

SPECIAL LAND ACQUISITION OFFICER
v.
INDIAN STANDARD METAL CO. LTD.

SEPTEMBER 30, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

Land Acquisition Act, 1894—Land Acquisition—Compensation—Claim for enhanced amount—Non production of documentary evidence showing purchase price of land by claimant—Claimant witnesses not proving the purchase price—Government produced document showing purchase price to be much lower—Development of the land was post Notification u/s 4—Compensation enhanced by High Court in view of industrial growth in the vicinity—On appeal, held: When claimant had purchased the land, purchase price of the same was an important factor in determining the value of acquired land—Since High Court order was in disregard of documentary evidence, and in disregard of fact of non-production of sale deeds and witnesses, the same is set aside—Matter remitted back to High Court for reconsideration.

The land of the respondent-claimant was acquired by State Government by issuing Notification in February, 1970 under Section 4 of Land Acquisition Act, 1894. A part of the acquired land had been given to the claimant by the Government after having acquired the same in 1967 and some part of the land was purchased by the claimant in 1964-65. Land Acquisition Authority passed an Award fixing the market value of the land. Claimant filed Land Reference claiming enhanced compensation. In the Reference Claimant Witness No. 1, the Power of Attorney Holder deposed that the entire development of the land was not prior to or in or about 1970 and the same was after the said period. Claimant Witness No. 2, the valuer of the land deposed that he was entrusted the work of valuation of acquired land by the Company in 1986; and that in the area there was no industry and no commercial zone was formed before 1970. Reference Court in view of the fact that documents regarding purchase of the land in 1964-65 ought to have been produced by the claimant; and since according to Government the land was purchased by the claimant at much lower price and the Government had relied upon Index Extract showing the price paid by the claimant in 1964-65 awarded a slightly enhanced compensation.

A Dissatisfied with the quantum of compensation claimant filed first appeal claiming further enhanced compensation. High Court awarded enhanced compensation holding that location of the land was near several important places and assessing the market value of those lands compensation had to be awarded in consonance with the industrial growth in the vicinity.

B In appeal to this Court appellant-State contended that amount of compensation is to be determined on the date of Notification u/s. 4 of the Act and not subsequent thereto; that the amount of compensation could not have been enhanced by High Court in view of evidence of two witnesses that the development was post 1970; and that the land in question being a large track of land, sale instances sought to be relied upon by the claimant in respect of small pieces of land were not relevant.

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Partly allowing the appeal, the Court

D HELD: 1. Relevant and germane consideration has not been taken into account by the High Court in deciding the appeal and enhancing the amount of compensation. High Court had not appreciated the evidence of witnesses for the claimant's property. By making the observations that the documents regarding purchase of land in the year 1964-65 ought to have been produced by the Company, the Reference Court has not committed any illegality. The High Court, has not considered this aspect in its proper perspective. The Reference Court also observed that according to the Government, some land was subject matter of purchase by the Company in 1964-65 and price paid by the Company was much lower. The State also relied upon Index Extracts showing the price paid by the Company in 1964-65. [903-B-C; 900-G-H; 902-D-E-F]

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F 2. In the instant case, the acquisition of land is on a large scale and as such, sale instances of small pieces of land would not be of much assistance to the claimant. Therefore, the High Court ought not to have given undue importance to sale instances. [903-B-C]

G 3. Since the High Court failed to consider documentary evidence as also the fact of non-production of sale deeds by the Company and also the evidence of two witnesses for the claimant in its proper perspective, decision of the High Court is set aside and remitted to the High Court so that the High Court may consider the matter afresh in the light of the evidences before it and in the light of observations made by this Court. [903-D-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6368 of 2004. A

From the Judgment and Order dated 3.7.2001 of the Bombay High Court in F.A. No. 758 of 1988.

R.K. Adsure and Mukesh K. Giri for the Appellant. B

Gopal Subramaniam, Rana Mukherjee, Siddharth Guatam and Goodwill Indeevar for the Respondent.

The Judgment of the Court was delivered by

THAKKER, J. : Leave granted. C

This appeal by special leave is directed against the judgment and order dated July 3, 2001 in First Appeal No. 758 of 1988 by the High Court of Judicature at Bombay partly allowing the appeal of the claimants for grant of enhanced compensation. D

The brief facts of the case are that the respondent-claimant, the India Standard Metal Comany Limited ("Company" for short) owned various pieces of land admeasuring about 21 hectares and 31.5 acres (2,13,150 Sq. Mtrs.) located at village Wadghar in Taluka Panvel of District Raigard in Maharashtra. Those lands were acquired by the State Government for New Bombay Project by issuing notification dated February 3, 1970 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") which was published in Government Gazette on February 4, 1970. Corrigendum dated September 5, 1970 was published in Government Gazette on September 7, 1970. Thereafter, notification under Section 6 of the Act was issued on October 25, 1972 which was published in Government Gazette on December 7, 1972. Notices under Section 9(1) and 9(2) of the Act were issued on May 10, 1973 and were published in Government Gazette on May 21, 1973 and May 10, 1973 respectively. Individual notices under Section 9(3) and 9(4) were also issued on October 10, 1975 which came to be served on respondent-Company on October 16, 1975. Respondent-Company claimed compensation @ Rs. 20 per square yard for non-agricultural land and @ Rs. 15 per square yard for agricultural land. The Special Land Acquisition Officer, Metro Centre No. 1, Panvel passed an award under Section 11 of the Act on February 22, 1985 and fixed the market value of the land including trees, construction, solatium and additional compensation etc. as Rs. E
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A 7,40,832.67 ps thereby fixing the market value of the land at Rs. 1.10 ps per sq. mtr. An amount of Rs. 7,40,832.75 was paid to the claimants on February 25, 1985 and possession of the entire land was taken over.

B After receipt of notice under Section 12(2) of the Act, being dissatisfied with the award, the claimant-respondent-Company filed a Land Reference being LAR No. 189 of 1986 under Section 18 of the Act before the Special Land Acquisition Officer requesting him to forward the same to the Civil Court for adjudication and claimed compensation for entire land at the uniform rate of Rs. 15 per sq. metre. Thus, additional amount of Rs. 29,58,790 was claimed. The appellant-State filed its written statement before the Civil Judge, Senior Division Raigad at Alibag in the Reference. In the Land Reference, respondent-Company examined its Power of Attorney holder Balchandra Shantaram Sule as C.W.1 as also Jeewan Naraya Kulkarni as C.W.2, valuer who visited the land in August-September, 1986. The Civil Judge, Raigad by an order April 18, 1987 awarded comensation @ Rs. 1.80 per sq. metre. Thus, additional amount of Rs. 5,09,103.60 together with interest @ 9% for first year and @ 15% for subsequent years was granted.

E Dissatisfied with the quantum of compensation, the respondent-Company preferred First Appeal No. 758 of 1988 before the High Court of Bombay and claimed compensation at the uniform rate of Rs. 15 per sq. meter. Claimant-respondent also filed Civil Application No. 930 of 1992 in pending First Appeal No. 756 of 1988 seeking permission to produce additional evidence and also sought amendment by claiming enhanced compensation @ Rs. 45 per sq. meter. The High Court by the impugned order dated July 3, 2001 awarded enhanced compensation of the acquired land @ Rs. 12.50 per sq. meter for entire land by deducting development charges @ 20%. It was observed by the High Court that location of the land was near several important places and assessing the market value of those lands compensation had to be awarded in consonance with the industrial growth in the vicinity. The Court stated that N.A. potentiality of the land was also required to be considered. The Court further observed that valuation report of Expert Valuer was ignored by the trial Judge without assigning reasons. The Court noted that a consistent view has been taken in such cases that development aspect has to be considered. It observed;

H “We may further note that this court has taken consistent view in the case involving the lands in the same area in respect of the

compensation to be awarded and while dealing with the land situated in the adjacent villages, it was held the development factor for consideration of the market value was on the basis of their proximity to various factors such as National Highway, State Highways and other infrastructural facilities. Therefore, if we are to follow the same rule consistent with other decisions of this court, and taking into account all the relevant aspects in respect of the location of the impugned land along with its potentiality, we are of the view that the proper rate of compensation for this land would be Rs. 12.50 ps. per sq. mtr.”

Being dissatisfied with the order of the High Court, the Special Land Acquisition Officer has preferred this appeal by special leave.

Notice was issued pursuant to which the respondent appeared. A counter affidavit and affidavit in rejoinder have been filed. We have heard learned counsel for the parties.

Learned counsel for the appellant contended that the High Court has committed an error of law as well as of jurisdiction in allowing the appeal. It was submitted that the relevant date for deciding the quantum of compensation was Notification under Section 4 of the Act. The said Notification was issued in February, 1970. It was, therefore, on the basis of that date that the amount of compensation was required to be determined. Development of the area was subsequent to and post 1970 and the amount of compensation could not be fixed considering the development of area after 1970. The High Court by considering such development committed an error in enhancing the amount of compensation. It was also submitted that the Reference Court considered the evidence of two witnesses of the claimant in its proper perspective. From the said evidence, it was clear that most of the development was post 1970. So far as the evidence of Jeewan Naraya Kulkarni, the valuer is concerned, it was urged that he had admitted that he was entrusted with the work of valuation of acquired land by the claimants only in August, 1986, i.e. after more than 15 years of issuance of notification under Section 4 of the Act. He visited the land thereafter, i.e. in the end of 1986 and prepared his report on that basis. Obviously, therefore, he had no knowledge as to what happened between 1970 and 1986 except what he had heard from other persons or so-called information received by him. The counsel further submitted that the land in question is a large track of land

A admeasuring more than 2 kilometers. Sale instances sought to be relied upon by the claimants in respect of small pieces of lands, therefore, were not much relevant and not comparable. Deduction of development charges would have been more comparing the development of recent past. In calculating development charges @ 20%, an error on the face of the record has been committed by the High Court. Serious grievance voiced by the learned counsel for the appellant was that the High Court has not considered extremely important material, namely, that a part of the land was acquired by the Government for the Company as also the fact that the Company had purchased some land by private negotiations in or about 1964-65. In spite of insistence by the appellant, no documentary evidence was furnished nor sale-deeds were produced by the Company. All those facts ought to have been appreciated by the High Court before allowing the appeal and granting enhancement of compensation. By not doing so, the High Court acted illegally and the order allowing the appeal by the High Court deserves to be set aside by restoring the order passed by the Reference Court.

D Mr. Gopal Subramaniam, senior advocate appearing for the respondent-Company, on the other hand, supported the order passed by the High Court. The counsel submitted that in undoubted exercise of appellate jurisdiction, the High Court considered all points argued by the parties and recorded a finding that the land was developed land and such development was there even in 1970 when the Notification under Section 4 of the Act was issued. It also took into account potential non-agricultural use of land which was indeed a relevant and vital fact. The value's report was considered in the light of substantive evidence of the valuer wherein he had stated about the development of land in or about 1970. The counsel also submitted that though the deduction of development charges @ 20 per cent was on higher side, the High Court reduced the amount of compensation by depriving the appellant-Company of substantial amount. The order of the High Court has not caused prejudice to the Government and the appeal deserves to be dismissed.

G Having given our thoughtful consideration to the rival contentions of the parties, in our opinion, the appeal deserves to be partly allowed. The High Court allowed the appeal of the Company and granted enhancement in the amount of compensation by deducting development charges @ 20 per cent. To us, however, it appears that the learned counsel for the appellant is right in submitting that the High Court had not appreciated the evidence of H witnesses for the claimants properly. From the evidence of Balchandra S/o

Shantaram Sule, Claimant-Witness No. 1, it appears that the entire development was not prior to or in or about 1970 and such development was after the said period. Moreover, the evidence of architect-cum-valuer Claimant-Witness No. 2 also relates to the period of August, 1986 and thereafter. In his examination-in-chief itself, he has stated that in August, 1986, he was entrusted with the work of valuation of acquired land by the Company. He thereafter visited the acquired land. He also admitted that he visited the place four times. *Afterwards*, he studied the development in neighbouring area and its effect on the acquired land. He visited the office of Talathi and collected necessary information regarding sale transactions and valuation of land by studying the sale transactions from 1967 to 1972.

In Cross-examination, the witness admitted that he did not know that the acquired land was purchased by the claimant in 1967. He also admitted that he did not feel to see sale transactions in respect of the land in question. He denied that he ignored those transactions because otherwise valuation could not be enhanced. He had to admit that there was no industry in Wadghar village and no commercial zone was formed in Wadghar village before 1970. There was no residential colony except college campus quarters. So far as acquired land is concerned, he admitted that in 1970, it was partly agricultural land and partly uncultivable. All the sale instances except the award of NIDC were on the eastern side of the Bombay Highway and the acquired land was about 2 kilometers away from Bombay-Pune Highway and by road it was 2.5 kilometers. All the sale instances were between 500 meters and 1 kilometer from Bombay-Pune Highway. The sale deeds were in respect of minimum area of 500 sq. mtrs. and maximum of 1500 sq. mtrs.

It is clear from the record and also from the cross-examination of Claimant-Witness No. 1 that the Government had acquired some land (12 acres) for the respondent-Company. The Government gave possession of the land to the Company in April, 1967. The witness then stated that he was not aware what was the price paid to the Government for acquisition of that land. He also stated that he could not trace the record in the office. He could not say as to whether the Company had papers when the representation was made to the Government. He could not give the name of the officer who dealt with the purchase of the land. He stated that he had no personal knowledge in the matter. He admitted that though some land was purchased by the Company thereafter, he was unable to produce sale deeds in respect of the said land. He also stated that he had not procured also transactions of the land nearby.

A He had not made any enquiry about those transactions. He had flatly stated that he was not going to produce any sale deed. In further cross-examination he admitted that all the industries mentioned by him were towards the north of Panvel. There was no industry near about the acquired land. He admitted that he did not know whether prior to 1970 there was any commercial or industrial area and residential activities within the vicinity of the acquired land. He also did not know the situation of the acquired land in or before 1970.

C From the evidences of the two witnesses of the claimant as also from other evidence, the Reference Court observed that admittedly some land was purchased in the year 1964 by the Company itself and yet witness No. 1 stated that he was not knowing anything about the purchase price. The Court noted that the transactions were of 1964-1965 and thus "not so much immemorial so as to treat the record evidence lost". In the circumstances, those documents ought to have been produced by the company.

D In our opinion, by making the above observations, the Reference Court has not committed any illegality. The High Court, unfortunately, has not considered this aspect in its proper perspective. Again, the Reference Court was right in stating that when the claimant itself has purchased some land, purchase price of the land was an important factor in determining the value of the acquired land. The Reference Court also observed that according to the Government, some land was subject matter of purchase by the Company in 1964-65 and price paid by the Company was much lower ranging from 0.45 paise to 0.75 paise per sq. mtr. The State also relied upon Index Extracts (Ex. 37) showing the price paid by the Company in 1964-65. In view of non-production of documentary evidence of the land purchased by the Company, the Reference Court observed :

G "It cannot be ignored that it price that was actually paid for a particular piece of land by the claimants in the year 1964-65 is within their knowledge and obviously it is a company viz. Indian Standard Metal Company Ltd. that has kept accounts and has furnished extensive list of machinery that was required to be purchased at the time of starting factory on the acquired land and must be presumed to be in possession of the record and the 11 sale deeds that were executed. The year 1964-65 is not so much immemorial so as to treat the record as lost and therefore, obviously

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it looks that the claimants are not willing to put forth the relevant record and for one reason or the other they want to suppress the fact viz. the price that was paid for the acquired pieces in the year 1964-65.”

It is thus clear that a relevant and germane consideration has not been taken into account by the High Court in deciding the appeal and enhancing the amount of compensation. To us, the submission on behalf of the appellant is also well-founded that in the instant case, the acquisition of land is on a large scale of more than 2 kilometers, and as such, sale instances of small pieces of land would not be of much assistance to the claimant. In our opinion, therefore, the High Court ought not to have given undue importance to sale instances. Since the High Court failed to consider documentary evidence as also the fact of non-production of sale deeds by the Company and also the evidence of two witnesses for the claimants in its proper perspective, it would be appropriate if we set aside the decision of the High Court and remit the matter to the High Court so that the Court may consider the matter afresh in the light of the evidence before it and in the light of observations made by us hereinabove.

For the foregoing reasons, the appeal deserves to be partly allowed and is allowed by setting aside the order passed by the High Court. We remit the matter to the High Court for taking an appropriate decision afresh in accordance with law. In the facts and circumstances of the case, however, there shall be no order as to costs.

K.K.T.

Appeal partly allowed.