

# **BOMBAY HIGH COURT**

Special Land Acquisition Officer Bombay

Vs.

Vishanji Virji Mepani

Appeal Nos. 700 of 1993 and 219 of 1995 In Inland Acquisition Reference Nos. 21 and 6 of  
1977

(B.P. Saraf and M.S. Rane, JJ.)

06.06.1996. 07.06.1996

## **JUDGEMENT**

**Rane, J.**

1. The State through the Special Land Acquisition Officer is the appellants for and on behalf of the acquiring body - the Municipal Corporation of Greater Bombay in these appeals which are filed under Section 54 of the Land Acquisition Act (hereinafter referred to as the said Act for brevity's sake) challenging the common Judgment and decree of the learned single Judge of this Court passed on 30th Oct. 1991/3rd March 1992 is various Land Acquisition References including in the Reference under the Appeals herein as mentioned in the title, filed under Section 18 of the said Act by the respondents - the original claimants. The learned single Judge by the impugned Judgment enhanced the compensation as also awarded benefits to the claimants under the amended provisions of the said Act. The appellants are challenging the said finding of the learned single Judge in these appeals. The plot of land under acquisition in both the appeals related to one and the same Notification, the Award passed by the learned Land Acquisition Officer is also common so also the Judgments by the Reference Court. The another common features in both these appeals are that the plot of land in both the appeals are acquired for the same purpose and also situated and located in the same vicinity.

2. The impugned Judgment of both these appeals as stated is common. The award of the learned Special Land Acquisition Officer is also common. The Notification for acquisition is common. The evidence adduced by the parties and relied upon by the Reference Court is also common. The issues raised are also common in both these appeals, so also the principle of law. Hence both the appeals are being disposed of with a common Judgment.

3. In order to appreciate the challenge in these appeals, it will be necessary to advert to few

relevant facts in the matter which are common in both the appeals.

(i) A plot of land admeasuring about 10,980.90 sq. fts. was acquired by the Municipal Corporation of Greater Bombay (for brevity's sake hereinafter referred to as acquiring body) for the public purpose namely the Public Play Ground. The acquired land is situated at Mulund (East) - one of the Suburbs of Greater Bombay in Municipal Ward No. 'T' bearing Survey No. 177 and belonging to various owners including the claimants/respondents in both the appeals. The plot of land involved in Appeal No. 700/93 CTS No. 1328 admeasuring 477.43 sq. mtrs. of which claimants 1 and 2 claim ownership and respondent No. 3 also claimed some interest which the claimants amongst themselves settled at later stage. The land involved in Appeal No. 219/95 bears CTS No. 1358 admeasuring about 464.05 Sq. Mtrs.

(ii) The entire acquired land was reserved for the public purpose vis Public Play Ground in the Development Plan prepared by the acquiring body and the Government under the provisions of Maharashtra Regional Town Planning Act (in short MRTTP Act) and which was published on 9th January 1964. The said Plan was given final approval on 20th December, 1965. Prior thereto Improvement Committee of the Acquiring body as also the acquiring body by their respective Resolutions dated 17th December, 1963 and 7th February, 1964 ear- marked and reserved the entire land for the said public purpose.

4. Since the acquired land formed part of the Development Plan as stated earlier, Notification under Section 126(4) of the MRTTP Act read with Section 6 of the said Act was issued by the Commissioner, Bombay Division on 22nd October, 1972 for the purpose of acquisition of the said land. On 1st July, 1974 possession of the land was taken over by the acquiring body.

5. After issuance of the Notifications, the claimants including the respondents in both the appeals appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 135/- per Sq. Mtr. as a market value. The Acquiring body also submitted its valuation through the expert offering compensation to the claimants at the rate of Rs. 45/- per Sq. Mtrs.

6. The Land Acquisition Officer on consideration of various sale instances which he has relied upon as also the evidence made available before him by the Acquiring body as well as the claimants proceeded to determine the compensation at the flat rate of Rs. 82.75 per Sq. Mtr. by his common Award dated 20th March, 1974. In addition, he also awarded 15% solatium.

7. It is noticed from the Award, that the Land Acquisition Officer referred to 10 sale instances - 8 relied upon by the claimants and 2 by himself while determining the compensation at the aforesaid rate.

8. The claimants in these appeals being dissatisfied with the award of compensation by the Land Acquisition Officer under the Award in question, as they felt the same was inadequate, sought

reference seeking enhancement at the rate of Rs. 150/- per Sq. Mtr. as provided under Section 18 of the said Act. The Reference is stated earlier came to be registered in this Court in 2 appeals as have been shown in the title herein.

9. The learned single Judge who heard the various References including the References in these appeals by his Judgment dated 30th October, 1991 and 3rd March, 1992 enhanced the compensation from Rs. 82.75 per Sq. Mtr. to Rs. 145/- per Sq. Mtr. In addition, the learned single Judge also awarded various benefits under the amended provisions of Section 23(I-A) of the said Act holding that the claimants were entitled to the said benefits.

10. The appellants in these appeals as stated earlier have challenged the Judgment and decree of the learned single Judge allowing the claim of the claimants for enhancement as also for the benefits under the amended provisions of the said Act.

11. Before we proceed to consider merits of the challenges, it will be appropriate to advert to the evidence which was placed before the learned single Judge in the References.

12. As stated earlier the evidence is common in both these appeals so also the Judgment. On behalf of the respondents/ Claimants the evidence oral as well as documentary was adduced. Three witnesses were examined on behalf of the claimants and one on behalf of the appellants. Vasanji Virji Mepani as C.W. No. 1 and two experts Babubhai Rathod - C.W. No. 2 and S.M. Kurdukar - C.W. No. 3 were examined on behalf of the claimants. The appellants examined their expert Shri R. M. Nanavati. All the three experts produced three written Valuation Reports. Besides, certain sale deeds were also produced as comparable sale instances by and on behalf of the claimants. Reference to certain sale instances in the vicinity of the acquired land was also made by the three experts. It is, however, noticed from the impugned Judgment that two sale instances, which were referred to by the experts of the claimants and of the appellants have been considered in the impugned Judgment by the learned single Judge. The said sale instances have been described and referred to in the Judgment as a properties of (i) Roop Niketan Housing Society, and (ii) Thakur Nagar Society. The learned Judge considered both these sale instances as comparable to the acquired lands. The Judgment further shows that the learned single Judge did not find the evidence of claimants' expert witness Shri Rathod --- C.W. No. 2 as relevant and of any assistance. He, however, relied upon the evidence of the experts Shri S. H. Kurdukar and R. H. Nanavati who as stated earlier referred to both the sale instances of Roop Niketan Housing Society and Thakur Nagar Society. It is relevant, however, at this stage to say that none of the parties, for that matter the Vendors or Vendees or anyone having knowledge in respect of the said two properties have been examined by the claimants to prove the genuineness and *bona fide* of the sale transactions.

13. Testimony of C.W. No. 1 shows that there were structures and encroachments upon the acquired land. This is also borne out from record as number of claimants had approached and

lodged their claims before the Land Acquisition Officer. It is further noticed that, initially claimant No. 3 who is respondent No. 3 in Appeal No. 700/93 had also put up the claim over the acquired land being the subject-matter of the said appeal before the Land Acquisition Officer which parties compromised during the pendency of the acquisition proceedings.

14. From the impugned Judgment it is noticed that the learned Judge proceeded to determine the compensation at enhanced rate relying upon and on consideration of the two sale instances mentioned hereinabove. It is further noticed that all the three experts -two examined by the claimants and one by the appellants had visited the acquired land in the year 1990 whereas as noticed earlier the Notification for acquisition was issued in the year 1972.

15. We summaries now the contentions raised by and on behalf of the appellants assailing the Judgment and decree of the Reference Court in awarding the compensation at the higher rate as under :

(i) The Reference Court committed an error in enhancing the compensation by applying wrong and illegal criteria. Inasmuch as it is asserted that the Reference Court based its finding and determined the market value on the evidence which was not proved. In that genuineness and *bona fide* of said sale instances viz. Roop Niketan Housing Society and Thakur Nagar Society was not proved as there is no evidence made available by the claimants that the same were comparable to the acquired land. In that it was emphasised neither the vendors nor the vendees or attesting witnesses to the said transactions having knowledge in respect thereof were examined to prove that the sale of the land of the said properties represented the true and genuine transaction between the willing vendors and willing vendees as reasonable, prudent men and prices mentioned were not at throw away prices or brought into existence to inflate the market value of the land in question.

(ii) No credence of weightage should have been given to the evidence of the experts since they visited the property in the year 1990 whereas the material date was of the year 1972; and.

(iii) The benefits awarded under the amended provisions of the said Act under Section 23(1-A) was not permissible having regard to the date of award in these matters.

16. To buttress and substantiate the aforesaid contentions, the learned Counsel appearing for the appellants has referred to certain decisions of the Apex Court.

17. On the other hand on behalf of the respondents/claimants it was submitted while supporting the findings of the learned Judge that the claimants are entitled to a compensation on the basis of then prevalent market value which was Rs. 300/- per Sq. Mtr. The appellants are not entitled to challenge the admissibility of the evidence in respect of the sale transactions in the appeals as they did not object before the Reference Court. It is submitted that the Court should adopt liberal and, equitable approach in such matter, while assessing and evaluating the evidence. The learned

Counsel for the claimants asserted that the Land Acquisition Officer in his award has made reference to the various other awards in respect of the lands in the said vicinity of the acquired land and that evidence be also considered. The learned Counsel also justified the award of benefits under the amended provisions of the said Act.

18. To appreciate the issues raised, it would be necessary to advert to the legal principles and basic concepts. The provisions as contained in Sections 23 and 24 of the said Act are relevant in the matter of determination of the market value in respect of the acquired land. It is a settled law that the claimant is entitled to just and reasonable compensation and Section 23 mandates to determine the market value of the lands on the basis of prevailing prices as on the date of publication of the Notification under Section 4(i) of the said Act. The reasonable method for ascertaining and determining the value of the property is the *bona fide* sales of the acquired lands and in its absence *bona fide* sales of the lands situated and located in the neighbourhood of the acquired land possessing the similar potentiality or fertility or other advantageous features. The sale instances, however, relied upon must be comparable to the acquired land in certain features such as it must be within a reasonable time of the date of Notification, it should be a *bona fide* transaction, it should be a sale of the land acquired or land adjacent to the land acquired and are possessing similar advantages and disadvantages. It is, however, necessary to establish the *bona fide* and genuineness of such sale instances by examining either the vendors or vendees and if they are not available the attesting witnesses who have personal knowledge of the transactions. The original sale deed or certified copy thereof must be tendered as evidence but that does not dispense with the proof of genuineness and *bona fide* of such transaction. Mere production of such sale deeds does not dispense with the proof of genuineness thereof. The underlying principle is to fix a fair market value with reference to comparable sale by reducing the clement of speculation. Equally it is necessary to produce the evidence with regard to the comparative nature of the land covered under the sale deed and the acquired lands. The apex Court in the case of *Periyar and Parekanni Rubbers Ltd. v. State of Kerala, reported in<sup>1</sup>* which has been relied upon by the learned Counsel for the appellants, after taking survey of the judicial pronouncements has laid down the test and guidelines regarding determination of the market value of the acquired properties by applying test known as "comparable sales method of valuation". The Apex Court summarized the legal position in this regard in para 10 of the said i.e. Periyar's case (supra) as under (Para 5, at p. 2196 of AIR) :

"Therefore, the transaction relating to the acquired land of recent dates or in the neighborhood lands that possessed of similar potentiality or fertility or other advantageous features are relevant pieces of evidence. When the Courts are called upon to fix the market value of the land in compulsory acquisition, the best evidence of the value of the property is the sale of the acquired land to which the claimant himself is a party, in its absence the sale of the neighboring lands. In proof of the sale transaction, the relationship of the parties to the transaction, the market conditions, the terms of the sale and the date of the sales are to be looked into. These features would be established by examining either

the vendor or vendee and if they are not available, the attesting witnesses who have personal knowledge of the transaction, etc. The original sale deed or certified copy thereof should be tendered as evidence. The under-lying principle to fix a fair market value with reference to comparable sale is to reduce the element of speculation. In a comparable sale the features are : (1) it must be within a reasonable time of the date of the notification; (2) it should be a *bona fide* transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired; and (4) it should possess similar advantages. These should be established by adduction of material evidence by examining as stated above the parties to the sale or persons having personal knowledge of the sale transactions. The proof also would focus on the fact whether the transactions are genuine and *bona fide* transactions. As held by this Court in *Collector, Raigarh v. Dr. Harising Thakur*<sup>2</sup> that fictitious and unreal transactions of speculative nature brought into existence in quick succession should be rejected. "

<sup>1</sup>(1991) 4 SCC 195

<sup>2</sup>(AIR 1979 SC 472)

19. These principles have been reiterated and re-affirmed by the Apex Court in its recent decision in the case of *P. Ram Reddy v. Land Acquisition Officer, Hyderabad Urban Development Authority reported in*<sup>3</sup> as also in various recent pronouncements reference to all of them is not necessary.

20. As noticed earlier, the learned single Judge has placed reliance upon two sale instances mentioned hereinabove in determining the market value of acquired land. No evidence has been adduced to prove whether the sale transactions in the first instance were genuine and *bona fide* and in what circumstances the same were made. The law as laid down by the Supreme Court referred to earlier, clearly posits that before the sale instance can be accepted as a comparable instance for determination of the market value of the acquired land, then the genuineness thereof has to be proved, and it would be only possible to have a reliable evidence through vendor or vendee and if either of them not available the attesting witnesses having personal knowledge of such transactions. Under Section 51-A of the said Act as amended in 1984 certified copy of the sale deeds can be brought on record. However, examination of the witnesses to find out the genuineness of the transactions is must. In the matter in hand as noticed earlier this had not been done. Therefore, the reliance placed by the learned single Judge upon the said two sale instances in determining the value of the acquired land in our view is not proper. The contentions raised by and on behalf of the appellants are, therefore, merited and well-founded.

21. If the evidence with regard to the said two transactions is eliminated then there is no reliable and dependable evidence before the Court for determination of the market value of the land. The burden to prove what will be the fair and reasonable value of the acquired land is upon the claimants. In the matter in hand the claimants examined three witnesses. As stated earlier the evidence made available which we have gone through does not render any assistance to the claimants for enhancement of the compensation. Therefore, in absence of credible and

dependable evidence in our view the learned Judge was not justified in allowing the compensation to the claimants at enhanced rate at Rs. 115/- per Sq. Mtr. It is apparent that the learned Judge has relied upon the evidence in respect of the two sale instances which legally he was not entitled and justified to do.

22. As far as the evidence of experts is concerned, as noticed, they visited the acquired land in the year 1990. Their evidence also does not render any assistance as the same lacks objectivity required of a professional. The material date for determination of the compensation was of the year 1972 and experts in these cases have visited and inspected the property in the year 1990.

23. We think it necessary to mention one aspect having bearing on the point and which is amply borne out from the record and proceedings of these appeals. The record shows that in the year 1978. one of the claimants offered their land in the same vicinity of the acquired land to the acquiring body at the rate of Rs. 150/- per Sq. Mtr. by private treaty. The claimants' witness No.1 has admitted in his evidence that he sold the adjoining plot of land bearing CTS No. 1286 by a private treaty to the acquiring body at the rate of Rs. 150/- per Sq. Yard. He has further stated that he did so because he was in need of money.

<sup>3</sup>(1995) 5 SCC 305

It is relevant, however, to note that his evidence shows that there was great deal of correspondence between him and the acquiring body preceding the said sale and his evidence does not show that there was any undue pressure or otherwise. If one takes into consideration this aspect and giving reasonable deductions for the period of 6 years from 1972 to 1978 i.e. the date of Notification and date of sale by private treaty, it would be reasonable to think that the compensation awarded by the S.L.A.O. at the rate of Rs. 82.75 per Sq. Mtr. in the year 1972 would be reasonable. This aspect has been mentioned since the arguments were advanced on behalf of the respondents for equitable and liberal approach.

24. Learned Counsel for the claimants also urged that it is upon the Court to determine the reasonable compensation in respect of the acquired land. He also stated that the Court would take into consideration the other evidence which is on record namely the various awards . which the S.L.A.O. himself has referred to in his award, in respect of the lands in that vicinity. We may, however, observe that there is no evidence in respect of the various lands involved in the various awards referred to by S.L.A.O. in his award. With a view to find out comparability thereof to the acquired land there has to be evidence in this respect also. Be it award of the S.L.A.O. or Judgment of the Court. The law is very clear on the point. The Judgment of a Court in such matters for determining the market value of the land can be admitted and considered as instance or one from which the market value could be deducted or inferred provided there is evidence placed before the Court with regard to comparability of lands, etc. We may usefully refer to the tests laid down by the Supreme Court in such situation. In the case of *Palsing v. Union Territory*, reported<sup>4</sup> in in para 5 (relevant portion) this is what has been laid down :

"But what cannot be overlooked is that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of Court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliened that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land. "

25. From the above, it will be clear that while relying upon the previous judgments or awards in respect of the acquisition of lands there has to be evidence to find out how far the same would be comparable to the acquired land. Admittedly, such evidence is also not made available in these matters. Therefore, we do not find any merits in the submissions of the learned Council for the claimants.

26. Now the next most important and crucial aspect is about the award of higher rate of interest by the learned single Judge to the claimants. The Appellants have seriously disputed and have questioned the same. It is submitted on behalf of the appellants that in the instant cases, the claimants are not entitled to the benefits of enhanced or higher rate of interest. It is pointed out that the claimants are not entitled to the said benefit on the basis of amending provisions of the said Act since the Award in this case was made before 30th April, 1982. Reference is made to the undermentioned decisions of the Supreme Court in support of the said contentions.

<sup>4</sup> AIR 1993 SC 225

- (1) *Union of India v. Raghubir Singh*, reported in<sup>5</sup>
- (2) *K.S.Paripoornan v. State of Kerala*, reported in<sup>6</sup>
- (3) *Mir Fazeelath Hussain v. Special Deputy Collector, L.A. Hyderabad*, reported in<sup>7</sup>
- (4) *Prem Nath Kapur v. National Fertilizers Corporation of India Ltd.*, reported in<sup>8</sup> and
- (5) *Yadavrao P. Pathado v. State of Maharashtra*, reported in<sup>9</sup>

27. Before we consider the submissions in the light of legal provisions and ratios in the above decision, we propose to mention relevant chronological events to appreciate the issue in hand.

- (1) Date of the Award : of S.L.A.O.:20th June, 1974.
- (2) Date of possession : of land:1st July, 1974.
- (3) Date of deposit of :amount under the Award in the Court:30th June, 1975.
- (4) Date of Introduction of the Amending Bill to the said Act.:30th April, 1982.
- (5) Date when the said Amendment was passed:24th September,1984.

28. We would advert to the relevant statutory provisions of the said Act. Section 23(1), clause firstly provides for determination of the amount of compensation in respect of the acquired land. Sub-section (2) of Section 23 envisages payment of additional amount on the market value awarded which was 15% prior to amendment and 30% after 1984 amendment. Further, under

Section 23(1-A) as amended in 1984, interest at the rate of 12% was allowed on the market value from the date of Notification to the date of Award of the Collector or the date of taking possession of acquired land, whichever is earlier, Section 34 of the said Act provided for further interest, before amendment of 1984, at 6% and after amendment at 9% in the event of non-payment or deposit of awarded compensation before taking possession. Proviso to Section 34, which is inserted in 1984, further provides for award of interest at 15% in case payment is not made or deposited within one year from the date of possession, Further, the liability to pay interest would arise as and when the compensation is further enhanced and would conterminous with the payment of such amount under Section 34 from the date of possession till date of payment of deposit of such excess amount of compensation.

29. From the conspectus of the ratios of the various decisions referred to hereinabove it emerges;

(i) Advantage or benefit of amended provisions of said Act (1984 amendment) would not be available in case of Award made before 30th April 1982.

(ii) The Court has no power to enlarge the scope of Section 30(2) of the said Act for according the benefit of the amended provisions.

(iii) Solatium is not part of market value awarded as compensation and as such not Component under Section 23(1) of the said Act.

(iv) The liability of payment of interest is only on the excess amount of compensation determined under Section 23(1) and not on the amount already determined under Section 11 and paid to the party or deposited into the Court or

<sup>5</sup>(1989) 2 SCC 754

<sup>7</sup>(1995) 2 UJ (SC) 73

<sup>9</sup>(1996) 2 SCC 570

<sup>6</sup> AIR 1995 SC 1012

<sup>8</sup>(1996) 2 SCC 72

determined under Section 26 or 54 and deposited into the Court or on solatium under Section 23(2) and additional amount under Section 23(1-A).

30. We have held earlier that the claimants failed to establish case for the enhancement and have held that the learned Judge was in clear error in enhancing the same. Further, the Award in this case is made by the Land Acquisition Officer on 20th June, 1974 which is anterior to 30th April, 1962 and therefore, claimants are not eligible and entitled to the advantage of the amended provisions of the said Act. The law on this score has been luminously laid down by the Apex Court as enunciated in its decisions mentioned earlier and which lends support to the contention raised by and on behalf of the Appellants that the award of benefit to the claimants under said amended provisions is impermissible. We uphold the said contention. We hold that the learned single Judge erred in law in according various benefits to the claimants in his impugned judgment.

31. The learned Counsel for the Claimants-Respondents requested for invocation of equity jurisdiction. However, the Supreme Court has in its decision in Mir Fazeelath Hussain's case (supra) has held that award of rate of interest in land acquisition award is governed by statutory

provisions and equity cannot be invoked for enhancement. This aspect needs no further elaboration in view of the enunciation of the Supreme Court.

32. To sum up, the Appellants succeed in the Appeals and the same stand allowed and impugned judgments to the extent concerns the respective L.A. References, stand set aside.

(I)(i) Appeal No. 700 of 1993 it allowed and impugned judgment therein, in so far concerns L. A. Reference No. 21 of 1976 stands set aside.

(ii) No order as to costs.

(II)(i) Appeal No. 219 of 1994 is allowed and impugned judgment therein, in so far concerns L.A. Reference No. 6 of 1977 stands set aside.

(ii) No order as to costs.

Appeal allowed.