mango Rs. 45, 224.00

2 x 22612

61 184-Pomegranate Rs 10,27,456.00

184 x 5584

60- Pomegranate Rs. 2,66, 820.00

60 x 4447

25- Pomegranate Rs. 82,750.00

25 x 3310

10-Jujubee Rs. 54,150.00"

10x 5415

9. The Reference Court then briefly referred to the award of the respondent and held that the classification made by him solely on the basis of the revenue assessment was totally arbitrary and unjustified.

10. The High Court reversed the findings of the Reference Court on all the counts. The High Court discarded Exhibit 28 by observing that there may be some special reasons for which the purchaser may be willing to offer Rs.3 lacs per hectare for such land. This is evident from the following observations made in the impugned judgment:

"If we take these details into account, it is evident that sale instance relied upon by claimant, which shows market price @ Rs.3,00,000/- for jirayat land, is not safe to rely upon. This is because, that being price offered by willing purchaser, there may be some special reasons for which the purchaser was willing to offer Rs.3.00 lacs per hectare of jirayat land, when trend of the transactions shows that bagayat lands were being sold @ Rs.1 lakh per hectare or so. In order to rely upon that instance, it was incumbent upon the claimants to show what was special about that jirayat land and not only that, but also to establish on record that acquired lands also enjoy same speciality."

11. In our view, the approach adopted by the High Court was clearly erroneous. There is no basis for the assumption that the purchaser of the land must have offered higher price for special reasons. Exhibit 28 was proved by Shri Arjun Sukdeo Patil, who had appeared as witness on behalf of the appellants. It was open to the counsel for the respondent to cross-examine the witness and elicit the special reasons, if any, for sale of land allegedly at a higher price. However, the fact of the matter is that no such question was put to the witness. As a matter of fact, it is neither the pleaded case of the respondent nor it has been argued before us that the sale deed Exhibit 28 had not been proved or that the price mentioned therein was not the highest price paid for Jirayat land in the area. Therefore, we have no hesitation to hold that the High Court was not right in interfering with the fixation of market value by the Reference Court for Jirayat land at the rate of Rs.3 lacs and for Bagayat land at the rate of Rs.6 lacs per hectare. The mere fact that average sale price of the transactions relied upon by the respondent was substantially less could not be made a ground for discarding Exhibit 28. In *M. Vijayalakshamma Rao Bahadur v. Collector (supra)*, this Court considered a question similar to the one raised in this appeal and observed:

"After all when the land is being compulsorily taken away from a person, he is entitled to say that he should be given the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. It is not disputed that the transaction represented by Ext. R-19 was a few months prior to the notification under Section 4 that it was a bona fide transaction and that it was entered into between a willing purchaser and a willing seller. The land comprised in the sale deed is 11 grounds and was sold at `1961 per ground. The land covered by Ext. R-27 was also sold before the notification but after the land comprised in Ext. R-19 was sold. It is true that this land was sold at `1096 per ground. This, however, is apparently because of two circumstances. One is that betterment levy at `500 per ground had to be paid by the vendee and the other that the land comprised in it is very much more extensive, that is about 93 grounds or so. Whatever that may be, it seems to us to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case."

In *State of Punjab v. Hans Raj (supra)*, this Court held as under:

"Having given our anxious consideration to the respective contentions, we are of the considered view that the learned Single Judge of the High Court committed a grave error in working out average price paid under the sale transactions to determine the market value of the acquired land on that basis. As the method of averaging the prices fetched by sales of different lands of different kinds at different times, for fixing the market value of the acquired land, if followed, could bring about a figure of price which may not at all be regarded as the price to be fetched by sale of acquired land. One should not have, ordinarily recourse to such method. It is well settled that

genuine and bona fide sale transactions in respect of the land under acquisition or in its absence the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands possessing similar value or utility taken place between a willing vendee and the willing vendor which could be expected to reflect the true value, as agreed between reasonable prudent persons acting in the normal market conditions are the real basis to determine the market value."

In *Anjani Molu Dessai v. State of Goa and another* (supra), the Court again considered the same issue and held:

"Therefore, we are of the view that the averaging of the prices under the two sale deeds was not justified. The sale deed dated 31-1-1990 ought to have been excluded for the reasons stated above. That means compensation for the acquired lands had to be fixed only with reference to the sale deed dated 30-8-1989 relied upon by the Land Acquisition Collector which will be `57.50 per square metre. As the said market value has been fixed with reference to comparable bharad land with fruit trees, the question of again separately awarding any compensation for the trees situated in the acquired land does not arise."

12. In view of the law laid down in the above noted three judgments, it must be held that the High Court committed an error by refusing to rely upon Exhibit 28 on the ground that the average sale price of the transactions relied upon by the respondent was far less than the price for which land was sold vide Exhibit 28.

13. The High Court was also not right in upsetting the finding of the Reference Court on the issue of nature of land. In his deposition, Arjun Sukdeo Patil categorically stated that there were wells in the lands of the appellants and there were Jujubee, Tambrine, Mango, Pomegranate trees. This was supported by the entries contained in 7/12 extracts. The High Court discarded the evidence of the appellants by observing that they had not cultivated sugarcane and wheat. When it was not in dispute that there were wells in the acquired land, the mere fact that the appellants had not cultivated sugarcane or wheat cannot lead to an inference that the land was not irrigated and, in our view, there was no valid reason for the High Court to interfere with the finding recorded by the Reference Court that parts of the lands were Bagayat and for such land they were entitled to compensation @ Rs. 6 lacs per hectare.

14. The High Court also committed error by rejecting the reports submitted by Shri Ravindra Ghanshyam Choudhari, who was examined by the appellants. This witness is a consultant in Agriculture and Horticulture. He personally visited the acquired land and gave the details of the trees standing on different parts of the land, their present and future age, condition, height, width, spread and annual fruit production capacity. The valuation made by him was amply supported by the market rates of fruits fixed by Agriculture and Horticulture Department of Government of Maharashtra. In the cross-examination, the witness stood by reports Exhibits 36 to 41 given by him. This being the position, the High Court had

no reason to overturn the finding recorded by the Reference Court on the issue of existence of trees on the acquired land and their valuation.

15. Learned counsel for the parties did not address any argument on the fixation of market value of pot kharab land. Therefore, we do not consider it necessary to delve into that issue.

16. In the result, the appeals are allowed, the impugned judgment is set aside and the award passed by the Reference Court is restored. The parties are left to bear their own costs.

Judgment Referred.

¹(1969) 1 MLJ 0045 (SC)

²(1994) 5 SCC 0734

³(2010) 13 SCC 0710