SUPREME COURT OF INDIA

Ramanlal Deochand Shah

Vs.

State of Maharashtra

C.A.No.5160 of 2013

(T.S.Thakur and Gyan Sudha Misra JJ.)

05.07.2013

JUDGMENT

T.S.THAKUR, J.

1. Leave granted.

2. These appeals arise out of two separate but similar orders dated 14th June, 2011 and 16th March, 2011 passed by the High Court of Judicature at Bombay whereby First Appeal Nos.179 of 1992 and 751 of 1992 filed by the respondent-State of Maharashtra have been allowed and the judgment and order passed by the Reference Court enhancing the amount of compensation payable to the appellants-land owners to Rs.85/- per square meter set aside.

3. In SLP (C) No.354 of 2012 the appellants prayed for enhancement of compensation payable towards compulsory acquisition of plots no.33, 34, 45 and 46 measuring 1366 square meters each, situated at village Saidapur, Taluq-Karad, District Satara, Maharashtra. The public purpose underlying the acquisition was the setting up of a Polytechnic Engineering College at Karad. The appellant-land owners claimed compensation @ Rs.25/- per sq. ft. The Special Land Acquisition Officer, Satara, however, made an Award dated 14th March, 1988 determining the compensation @ Rs.26.25 per sq. mtr. only. Dissatisfied with the award made by the Collector the appellant-land owners got the matter referred to the Civil Court for determination of the market value of the land under Section 18 of the Land Acquisition Act besides solatium and interest payable on the same. A similar reference was also made in SLP (C) No.395 of 2012 for plot no. 47 admeasuring 1366 sq. mtrs. of the same village.

4. The claim made by the appellant-land owners was contested by the respondent-State giving rise to the following issues in Reference No.12 of 1988 relevant to SLP (C) No.354 of 2012:

> (i) Is the claimant entitled to Rs.9,27,064/- in addition to Rs.2,31,716/- from the opponent-referee by way of compensation as claimed?
>
> (ii) Is the claimant entitled for interest at the rate of 15% p.a. on the amount of compensation as claimed?
>
> (iii) Is the claimant entitled to solatium as claimed?
>
> (iv) What order?

5. Similar issues were framed in the connected Reference No.4 of 1988 relevant to SLP (C) No.395 of 2012, save and except that the total amount claimed in the same was lower having regard to the lesser number of plots acquired in that case.

6. The Reference Court answered the issues in favour of the appellants and enhanced the compensation payable to them to Rs.85/- per sq. mtr. besides interest at the stipulated rates by similar but separate Awards both dated 31st January, 1991. While doing so, the Reference Court relied entirely upon certain observations made by Special Land Acquisition Officer and the Draft Award prepared by him. The Reference Court held that from the discussion contained in the Draft Award it was not clear as to how the Special Land Acquisition Officer had awarded compensation @ Rs.26.25 per sq. mtr. Relying upon the discussion in the Draft Award and taking advantage of an apparent conflict between the discussion contained therein and the amount actually awarded by the Special Land Acquisition Officer the Reference Court enhanced the compensation to Rs.85/- per sq. mtr. as already noticed above. The High Court has, in the appeals filed by the State Government against the enhancement of compensation, reversed the view taken by the Reference Court on the ground that the enhancement was not justified in the absence of any evidence to show that the market value of the property in question was higher than what was awarded by the Special Land Acquisition Officer. The High Court declared that claimants were in the position of plaintiffs and the burden to prove that the amount of compensation awarded by the Special Land Acquisition Officer was not adequate lay upon them. It was only if that burden was satisfactorily discharged by cogent and reliable evidence that the Reference Court could direct enhancement. No such evidence having been adduced

by the landowners, the High Court set aside the order passed by the Reference Court and answered the reference in the negative thereby dismissing the claim made by the landowners.

7. We have heard learned counsel for the parties at some length. It is trite that in a reference under Section 18 of the Land Acquisition Act on the question of adequacy of compensation determined by the collector, the burden to prove that the collector's award does not correctly determine the amount of compensation payable to the landowner is upon the owner concerned. It is for the claimant to prove that the amount awarded by the Collector needs enhancement, and if so, to what extent. The claimant can do so by adducing evidence, whether oral or documentary which the Reference Court would evaluate having regard to the provisions of Sections 23 and 24 of the Land Acquisition Act while determining the compensation payable to the owners. To that extent the claimant is in the position of a plaintiff before the Court. In the absence of any evidence to prove that the amount of award by the Collector does not represent the true market value of the property as on the date of the preliminary notification, the Reference Court will be helpless and will not be justified in granting any enhancement. The Court cannot go by surmises and conjectures while answering the reference nor can it assume the role of an Appellate Court and enhance the amount awarded by reappraising the material that was collected and considered by the Collector. What is important to remember is that a reference to a Civil Court is not in the nature of an appeal from one forum to the other where the appellate forum takes a view based on the evidence before the forum below. The legal position is settled by the decisions of this Court to which we may at this stage refer.In Chimanlal Hargovinddas v. Spcl. Land Acquisition Officer & Anr. (1988) 3 SCC 751, the controversy related to a correct valuation of a piece of land that was under acquisition. This Court found that the Reference Court had virtually treated the award to be a judgment under appeal hence fallen in error on the fundamental question of the approach to be adopted while answering a reference. The Court observed:

> 1) 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.
>
> 2) 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 utilised by him for making his valuation cannot be utilised by the court unless produced and proved before it. It is not the function of the court to sit in 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.

3) The court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in court. Of course the materials placed and proved by the other side can also be taken into account for this purpose."

(emphasis supplied)

8. In the Spcl. Land Acquisition Officer & Anr. etc. etc. v. Siddappa Omanna Tumari & Ors. etc., 1995 Supp (2) SCC 168, a three Judge Bench was dealing with a case where the question that fell for determination was whether it was open to a Reference Court to determine the amount of compensation exceeding the amount of compensation determined in the award without recording a finding on consideration of the relevant material therein, that the amount of compensation determined in the award under Section 11 was inadequate. Answering the question this Court considered the entire legislative scheme underlying the Act and clarified that a claimant was in the position of a plaintiff on whom lay the burden of proving his case that the compensation awarded by the Collector was inadequate. The following passage in this regard is apposite:

"When the Collector makes the reference to the Court, he is enjoined by Section 19 to state the grounds on which he had determined the amount of compensation if the objection raised as to the acceptance of award of the Collector under Section 11 by the claimant was as regards the amount of compensation awarded for the land thereunder. The Collector has to state the grounds on which he had determined the amount of compensation where the objection raised by the claimant in his application for reference under Section 18 was as to inadequacy of compensation allowed by the award under Section 11, as required by Sub- section (2) of Section 18 itself. Therefore, the legislative scheme contained in Sections 12, 18 and 19 while

on the one hand entitles the claimant not to accept the award made under Section 11 as to the amount of compensation determined as payable for his acquired land and seek a reference to the court for determination of the amount of compensation payable for his land, on the other hand requires him to make good before the Court the objection raised by him as regards the inadequacy of the amount of compensation allowed for his land under the award made under Section 11, with a view to enable the Court to determine the amount of compensation exceeding the amount of compensation allowed by the award under Section 11, be it by reference to the improbabilities inherent in the award itself or on the evidence aliunde adduced by him to that effect. That is why, the position of a claimant in a reference before the Court, is considered to be that of the +plaintiff in a suit requiring him to discharge the initial burden of proving that the amount of compensation determined in the award under Section 11 was inadequate, the same having not been determined on the basis of relevant material and by application of correct principles of valuation, either with reference to the contents of the award itself or with reference to other evidence aliunde adduced before the Court. Therefore, if the initial burden of proving the amount of compensation allowed in the award of the Collector was inadequate, is not discharged, the award of the Collector which is made final and conclusive evidence under Section 12, as regards matters contained therein will stand unaffected. But if the claimant succeeds in proving that the amount determined under the award of the Collector was inadequate, the burden of proving the correctness of the award shifts on to the Collector who has to adduce sufficient evidence in that behalf to sustain such award. Hence, the Court which is required to decide the reference made to it under Section 18 of the Act, cannot determine the amount of compensation payable to the claimant for his land exceeding the amount determined in the award of the Collector made under Section 11 for the same land, unless it gets over the finality and conclusive evidentiary value attributed to it under Section 12, by recording a finding on consideration of relevant material therein that the amount of compensation determined under the award was inadequate for the reasons that weighed with it."
(emphasis supplied)

9. In Major Pakhar Singh Atwal and Ors. v. State of Punjab and Ors., 1995 Supp (2) SCC 401 also this Court reiterated the position that a reference under section 18 of the Land Acquisition Act is not an appeal against the award of the LAO. It merely is an offer. The proceeding before the Reference Court is of such nature

that it places the claimant in the position of a plaintiff and the Reference Court is akin to a court of original jurisdiction. The Court observed:

> "… … It is now settled law that the award is an offer and whatever amount was determined by the Collector is an offer and binds the Improvement Trust. However, the Collector also is required to collect the relevant material and award compensation on the basis of settled principles of determination of the market value of an acquired land. The Improvement Trust, therefore, cannot go behind the award made by the Collector. Reference is not an appeal. It is an original proceeding. It is for the claimants to seek the determination of proper compensation by producing sale deeds and examining the vendors or the vendees as to passing of consideration among them, the nearness of the lands sold to the acquired lands, similarly of the lands sold and acquired and also by adduction of other relevant and acceptable evidence. In this case, for the Court under Section 18 of the Act, the Tribunal is constituted. Therefore, if the claimants intend to seek higher compensation to the acquired land, the burden is on them to establish by proof that the compensation granted by the Land Acquisition Officer is inadequate and they are entitled to higher compensation. That could be established only by adduction of evidence of the comparable sale transactions of the land acquired or the lands in the neighbourhood possessed of similar potentiality or advantages. … … … No doubt, in the award itself, the Land Acquisition Officer referred to the sale transactions. Since the Land Acquisition Officer is an authority under the Act, he collected the evidence to determine the compensation as an offer. Though that award may be a material evidence to be looked into, but the sale transactions referred to therein cannot be relied upon implicitly, if the party seeking enhancement resists the claim by adducing evidence independently before the Court or the Tribunal. In this case, since no steps were taken to place the sale transaction referred in the award, they cannot be evidence. So they can neither be relied upon nor can be looked into as evidence."
> (emphasis supplied)

10. It is not in dispute that the landowners, appellants before us, did not lead any evidence in support of their claim before the Reference Court to prove that the market value of the land acquired from the ownership was more than what was awarded as compensation by the Collector. Neither the order passed by the Reference Court nor that passed by the High Court make any reference to such evidence. Absence of any such evidence was, therefore, bound to go against the appellants. So long as the appellants failed to discharge the burden cast on them,

there was no question of the Reference Court granting any enhancement. The High Court was, in that view, justified in holding that the enhancement granted in the absence of any evidence was unjustified.

11. It was argued by learned counsel for the appellants that although no evidence was adduced by the claimants to prove that the market value of the acquired land was higher than what was awarded by the Land Acquisition Collector, the claimants could rely on the documents produced by the respondent-State before the Collector. If that be so, the Sale Deeds to which the Draft Award made a reference, could be referred to and relied upon. There is, in our opinion, no merit in that contention. While it is true that the claimant can always place reliance upon the evidence that may be adduced by a defendant in a suit to the extent the same helps the plaintiff, but the documents that have not been relied upon before the Court by the defendants cannot be referred to or treated as evidence without proper proof of the contents thereof. In the present case the defendants-respondents did not produce any documents before the Reference Court in support of its case. There was indeed no occasion for them to do so in the absence of affirmative evidence from the claimants. We specifically asked learned counsel for the respondents whether copies of any Sale Deeds had been produced by the defendants before the Reference Court. The answer was in the negative. That being so, it is difficult to appreciate how the appellants could have referred to a document not produced or relied upon by the defendants before the Reference Court. Even if the documents had been produced by the defendants, unless the same were either admitted by the plaintiff or properly proved and exhibited at the trial, the same could not by themselves constitute evidence except where such documents were public documents admissible by themselves under any provision. Sale Deeds executed between third parties do not qualify for such admission. The same had, therefore, to be formally proved unless the opposite party admitted the execution and contents, thereby, in which event no proof may have been necessary for what is admitted, need not be proved.

12. Suffice it to say that in the facts and circumstances of the present case no evidence having been adduced by the defendants-respondents, whether documentary or otherwise, there was no question of the appellant relying upon such non-existent evidence. Merely because some documents were referred to in the Draft Award by the Collector, did not make the said documents admissible by them to enable the plaintiffs to refer to or rely upon the same in support of a possible enhancement. If a document upon which the plaintiffs placed reliance was available, there was no reason why the same should not have been produced or

relied upon. Inasmuch as no such attempt was made by the plaintiffs, they were not entitled to claim any enhancement.

13. The next question then is whether the appellants- landowners can be given another opportunity to adduce evidence at this stage and if so on what terms. The Reference Court, it is noteworthy, was of the opinion that the Special Land Acquisition Officer had in the cases at hand relied upon two sale deeds to record a finding that the true market price of the land under acquisition was Rs.85/- per square meter. Having said that the S.L.A.O had for no reason awarded an amount of Rs.26.25 per square meter only. This was according to the Reference Court inexplicable. The Reference Court observed:

> "According to the S.L.A.O. the said rate is fair and reasonable but actually he has not awarded the compensation accordingly. He has awarded it at the rate of Rs.26.25 ps. per sq. mtrs. This abstruse to understand as to how the S.L.A.O has awarded the compensation accordingly, when he had already arrived at the conclusion in respect of reasonable rate of the compensation. Considering all these things, I hold that the compensation ought to have been awarded at least at the rate of Rs.85/- per sq. mtrs. for the lands under acquisition. For the same reason, I also hold that the claimant is entitled for compensation at the rate of Rs.85/- per sq. mtrs. for the lands under acquisition."

14. The failure or the omission to lead evidence to prove the claim appears in the above context to be a case of some kind of misconception about the legal requirement as to evidence needed to prove cases of enhancement of compensation. We do not in that view see any reason to deny another opportunity to the landowners to prove their cases by adducing evidence in support of their claim for enhancement. Since, however, this opportunity is being granted ex debito justitiae, we deem it fit to direct that if the Reference Court eventually comes to the conclusion that a higher amount was due and payable to the appellant-owners, such higher amount including solatium due thereon would not earn interest for the period between the date of the judgment of the Reference Court and the date of this order. These appeals are with that direction allowed, the judgments and orders impugned in the same modified to the extent that while the enhancement order by the Reference Court shall stand set aside, the matters shall stand remanded to the Reference Court for a fresh disposal in accordance with law after giving to the landowners opportunity to lead evidence in support of their claims for higher compensation. No costs.