

Executive Engineer and Others Vs. Ragho S/O Laxman Badkal and Others

Executive Engineer and Others Vs. Ragho S/O Laxman Badkal and Others

SooperKanoon Citation : sooperkanoon.com/949434

Court : Mumbai Nagpur

Decided On : Oct-23-2012

Judge : M.N. Gilani

Appeal No. : First Appeal Nos.762 of 2007, 860 of 2007, 1486 of 2008, 1487 of 2008 & 165 of 2009 With Cross Objection Nos. 16 of 2011 [IN F.A. No.1486 of 2008] & 22 of 1012 [In F.A. No.165 of 2009]

Appellant : Executive Engineer and Others

Respondent : Ragho S/O Laxman Badkal and Others

Advocate for Def. : Mrs. Deshpande

Judgement :

Oral Judgment:

These appeals and cross appeals are arising from the judgment and award passed in between 28.9.2006 to 20.10.2006 by the Reference Courts at Kelapur - Pandharkawada, district : Yavatmal. The particulars of the survey numbers, land acquired, compensation granted by S.L.A.O. and by Reference Court are reproduced in the following chart:

Sr. No.	First Appeal No	Survey No./Gat No.	Total area (H.R.)	Area acquired (H.R.)	Name of owner
---------	-----------------	--------------------	-------------------	----------------------	---------------

1	2	3	4	5	6
1	762/07	31	0.88	0.88	RaghoLaxman Badkal (Respdt)
2	860/07	30	4.02	4.02	JagoLaxman Badkal. (Respdt)
3	1486/08 cross obj. 16/11	320 317	1.72 2.58	1.72 2.58	PandurangMaroti Awari (Respdt)
4	1487/08	18	1.62	1.62	RajendraprasadLaxman Gaikwad (Respdt)
5	165/09 Cross-Obj. 22/12	301	2.23	2.23	Anil Bapurao Ladke (Respdt)

Compensation awarded by S.L.A.O.	LAC No.	Date of Decision	Compensation by Reference court
7	8	9	10
Rs.27,000/- P.H. Rs.1,500/- P.H. for P.K.	135/04 [Old 71/04]	29/9/06	Rs.85,000 P.H.
Rs.27,000/- P.H. Rs.1,500/- P.H. for P.K.	141/04 [Old 77/04]	28/9/06	Rs.85,000/- P.H.

Rs.27,000/- P.H.	130/04		
Rs.1,500/- P.H. for P.K.	[Old 66/04]	20/10/06	Rs.88,000/- P.H.
Rs.32,000/- P.H.	136/04		
Rs.1,500/- P.H. for P.K.	[Old 72/04]	19/10/06	Rs.85,000/- P.H.
Rs.32,000/- P.H. Rs. 1,500/- P.H. for P.K.	28/03 [Old 23/03]	19/10/06	Rs.85,000/- P.H.

2] Mr. Patil, learned counsel appearing for the appellant contended that there being no evidence produced on record, the learned Reference Court ought not to have enhanced the compensation from Rs.27,000/- per hectare granted by the S.L.A.O. to Rs.85,000/- per hectare. According to him, the learned Reference Court adopted erroneous approach while entertaining these references.

3] Learned A G P, appearing for the State supported the contention advanced by Mr. Patil.

4] Mrs. Deshpande, appearing for the respondents / cross-objectors, contended that whatever the compensation awarded by the learned Reference Court is very much on the lower side. According to her, by producing on record overwhelming evidence, the land owners satisfactorily discharged the burden which lay upon them. In that view of the matter, no interference with the judgment and award impugned is warranted, she urged.

5] Point that arises for my consideration is:

Whether the compensation awarded by the Reference Court is just and fair?

6] Sale instance i.e. exhibit 41 relied upon by the land owners relates to the land of the same village i.e. Navargaon it being just 2 years prior to the date of notification, learned Reference Court was justified in fixing the market value after considering the same. However, from the observations made in paragraph 13 of the judgment and award it appears that the learned Reference Court felt hitch in relying upon the Index II in view of the provisions of section 51-A of the Land Acquisition Act. However, in later part of the judgment, the learned Reference Court observed that there was no challenge to the genuineness to the sale transaction and therefore, he proceeded to draw presumption about its genuineness and then considered it as a cogent evidence. In fact, after the decision of the Apex Court in Cement Corporation of India ..vs.. Puriya reported in (2004) 8 SCC 270, this issue remains no longer res-integra. The Division Bench of this Court in case of MIDC..vs.. Shaikh Khatinabi Abdul Gafar Shaikh and others, reported in 2008(2) Bom.C.R. 34 relying upon the decision in Cement Corporation's Case supra observed thus:

“It is not in dispute that Shri Ladekar's land was purchased by Shri Dwivedi and that copy of Index II in respect of the sale is placed on record at Exh 32. The learned Advocate for the appellant submitted that for relying on the sale instances the party ought to have been examined. Such a view undoubtedly held field even after insertion of section 51(A) of the Land Acquisition Act. In (Special Deputy Collector ..vs.. Kurra Sambasiva Rao), reported at 1997 DGLS 725:A.I.R.1997 S.C.2625 the Apex Court held that the sale instance can be proved only by examining the vendor or vendee. However, subsequently, in (State of Haryana ..vs.. Ram Singh) reported at 2001 DGLS 895:A.I.R.2001 S.C.2532 the Apex Court held that the registered documents can be seen even without examining the parties. In (Cement corporation of India ..vs.. Puriya) reported at 2004 DGLS 713: 2004 A.I.R.S.C.4830:(2004)8S.C.C.270, all these authorities, were considered and it was held that certified copy of document registered under the Registration Act, including copy given under section 57 of the Act, may be accepted as evidence of the transaction recorded. In view of this objection of non-examination of the vendor or vendee cannot be sustained”

7] In that view of the matter, the evidence in the nature of the certified copy of the Index II is very much admissible even without examining vendee and vendor. This transaction shows that for the area of 1.21 H.R. value fetched was Rs.74,300/- P.H. and this happened 2 years earlier. If 10% increase per year is added, the value would be more than Rs.90,000/- P.H.

8] Learned counsel for the appellant pointed out admission given by land owner A.W. 1 Ragho [L.A.C.No.132/2004] to the effect that 3 to 4 years prior to application of notification under section 4 there was rumour that the Bembla Project was going to be implemented and for that lands would be acquired. This does not mean that whatever the sale transactions were effected were not bonafide or deliberately the price was inflated. To a specific suggestion A.W.1 Ragho denied that transaction Exhibit 25 is a bogus and was prepared with an eye on the proposed acquisition. It is pertinent to note that the appellant did not undertake any exercise to point out some more sale instances, at least to raise a doubt that they were deliberately made to claim higher amount of compensation. In absence of such evidence the sale instance Exh.41, which prima facie, appears genuine, cannot be discarded.

9] Mrs. Deshpande, learned counsel appearing for the respondents/cross-objectors relied upon the sale transaction at exhibit 45 [in F.A. No.165/2009] to claim enhanced amount of compensation than whatsoever has been awarded by the learned Reference Court. This transaction is dated 24.12.1990 which was made in pursuance to the agreement of sale. Frankly speaking no importance can be attached to the agreement of sale exhibit 46 which was not registered. Moreover, there is no evidence to prove its genuineness. Thus what appears is that on 24.12.1990, the land in the village, which is adjoining to village Navarwgaon fetched value of Rs.1,10,000/- i.e. about Rs.55,000/- per acre. Having regard to date of notification issued under section 4 i.e. dated 6.2.1997, this sale instance does not appear to be proximate from time angle.

10] In that light of the matter, there appears no scope for interference with the judgment and award impugned.

11] Accordingly, the appeals as also the cross-objections are dismissed. Parties are left to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com