

BILKIS AND OTHERS

v.

STATE OF MAHARASHTRA AND OTHERS

(Civil Appeal No(s). 2706-2707 of 2004)

APRIL 5, 2011

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Land Acquisition Act, 1894:

Acquisition of land – Compensation – Land acquired for development of tourism – Reference court enhancing compensation from Rs.300/- to Rs.650/- per 'Aar' holding that the land was permitted to be converted to non-agricultural use – High Court reducing the compensation to Rs.500/- per Aar – HELD: The potential to which the land is reasonably capable of being used in future by the owner should be taken into account in assessing the compensation – In the instant case, the land has been converted to non-agricultural land and is also adjacent to the highway, only 6- 8 km. away from an internationally famous tourist destination – Judgment of High Court set aside and the award of the reference court restored.

The entire land of the predecessor-in-interest of the appellants was acquired pursuant to notification dated 16.4.1990 issued u/s 4 of the Land Acquisition Act, 1894 for the development of tourism. The award was made on 22.7.1993 awarding the compensation @ Rs.300/- per Aar. The reference court held that the Land Acquisition Officer had wrongly ignored the fact that the land under acquisition had been converted into non-agricultural land in 1993. It enhanced the compensation for the land to Rs.650/ per Aar. The High Court dismissed the appeal of the claimants and partly allowed the appeal of the State holding that while permission for non-agricultural use had been given for the acquired land, it should not be the

A sole basis to treat the entire land as being non-agricultural or being used for commercial purpose. It, accordingly, reduced the compensation to Rs.500/- per Aar. Aggrieved, the claimants filed the instant appeals.

B Partly allowing the appeals, the Court

HELD: 1.1. Though the claimant has been unable to prove the existence of a hotel, it has been found that some structures for the same existed. Therefore, there is some development on the acquired land. Further, C admittedly, travellers would stop by and utilize the hotel services provided by the claimants. The land is also adjacent to the Aurangabad-Jalgaon highway and is only 6 to 8 km. away from the Ajantha caves, an internationally famous tourist destination. Thus, there is great future D potential for development with respect to the acquired land. The potential to which the land is reasonably capable of being used in future by the owner should be taken into account in assessing the compensation. [Para 13] [739-C-E]

E *Smt. Kamlabai Jageshwar Joshi and others v. State of Maharashtra and others AIR 1996 SC 981 and State of Maharashtra and others v. Digamber Bhimashankar Tandale and others 1996 (2) SCC 583 - distinguished*

F 1.2. In the circumstances, the compensation awarded by the reference court appears to be just and reasonable, having been determined after correctly appreciating all the material evidence on record. There was no need for the High Court to reduce the same. Accordingly, the G judgment of the High Court is set aside and the award of the reference court restored. [para 14] [739-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2706-2707 of 2004.

H

BILKIS AND ORS. v. STATE OF MAHARASHTRA AND 735
ORS.

From the Judgment & Order dated 3.4.2003 of the High Court of Judicature at Bombay bench at Aurangabad in F.A. No. 1127 of 2002 & F.A. No. 3260 of 2002.

Vinay Navar for the Appellants.

Anantbhushan Kanade, Asha Gopalan Nair, Prashant R. Dahat for the Respondents.

The Judgment of the Court was delivered by

GANGULY, J. 1. Heard learned counsel for the parties.

2. The deceased Shaikh Rasheed Shaikh Latik was the owner of the land gut no. 29 adms. 80 Aar situated at Thana Tq. Soyegaon. His entire land was acquired by the Land Acquisition Officer (hereinafter 'LAO') for the development of tourism plan of Ajintha villages Fardapur and Thana, taluka Soyegaon, district Aurangabad. A notification was published under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter 'the Act') on 16.4.1990. It was followed by the notification under Section 6 published on 12.9.1991.

3. The LAO passed an award dated 22.7.1993 wherein he classified the lands into two groups, and the group within which the land of the deceased was classified was given compensation at the rate of Rs.300/- per Aar and Rs.3,79,498/- towards structures and Rs.6,300/- towards fruit-bearing trees.

4. Aggrieved, the claimants filed references before the Reference Court. The Reference Court, vide order dated 27.6.2001, partly allowed the reference petitions. It found that the land under acquisition was converted into non-agricultural land in 1993 and the LAO was wrong to ignore the said fact while granting compensation and taking the acquired land to be agricultural land. Thus, it enhanced compensation to an amount of Rs.650/- per Aar as cost of land. The Reference Court also gave specific findings to the following effect:

- A 1. The claimant was unable to prove that he had constructed a hotel of 2400 sq. ft. on the acquired land. Thus, it concluded that the evidence of the claimant was insufficient to prove that the value of the structure was more than the compensation awarded by the LAO.
- B
2. The evidence of the claimant was also insufficient to prove that bore or well existed on the land. Thus, the claimant was held not entitled to enhanced compensation towards well or bore.
- C
3. The LAO had granted compensation for sitaphal, bor, coconut, mango and jamun trees. The claimant was unable to prove the existence of any more trees or plants on his lands and therefore he was held not entitled to enhanced compensation towards trees and flower plants.
- D
4. The claimant claimed to be earning annual income of Rs.24,000/- from his hotel business. On perusal of evidence, the Court concluded that there was definitely no hotel in existence and an inference could only be drawn that he was running a small hotel like a tea stall, and that such business had no future prospects. Thus, he was not entitled to any compensation for loss of business.
- E
- F
5. Being still aggrieved, the claimants filed appeals before the High Court for further enhancement of compensation. The State also appealed before the High Court for reduction of compensation awarded by the Reference Court.
- G
- H 6. The High Court, vide its judgment dated 3.4.2003 dismissed the appeal of the claimants and partly allowed the appeal of the State. It upheld all the findings of the Reference Court, except the computation with respect to market value of the land, which it reduced to Rs.500/- per Aar. The reasoning

High Court gave for the same was that while non-agricultural permission had been given for the acquired land, it could not be the sole basis to treat the entire land as being non-agricultural or being used for commercial purposes. The non-agricultural permission had been based on certain conditions, one of which was that the grantee would commence non-agricultural use of land within one year from the date of such order unless the same was extended, failing which the permission would be cancelled. According to the High Court, the construction of the hotel for which compensation had been granted was located on an area of 2400 sq. ft. and this by itself would not make the entire remaining land as non agricultural or used for commercial purposes. The High Court relied on *Smt. Kamlabai Jageshwar Joshi and others v. State of Maharashtra and others (AIR 1996 SC 981)* and *State of Maharashtra and others v. Digamber Bhimashankar Tandale and others [1996 (2) SCC 583]*.

7. Further, the High Court held that the permission granted by the village Panchayat revealed that there was a structure standing on the acquired land, and even if benefit of doubt was given in favour of the claimants, the structure did not exceed 2400 sq. ft. The High Court also recorded a finding that village Thana was located on the Aurangabad-Jalgaon highway at a distance of 95 kms. from Aurangabad and about 50 kms. from Jalgaon. The Ajantha caves were located 6 to 8 kms. from the said village. The acquired land was adjacent to the State highway and in proximity of junction point on the approach road leading to the caves. On the land in front of it, i.e. Gut No. 28, there was another hotel by the name of Hotel Gazal. As per evidence, travellers on the said highway would stop and utilize the services of the restaurants either in Gut No. 28 or 29. However, there was nothing further to show that the land appurtenant to the lodging and boarding house was being used for any commercial purpose and it was by choice of the owners that it was not being used for agricultural purposes. Thus, the High Court took the view that the Reference Court erred in

A treating the entire land as commercial/non-agricultural. Accordingly, it held that compensation of Rs.420/- per are for the agricultural land would be just and proper, however as the land was adjacent to the highway, market value of the land was fixed at Rs.500/- per are.

B 8. Aggrieved, the claimants approached this Court by way of appeal for further enhancement of compensation.

C 9. We have perused the material on record and heard the parties. We are of the opinion that the judgment of the Reference Court deserves to be restored and that of the High Court set aside.

D 10. The High Court has reduced compensation on the ground that the land, though was given non-agricultural permission, it could not be treated as a basis for treating the entire land as non-agricultural. We disagree with this view. The High Court has relied on the case of *Kamlabai Jageshwar Joshi* (supra) and *Digamber Bhimashankar Tandale* (supra).

E 11. In the case of *Kamlabai Jageshwar Joshi* (supra), it was found that at the time of acquisition, as per the report of the Land Acquisition Officer in the award, there was no development, though the lands were situated within the municipal limits. Sanction had been obtained for converting the lands into non-agricultural lands. In view of these
F circumstances, a bench of this court concluded that permission for conversion was obtained by the appellant with a view to inflate the market value, after becoming aware of the proposal for acquisition. This Court also found that except obtaining
G sanction for conversion no further action to develop the lands was taken. Accordingly, this Court proceeded to award compensation taking the land to be agricultural land.

H 12. In the case of *Digamber Bhimashankar Tandale* (supra), on the date of the notification the lands were agricultural lands though situated within the municipal limits. It is also in

evidence that the lands were converted for non-agricultural purpose. But as on the date of notification, there was no development in that area. The oral evidence was adduced in which it was shown that upto a distance of 3/4th km. of the lands there was development. Some illegal constructions were made on the lands. Under those circumstances, the court concluded that as on the date of the notification there was no potential value to the lands though converted into non-agricultural lands.

13. We believe that the present case can be distinguished from the abovementioned judgments. From evidence on record, though the claimant has been unable to prove the existence of a hotel, it has been found that some structures for the same existed. Therefore, unlike the abovementioned judgments, there is some development on the acquired land. Further, admittedly, travellers would stop by and utilize the hotel services provided by the claimants. The land is also adjacent to the Aurangabad-Jalgaon highway and is only 6 to 8 kms. away from the Ajantha caves, an internationally famous tourist destination. Thus, there is great future potential for development with respect to the acquired land. The potential to which the land is reasonably capable of being used in future by the owner should be taken into account in assessing compensation.

14. In light of these circumstances, the compensation awarded by the Reference Court appears us to be just and reasonable, having been determined after correctly appreciating all the material evidence on record. There was no need for the High Court to reduce the same. Accordingly, we set aside the judgment of the High Court and restore the award of the Reference Court.

15. The appeals are partly allowed and the award of the Reference Court is restored.

16. No order as to costs.

R.P.

Appeals partly allowed.