

FA-1-1995

(PREM NATH Vs VEENA DRAVID)

25-04-2017

HIGH COURT OF MADHYA PRADESH:

BENCH AT INDORE

Division Bench: Hon'ble Shri Justice P.K. Jaiswal
& Hon'ble Shri Justice Virender Singh

First Appeal No.1/1995

Premnath Verma

Vs.

Veena Dravid & Others

&

First Appeal No.137/1996

The Municipal Corporation, Indore

Vs.

Premnath Verma

&

First Appeal No.193/1996

Vilas S/o Balkrishna Dravid

VS.

The State of M.P. & Anr.

Shri A.K. Sethi, learned Senior Counsel with Shri Rahul Sethi, learned counsel for the appellant in FA No.01/1995.

Shri P.V. Bhagwat, learned counsel for the respondent no.(s).1, 2 and 3 in FA No.01/1995 and also learned counsel for the appellant in FA No.193/1996.

Shri Anand Agarwal, learned counsel for the respondent

no.(s).1, 2 and 3 in FA No.01/1995.

Shri Satish Tomar, learned counsel for the respondent no.(s).1, 2 and 3 In FA No.01/1995.

Shri Aniket Naik, learned counsel for the appellant/Municipal Corporation of Indore in FA No.137/1996 and also on behalf of respondent no.2 in FA No.193/1996.

Shri S.K. Verma, learned counsel for the respondent in FA No.137/1996.

Shri M. Phadke, learned G.A. For the State in FA No.137/1996.

Shri P.M. Bhargava, learned Dy. A.G., on behalf of respondent no1/State in FA No.193/1996.

JUDGMENT
(Passed on -----)

Per: Virender Singh, J.

- 1.** Regard being had to the similitude of the facts in these three appeals, they were heard together and are being disposed of by this common judgment.
- 2.** All three appeals are arising out of the common award dated 15/12/1994 passed by XVIth Additional Judge to the court of District Judge, Indore (M.P.) in LA Ref. Case No.20/1992, whereby the learned reference Court enhanced the compensation from Rs. 1.90 per square feet (psqft) awarded by the Land Acquisition Officer (LAO) vide award dated 06/09/1985 passed in LA Claim Case No.3A/82/82-83 to Rs. 3/- psqft for acquisition of land under Section

18 and 30 of the Land Acquisition Act, 1894 (Hereinafter referred as to "The Act, 1894") bearing Survey No.162, total area of 2.478 hectare, situated at Kulkarni Bhatta, Indore.

3. The LAO awarded total compensation Rs.6,71,469/-. The reference court enhanced it by Rs. 3,94,219/- and took it to Rs. 10,65,668/-.

4. The appellant of FA No.137/1996, the Municipal Corporation of Indore, while challenging the impugned order in general, has mainly challenged his responsibility to pay the compensation.

5. The appellant of FA No.1/1995, Premnath (deceased through LRs.) has only challenged the apportionment of the compensation determined by the impugned order and has claimed his entitlement for the entire amount of compensation either on the basis of sale deed executed in his favour by the owner Balkrishna Dravid or on the basis of partition of coparcenary property of the joint Hindu family of the Balkrishna Dravid.

6. The appellants of FA No.193/96 have challenged inadequacy of quantum of the award and pray that it should be assessed @ Rs.10 psqft instead of Rs.3 psqft.

7. The material facts relevant to the adjudication of the all three appeals in brief are that one Balkrishan Dravid was Karta of Joint Hindu family and was managing several properties of that joint family. He

was having 3 sons and 4 daughters. All the four daughters were married. His wife Mrs. Veena Dravid alongwith her minor sons Vilas Dravid and Rajesh Dravid and four daughters filed a civil Suit no.13/61 on 11/07/1961 before the Second Additional Sessions Judge, Indore for partition of the property shown in schedule A, which was annexed with the Suit (Ex-P/2).

8. During the pendency of the suit Balkrishan sold the land Khasra No.162 (disputed in this case) and 163 on 18/05/1962 to the appellant Premnath, so he was impleaded as defendant no.2 in the Civil Suit No.13/61 by Ms. Veena Dravid and made a prayer that sale deed dated 18/05/1962 be declared null and void.

9. On 01/07/1965, Balkrishan Dravid died so Ms. Veena Dravid substituted herself as defendant no.1 as Legal Representative of the deceased Balkrishan in the Civil Suit (No.13/61). The Civil Suit was decreed. The sale deed dated 18/05/1962 executed in favour of the appellant/Premnath was declared null and void. Premnath preferred an appeal FA No.52/62 before the Hon'ble High Court, which was partly allowed vide order dated 06/08/79. The Hon'ble High Court held that the sale deed dated 18/05/1962 shall be effective to the extent of share of deceased Balkrishna in the coparcenary property and shall not affect the share of the other coparcenars who are

sons and daughters of Balkrishan.

10. During the pendency of FA No.52/62, the land so purchased by the appellant/Premnath bearing survey no.162, area 2.478 Hectares situated at Kulkarni Bhatta was acquired by the Government of M.P. in exercise of powers under Section 3 of the M.P. Slums Improvement (Acquisition of Land) Act, 1956 (Hereinafter referred as to "The Slum Act, 1956") vide notification published in the official Gazette of M.P. dated 26 September 1975, as the land in the vicinity was required for the clearance of the slum.

11. The land was then transferred to the Indore Municipal Corporation (hereinafter referred to as "The Corporation") for clearance of the slum in pursuance of Section 4 of the Slums Act.

12. Under Section 5 of "The Slum Act, 1956", the Compensation for compulsory acquisition was required to be determined in accordance with the provisions of the Land Acquisition Act, 1894. Accordingly, the land Acquisition Officer determined the compensation by order dated 6th September, 1985 as Rs.6,71,469/- including compensation for one out of two wells situated on the land.

13. The matter was then referred under Section 18 of the Land Acquisition Act, 1840 to the Distt. Judge, Indore on the application of the Vilas, Rajesh & Smt Veena (appellant and Respondent's no.3 and 4 of FA

193/96), who are sons & wife respectively of deceased Balkrishna. After recording evidence, the learned Court below passed the impugned award.

14. Incidentally, there was also a dispute as to the apportionment of the compensation between the appellant and the respondents no.3 and 4 (Vilas, Rajesh, Smt Veena) on one hand and respondent no.5 (Premnath) on the other. Hence, a reference under Section 30 of the LA Act, 1894 was also made and by the same award, all the 4 persons were held to be entitled to get $\frac{1}{4}$ shares each. This part of the award is subject matter of the First Appeal no.1/1995 filed by the respondent no.5 Premnath.

15. So far as the quantum of the compensation is concerned the Court below has determined the market value of the land at Rs.3/- psqft as against Rs.10/- psqft claimed by the parties. Similarly, the compensation for the two wells has been determined at Rs.10,000/- each as against Rs.40,000/- each as claimed by the parties. Thus, making the total market price of the land, by the Court below, at Rs.7,99,761/- as against Rs.26,65,870/- claimed by the parties. The difference between the market price claimed and the market price awarded for the land is Rs.18,66,109/-. Similarly, the difference between compensation claimed and compensation awarded for the wells is Rs.60,000/-. Thus, the difference between the compensation claimed and the compensation

awarded is Rs.19,26,109/-.

16. The appellant of **FA No. 193/1996 Vilas Dravid** has challenged the award on the grounds that:

a. The Court below has not given due consideration and weight to the situation, location and condition of the land, and has not properly evaluated the potentiality which has resulted in under-valuation of the market price.

b. The Court below has failed to appreciate that the lease rent Schedule (Ex.P/6) prescribed by the Corporation itself fixed the off-set price at Rs.3/- psqft in the locality. At this price only lease hold rights are given and not the full ownership rights. The rent fixed is Rs.18/- per 100 Sqft per month. As such the free hold rights must have the price much higher than the premium. Hence the claim of Rs.10/- psqft cannot be said to be excessive.

c. The court below has failed to appreciate the evidence of the expert property valuer Shri Ghatpande, who on a sound reasoning fixed the market price of the land at Rs.10/- psqft.

d. The Court below has erred in not relying on the standard rates fixed under the M.P. Land Revenue Code. The notification fixing

the standard rates was statutory notification. Hence, it needed no proof. These standard rates are fixed on the basis of the average market price for last 20 years. Hence unfolding these standard rates the market price can be determined which, in this case, comes to even more than Rs.10/- psqft.

e. The Court below has grossly undervalued the price of wells despite the unchallenged evidence of Shri Ghatpande and other witnesses.

f. The Court below has not properly appreciated the evidence on record and has also misconstrued the law relating to the determination of market price under Section 23 of the Act.

17. The appellant of **FA No. 01/1995 Premnath** has challenged the award on the following grounds:

a. The Hon'ble High Court in para no.11 of the judgment expressly stated that the deceased Balkrishan Dravid also had a share in the Suit land and he had right to alienate his undivided share in the suit property.

b. The learned reference Court illegally held that for the purpose of apportionment, the alienated property in question is not

required to be blended with the other land property belonging to the joint Hindu family of Balkrishan Dravid, while in para no.9 of the judgment of FA No. 52/66, the Hon'ble High Court has made it clear that for the purpose of partition, the disputed property shall blend with the other joint family. But the reference Court while determining the issue regarding the apportionment did not take into consideration, the whole of joint family property mentioned in Ex-P-2, without which it cannot be determined that as to what was the actual undivided share of the deceased Balkrishan Dravid in the coparcenary property which he was entitled to alienate and how much of the rights and share of the other co-parceners. It is the case of the appellant that if whole of the joint family property would have been taken into account then share of the late Balkrishan Dravid would have been different from what has been decided by the learned reference Court.

c. The reference Court acted illegally in holding that the appellant is only entitled to $\frac{1}{4}$ share and respondent no.2 and 3 and 4 are also entitled to $\frac{1}{4}$ shares each. In fact, the appellant is entitled to receive the

whole of compensation amount.

d. The learned reference Court ignored this fact that coparcener status of the family was disrupted with the filing of the partition suit in the year 1961 and a notional division of joint family property and rights took place and in that situation the learned Court was duty bound to divide the property of the late Balkrishan by meets and bounds between the tenants-in-common.

e. The learned reference Court did not pay any attention towards the legal position of the case that respondent no.2 and no.3 were minors at the time of the institution of the partition suit, after attaining majority within three years, they ought to have filed a suit against the appellant for declaration of their right, if any, in the alienated land. But they failed to do so. Hence, Article 60 of the limitation Act, is a bar against them and thereafter before the land acquisition officer or the Court, their rights were not in existence.

f. The learned reference Court ought to have considered this position also that at the time of partition suit, the appellant was also a party as defendant no.2, who by

purchase of the said alienated land, stepped into the shoes of Balkrishna. The next friend respondent no.2 ought to have sought relief of partition against this appellant, on the contrary, when defendant no.1 in that suit died on 1.7.1965 instead of taking available relief against this appellant, she got her name substituted in place of deceased Balkrishna and adopted his written statement and accepted acknowledged and confirmed this act of the deceased.

g. The reference Court committed an error of law in holding that unless partition is effected, the heirs of the deceased Balkrishna i.e. Respondent no.1,2, and 3 are entitled to claim shares in the land sold by the Balkrishna to this appellant.

h. That the Court failed to appreciate that after disruption of joint family the status of the members of the family only remains tenants-in-common and the property sold by one coparcener would be allotted to the share of the alienating member and thus the whole amount of compensation would have been awarded to this appellant alone.

i. That the reference Court's finding that the decision of the Hon'ble High Court in

Civil First Appeal No.52/1966 shall operate as res-judicata against the appellant is without any responsible and legal basis.

j. The trial Court's reasoning that the appellant is estopped from challenging the share in the compensation amount is without any substance and against the legal position.

k. That having once withdrawn the partition suit by the respondent no.1,2 and 3 after challenging the alienation in favour of the appellant, now respondents are estopped from claiming compensation of the property sold to the appellant.

l. The reference Court has misinterpreted the decision of the Hon'ble High Court in FA No.52/1966 holding $\hat{A}^{3/4}$ shares of the respondent no.1,2 and 3 in the alienated property when the decision in appeal was as regards the whole property in dispute. Had the Hon'ble High Court sought to decide in any share in the property purchased by the appellant. It would have specifically stated that the respondents 1, 2 and 3 had $\hat{A}^{1/4}$ share each in the alienated property.

18. The appellant of **FA No. 137/1996 Municipal Corporation, Indore (MCI)** while refuting all

findings recorded and observations made by the lower court and accepting the legal position regarding its liability of payment of compensation in para 9 of memo of the appeal has assailed the award stating that:

a. The award passed by the land acquisition officer was void for want of jurisdiction, as no notification was issued or published by State (respondent no.5) under section 4 of the Slum Act, 1956, consequently the entire proceedings taken by the LAO including the award passed by him and the reference made by him to the lower Court were null, void, ultra vires and without jurisdiction. As the reference was without jurisdiction, the award passed by the Court below including the entire proceedings taken by it becomes null and void and The learned lower Court had no power or jurisdiction to direct the appellant to pay the amount of the compensation awarded to the claimants.

b. The land in question i.e. Survey No.162 of Kasba Indore, area 2.478 hectares, was situated outside the area which was declared to be a slum area under Sec.3(1) of the M.P. Slum Improvement (Acquisition of land) Act, 1956. It stood in the vicinity of the area so declared and hence for its

acquisition, Government published a notification in the Government Gazette under Section 3(2) on 26.09.1975. On the publication of this notification, the land in question vested in Government as provided in Section 4 of the Act, and the commissioner, Indore Division, who was the prescribed authority appointed to act under and for the purposes of the Act, became bound by law to determine, tender and pay the compensation to the persons entitled as provided in Section 5 and 8 of the Act. The compensation to be paid was required by Section 5 of the Act to be determined according to the provisions of the Land Acquisition Act.

c. The provisions of section 5 of the Slum Act, 1956 does not mean that all the provisions of the Land Acquisition Act shall be applicable to the case but it does mean that only provisions relating to determination of quantum of the award shall be applicable, therefore, neither solatium nor any interest could have been awarded.

d. No transfer of the land was made under section 4 of the Slum Act, 1956, no possession was delivered and also no order

was passed by the Govt. to the effect that the MCI shall pay the compensation therefore, the MCI was not responsible to pay the compensation.

e. No issue was framed by the reference Court

19. The answers regarding technical objections raised by the MCI about competency and jurisdiction of the LAO, validity of the award passed by the learned reference Court and applicability of provisions of Land Acquisition Act, 1894 lies in the provisions of Section 3, 4 and 5 of the M.P. Slum Improvement (Acquisition of Land) Act, 1956, which reads thus:

â□□3. Power to acquire land:

(1) Where the [State Government] is satisfied that any area [to which this act applies] is or may be a source of danger to the public health, safety of convenience of its residents or its neighbourhood by reason of the area being low lying,

insanitary, squalid or otherwise, they may, by notification in the Gazette, declare such area to be a slum area.

(2) Where the [State Government] is satisfied that it is necessary to acquire [any land in a slum area or its vicinity] for the purpose of clearing or improving any slum areas. It may acquire the land by publishing in the Gazette, a notice to the effect that it has decided to acquire it in pursuance of this action;

Provided that before publishing such notice, the [State Government] shall call upon the owner of, or any other person who, in the opinion of the [State Government] may be interested

in such land to show cause why it would not be acquired; and after considering the cause, if any, shown by any person interested in the land, the [State Government] may pass such orders as it deems fit.

Explanation — Cause shown by the person interested in the land may be against the as a slum area under Sub-section (1) as well as against the necessity to acquire the land for the purpose of clearing and improving the slum area.

(3) When a notice as aforesaid is published in the Gazette the land shall, on and from the beginning of the day on which the notice

is so published, vest absolutely in the [State Government] free from all encumbrances.

(4) The [State Government] may, by order, authorize any authority or officer subordinate to them to exercise all or any of the powers conferred and perform all or any of the duties imposed on them by this section subject to such conditions and restrictions as may be specified in the order.

4. Transfer of land in a slum area by the [State Government]-

(1) Where any land has been acquired under this Act, the [State Government] may either hold the land under their own control and management and undertake the clearance or improvement of the slum area or transfer the land to the Municipality or Improvement Trust of the city or town for purpose of undertaking the clearance or improvement of the slum area; and in the later case, the land shall vest in the Municipality or the Improvement Trust, as the case may be;

(2) Where the land is transferred under Sub-section (1) to a

Municipality or Improvement Trust, the Municipality or the Improvement Trust shall be liable to pay the cost of acquisition of the land or of such portion thereof as the [State Government] may fix in such case;

(3) Where the [State Government] hold the land under their own control and management and undertake the clearance or improvement of the slum area the cost of acquisition or such portion of the costs as the [State Government] may determine shall be borne by the persons to whom the land is allotted in parcels for residence and such costs shall be recoverable from them in such proportion and in such manner as may be prescribed.

5. Right to receive compensation

- Every person whose right, title or interest in any land situated in any slum area is acquired under this Act, shall be entitled to receive and be paid compensation hereinafter provided. Any person whose right title or interest in any land situated

out of any slum area is acquired under this Act, shall be entitled to receive and be paid compensation provided in the Land Acquisition Act.â

20. Government of Madhya Pradesh, Local Administration Department vide letter No. 4886/18-2/76 Bhopal dated 20th November 1976 ordered that the task of clearance of slum area of Kulkarni Bhatta be carried out by the MCI.

21. We shall take up other contentions of the MCI regarding quantum and adequacy of the award, when we take up the similar contentions raised by the other appellants. But here, in view of the unambiguous provisions of the Slum Act and also the order of the Government of M.P. entrusting the task to the MCI, objections raised by the MCI regarding competency and jurisdiction of the LAO or of the learned reference Court are not tenable and we decide and uphold the findings of the learned reference Court (in para 52 of the award) that only MCI is responsible for payment of the compensation to be determined hereinafter.

22. Learned counsel for the MCI raised a question that no issue has been framed to decide liability of the MCI, but Hon'ble the Supreme Court, in

Lalisteshwar Prasad Singh v. S.P. Shrivastava 2016 (12) SCALE 902 made it clear that mere omission to frame Point/Points for determination does not vitiate the judgment of the first appellate Court provided that the first appellate Court records its reason based on evidence adduced by both the parties. In the present case, the learned reference Court has considered all the aspects of law and facts to decide liability to pay compensation after giving due opportunity to all the parties, therefore, the objection raised by the MCI has no force.

23. While determining the amount of the compensation, the learned reference Court not only taken into consideration the market value of the acquired land but also considered income might have been derived from the land, utility of the land, its adaptability, in most befitting and advantageous way, the vicinity and surroundings of the land, recent instances of sales of, similar land in the same area adjoining localities, guidelines issued by the authorities, opinion of valuer and all other evidence produced by the parties before the learned trial Court. The learned trial Court considered that at the time of acquisition, the land in question was mainly under cultivation, there were no evidence that the owner of the land was earning any profit from it, no instances of sale of any land in the vicinity were found, sale deed produced by the MCI was only of a

house which can not made basis for determination of compensation for agriculture land or in the present case the land in question. The learned trial Court further observed that there was no standard rates of the land fixed by the Collector.

24. The learned trial Court has considered opinion of the expert, a retired MCI employee Mr. G.S. Ghatpande, who was examined by appellant /Premnath. After extensive analysis of the statement and also the report submitted by Mr. Ghatpande, the learned trial Court was of the view that this witness, in his cross-examination, could not reveal as to how the method adopted by him, was found out and he failed to site any authority on it, for this reason, the learned reference Court found him unable to accept his opinion for the purpose of determining the market value of the acquired land.

25. Learned reference Court further considered the evidence of appellant/Premnath Verma and Vilas Dravid. They have stated there that there are some mills in the locality and that was a thickly populated area, but a higher compensation can not be determined of such basis as the land was in vicinity of slum area, which was acquired to clear adjoining slum.

26. Learned reference Court also analyze the reasoning assigned by LAO, while determining the compensation @ Rs.1.90/- psqft. and found that the

LAO has determined this value solely on the statement of the MCI which did not found any support from the record. The learned reference Court found him unable to accept such valuation.

27 After considering all these evidence, the learned reference Court determined the compensation @ of Rs.3.0/- psqft.

28. We have gone through all the evidence produced by both the parties on record and found ourselves in fully agreement with the learned reference Court as the learned reference Court has considered each and every evidence produced by the parties and was available on record, he has rightly rejected the report of expert/valuer Mr. Ghatpande and further rightly hold that the learned LAO has committed error in determining the compensation only on the sole ground of admission/statement of MCI. Applying the well settled principles for determination of the compensation alongwith the attaining facts and circumstances of the case at the time of the acquisition, the learned reference Court has rightly reached on the conclusion and determined the compensation which appears to us also a just and proper compensation for the land situated in vicinity of slum area acquired for clearance of the adjoining slum, which was an agriculture land and was having no other use at the prevalent time. The award can not be said at lower side neither it can be said on higher

side, we found ourselves unable to accept the pleadings and arguments of the parties submitted for enhancement of the compensation. We are not convinced with the contentions that compensation must be @ of Rs.10/- psqft. for a land of such a huge area of 2.478 hectare and was only being used for cultivation. Parties, who are claiming enhancement could not produce a single sale deed in the area, which could show that the rate of the land was much higher from what the compensation has been decided by the learned reference Court, no guidelines, no authorities or no other evidence could be produce to show that the land could have been fetched better price or profit than that awarded by the reference Court. Only on the basis of surmises and conjunctures, without any corroborative support from a convincing evidence, it can not be held that the compensation should be @ of Rs.10/- psqft. In the year acquisition_i.e. 1995.

29. Considering all these facts, we do not find any ground for interference in the finding of the learned reference Court.

30. The objection regarding solatium has been dealt in para no.31 of the impugned judgment and it is rightly held that considering the provisions of Section 5 of The M.P. Improvement of Slum (Acquisition of land) Act, 1956 the compensation for any land situated out side of any slum area to be determined

as provided in the Land Acquisition Act. This provision is wide enough to cover all the provisions of Land Acquisition Act including the provisions providing solatium. This provision does not limit the application of the provisions of the Land Acquisition Act, to only those sections who are concerned with the determination of the compensation, but the provisions are wide enough to cover all the provisions of the Land Acquisition Act on the basis of which, just and proper compensation can be determined including the provisions relating to solatium and interest etc. therefore, the contentions of the objector in this regard, are misconceived.

31. Now, we consider the issue of apportionment of the compensation awarded. In this regard, the main objection is from appellant/Premnath Verma, who purchased the land from the owner Balkrishan Dravid. His objections are elaborately mentioned in the facts as stated above and need not to repeat here. All these objections have been raised by Premnath Verma before the learned reference Court also. The learned reference Court framed the issue no.3 and in this regard, considered all the objections raised by Premnath Verma regarding legal status of *Karta* of joint Hindu family, its coparcener's status, status of coparcenary property, blending of share of deceased Balkrishan Dravid with the other coparcenary property and fact of filing of the civil suit and rightly

held that in view of the judgment of Hon'ble High Court passed in Fa No.52/62, which had attained finality the deceased Balkrishan Dravid was having $\frac{1}{4}$ share in the land acquired with other coparceners i.e. his two sons and wife and the appellant/Premnath Verma can not have a better share than that the share of deceased Balkrishan Dravid. The learned reference Court had rightly observed that the appellant/Premnath Verma, after purchasing of the land from the Balkrishan Dravid had not filed any suit for partition of the entire joint Hindu family property. He, in proceedings of land acquisition, can not claim blending of the whole coparcenary property of Balkrishan Dravid or that any particular property stating that Balkrishan Dravid was having sole ownership over any particular property i.e. in the present case, the land in question, which is acquired by the Government of M.P. Further, Hon'ble the High Court in Civil Suit No.13/61 has decided the share of Balkrishan Dravid to the extent of $\frac{1}{4}$, therefore, he can not claim better share than that was awarded to him by the learned reference Court. Thus, considering the law on the subject, legal status of coparcenary property and the effect of partition, we are unable to reach on any contrary finding to the finding of the learned reference Court.

32. After appreciating all the evidence available on

record, the contentions/objections raised by the various parties and considering them within the periphery of the law on the subject, explicit provisions of the slum Act, Land Acquisition Act and other facts and circumstances prevailing at the time of the acquisition, we do not find any force to accept the contentions of the appellant of Appeal No.193/1996 to enhance the compensation or to taken a different view regarding apportionment of the compensation as prayed by the appellant/Premnath Verma of Appeal No.01/1995 or to deviate from the finding of the learned reference Court to exonerate the MCI of Appeal No.137/1996, therefore, we confirmed the impugned award passed by the learned reference Court, consequently, all the appeals preferred against the award for different reasons and for different reliefs are hereby dismissed. However, no order as to costs.

(P.K. JAISWAL)
JUDGE

(VIRENDER SINGH)
JUDGE

Amit