

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

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921 FIRST APPEAL NO. 592 OF 2002
 WITH CIVIL APPLICATION NO.1875/2015 IN FIRST APPEAL
 NO.592/2002 WITH CIVIL APPLICATION NO.11624/2015 IN
 FIRST APPEAL NO.592/2002 WITH FIRST APPEAL NO.42/2003
 WITH FIRST APPEAL NO.591/2002 WITH FIRST APPEAL
 NO.593/2002 WITH CIVIL APPLICATION NO.2578/2014 IN
 FIRST APPEAL NO.593/2002 WITH FIRST APPEAL NO.594/2002
 WITH FIRST APPEAL NO.595/2002 WITH CIVIL APPLICATION
 NO.1874/2015 IN FIRST APPEAL NO.595/2002 WITH FIRST
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 FIRST APPEAL NO.598/2002 WITH FIRST APPEAL NO.599/2002
 WITH CIVIL APPLICATION NO.3789/2002 IN FIRST APPEAL
 NO.599/2002 WITH CIVIL APPLICATION NO.8578/2011 IN
 FIRST APPEAL NO.599/2002 WITH FIRST APPEAL NO.3835/2008
 WITH
 CIVIL APPLICATION NO.12416/2015
 IN X-OBJST/28744/2015
 WITH
 CIVIL APPLICATION NO.12417/2015
 IN X-OBJST/28965/2015

M I D C , NASHIK
 VERSUS
 ZUMBER UTTAM PATIL AND ORS

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WITH
 922 FIRST APPEAL NO. 43 OF 2003
 M I D C NASHIK
 VERSUS
 ANIL JAGANNATH PATIL

...

Advocate for Appellant : Mr. S S Dhande
 AGPs for State: Mr. A. M.Phule, Mr. S. P. Sonpawale
 Advocates for the respective Respondents : Mr. Anant R.
 Devakate, Mr. . B. R. Warma, Mr. M. B. Sandanshiv, Mr. N.
 L. Choudhari, Mr. P. B. Pawar

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CORAM : S. V. GANGAPURWALA, J.

DATE : 27th October, 2015

ORAL JUDGMENT:

1. Lands of the respondents/claimants have been acquired by the present appellant i.e. Maharashtra Industrial Development Corporation. The respondents/claimants filed reference under section 18 of the Land Acquisition Act. The same is partly allowed. The MIDC has filed the present appeals.

2. Mr. Dande, the learned counsel for the appellant submits that the reference court has failed to consider that the acquired lands are jirayat land. They are situated in village Avadhan, Laling and Diwanmala. All these villages are situated at the distance of 4 to 6 kms. from Dhule city. The said villages are small villages, having village panchayat and only primary education facilities are available. No development activities are in progress in the said villages. According to the learned counsel, the claimants relied on two sale deeds but there is no whisper in respect of the similarity and location of the lands under the sale deeds with the acquired lands. The lands under the sale deeds are far away from the acquired lands. No map is filed to show topography, location of the acquired properties. The Special Land Acquisition Officer has considered the other sale transaction which has taken place before 1980

and had awarded just and reasonable amount of compensation. The Special Land Acquisition Officer had considered almost 62 sale instances. The sale deed Exhibit 16 is not a genuine sale transaction. The person who had sold the said property under the sale deed had also filed reference for the entire land including the land under the sale deed, which itself shows that the said transaction is not a bona fide and genuine sale transaction. It is just to inflate the market value, the said land was sold. The said sale instance is not comparable sale instance nor the land under the sale deed is within the vicinity of the acquired land. It has been specifically admitted by the claimants in cross examination that there is no facility of water in the area from where the lands are acquired. There is also nothing on record to show that the land was cultivated. The Special Land Acquisition Officer had considered the location and potentiality of the land. The SLAO had considered that there is no potentiality of the land except for the agricultural purpose. The lands acquired are large area of lands and the sale transaction relied is in respect of small piece of land. Mr. Dande, the learned counsel submits that in Lok Adalat, some of the claimants have settled the matters wherein, they have

accepted compensation @ Rs.28,000/- to Rs.38,000/- per hectare.

3. According to learned counsel, the methodology adopted by the reference court cannot be sustained. The learned counsel submits that the present appellant had paid excess amount of compensation as advance i.e. @ Rs.20,000/- per hectare. The SLAO had awarded the compensation @ Rs.7,000/- per hectare. While passing the award, the reference court has deducted the amount of advance paid at the fag end. According to learned counsel, the same is not proper.

4. Mr. Devakate, Mr. Varma, Mr. Choudhari, the learned counsel for the respective claimants submit that the reference court has come to the conclusion that the claimants are entitled for compensation @ Rs.49,500/- per hectare. However, as the claims are restricted to Rs.42,000/-, the reference court awarded compensation @ Rs.42,000/- per hectare only. The reference court has power to grant more compensation at the rate at which the reference court comes to the conclusion about the market value of the land and cannot restrict itself to the claim made in the application. At the most, the reference court can direct the claimants to pay court fees on the

amount of compensation awarded. The learned counsel submits that the sale instances relied are in close proximity with the notification under section 32(2) of the M.I.D.C. Act which is equivalent to the notification under section 4 of the land Acquisition Act. The learned counsel submits that the sale transactions are in respect of the land of the same village from which the lands are acquired and the said sale transactions are not in respect of the small pieces of land. One sale transaction is in respect of 40 R land i.e. about one acre and another sale transaction is in respect of 1 Hectare 10 R land. There were three sale instances relied. The court has rightly considered the same. In fact, the court ought to have awarded compensation @ Rs.49,500/-per hectare.

5. The learned counsel for the claimants further submit the cross objections are filed in two appeals alongwith application for condonation of delay. The claimants could not file cross objection within limitation because of their illiteracy, ignorance and poverty.

6. With the assistance of learned counsel for the respective parties, I have considered the judgment,

record and proceeding so also the submissions advanced.

7. Notification under section 32(2) of the M.I.D.C. Act is dated 12.02.1981. The possession of the acquired land has been taken prior to the said notification. The reference court has discussed the sale instances on record i.e. the sale instance dated 14.10.1980 which is from village Avadhan. The lands are also acquired from village Avadhan. The evidence led by the claimants has been discussed. The witness to the sale deed has also been examined and thereafter, the reference court has considered the location of the properties. The court has observed that the claimants have stated that the acquired lands are surrounded by Hotels, petrol pump, factory and adjoining to the Bombay Agra highway. Dhule city is about five kms. away from the acquired land.

8. The court has considered the sale transactions which is about four months prior to the notification in question. The said sale deed is not in respect of small piece of land but it is of one acre, wherein the said property was sold for Rs.19,800/- and part of the said property is also under acquisition. Only because the claim has been made for the whole property, the same would not be sufficient to discard the sale instance.

The sale instance is in respect of the land of the village from which the lands are acquired. The same is also just prior to four months of the notification in question. The said sale deed can be said to be a relevant. It is from village Laling. The lands are acquired from village Avadhan, Laling and Diwanmala for the same project. Valuation as per the said sale deed comes to Rs.49,500/- per hectare but the court has awarded compensation @ Rs.42,000/- per hectare on the ground that the said rate was only claimed by the claimants.

9. One of the safest mode to determine market value is sale transaction. The market value would be a price at which the purchaser is ready to purchase the property and seller is ready to sell the property. The said sale transaction has been proved by the evidence of witness, the vendor and the vendee. There is no reason to discard the same. As such, the market value arrived at by the reference court appears to be reasonable and proper.

10. As far as cross objections are concerned, there is inordinate delay in filing the same. Delay is almost of five to six years. The learned counsel relies on the judgment of the learned Single Judge of this court in

case of **State of Maharashtra Vs. Kalu Ladku Mhatre**, reported in **2012 (4) Mh.LJ 741**. I have considered the said judgment also. Though it is said that there is no requirement of establishing sufficient cause within the meaning of section 5 of the Limitation Act in the application for seeking extension of time to file cross objection, brief reasons for delay will have to be set out. Even on the basis of touchstone of the said judgment, no reasons have been set out. The claimants have appeared in the matter in the year 2009 and the cross objections are filed in the year 2015. Time to time, they have appeared in the matter but no cross objection was filed. The only ground mentioned is about poverty, illiteracy etc. The claimants were represented by their lawyers in the appeals since beginning. But only when the matters were taken up for final hearing, cross objections are filed with condonation of delay application. Considering the above, I am not inclined to entertain the application for condonation of delay. As such the applications for condonation of delay in filing cross objections are rejected.

11. As far as the deduction of advance amount paid as compensation, the reference court has not considered the

same in its correct perspective. The same would also appear to be disadvantageous to the claimants apart from the grievance of the present appellant. The SLAO had determined the compensation @ Rs.7000/- per hectare. The advance amount was paid @ Rs.20,000/- per hectare. After the award was passed by the SLAO, no amount was paid to the claimant on the ground that excess amount has been paid as advance. Part of the excess amount paid will have to be adjusted from the award passed by the SLAO and remaining excess amount is required to be adjusted from the amount of compensation awarded by the reference court which would include all the statutory benefits.

12. In the result, the amount of market value and compensation determined by the reference court so also the other statutory benefits as awarded by the reference court are upheld and maintained with clarification that claimants shall be entitled to interest on the market value awarded alongwith solatium.

13. The modification is made to the extent of adjustment of the amount paid excess by the present appellant to the claimants. Part of the amount of advance paid by the present appellant to the claimants

shall be adjusted as against the award passed by the SLAO. Remaining amount of advance shall be adjusted from the amount of the award passed by the reference court which would be inclusive of statutory benefits.

14. The first appeals are accordingly disposed of .

15. Civil applications also stand disposed of.

(S. V. GANGAPURWALA, J.)

JPC

(J. P. Chavan)
Personal Assistant to the
Hon'ble Judge.