

## **Bilkis Bano through her Power of Attorney, Mohd. Abdul Razzak Vs State of Maharashtra and The Special Land Acquisition Officer, B. and C.**

**Court:** Bombay High Court (Aurangabad Bench)

**Date of Decision:** March 6, 2009

**Acts Referred:** Land Acquisition Act, 1894 & Section 12(2), 18, 4, 6

**Citation:** (2009) 3 BomCR 909

**Hon'ble Judges:** K.K. Tated, J

**Bench:** Single Bench

**Advocate:** K.G. Khader, for the Appellant; S.P. Dound, A.G.P., for the Respondent

### **Judgement**

K.K. Tated, J.

Heard Mr. Khader, learned Counsel appearing on behalf of the Appellant and Mr. Dound, learned A.G.P. appearing on behalf of the Respondents.

2. Present Appeal has been preferred by the Appellant/ original claimant against the Judgment and award dated 19th October, 1993 passed by

Civil Judge, Senior Division, Nanded in L.A.R. No. 60 of 1992.

3. Mr. Khader, learned Counsel for Appellant submitted the undisputed facts as under:

The Special Land Acquisition Officer (for short "S.L.A.O.") issued Notification u/s 4 of the Land Acquisition Act dated 20th February, 1987 for

acquiring Appellants/original claimants land from Survey No. 99/3 of village Sonkhed, Tq-Kandhar, Dist-Nanded admeasuring 81 Rs. for

construction of Vishnupuri Project at Kandhar, Dist-Nanded. Thereafter the S.L.A.O. issued Notification u/s 6 of the Land Acquisition Act dated

15th March, 1990. After following due process of law, the S.L.A.O. declared award dated 12th July, 1991 and awarded compensation in respect

of acquired land at the rate of Rs. 13,000/- per Acre. Learned Counsel for the Appellant submitted that the Respondents took possession of the

acquired land on 7th August, 1988. The notice u/s 12(2) of the Land Acquisition Act served on the Appellant on 15th July, 1991 and thereafter

the Appellant accepted the payment under protest on 22nd July, 1991. Being aggrieved by the said award passed by the S.L.A.O., the

Appellant/original claimant preferred Reference u/s 18 of the Land Acquisition Act dated 14th August, 1991. In the said Reference the Appellant

claimed compensation in respect of acquired land at the rate of Rs. 50,000/- per Acre. The said Reference decided by the Reference Court on

19th October, 1993 and awarded compensation in respect of acquired land at the rate of Rs. 21,000/- per Acre.

4. Mr. Khader, learned Counsel for the Appellant submitted that the Reference Court erred in coming to the conclusion that the Appellant is not

entitled to compensation in respect of the acquired land at the rate of Rs. 50,000/- per Acre. He further submitted that the Reference Court failed

to consider the fertility of the land at the time of fixing market value in respect of acquired land. Learned Counsel for Appellant submitted that the

Reference Court failed to take into consideration the valuation of the land of the Appellant which was fixed by the Deputy Collector, Degloor at

Rs. 4 Lakh at the time of issuing solvency certificate. Learned Counsel submitted that the Reference Court ought to have considered the solvency

certificate issued by the Deputy Collector, Degloor showing the market value of the acquired land at Rs. 4 Lakh. In view of these facts and on

other grounds, learned Counsel for Appellant submitted that the Appeal preferred by the Appellant to be allowed and the compensation in respect

of acquired land to be determined at the rate of Rs. 50,000/- per Acre.

5. On the other hand, Mr. Dound, learned A.G.P. appearing on behalf of the Respondents submitted that the Reference Court considered the

market value of the acquired land as per prevailing rate and fixed it at the rate of Rs. 21,000/- per Acre. Learned A.G.P. submitted that the

claimant produced only one sale deed at Exhibit 14 dated 5th December, 1988 in respect of Bagayat land of 20 Rs. sold for Rs. 17,000/-, the rate

of which comes to Rs. 34,000/- per Acre. Except this sale deed the Appellant has not produced any other cogent evidence to show that the

Appellant is entitled to enhanced compensation in respect of acquired land at the rate of Rs. 50,000/- per Acre. Learned A.G.P. further submitted

that the solvency certificate issued by the Deputy Collector showing the market value of the acquired land at the rate of Rs. 4 Lakh cannot be

considered for fixing market value of the acquired land in the present case. Learned A.G.P. submitted that the said document was not proved by

the Appellant and therefore the same was not accepted by the Reference Court. The said document was taken on record for identification only. In

this circumstances, learned A.G.P. submitted that there is no merit in the present Appeal and the same is liable to be dismissed with costs.

6. Learned Counsel Mr. Khader, appearing on behalf of the Appellant pointed out that husband of the Appellant/original claimant entered into

Witness Box at Exhibit 18 and stated that the acquired land is situated on High Way. The land under acquisition is surrounded by Gram Panchayat

Office, School, Junior College, Bank, society office and Government Offices. Thus the land under acquisition is surrounded by the developed area.

For fertilization facilities, there is Soil Conservation Office. Village Loha is six k.m. away from the acquired land. He further pointed out that Exhibit

14 sale deed produced by the Appellant. The sale deed shows the market value as on 5th December, 1988 at the rate of Rs. 34,000/- per Acre.

Learned Counsel further pointed out the evidence of Vithal Ramrao at Exhibit 35, who was S.L.A.O. at the time of passing the award in the

present case. The said witness was examined by the State. In cross examination this witness specifically stated that Survey No. 28/2 has been sold

for consideration of Rs. 1 Lakh per Hector. Similarly land from Survey No. 230/C sold for consideration of Rs. 68,800/- per Hector by sale deed

dated 22nd September, 1988. On the basis of this admission by S.L.A.O., learned Counsel for Appellant submitted that Appellant is entitled to

compensation in respect of acquired land at least at the rate of Rs. 50,000/- per Acre. He further submitted that the Reference Court considered

three sale instances i.e. dated 12th March, 1986, 5th May, 1987 and 3rd March, 1987. Those sale instances were not produced either by the

Appellant and/or by the Respondent before the Reference Court. Those sale instances were referred by the S.L.A.O. in his award dated 12th

July, 1991. Learned Counsel for the Appellant submitted that those sale instances can be considered for fixing market value though the same were

not produced before the Court. He submitted that the S.L.A.O. in his evidence admitted those sale instances which were relied by him at the time

of passing the award dated 12th July, 1991. In view of these facts, the learned Counsel for the Appellant submitted that the Appellant is entitled to

compensation in respect of acquired land at the rate of Rs. 40,000/- per Acre though the Appellant claimed compensation at the rate of Rs.

50,000/- per Acre in the Reference u/s 18 of the Land Acquisition Act.

7. Mr. Dound, learned A.G.P. for the Respondents submitted that sale deeds dated 12th March, 1986, 5th May, 1987 and 3rd March, 1987

cannot be considered for fixing the market value of the acquired land because same were not produced before the Reference Court. He further

submitted that the contents of the award passed by the S.L.A.O. cannot be considered for fixing the market value of the acquired land unless and

until material relied by the S.L.A.O. for declaring the award is produced before the Court. He further submitted that sale deed at Exhibit 14 dated

5th December, 1988 is in respect of Bagayat land. The land involved in Exhibit 14 is only 20 Rs. of land, therefore, the said sale deed cannot be

considered for fixing the market value of the acquired land. On the basis of these submissions, learned A.G.P. submits that there is no merit in the

present Appeal and the same to be dismissed with costs.

8. The first contention raised by learned Counsel for the Appellant that three sale deeds dated 12th March, 1986, 5th May, 1987 and 3rd March,

1987 can be considered for fixing the market value of the acquired land, cannot be accepted because it is admitted position that neither the

purchaser nor the seller of those sale deeds are examined as witnesses nor the certified copies of those sale deeds are produced on record. Those

sale deeds are referred by the S.L.A.O. in his award. The Apex Court in the matter of Chimanlal Hargovinddas Vs. Special Land Acquisition

Officer, Poona and Another, , held that the material relied upon by the Land Acquisition Officer cannot be relied upon by the Court unless the

same is produced and proved before the Court. In view of these facts, the contention raised by the Appellant in that behalf, cannot be accepted.

9. The solvency certificate issued by the Deputy Collector in respect of valuation of the land produced by the Appellant also cannot be considered

for fixing the market value because the said certificate is not proved and the same is not accepted by the Reference Court. The Reference Court

has kept the said certificate on record and marked it for identification only. 10. For the purpose of considering the market value of the acquired

land, Exhibit 14 i.e. sale deed dated 5th December, 1988 can be considered. In the said sale deed the land of 20 Rs. was sold for Rs. 17,000/-

from the village Sonkhed itself. The acquired land also situated at village Sonkhed. The Appellant's witness Abdul Afgan at Exhibit 18 specifically

stated in his evidence that the land involved in Exhibit 14 sale deed was adjacent to the land of the Appellant which was sold for consideration of

Rs. 34,000/- per Acre. If the sale deed of adjacent land is available on record, the same can be considered for fixing the market value of the

acquired land. A determination of the market value of the land acquired in terms of provisions of the Land Acquisition Act depends upon large

number of factors, the first being the nature and quality of the land i.e. whether agricultural land or industrial land. Apart from nature and quality of

land, in the event the agricultural lands are acquired, the other factors relevant therefore are also required to be considered namely, as to whether

they are irrigated or non irrigated, extent of facilities available for irrigation, location of land, closeness thereof from any road or high way. In the

present case, the witness for the Appellant specifically stated in his evidence that acquired land is situated on high way and surrounding to the lands

under acquisition there is Gram Panchayat Office, school, junior college, hospital, banks etc. The said evidence is not seriously challenged in the

cross examination by the Respondents. Therefore, considering the sale deed at Exhibit 14, I am holding that the Appellant/original claimant is

entitled to compensation in respect of acquired land at the rate of Rs. 34,000/- per Acre. Needless to say that Appellant is entitled to additional

benefits as per the amended provisions of the Land Acquisition Act on enhanced compensation. Therefore, First Appeal is required to be partly

allowed. Hence the Order:

#### ORDER

(i) First Appeal No. 334 of 1994 is partly allowed.

(ii) The Judgment and award passed by Civil Judge, Senior Division, Nanded dated 19th October, 2003 in L.A.R. No. 60 of 1992 is modified to

the extent that Appellant is entitled to compensation in respect of acquired land at the rate of Rs. 34,000/- per Acre.

(iii) The Appellant is entitled to additional benefits as per the amended provisions of the Land Acquisition Act on the enhanced compensation.

(iv) Reference Court is directed to calculate the amount due and payable to the Appellant after giving notice to both the sides, within four months

from the date of receipt of Writ and certified copy of the Judgment.

(v) Appellant is entitled to proportionate cost in the present Appeal.