

Supreme Court of India

Municipal Corpn. Of Greater ... vs C.B.I on 2 May, 1994

Equivalent citations: 1994 AIR 2385, 1994 SCC (4) 690

Author: V N.

Bench: Venkatachala N. (J)

PETITIONER:

MUNICIPAL CORPN. OF GREATER BOMBAY

Vs.

RESPONDENT:

C.B.I.

DATE OF JUDGMENT 02/05/1994

BENCH:

VENKATACHALA N. (J)

BENCH:

VENKATACHALA N. (J)

RAMASWAMY, K.

CITATION:

1994 AIR 2385

1994 SCC (4) 690

JT 1994 (3) 535

1994 SCALE (2) 813

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by VENKATACHALA, J.- These appeals by special leave, directed against the common judgment dated 5th, 6th and 7th August, 1974 rendered in First Appeal Nos. 386-395 of 1968 by the High Court of Judicature at Bombay, are required to be decided by us by considering and answering three important questions:

(i) Does the provision in sub-section (1) of Section 301 of the Bombay Municipal Corporation Act, 1888 - "the BMC Act" specify a principle of determination of compensation payable to the owners of the buildings or lands acquired for a public street under Sections 298 and 299 thereof?

(ii) Does the principle specified in sub-section (1) of Section 301 of the BMC Act, for determination of compensation payable to the owners for their buildings or lands acquired under Sections 298 and 299 thereof, warrant determination of such

compensation according to the market value of such acquired buildings or lands?

(iii) What method could be adopted for determining the amount of compensation payable under sub-section (1) of Section 301 of the BMC Act?

2. The salient facts which have led to the filing of the present appeals lie in a narrow compass: Gowalia Tank Road and Bhulabhai Desai Road lying within the area of the Bombay Municipal Corporation - "the BMC" are public streets envisaged under the BMC Act. In the year 1962, the BMC which resolved to improve the said public streets by widening them, acquired out of the lands of respondent/s in these appeals, certain portions which fell within the regular line of the public streets and took their possession as provided for in sub-section (2) of Section 298 and sub-section (1) of Section 299 of the BMC Act. The Commissioner who was liable under sub-section (1) of Section 301 of the BMC Act, to pay compensation to the respondent/s in these appeals for their acquired portions of lands, offered to pay them compensation at an uniform rate of Rs 80 per square yard of land. But, the respondent/s, who disputed the adequacy of the said compensation offered to be paid to them, filed applications before the Chief Judge of the Court of Small Causes, Bombay, praying for grant of higher compensation for their acquired portions of lands, by taking recourse to the provision in Section 504 of the BMC Act. The Chief Judge, who entertained those applications, with the consent of parties, clubbed all the said applications, recorded common evidence thereon and decided them by his common judgment dated 14-3-1968. Under that common judgment, the compensation made payable to the respondent/s in these appeals - the owners, for their acquired portions of lands, was their market value worked out at a rate ranging from Rs 450 per sq. yard to Rs 640 per sq. yard. The BMC assailed that common judgment of the learned Chief Judge, as granting excessive compensation, by filing appeals in the High Court of Judicature at Bombay. A Division Bench of the High Court, which heard those appeals, by its common judgment dated the 5th, the 6th and the 7th August, 1974, while allowing one of them partly by reducing the compensation in some measure, dismissed the rest. According to the Chief Judge of the Court of Small Causes and the Division Bench of the High Court, what was payable by way of compensation under sub-section (1) of Section 301 of the BMC Act to the owners, for the portions of their lands acquired under either Section 298 or Section 299 thereof, was the market value of such portions and, therefore, the market value obtainable by the owners for their respective entire lands had to be apportioned between the unacquired portion of the land and the acquired portion of the land and it was that much of the market value apportionable to acquired land, which was liable to be paid to the owner as compensation for his acquired land. Consequently, both the Chief Judge of Court of Small Causes and the Division Bench of the High Court determined the market value of the entire land of respondent/s concerned in each appeal, of which his/their acquired portion of land formed part and apportioned to such acquired portion of land out of the market value of the entire land so determined, according to the ratio of the area worked out on square yard basis. The market value of the acquired portion of land so determined was, in fact, treated as the loss sustained by the respondent-owner concerned and the Commissioner was directed to pay the same to him/them as compensation required to be paid under sub-section (1) of Section 301 of the BMC Act for his/their acquired land. For the unpaid amount of such compensation, interest at 6% per annum was also ordered to be paid from the date of taking possession of the land till its actual payment. The present appeals by special leave are filed on behalf of the BMC, against the said judgments of both the Court

of Small Causes and the High Court, assailing the amounts of compensation determined for the acquired portions of lands of the respondent/s, on the basis of the principle of their market value, purporting to be under sub-section (1) of Section 301 of the BMC Act.

3. The learned counsel appearing for the BMC the common appellant in all the present appeals, contended that the Court of Small Causes, as well as, the High Court had gone wrong in determining the compensation payable to the owner under Sub-section (1) of Section 301 of the BMC Act for his land acquired under Sections 298 and 299 thereof, was its market value, when such compensation to be determined Could not have been anything other than the loss which that owner had to sustain as a consequence of such acquisition and the expense which that owner had to incur as a consequence of such acquisition. He also contended that the method of determining the amount of market value of the whole land of the respondent in each appeal including that which was acquired and apportioning that market value to the portion of the acquired land, was indeed, not a method which the Court of Small Causes and the High Court, could have adopted for determining- the compensation payable under sub-section (1) of Section 301 of the BMC Act. On the other hand, learned counsel who appeared for contesting respondent/s in the present appeals, sought to support the judgments of the Court of Small Causes and the High Court by which it has been held that the compensation payable to the owners for their portions of lands acquired by the BMC under Sections 298 and 299 thereof cannot be anything but their market value, and when such market value was given as compensation to owners for their acquired lands, there was no warrant for interfering with the same, by this Court. They also sought to obtain support for their contention from the decision of Privy Council in *Municipal Council of Colombo v. Kuna Mana Navanna Suna Pana Letchiman Chettiar*<sup>1</sup>.

4. The questions which we have formulated at the outset as those requiring our consideration and answers, in deciding the present appeals, since take within their fold the aforesaid rival contentions of learned counsel for the contesting parties, they could now be considered and answered, in their serial order.

Re : Question (i)

5. Does the provision in sub-section (1) of Section 301 of the BMC Act specify a principle of determination of compensation payable to the owners of buildings or lands acquired for public streets under Sections 298 and 299 thereof, is the question.

6. As the answer to the said question has to necessarily depend on the content of sub-section (1) of Section 301 of the BMC Act, it could be reproduced to understand its content thus:

"301. (1) Compensation shall be paid by the Commissioner to the owner of any building or land acquired for a public street under Section 298 or 299, for any loss which such owner may sustain in consequence of his building or land being so acquired and for any expense incurred by such owner in consequence of the order made by the Commissioner under either of the said sections; provided that any increase or decrease in the value of the remainder of the property of which the

building or land so acquired formed part likely to accrue from the setback to the regular line of the street shall be taken into consideration and allowed for in determining the amount of such compensation."

The said sub-section as could be seen from its content while provides for payment of compensation to the owner for his building or land acquired under Section 298 or Section 299 of the BMC Act, requires that such compensation could comprise of, loss which such owner may sustain and expense which such owner may incur, as a consequence of acquisition of his building or land. In this context, if it is noted, that what is acquired under Section 298 of the BMC Act is the portion of land within the regular line of public street, that is, the portion of land occupied by a building fallen down or burnt down or taken down, and that what is acquired under Section 299 of the BMC Act is the portion of land occupied by a building external to the building abutting the public street or a verandah, a step, a platform or other structure within the regular line of public street, the same furnishes the 1 (1947) AC 188 : AIR 1947 PC 118:51 CWN 504 reason as to why the principle of compensation required to be adopted under sub-section (1) of Section 301 of the BMC Act, for payment of compensation for such acquisition is confined to merely the loss sustained and the expense incurred, as a consequence of such acquisition. Thus, when sub-section (1) of Section 301 of the BMC Act requires the loss sustained by the owner as a consequence of acquisition and the expense incurred by the owner as a consequence of acquisition, to be made good to such owner by way of compensation, what is found in that sub-section cannot be anything other than the principle of determination of compensation which is deliberately or wantonly specified therein, having regard to the vulnerability of a portion of land or a portion of building being acquired for the public street. This situation, makes us take the view that sub- section (1) of Section 301 of the BMC Act specifies the appropriate principle of determination of compensation for a building or a land acquired either under Section 298 or Section 299 thereof. Our view that sub-section (1) of Section 301 of the BMC Act specifies the principle of determination of compensation for building or land acquired under Section 298 or Section 299 thereof, gives no room for doubting, since it receives, fortification from a Constitution Bench decision of this Court in Municipal Corpn. of the City of Ahmedabad v. State of Gujarat city<sup>2</sup>, wherein dealing with the content of the provision in sub- section (1) of Section 216 of the Bombay Municipal Corporation Act 1949 which is exactly similar to the provision in sub-section (1) of Section 301 of the BMC Act, it has been held thus: (SCC pp. 812, 813, para 15) "Since full indemnification in accordance with judicial norms is the goal set by the Act, it is implicit in such a provision that the rules for determination of compensation shall be appropriate to the property acquired and such as will achieve the goal of full indemnity against loss. In other words, the Act provides for compensation to be determined in accordance with judicial principles by the employment of appropriate methods of valuation so that the person who is deprived of property is fully indemnified against the loss. This, by itself in our opinion, is a specification of a principle for the determination of compensation."(emphasis supplied)

7. Hence, we answer the question in the affirmative and to the effect that sub-section (1) of Section 301 of the BMC Act, itself, specifies the principle of determination of compensation payable for land or building acquired under either of the Section 298 or Section 299 thereof. Re: Question (ii)

8. Principle of determination of compensation payable to owners for the portions of their building or lands acquired either under Section 298 or Section 299 of the BMC Act, specified under sub-section (1) of Section 301 of the BMC Act, as could be seen therefrom requires that such compensation shall be confined only to the loss sustained or the expenses incurred, by the owner, as a consequence of acquisition of his building or land lying within 2 (1972) 1 SCC 802: (1973) 1 SCR 1 the regular line of the public street. If that be so, question of determining the compensation under sub-section (1) of Section 301 of the BMC Act for acquisition of lands lying within the regular line of public street under either Section 298 or Section 299 thereof, on the basis of their market value, cannot arise. Market value could, undoubtedly, be a principle on the basis of which compensation may be required to be determined under certain statutes, for lands acquired thereunder. For instance, the Land Acquisition Act, 1894 provides for payment of compensation for the land acquired thereunder on the basis of market value, that is, the price which a willing vendor might reasonably obtain from a willing purchaser for such land. It may be recalled in this context that in fact sub-section (1) of Section 301 of the BMC Act, before its amendment by Bombay Act 1 of 1925, also required payment of compensation for lands acquired under Sections 298 and 299 of the BMC Act, on the basis of market value, in that, it read:

"301. (1) Compensation shall be paid by the Commissioner to the owner of any building or land acquired for a public street under Section 298 or 299, for the value of the said land and for any loss, damage or expense sustained by such owner in consequence of the order made by the Commissioner under either of the said sections."

9. As seen from the said unamended sub-section, compensation was payable to the owner for his land or building acquired for a public street under either of the Sections 298 or 299 of the BMC Act, included the value of the land. But, sub-section (1) of Section 301 of the BMC Act as it stands amended, even though specifies the principle of compensation payable for land acquired under either of the Sections 298 or 299 of the BMC Act, does not require the payment of compensation to be paid thereunder, to include the value of land. The amended sub-section, therefore, makes it clear that the payment of value, that is, market value, as compensation for the acquired land is, in fact, excluded thereunder. If that be so, to hold that the market value of the acquired land is payable as compensation to the owner under sub-section (1) of Section 301 of the BMC Act for the acquired lands envisaged thereunder, is to order something to be done which the Legislature required, not to be done.

10. Indeed the decision of the Privy Council in *Municipal Council of Colombo v. Kuna Mana Navanna Suna Pana Letchiman Chettiar*<sup>1</sup>, relied upon by counsel for respondent/s to support the view of Court of Small Causes and the Division Bench of the High Court that, that compensation payable under sub-section (1) of Section 301 of the BMC Act, is the market value of the land acquired under either of the Section 298 or Section 299, goes against such view. The Privy Council in that case was concerned with a provision which provided for payment of compensation for a land acquired for a public street according to the value of the land as required by the statute - the Land Acquisition Ordinance. When the judgment of Supreme Court of Colombo appealed against, indicated that the compensation was ordered to be paid according to the loss sustained by the owner of the land

acquired for the public street, instead of ordering compensation, according to the market value of the acquired land, the Privy Council observed thus:

"The Supreme Court in valuing the acquired strip as part of the rest of the land of the respondent which is not either actually or nationally in the market, have not ascertained the market value of the acquired strip; they have attempted to ascertain the loss which the respondent has sustained by reason of the acquisition of the acquired strip. That method finds no warrant in the Ordinance."

11. Thus, the above decision of the Privy Council, if anything, makes it clear that what is to be paid by way of compensation for a land acquired under a statute is what is required to be paid thereunder, by way of compensation for the acquired land and not payment of something by way of compensation which is not envisaged under the statute.

12. Hence, our answer to the question is that the principle specified in sub-section (1) of Section 301 of the BMC Act for determination of compensation payable to the owners for their lands or buildings acquired under either of the Section 298 or Section 299 thereof, does not warrant determination of compensation according to market value of such building or land.

Re : Question (iii)

13. Method adoptable for determining the amount of compensation payable to the owners under sub-section (1) of Section 301 of the BMC Act for land or building acquired under either Section 298 or Section 299 thereof, arises for consideration here. The compensation payable under sub-section (1) of Section 301 of the BMC Act to the owner of the acquired land or building can only be the loss sustained and the expense incurred by the owner because of such acquisition and not the market value of the acquired building or land, as pointed out by us hereinbefore while considering Question (ii). Therefore, compensation payable under the said sub-section should be the amount which is required to be made good to the owner towards reimbursement of his loss sustained, if any, on account of acquisition and his expense incurred, if any, on account of acquisition. Sometimes there may not be any loss sustained and sometimes there may not be any expense incurred. At other times, there may be both loss sustained and expense incurred by the owner. Therefore, depending upon a given situation, what should be the compensation payable under that sub-section, has to be determined. Moreover, as is required by the proviso to the said subsection "any increase or decrease in the value of the remainder of the property of which the building or land so acquired formed part, likely to accrue from the setback to the regular line of the street shall be taken into consideration and allowed for", in determining the amount of such compensation.

14. If such amount, is the compensation payable to the owner under the said sub-section, what method should be adopted for determining such amount of compensation is the real question, which needs our answer.

15. The method which in our considered opinion, is the most appropriate for adoption in determining the compensation payable under sub-section (1) of Section 301 of the BMC Act to the

owner for his acquired property, having regard to the determinants or indicia specified in that sub-section, is that which should necessarily involve the following exercise:

(1)Of determining the market value of the whole property or land of the owner before a portion of that property or land was acquired under either Section 298 or Section 299 of the BMC Act.

(2)Of determining the market value of the remainder property left with the owner after a portion of it got acquired under either Section 298 or Section 299 of the BMC Act. That market value of the remainder property must be that determined taking into consideration the increased value accrued to it or decreased value suffered by it, as a result of improved street formed by acquisition of its portion and acquisition of similar portions of properties of others. Whenever the remainder property gets the benefit of improved street formed with acquired portions of lands, it can be presumed in the absence of contrary evidence that there is increase in its value, although the quantum of increase ought to depend on extent or strips of lands acquired for the improvement of the street and importance gained by it. (3)If the amount of the market value of the property, as determined under item (2) falls short of the amount of market value of the property as determined in item (1), it is that amount of the shortfall, which could be regarded as the loss to the owner for his acquired portion of the property, the principal component of compensation payable under subsection (1) of Section 301 of the BMC Act to the owner for his acquired portion of property or land.

(4)Expenses incurred by the owner, if any, on account of acquisition of a portion of his property if not already taken into consideration in determining the market value of the remainder property under item (2), then that amount of expenses incurred by the owner should be regarded as the other component of compensation payable to him under subsection (1) of Section 301 of the BMC Act. (5) The amount of loss in item (3) and the amount of expense in item (4) together constitute the total compensation payable under sub-section (1) of Section 301 of the BMC Act to the owner for his acquired property or land.

16.How by adoption of the said method the amount of compensation payable under sub-section (1) of Section 301 of the BMC Act is determinable could be illustrated with reference to a hypothetical case of acquisition of 20 sq. mts. of land out of 100 sq. mts. of land whereby the owner is allowed to retain the remainder land of 80 sq. mts. of land.

17.Amount of market value to be fetched for 100 sq. mts. of land before acquisition of its portion, is found to be, say Rs 180 per sq. mt. Such market value would be 100 times Rs 180, that is, Rs 18,000.00. Amount of market value to be fetched for 80 sq. mts. of remainder land, is found to be, say of Rs 200 per sq. mt., such market value would be 80 times Rs 200, that is, Rs 16,000.00. The amount of market value of the entire 100 sq. mts. of land before a portion of it was acquired, minus the amount of market value of the remainder land would furnish the amount of loss sustained by the

owner, that is, Rs 18,000.00 minus Rs 16,000.00 = Rs 2000.00. The loss so sustained by the owner as a consequence of acquisition of a portion of his land and the amount of expenses, say Rs 1000.00, incurred by him because of the acquisition, (such expenses if not already included in determining the market value of the remainder land of 80 sq. mts), together, would be the compensation. That is Rs 2000.00 + Rs 1000.00 = Rs 3000.00. Therefore, compensation payable under sub-section (1) of Section 301 of the BMC Act to the owner for his acquired land, would be Rs 3000.00.

18.Hence, our answer to the question is that the method of determination of compensation payable under Section 301(1) of the BMC Act to the owner for his acquired property or land under either Section 298 or Section 299 thereof, requires the assessment of the loss sustained by the owner as a consequence of acquisition, such loss being the amount of market value of the property or land as a whole, as stood before its acquisition, minus the amount of market value of the remainder property or land and assessment of the expenses incurred by the owner as a consequence of acquisition. The said method has commended itself for our acceptance, since it accords with the principle specified in sub-section (1) of Section 301 of the BMC Act for determination of compensation payable to the owner of a property or land acquired under either Section 298 or Section 299 thereof. However, what method should be adopted for determining the market value of the whole property of the owner or remainder property of the owner, shall, as it ought to be, depend on the nature of property concerned.

19.There is, however, another question which requires our consideration and answer. That question concerns the payment of interest on the amount of compensation payable under sub-section (1) of Section 301 of the BMC Act to the owner for his acquired property referred to therein.

20.Sub-section (1) of Section 301 of the BMC Act as it stands does not provide for payment of interest on the amount of compensation payable to the owner for his properties acquired either under Section 298 or Section 299 of the BMC Act. There is no other provision also found in the BMC Act providing for payment of interest on such amount of compensation. The question is, if the statute which provides for acquisition of property and payment of compensation therefor, does not provide for payment of interest on such compensation, does any interest become payable.

21.It is now settled by three-Judge Bench decision of this Court in Union of India v. Hari Krishan Khosla<sup>3</sup>, that no interest is payable on the compensation payable under the Requisitioning and Acquisition of Immovable Property Act, since there is no provision made in that regard in that Act. The ratio of the said decision since forbids payment of interest on the amount of compensation payable under sub- section (1) of Section 301 of the BMC Act, we are constrained to hold that no liability arises for payment of interest on such compensation.

22.Now coming to the facts of the cases which have led to the filing of the present appeals by the BMC, what has been done in the judgments of the Chief Judge of the Court of Small Causes and the High Court appealed against, is to determine the amount of market value, as such, of the acquired portions of the lands of respondent/s in the appeals and order payment of such amounts of market value as compensation along with 6 per cent interest per annum from the date of taking possession of the lands till the date of its payment.



23. In answering the various questions considered by us hereinbefore, we have held that the compensation payable under sub-section (1) of Section 301 of the BMC Act for the properties acquired under either Section 298 or Section 299 thereof cannot be determined on the basis of their market value, as it would go against the principle of determination of compensation specified in that sub-section and that no interest shall be payable on such amount of compensation for delayed payment, as the same is not made payable by any provision in the BMC Act. Hence, the judgment of the Chief Judge of Small Cause Court, as well as, the judgment of the High Court, appealed against in these appeals, directing payment of compensation for the acquired portions of lands, according to their actual market value along with interest thereon @ 6 per cent per annum, become unsustainable and are liable to be set aside by allowing the present appeals. Then, do the cases under present appeals, require to be remanded to the Chief Judge of the Court of Small Causes, Bombay for their disposal in the light of this judgment, is the question, which calls for our consideration.

24. It was submitted by learned counsel for the respondent/s, that we should instead of remanding the cases under appeals to the Chief Judge of the Court of Small Causes at Bombay for fresh disposal in accordance with this judgment, as was suggested by us, the amounts of compensation awarded to the respondent/s in the appeals having regard to the fact that a period of 20 years has elapsed from the year in which the acquisitions concerned were made, and the total amounts awarded, that is, about 11 lakhs, not being a very big amount from the point of the BMC, should be allowed to stand undisturbed. We have given our anxious consideration to the submission. What has been now done by the Court of Small Causes as well as the High Court is to determine the market value of the whole of the land 3 1993 Supp (2) SCC 149 of each of the respondent/s in the appeals, as stood before Its portion was acquired, on square yard basis and award out of that amount of compensation, the amount of market value apportionable to the acquired portion of the land, according to its area on square yard basis. If the material, as to what was the total extent of land of the respondent/s in each of the appeals, before a portion of it was acquired, was made available to us, we would have ourselves determined the compensation, according to the method which is already suggested by us for adoption. When such material, is unavailable, we have no option but to remand the cases for disposal by the Chief Judge of the Court of Small Causes at Bombay in the manner which we shall presently indicate.

25. The market value of the remainder land (land left out after acquisition) of respondent/s in each of the appeals, will have naturally increased, due to the advantage got by it on account of improved road made by acquisition of their several parcels of lands. In the absence of evidence of such increased value, in our view, the facts and circumstances of the present cases warrant granting of an increase in the market value of the remainder land of each of the respondent/s by 10 per cent.

26. Therefore, the Chief Judge, Court of Small Causes must firstly, find out the total market value of the remainder land of each of the respondent/s in the appeals, according to the rate per square yard already fixed for it by the High Court and secondly add to such market value 10 per cent increase adverted to. Then, the Chief Judge must also find out, separately, the amount of market value of the whole land of respective respondent/s in each of the appeals again finding out such market value according to the rate per square yard already fixed by the High Court.

27.The amount of market value of the whole land of the respondent/s in each of the appeals arrived at, as stated, minus the amount of market value of the remainder land of respective respondent/s arrived at, as stated, shall be treated as the loss sustained by each of them, as a consequence of acquisition of their respective portions of land. Such amount of loss, if any, shall alone be the amount, to be ordered to be paid to the respondent/s concerned, as compensation payable to him/them, under sub- section (1) of Section 301 of the BMC Act, inasmuch as there is no claim or evidence in the cases as to the expenses incurred, by him/them, as a consequence of acquisition, which would have otherwise become payable as a component of compensation under that sub-section. That no interest is payable on the amount of compensation to be ordered to be paid, shall, however, be noted.

28.In the result, we allow these appeals, set aside the judgments of tile Chief Judge of Small Cause Court at Bombay and of the High Court of Bombay, appealed against, and remit the cases to the Court of the Chief Judge of Small Cause Court at Bombay for deciding them according to the directions contained and indications given in this judgment, after hearing parties or their counsel. However, in the circumstances of these appeals, we make no order as to costs.