

Digamber & Ors vs State Of Maharashtra & Ors on 1 August, 2013

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Author: V. Gopala Gowda

Bench: V. Gopala Gowda, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5346 OF 2013

DIGAMBER & ORS.

.. APPELLANTS

VS.

STATE OF MAHARASHTRA & ORS.

.. RESPONDENTS

J U D G M E N T

V. Gopala Gowda, J.

Leave has been granted by this Court vide order dated 8.7.2013.

2. This appeal is directed against the judgment and order dated 05.10.2005 passed by the High Court of Judicature of Bombay, Bench at Aurangabad passed in First Appeal No. 646 of 1998 whereby the High Court set aside the judgment and award dated 02.05.1998 of the learned Civil Judge, Senior Division, Nanded passed in land acquisition reference case and restored the

compensation awarded at the rate of Rs.50,000/- per hectare by the Special Land Acquisition Officer, Nanded by allowing the appeal filed by the respondents.

3. It is contended by Ms. Bina Madhavan, the learned counsel for the appellants that the impugned judgment is contrary to the legal evidence on record particularly Exhs. 20-21 which are the sale deeds of the plots covered in the same area that were prior to the notification that is before 14.06.1990 which sale instances were very well considered by the reference court for comparison and the finding of fact was recorded that the said instances are comparable to the acquired land to that of the plots covered in the sale deeds. Therefore, it is contended that the acquired land has the similar non agricultural potentiality and the State Government had acquired the said land in favour of the Maharashtra Industrial Development Corporation (in short 'the Corporation') for the purpose of formation of industrial estate and sale of the plots for commercial purposes. It is urged by the learned counsel that the judgment and award passed by the reference court is erroneously set aside by the High Court as it has found fault with it in placing reliance upon the sale instances and has wrongly re-determined the market value of the land which findings recorded by the High Court in its judgment are not only erroneous in law but also suffers from error in fact and therefore, the same is liable to be set aside.

4. The further legal contention urged by the learned counsel for the appellants is that learned reference Judge has rightly awarded the compensation of the acquired land after re-determining its market value based on legal evidence on record at the rate of Rs.5/- per sq. feet. The documentary evidence produced by the appellants are sale deeds marked as Exhs. 22 and 23 pertaining to years 1991 and 1993 respectively and Exhs. 24 and 25 pertaining to the year 1994, ie. post acquisition notification period. That the plots covered in the said sale instances are non agricultural plots of Venkateshnagar Layout which are comparable to the acquired land is the finding of fact recorded by the learned Judge of the reference court on proper appreciation of legal evidence on record. The same is supported by the decision of this Court in the case of The special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahbi Bawa Sahib[1], wherein this Court in the aforesaid case has held that the reference court can take into consideration the plots which are covered in the sale instances which were small bits of land, if the acquired land is comparable to the land covered in sale deeds and that placing reliance on such sale instances by the reference court for re-determination of the market value of the acquired land is permissible in law. It is further urged by the learned counsel that this vital aspect of the matter has been overlooked by the learned Judge of the High Court while passing the impugned judgment and award by setting aside the judgment and award of the reference court and restored the compensation awarded by the Land Acquisition Officer which is vitiated both on facts and on law. Therefore, the same is liable to be set aside and the judgment of the reference court must be restored.

5. Further, it is contended by her that the learned Judge of the High Court has erred in affirming the compensation awarded by the Special Land Acquisition Officer at Rs. 50,000/- per hectare of the acquired land ignoring its potentiality as it is acquired for the purpose of formation of industrial estate with a view to carve out the plots and allot the same in favour of allottees/private industrial entrepreneurs at commercial rates for construction of the commercial and industrial buildings upon such allotted plots.

6. It is further contended that the impugned judgment and award of the High Court is otherwise contrary to the principles of law laid down by this Court in a catena of cases, and, therefore requested this Court to award just and reasonable compensation as awarded by the reference court.

7. Mrs. Asha Gopalan Nair, the learned counsel for respondent Nos. 1 and 2 and Mr. Shyam Divan, learned Senior Counsel for respondent No.3 have sought to justify the impugned judgment of the High Court, inter alia, contending that the learned single Judge of the High Court has rightly set aside the impugned judgment in the First Appeal after recording valid and cogent reasons for rejecting the finding recorded by the reference court on contentious issues by placing reliance upon the pre and post sale instances in relation to the non residential plots which are not comparable to the acquired land. Therefore, it is submitted that the High Court has rightly come to the conclusion on proper re-appraisal of evidence and held that the finding of fact recorded by the reference court in placing reliance upon the sale instances is in relation to small plots, whereas the land acquired is a bigger area. Therefore, the plots covered under sale instances are not comparable to the acquired land in order to arrive at a conclusion and record finding that the acquired land is comparable to the plots referred to supra. Further, the land of the owners has not acquired non agricultural potentiality and re-determination of the market value by the learned reference Judge on the basis of sale instances is erroneous and contrary to the judgments of this Court. The High Court, in support of its findings and conclusions has placed reliance upon the judgment of this Court reported in *Saraswati Devi and others Vs. U.P. Government & Anr*[2]. and another judgment in *Union of India Vs. Zila Singh and Ors.*[3] wherein this court after interpretation of Section 23 of Land Acquisition Act, 1894 (in short 'the L.A. Act'), has held that the sale price in respect of a small piece of land (one bigha in that case) cannot be the basis for determination of market value of a vast stretch of land (5484 bighas in that case). Therefore, the impugned judgment of the High Court in setting aside the judgment of the reference court must be accepted by this Court and does not call for interference by this Court. Hence, they have prayed for dismissal of this appeal.

8. With reference to the above rival legal contentions, the following points would arise for consideration of this Court:

I. Whether the impugned judgment passed by the High Court by reversing the judgment and award of the reference court is vitiated on the ground of erroneous finding and also error in law?

II. For what award the appellants are entitled to in this appeal?

9. The first point is required to be answered in the affirmative in favour of the appellants for the following reasons:-

The State of Maharashtra in exercise of its statutory power acquired the lands in favour of the Corporation by publishing the notification in the government gazette on 7.09.1991, and final notification published in the government gazette on 12.07.1992, for the purpose of industrial development by the Corporation in the State of Maharashtra. Undisputedly the acquisition of land is for non residential purpose as it

was required to establish industries through industrial entrepreneurs in the acquired land by forming industrial estate and carving out the industrial plots by the Corporation, which is purely a commercial purpose. This important aspect of the matter was required to be kept in mind by the Special Land Acquisition Officer at the time of determining the market value of the acquired land in exercise of his statutory power under Section 11 of the L.A. Act and the Special Land Acquisition Officer has awarded compensation at Rs. 50,000/- per hectare of the acquired land which does not reflect the correct market value.

10. Feeling aggrieved by the said award the appellants herein sought for reference to the reference court by filing claim petition under Section 34 of the Maharashtra Industrial Development Act, 1961 for enhancement of compensation by re-determining the market value. The Collector made reference to the reference court by acceding to the request of the land owners for re-determination of the market value of the acquired land. The appellants produced documentary evidence of sale instances of the plots which are situated in the near proximity of the acquired land and the reference court has examined their claim for enhancement of compensation and rightly re-determined the market value of their land by placing reliance upon the sale instances. The said claim was opposed by the respondents by filing their written statement, inter alia, contending that compensation awarded by the land acquisition officer is as per the sale consideration of the land covered in the sale instances which are situated nearby the acquired land. The claimants have rightly placed strong reliance upon the sale instances of small plots which are formed in the New Venkateshnagar layout. The sale deed Exh. 21 dated 17.3.1989 shows that the 120 sq. feet was sold for Rs. 3500/- and Exhs. 20 and 22 dated 03.11.1989 which plots measuring 1200 sq. feet sold for Rs.9000/- i.e. Rs. 7.50/- per sq. feet. The aforesaid sale deeds are no doubt prior to the issuance of preliminary notification under Section 4 of the L.A. Act. The other sale instance produced by the claimants, Exh. 23 from GRC 136 shows that plot No.22 about 1500 sq. feet has been sold for 18,000/- at the rate of Rs. 12 per sq. feet. The sale deed is dated 31.05.1993 i.e. three years later from the date of issuance of preliminary notification under Section 4 of the L.A. Act. Another sale deed Exh. 14 is in respect of G.No.605 wherein plot No. 8 measuring 45 x 14 sq. feet was sold for Rs. 35,000/- on 21.12.1994. The appellants also produced the sale deed dated 16.02.1990 at Exh. 33 showing that plot No. 34 and 35 admeasuring 60 x 30 feet situated at Venkateshnagar Layout was sold for Rs. 11,000/-. Another sale deed Exh. 34 shows that one plot No. 13 measuring 40 x 30 feet was sold for Rs. 9,000/- on 02.11.1991 which are all after the preliminary notification under Section 4 of the L.A. Act. The learned reference Judge has rightly placed reliance upon the said sale instances for comparison and held that the acquired land is comparable to the plots covered in the sale deeds referred to supra, as it has acquired non-agricultural potentiality and the acquired land is situated in the near proximity to the plots covered in the sale deeds.

11. The learned Judge of the reference court has referred to the notes of inspection of the site made by the Assistant Collector and Land Acquisition Officer on 21.11.1990, wherein they have stated that the acquired land is situated adjacent to Bhokar and on the eastern side of Bhokar Umri Road i.e. towards southern side of Bhokar - Bhainsa Road, and population of Bhokar is about 12000. It is further stated that there are various facilities in the said area like school and college. Bhokar is connected by Railway and State Road Transport. The learned reference Judge after referring to the

factual contention urged on behalf of the Land Acquisition Officer and the claim of the appellants and placing reliance upon the documentary and oral evidence on record, passed judgment by awarding just and reasonable compensation by re-determining the market value. The land G.No.133 is acquired for the purpose of Mini MIDC i.e. for non agricultural purpose and further with reference to Map. 4, the acquired land is on Nanded Bhokar – Bhainsa Highway. Further, on the basis of receipts produced at Exhs. 17 and 18, the claimant No. 2 Ashok Narayan Kondalwar has converted his share of land from G.No. 123 into non- agricultural purpose. To substantiate this fact the claimants produced the certificate issued by the Talathi, which is marked as Exh. 19. The learned reference Judge has also taken note of the fact that there is no evidence to prove that the acquired land was converted for non agricultural purpose prior to 14.06.1990. From Exhs. 40 and 41, it is clear that the possession of this land was taken on 19.6.1995 and prior to that date claimant No. 2 Ashok Narayan Kondalwar had converted his share of land into non agricultural purpose. The learned Judge did not consider the said documentary evidence and erroneously held that they are not helpful to the appellants. However, he has rightly placed reliance upon the sale instances on record and come to the correct conclusion and held that there is tendency for price of the land to increase in the locality and found fault with the Land Acquisition Officer in not determining the market value of the acquired land at the rate of Rs. 5/- per sq. feet after deducting 40% area of the acquired land which is used for the purpose of development. Therefore, the appellants are entitled for compensation as awarded by the learned Judge of the reference court.

12. The learned reference Judge has recorded a finding of fact stating that the acquired land is having non agricultural potentiality as it has been acquired for MIDC for the purpose of industrial development and further, it is an admitted fact that no crops were raised by the appellants upon the land. The claim of the appellants was partly allowed by the reference Judge holding that they are entitled for enhanced compensation at the rate of Rs. 5/- per sq. feet as per the calculations made in the judgment of the reference court.

13. Accordingly, the reference Judge has rightly re-determined the market value of the acquired land and awarded all statutory benefits like 30% solatium and interest and additional compound interest from August, 1993 to 6th March, 1995. Statutory interest under Section 38 of the L.A. Act was given, on enhanced compensation from 19.06.1995 to 18.06.1996 and thereafter @ 15% from 19.06.1996 till the date of realization of the amount by the appellants.

14. We have carefully examined the factual and legal contentions urged on behalf of the parties and also the findings recorded by the learned reference Judge in the judgment impugned in the First Appeal filed by the respondents before the High Court. The reference court has rightly placed reliance upon the sale instances for comparison with that of the acquired land after satisfying the fact that it has also acquired non-agricultural potentiality. The subsequent sale deeds in relation to the residential plots of New Venkateshnagar Layout, which were sold after the preliminary notification was issued in relation to the acquired land, the learned reference Judge has noticed the same and held that there is a trend of escalation of the price of land situated in the proximity of the acquired land. The said finding of fact is erroneously set aside by the High Court, holding that the learned reference Judge has erroneously applied the sale instances of the small residential plots of New Venkateshnagar Layout to the land acquired by the State government in favour of the M.I.D.C.

The Land Acquisition Officer while determining the market value has considered the acquired land as agricultural land and awarded inadequate compensation in favour of the appellants.

15. We have carefully examined the factual and legal contentions urged on behalf of the respondents keeping in view the decision of this Court in the case of *Sabha Mohammed Yusuf Abdul Hamid Mulla Vs. Special Land Acquisition Officer*[4], wherein this Court after interpreting Section 23 of the L.A. Act, 1894, referred to the various legal principles laid down by the Bombay High Court and this Court regarding the relevant criteria to be followed by the Land Acquisition Collector and Courts for determination of the market value of the land acquired for public purpose. At paragraph 5 of the above referred judgment, there is a reference to the Bombay High Court's judgment rendered in the case of *Nama Padu Huddar Vs. State of Maharashtra*[5], the relevant extracted portion is reproduced below:

“Judicial note can be taken of the fact that the industrial growth in and around Bombay has started with rapid stride from the year 1965 onwards. In fact, the growth is by leaps and bounds in the magnitude of industries as well as number of industries and virtually all the industries of the country are represented on the industrial estates scattered on this highway. It is also an admitted position that on this highway on all sides the facility of electric supply is available as also of abundant water supply. In the area in question it is also an admitted position that all the lands have suitable access roads to Zila Parishad and State Highway including lands which are the farthest from the highway.”

16. Further, in para 7 of *Sabha Mohammed Yusuf Abdul Hamid Mulla's* judgment, reference is made to the judgments in *Shashikant Krishanji v.*

Land Acquisition Officer[6] and *Nama Padu Huddar v. State of Maharashtra (supra)*, relevant portion of which is extracted below:-

“The land involved in the reference in hand and the land involved in *State of Maharashtra v. Ramchandra Damodar Koli*[7] are virtually identical situated in the same area bearing similar topographical and physical characteristics covered by the same Notification dated 3-2- 1970, when the nearby land of the land under reference fetched market value @ Rs 25 per square metre. On the date of notification, certainly the land under reference will fetch the same market value.”

17. Also paras 16 and 17 from *Sabha Mohammed Yusuf Abdul Hamid Mulla (supra)* are quoted hereunder:

“16. We have considered the respective arguments and carefully perused the record. It is settled law that while fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors:

(i) Existing geographical situation of the land.

(ii) Existing use of the land.

(iii) Already available advantages, like proximity to National or State Highway or road and/or developed area.

(iv) Market value of other land situated in the same locality/village/area or adjacent or very near the acquired land.

17. In *Viluben Jhalejar Contractor v. State of Gujarat*[8] this Court laid down the following principles for determination of market value of the acquired land: (SCC pp. 796-97) “17. Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under sub-section (1) of Section 4.

18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.”

18. Further, it would be worthwhile to refer to the portion which is extracted from *Atma Singh Vs. State of Haryana*[9] which para is referred to at para 18 in *Sabha Mohammed Yusuf Abdul Hamid Mulla's case (supra)* which reads thus:

“5. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, uses to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether nearabout town is developing or has prospect of development have to be taken into consideration.”

19. In para 22 of *Sabha Mohammed Yusuf Abdul Hamid Mulla's case (supra)*, the judgment of this Court in *Land Acquisition Officer Vs. L. Kamamma*[10] is referred to and the relevant portion of which is extracted hereunder:

“7. ... When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and therefore classification of the same into different categories does not stand to reason.”

20. Para 18 of this Court's judgment in the case of Faridabad Gas Power Project, NTPC Ltd.,etc Vs. Om Prakash & Ors., etc[11], is extracted thus:

“18. On the facts and circumstances of the matters before us and difference in quality and potentiality of the lands acquired, we are of the view that market value of the acquired lands for NTPC when compared to the lands acquired for Sector-II Faridabad, should be reduced by at least one-fifth (20%).”

21. It would be worthwhile to refer to the judgment of Privy Council decided on 23.02.1939 in the decision reported in Vyricherla Narayana Gajapatiraju Vs. Revenue Divisional Officer[12] wherein at para 24 it reads as under:

“24. It was then claimed on the appellant's behalf that the spring could but for its acquisition, have been used by him as a source of water supply either to the Harbour Authority or to the oil companies and others residing or carrying on business in the harbour area; and the appellant claimed to be compensated upon this footing. After a lengthy hearing before him in the course of which many questions of law and fact not now in issue were discussed, the learned Judge made his award. He found as a fact, and the fact cannot be disputed, that the water of the spring was on 13th February, 1928 capable of being used as a source of water supply to persons outside the plaintiff's land. He also found that the only possible buyers of the water at that date were the Harbour authority itself and the oil companies and labour camps that might be established as a result of the development of the Harbour and stated that this fact would be taken into consideration in fixing the amount of compensation. But after considering the authorities on the subject, he came to the conclusion as a matter of law that the value to a vendor of a potentiality of his land can be assessed even though there are no other possible purchasers beyond the acquiring authority. Other principles of law stated by him for his guidance in making his award were that it was the contingent possibility of the user that had to be taken as the basis of valuation and not the realized possibility and that the use to which the acquiring authority had actually put the property could be taken as a strong piece of evidence to show that the property acquired could be put to such use by the owner at the date of acquisition.”

(Emphasis supplied)

22. The judgment of Bombay High Court extracted in Sabhia Mohammed Yusuf Abdul Hamid Mulla's case (supra), and the principles laid down by this Court would clearly go to show that the relevant consideration for determination of market value of the acquired land is virtually identical. The nearby land of the land under reference fetched market value of Rs.25/- per sq. metre. In the judgment referred to supra it is held that judicial notice can be taken of the fact that the industrial growth in and around Bombay has started with rapid strides from the year 1965 onwards. In fact, the growth is by leaps and bounds in magnitude as well as number of industries and virtually all the industries of the country are represented on the industrial estates scattered on this highway.

23. The sale instances in relation to the small residential plots covered in the sale deeds Exhs. 20-21 are situated in the same area, which sales were prior to the issuance of the preliminary notification i.e. before 14.06.1990 and it has similar topographical and physical characteristics and the fact is that the land of the appellants is acquired for the purpose of industrial development, which has got the potentiality for development of the land as industrial estate and to carve out industrial plots in it. That the acquisition of the land is for commercial purpose should be the relevant criteria for determining the market value by both the Land Acquisition Officer and reference Court placing reliance upon the sale instances even in relation to small plots of land, though it is shown from the records that the acquired land on the date of notification is an agricultural land. But the acquired land has got non agricultural potentiality as the said land was proposed by the District Collector after identifying the land for acquisition and stated that it is suitable for the purpose of industrial development. Therefore, the principles laid down at para 16 of Sabhia Mohammed Yusuf Abdul Hamid Mulla's case and the principles laid down in Viluben Jhalejar Contractor's case referred to supra laid down the criteria for determination of the market value of the acquired land. Also, in Atma Singh's case (supra) it was stated that the criteria for the determination of the market value the potentiality of the acquired land should also be taken into consideration which has been explained stating that potentiality means capacity or possibility for changing or developing into a state of actuality. Further, the legal principles laid down in the case of Atma Singh (supra) at para 5 which portion is extracted above, gives us the criteria to be followed for determination of the market value of a property keeping in view its existing condition with all its existing advantages and its potential possibility when let out in its most advantageous manner. The various criteria laid down in the above referred case namely, the existing amenities like water, electricity, possibility of their further extension, whether near about the acquired land, town is developing or has prospect of development in future, have to be taken into consideration by both the Land Acquisition Collector and the courts for determination of the market value. The aforesaid advantages are very much abundantly available in respect of the acquired land as the said land is within the proximity of New Venkateshnagar Layout, wherein residential sites are formed, and it is on record and there is a school and college near the Highway. Therefore, the principles laid down in the aforesaid case are aptly applicable to the fact situation of the case in hand. Hence, we have to apply the aforesaid principles laid down in the cases of Atma Singh & Sabhia Mohammed Yusuf Abdul Hamid Mulla (supra) to the case on hand.

24. In view of the foregoing reasons, we are of the view that the findings of fact and reasons recorded by the learned Judge of the reference court in determining the market value of the acquired land are well founded and the same are based on facts, cogent and legal evidence adduced on record by the appellants. The same has been rightly accepted by the learned reference Judge after having noticed that the Land Acquisition Officer in a casual manner rejected the claim of the appellants and determined the meager sum of Rs. 50,000/- per hectare as the market value of the land which is unrealistic and contrary to the legal evidence on record and the law laid down by this Court in the cases referred to supra. The findings of fact recorded by the reference Judge on the relevant issue has been erroneously set aside by the High Court without assigning valid reasons. The findings and reasons recorded by the High Court in its judgment are contrary to the facts and legal evidence and various legal principles laid down by this court in the cases referred to supra. Therefore, we have to record our finding that reversing the judgment and award of the reference court is not only erroneous on facts but is also erroneous in law. Accordingly, we answer the first point in favour of the appellants.

25. Since, we have answered the first point in favour of the appellants, the second point is also answered in favour of the appellants and it would be just and proper for this Court to restore the judgment and award passed by the reference court. Since we have affirmed the award of the reference court, having regard to the undisputed fact that this acquisition is of more than 23 years, it would be just and proper for this Court to direct the respondent No.3 – M.I.D.C. to issue the Demand Draft in favour of the landowners/appellants or their legal representatives or deposit the same in their bank accounts within six weeks from the date of receipt of a copy of this judgment and submit the compliance report before the reference court.

26. The appeal is allowed accordingly. There shall be no order as to cost.

... .. J [G . S . S I N G H V I]
J. [V. GOPALA GOWDA] New Delhi, August 1, 2013

- [1] JT 2002 (3) SC 176
- [2] AIR 1992 SC 1620
- [3] (2003) 10 SCC 166
- [4] (2012) 7 SCC 595
- [5] 1994 BCJ 316
- [6] 1993 BCJ 27
- [7] (1997) 2 Mah. LR 325
- [8] (2005) 4 SCC 789
- [9] (2008) 2 SCC 568
- [10] (1998) 2 SCC 385
- [11] (2009) 4 SCC 719
- [12] AIR 1939 PC 98
