

(2004) 04 BOM CK 0127

Bombay High Court

Case No: First Appeal No. 764 of 1991

The State of Maharashtra

APPELLANT

Vs

Smt. Meharunnisa Mahamadalli
Khot (since deceased, through
legal heirs Riaz M. Ali Khot,
Liyakat M. Ali Khot, Smt.
Faridabegam M. Ali Khot and
Smt. Jkiyabegam M. Ali Khot)

RESPONDENT

Date of Decision: April 22, 2004

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 23(1), 23(1A), 4

Citation: (2004) 4 ALLMR 30 : (2004) 6 BomCR 301 : (2005) 1 MhLj 290

Hon'ble Judges: P.V. Kakade, J

Bench: Single Bench

Advocate: K.K. Tated, A.G.P, for the Appellant; K.B. Irani, instructed by Harish Joshi and Co., for the Respondent

Judgement

P.V. Kakade, J.

This appeal preferred by the State against the judgment and order dated 29.4.1987 passed by the Civil Judge, Sr. Divn., Alibag in L.A.R. No. 7 of 1982, wherein enhanced compensation was allowed to the respondent claimant at the rate of Rs. 12/- per sq. mtr. as against the enhanced compensation granted by the Spl. Land Acquisition Officer (hereinafter referred to as "the S.L.A.O.") at Rs. 5.50 per sq. mtr. alongwith statutory benefits under different components under the provisions of the Land Acquisition Act (hereinafter referred to as "the said Act").

2. Heard Shri Tated, the learned A.G.P. for the State and learned counsel Shri Irani for the respondent.

The S.L.A.U., Metro Centre No. 1, Panvel, Dist. Raigad acquired lands of the respondent for New Bombay Metro Project admeasuring 60.7 Areas i.e. 6070 sq. mtrs. for the public purpose noted above. The notification u/s 4 of the said Act came to be issued on 3.2.1970 and the date of the award was 27.11.1981 whereby the compensation was granted to the respondent at the rate of Rs. 5.50 per sq. mtr. which amounted to Rs. 38,367.45 in toto. Therefore, the claimant filed reference u/s 18 of the Act submitting that the compensation awarded by the S.L.A.O. was inadequate and insufficient considering the N.A. potentiality, capitalization and other sale instance of the similarly situated properties and, therefore, he claimed the compensation at the rate of Rs. 12/- per sq. mtr. The learned Trial Judge heard the reference on merits and came to the conclusion that the claimant had proved his case and, therefore, enhanced compensation at the rate of Rs. 12/- per sq. mtr. came to be awarded alongwith different components under the provisions of the said Act including Section 23(1) of the said Act, on the basis of available evidence including that of the expert valuer.

Hence the appeal.

3. At the outset, it may be noted that, it is an admitted position that the land in question is located at Village Panvel, Tal. Panvel, Dist. Raigad and it was acquired for the purpose of New Bombay Project by the impugned notification dated 3.2.1970. On perusal of the judgment of the learned Trial Judge, it appears that he has put reliance on the evidence of the claimant. It may be noted that the expert valuer who was consulted by the claimant had prepared a map of the property and given his expert opinion, however, before recording of his evidence he met with an accident, as a result, his evidence could not be recorded, the map and valuer's report were brought on record as the State did not raise any objection for the same. It is also evident from the entire record that the Bombay-Pune National Highway and Sion-Panvel Highway are in the close proximity of the impugned land. The National Highway is 30 mtrs. from the said land. It is also seen from the record that various industrial estates and industrial developments which are took place in the area are in close vicinity and, therefore, there was absolutely no hesitation on the part of the learned Trial Judge to hold that the claimant is entitled to the compensation at the rate of Rs. 12/- per sq. mtr.

4. Moreover, apart from this aspect, it must be noted that this Court has time and again held that the lands acquired for the New Bombay Project had definite industrial potentiality as those were specifically acquired for that purpose and, therefore, it had potentiality for industrial development as well as development of residential areas. It must be noted that, while adjudicating the similar appeals, the Division Benches of this Court have repeatedly come to the conclusion that the value of the impugned properties would be decided on the basis of proximity thereof to the National Highway No. 4 which runs through the entire New Bombay Metro Project. In this case, the highway is at the distance of only 30 mtrs. and, therefore,

there is absolutely no reason to disbelieve that the land has tremendous N.A. potentiality. In fact, in several judgments, while adjudicating the appeals under the said Act, this Court has come to the conclusion that the lands at Panvel and in the proximity were assessed for more than Rs. 20/- per sq. mtr. However, since the respondents have not filed any cross-appeal or cross-objection, we need not consider the same and, therefore, I hold that the rate granted by the learned Trial Judge at Rs. 12/- per sq. mtr. is just, reasonable and proper and, therefore, need not be disturbed. Shri Tated, the learned A.G.P. submitted that the lower Court had awarded additional compensation under the component contemplated u/s 23(1-A) of the said Act which would not be available for consideration and cannot be awarded because the award is dated 27.11.1981. Now, it is well settled position by virtue of the Apex Court ruling reported in [Ghaziabad Development Authority Vs. Anoop Singh and Another, ,](#) to the effect that the component contemplated u/s 23(1-A) of the Act would not be available where award has been made by the Collector before 30.4.1982 i.e. the date of introduction of Amendment Bill in Lok Sabha. In view of this position, I hold that the respondent-claimant shall not be entitled to the component contemplated u/s 23(1-A) of the Act which is granted by the Trial Judge. The remaining order of the learned Trial Judge stands good in law. 5. In the result, the appeal is partly allowed.

The award granted by the learned Trial Judge, by his order dated 29.4.1987 stands confirmed except for the amount which was granted u/s 23(1) of the Act. The respondents shall be entitled to all other amounts granted under the award except the stated one.

With these directions, the appeal stands disposed of with no order as to costs.

It is clarified that the respondent is at liberty to move the Trial Court to make his submissions for entitlement of proportionate interest and commission on the bank guarantee.