

SUPREME COURT OF INDIA

Sajan

Vs.

State of Maharashtra

C.A.No.2170-2171 of 2020

(R.Banumathi and A.S.Bopanna,JJ.)

17.03.2020

JUDGMENT

R.Banumathi,J.,

1. Leave granted.

2. These appeals have been filed by the appellants assailing the impugned judgment and final order dated 21.08.2017 passed by the High Court of Judicature at Bombay Bench at Aurangabad in First Appeal No.601 of 1997 along with Cross Objection St. No.22145 of 1997 in the First Appeal in and by which the High Court partly allowed the appeal and inter-alia reduced the compensation for the land by giving 40% deduction towards development cost.

3. The facts giving rise to these appeals are that land in Gat No.85 at village Mhasekota, Tehsil Soyegaon, District Aurangabad admeasuring 6 acres (2.40 hectares) owned by the partnership firm of the appellant and respondents No.2 and 3 was proposed for acquisition for the purpose of construction of Hiwra Dam project by the office of the Executive Engineer, Jalgaon Medium Project Division. Accordingly, on 29.03.1982, the Special Land Acquisition Officer issued notification under Section 4 of the Land Acquisition Act, 1984 (for short, "Land Acquisition Act") and on 03.11.1983, notification under Section 6 was published. Out of this acquired land, land admeasuring 0.80 hectares was non-agricultural land used for running the Sugar Mill by the partnership firm and the remaining was cultivable land.

4.The Special Land Acquisition Officer, Aurangabad passed an award dated 01.09.1986 under Section 11 of the Land Acquisition Act awarding compensation considering valuation of land @ Rs.29,712/- (Rs.20,000/- per hectare for 0.80 hectares non-agricultural land, Rs.9500/- per hectare in respect of 1.44 hectare cultivable land and Rs.200 per hectare in respect of 0.16 hectare Potkharaba land). Apart from the costs of the land, the S.L.A.O. has also fixed the valuation of structure under three heads i.e. (i) Civil part/Building valuation Rs.3,67,100/-; (ii) Electrical installation (now to be demolished) Rs.1,06,000/-; and (iii) Mechanical Machinery (dismantling and transportation) Rs.1,05,000/-, total Rs.5,78,100/-. To this compensation amount, statutory entitlement of

30% solatium and 12% enhancement of compensation value w.e.f. notification under Section 4 was added. The net amount payable was calculated at Rs.36,00,385.50/-.

5. Aggrieved, the appellant and also respondents No.2 and 3 filed reference application (Land Acquisition Reference No.299/94) under Section 18 of Land Acquisition Act on the ground that market value has not been properly determined. The appellant and respondents No.2 and 3 further claimed damages and loss of business @ Rs.5,00,000/- per year since 1981 till 1986 to the tune of Rs.30,00,000/-. The appellants claimed market value @ Rs.10 per sq.ft and claimed total compensation at Rs.1,69,45,111/- along with other statutory benefits.

6. The Reference Court-Civil Judge, Senior Division, Aurangabad, vide judgment and award dated 24.04.1996 awarded compensation at the enhanced rate of Rs.6/- per sq. ft. for the entire acquired land by treating the entire land as land meant for non-agricultural use and deducted 10% towards development costs, Rs.3,86,867/- towards demolishing and dismantling charges of electrical, mechanical and machinery installation, Rs.5,00,000/- was awarded for loss of earning for the period from 1981 to 1986, Rs.91,000/- towards damages and dismantling charges and Rs.15,000/- towards transportation, loading and unloading along with the statutory benefits. Thus, total additional claim of the appellant to the extent of Rs.23,73,011/- was allowed.

7. Respondent-State filed First Appeal No.601 of 1997 assailing the aforesaid order and the appellant and respondents No.2 and 3 also filed Cross Objection bearing St. No.22145 of 1997. Initially this cross-objection was dismissed by the High Court for non-removal of objections. Restoration application was also dismissed on account of inordinate delay and the appeal filed by the respondents was partly allowed. Against this dismissal, the appellant and respondents No.2 and 3 filed appeal No.2432 of 2005 before the Supreme Court which was allowed vide judgment dated 20.04.2011 and the matter was remitted back to the High Court for fresh disposal taking into consideration the law laid down by this court in recent judgments.

8. Thereafter, by impugned Judgment dated 21.08.2017, the High Court partly allowed the appeal as well as cross-objections and passed the following award:-

i.	Cost of the land @ Rs.6/- per sq.ft. (Deduction at 10%)	....	Rs.9,40,896/-
ii.	Dismantling and damage of Civil work costs	....	Rs.4,26,890/-
iii.	Replacement of electrical installation	....	Rs.2,39,000/-
iv.	Depreciated value of machineries	....	Rs.6,62,000/-
v.	Loss of business	....	Rs.5,00,000/-
	Total	....	Rs.21,60,974/-

9. Mr. Gopal Balwant Sathe, learned counsel for the appellant assailed the impugned judgment contending that the High Court failed to consider the valuation certificate (Exh.-21) duly proved by PW-2-Mukund Dharashivkar-Empanelled Government Valuer

whose evidence remained un rebutted by the State Government. Further, it has been submitted that Exh.-21 proves that the civil work comes to the tune of Rs.9,55,000/-, electrical installation Rs.3,21,000/- and mechanical installation Rs.10,69,000/- which totally comes to Rs.23,45,000/- and the depreciation value comes to Rs.14,28,000/-. Totally, the valuation of the civil, mechanical and electrical structure comes to Rs.63,80,000/- and the valuation done by PW-21-Valuer has not been considered by the High Court. It was further submitted that the High Court has completely ignored the fact that the respondents had not adduced any documentary evidence to show that the valuation certificate (Exh.-21) issued by PW-2 is not proper and lacks precision. It was further submitted that computation of loss of business @ Rs.1,00,000/- per year is completely erroneous. It was submitted that the High Court erred in not taking into consideration that the appellant had to close the sugar factory and face financial crisis suffering decree of civil court for recovery of loan amount as the appellant had raised loan from the bank. It was further submitted that the High Court erred in making deduction of 40% though the lands were acquired for irrigation project which does not require development charges like providing basic amenities like roads, water etc. and the Reference Court rightly made deduction of 10% which is a reasonable deduction and the High Court erred in reducing the compensation amount.

10. On the other hand, Mr. Aaditya A. Pande, learned counsel appearing for the State of Maharashtra has submitted that the Reference Court has committed an error by considering the market value of fully developed plot and comparing the same with undeveloped land. It was submitted that village Mhasekota is a very small village having a population of one thousand, situated in a remote area without any development potentials and there was no potential value of the acquired land as non-agricultural land. It was further contended that no purchaser will come forward to purchase the large area of land admeasuring 1.44 hectares on square feet basis and without considering this aspect, the Reference Court had enhanced the compensation @ Rs. 6.90 per sq.ft. Drawing our attention to the evidence of the State witness Dilip Gudwe, Sub-Divisional Officer, it was submitted that SDO had visited the site and factory premises and submitted a report (Exh.-54) mentioning that the factory was not in operation and the machinery was lying idle and considering the same, the High Court has recorded a finding that the claimants had closed the sugar factory. The learned counsel urged that the High Court rightly reduced the compensation awarded by the First Appellate Court and there is no ground warranting interference with the impugned judgment.

11. We have heard Mr. Shirish K. Deshpande and Mr. Sagar N. Pahune Patil, learned counsel appearing on behalf of the appellants and Mr. Rahul Chitnis, learned counsel appearing on behalf of the respondent-State. We have carefully considered the contentions and perused the impugned judgment and materials on record.

12. The land Gat No.85 admeasuring 6 acres, situated at Mhasekota in Soygaon Tahsil of Aurangabad district, owned by the appellants-claimants came to be acquired by the Government for construction of Hiwra medium project. The land Gat No.85 admeasuring 2 hectares 40 R came to be acquired including 0.16 hectare Potkharaba land. Out of this area, land admeasuring 0.80 hectare has been converted into non-agriculture (N.A) purpose for installation of Khandsari factory (sugar factory). Rest of the area admeasuring 1.44 hectare is appellants claim that they have been using for non-agricultural purpose.

Though the claimants had asked for non-agricultural permission for the land admeasuring 1.44 hectare out of the land Gat No.85, the same was not granted by the concerned authority. The S.L.A.O. on 29.03.1982 has published the notification under Section 4 of the Land Acquisition Act and on 01.09.1986 awarded the compensation for the acquired land admeasuring 0.80 R, since converted into the non-agriculture land, at the rate of Rs.2.00 per sq. meter i.e. Rs.20,000/- per hectare. The S.L.A.O. has awarded the compensation to the agricultural land admeasuring 1.44 R at the rate of Rs.9500/- per hectare. So far as Potkharaba land, which is 0.16 hectare is concerned, the S.L.A.O. has awarded the compensation at the rate of Rs.200/- per hectare. The S.L.A.O. has awarded total compensation at Rs.29,712/- as the costs of the land, as stated above.

13. So far as the use of the entire land for non-agricultural purpose is concerned, the High Court found that the Reference Court is justified in treating the entire land having the potential for non-agricultural purpose of the remaining area - 1.44 hectare. Referring to the Project report - Exh.42 - scheme of the factory approved by the Small Scale industries, Aurangabad, the High Court found that the main raw material required for the sugar factory is sugarcane and part of the building is used for keeping the raw materials. The High Court further found that besides flow sheet, certain part of the land would be utilised for office building, workshop, staff quarters, etc. and also used for parking and various other purposes. The High Court also pointed out that the State has not adduced any evidence to the effect that the land admeasuring 1 hectare 44 R out of the acquired land was mainly used for agricultural purpose and not for the non-agricultural purpose. In view of the concurrent findings by the Reference Court and by the High Court that apart from 0.80 hectare, the land measuring 1 hectare 44 R be taken as having the potential for non-agricultural purpose, we do not find any reason to take a different view.

Market value and deduction for development

14. The High Court has taken Exh.23 dated 03.06.1976 as exemplar which is the sale deed for plot admeasuring 30x32 ft. (960 sq.ft.) for Rs.3,000/- i.e. at the rate of Rs.3.12 per sq.ft. The appellants have also placed further reliance on the sale deed dated 03.02.1982 Exh.35 wherein, the plot of admeasuring 5023 sq.ft. was sold for Rs.35,000/- i.e. Rs.6.90 per sq.ft. The High Court has taken Exh.23 sale deed dated 03.06.1976 and had taken 10% increase for every year and arrived at the value at Rs.6 per sq.ft. Even going by Exh.35 sale deed (03.02.1982) under which Rs.5023 sq.ft. was sold for Rs.35,000/- i.e. Rs.6.90 per sq.ft., Exh.35 sale deed (03.02.1982) is after possession of the land was taken by the State Government (21.11.1981) and Section 4 Notification dated 10.02.1982. Since Exh.35 sale deed dated 03.02.1982 is between two dates - date of taking possession of the land and the date of Section 4 Notification, it is necessary to adopt a reasonable valuation. Considering Exh.23 and Exh.35, the value adopted by the Reference Court at Rs.6.90 per sq.ft., in our view, fixation of valuation at Rs.6.90 per sq.ft., the value adopted is fair and reasonable and the same is affirmed.

15. Taking the value at Rs.6.90 per sq.ft, the High Court deducted 40% towards the development cost and calculated the value of the land at Rs.2,61,300 sq.ft. at Rs.9,40,896.00. While determining the market value of the acquired land, normally one-third deduction i.e. 1/3% towards development charges is allowed. After referring to

number of judgments, in Major General Kapil Mehra and Others vs. Union of India and Another (2015) 2 SCC 262, the Supreme Court held as under:-

“36. While determining the market value of the acquired land, normally one-third deduction i.e. 33 1/3% towards development charges is allowed. One-third deduction towards development was allowed in Tehsildar (LA) v. A. Mangala Gowri (1991) 4 SCC 218, Gulzara Singh v. State of Punjab (1993) 4 SCC 245, Santosh Kumari v. State of Haryana (1996) 10 SCC 631, Revenue Divl. Officer and LAO v. Sk. Azam Saheb (2009) 4 SCC 395, A.P. Housing Board v. K. Manohar Reddy (2010) 12 SCC 707, Ashrafi v. State of Haryana (2013) 5 SCC 527 and Kashmir Singh v. State of Haryana (2014) 2 SCC 165.

37. Depending on the nature and location of the acquired land, extent of land required to be set apart and expenses involved for development, 30% to 50% deduction towards development was allowed in Haryana State Agricultural Market Board v. Krishan Kumar (2011) 15 SCC 297, Director, Land Acquisition v. Malla Atchinaid (2006) 12 SCC 87, Mummidi Apparao v. Nagarjuna Fertilizers & Chemicals Ltd. (2009) 4 SCC 402 and Lal Chand v. Union of India (2009) 15 SCC 769.”

16. Rule of one-third deduction towards development is the general rule. But depending upon the purpose of acquisition and taking note of well planned layouts, if any, the deduction for development cost may vary from 20% to 75%. Observing that deduction towards development can range from 20% to 75% of the price of the plot, in Lal Chand vs. Union of India and Another (2009) 15 SCC 769, the Supreme Court held as under:-

"19. If the acquired land is in a semi-developed urban area, and not an undeveloped rural area, then the deduction for development may be as much less, that is, as little as 25% to 40%, as some basic infrastructure will already be available. (Note: The percentages mentioned above are tentative standards and subject to proof to the contrary.)

22. Some of the layouts formed by the statutory development authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the “deduction for development” factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%.”

17. In the present case, since the land was acquired for the construction of Hiwra Dam project, much of the development like in the case of a layout for housing colony is not required. In our view, 40% deduction made by the High Court appears to be on the higher side. Considering the purpose of the acquisition and the facts and circumstances of the case, 20% deduction for development cost would be reasonable. Taking the entire land 2,61,300 sq.ft. as non-agricultural and making 20% deduction for the development cost, the value of the land is calculated at Rs.12,54,530/- as under:-

Value of the land

Rs.18,03,384.00

Rs.3,60,67.68

Rs.3,60,677/-

Rs.14,42,707/-

2,61,360 x 6.90 20% deduction Rounded to Total Valuation of the construction/civil works

18. PW-2-Mukund Dharashivkar in his valuation report Exh.21 has considered the valuation of the civil work and foundation under four heads:- (i) reproduction costs; (ii) market value as on today; (iii) dismantling costs and damages; and (iv) transportation costs of good materials. The reproduction costs has been shown as Rs.9,55,020/- whereas, the market value as on the date of report has been shown at Rs.5,26,575/- and Rs.4,09,565/- has been shown under the head of dismantling costs and damages and further Rs.17,325/- has been shown as transportation costs of good materials. PW-2-Mukund Dharashivkar has deposed that the valuation of the civil work is Rs.5,26,575/- and that it includes the valuation of foundation embedded in the earth. As referred to by the High Court in its judgment in Para (28), PW-2-Mukund Dharashivkar has considered the civil work and foundation with regard to power house, office and workshop, staff quarter, water storage tank and other infrastructure/constructions with size, specifications and the number of items. Per contra, witness No.3 for the State, Sub-Divisional Engineer, Mr. Dilip Gudwe has assessed the valuation of civil work amounting to Rs.3,67,100/-. After extracting the relevant portion of the judgment of the Reference Court as to the valuation of the civil work, the evidence of PW-2 and witness No.3 for the State Sub-Divisional Engineer, the High Court has assessed the valuation of the dismantling costs and damages of civil work and foundation to the tune of Rs.4,09,565/- and Rs.17,325/- for transportation costs of good materials and arrived at the total amounting to Rs.4,26,890/-. We do not find any reason to take a different view and we affirm the amount of Rs.4,26,890/- towards damages of civil work and foundation and transportation of good materials. Electrical installation and re-installation

19. As against the amount of Rs.3,86,867/- awarded by the Reference Court, the High Court has awarded Rs.2,39,000/- towards depreciated market value of the electrical installation. As per the project report that was initially prepared for the year 1976, cost of factory installation was given at Rs.6,93,677/- and as per award, it has been given Rs.5,78,100/-. Referring to Exh.21 report and evidence of PW-2-Mukund Dharashivkar, the Reference Court has awarded Rs.3,86,867/- towards dismantling charges in respect of electrical, mechanical and re-installation. During the course of dismantling and re-installation, there is every possibility of the electrical installation being damaged. Considering the findings of the Reference Court, in our view, the High Court was not justified in reducing the amount of Rs.3,86,867/- to Rs.2,39,000/- on the ground of depreciated market value of electrical installation. Therefore, the amount of Rs.3,86,867/- awarded by the Reference Court is affirmed. For the dismantling of the electrical installation and re-installation of the same, the amount of Rs.2,39,000/- awarded by the High Court is enhanced to Rs.3,86,867/- as awarded by the Reference Court. Replacement cost of machinery and mechanical installation

20. Based on the report Exh.21 and the evidence of PW-2, the High Court has awarded depreciated market value of the machinery and mechanical installation to the tune of Rs.6,62,000/- and the same is affirmed.

Loss of business

21. A perusal of the evidence of PW-2-Mukund Dharashivkar examined on behalf of the appellants shows that in the year 1978-79, when the witness has visited the factory of the appellants, he noticed that the production of the sugar was stopped. As pointed out by the Reference Court as well as by the High Court, as regards income, no statement of income had been produced. During the period 1981 till 1986, the sugar mill was idle. The balance sheet for the years 1975-76 as per Exh.33 shows that the factory was running in loss initially during the year 1975-76. Though the appellants have claimed that they were making profit of Rs.2,00,000/- per year, as pointed out by the courts below, no statement had been filed to show that the sugar factory was making profit of Rs.2,00,000/-. The courts below have recorded the concurrent findings for awarding the compensation of Rs.5,00,000/- for loss of business from the year 1981, the time of taking possession of the property and compensation paid in the year 1986. The compensation amount of Rs.5,00,000/- paid towards the loss of business is also affirmed.

22.The compensation awarded to the appellants under various heads is modified as under:-

Sr. No.	Description of Items	By the High Court	By the Supreme Court
i.	Land value	Rs.9,40,896/-	Rs.14,42,707/-
ii.	Civil work	Rs.4,26,890/-	Amount confirmed
iii	Replacement of electrical installation	Rs.2,39,000/-	Rs.3,86,867/- as awarded by the Reference Court
iv	Depreciated value of the machinery and mechanical installation	Rs.6,62,000/-	Amount confirmed
V	Loss of business from the year 1981 to 1986	Rs.5,00,000/-	Amount confirmed

In the counter affidavit filed by the respondent-State, it is stated that the office of the Executive Engineer, Jalgaon Medium Project Division-1 has deposited the decretal amount of Rs.72,02,224/- by way of a cheque deposited in the Civil court. Further the amount of Rs.10,00,000/- has been paid to the appellant on 21.09.2018 by way of cheque bearing No.000081 vide receipt No.0114362 and the amount of Rs.5,00,000/- has been paid to the appellants on 02.11.2018 by way of the cheque bearing No.000094 (receipt No.0114663). It is stated that the appellant has also executed the receipt of the above said amount and has also executed an acknowledgement to the effect that, his entire claim has been settled. As per the modified amount of compensation, the appellants are entitled to the balance amount.

23. In the result, the impugned judgment and final order dated 21.08.2017 passed by the High Court of Judicature at Bombay Bench at Aurangabad in First Appeal No.601 of 1997 along with Cross Objection St.No.22145 of 1997 in the First Appeal, is modified as stated above in Para (22) and these appeals are partly allowed. The balance amount as per the modified amount of compensation be paid to the appellants/claimants with all statutory benefits as awarded by the Reference Court.