

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO.1428 OF 2014
WITH
CIVIL APPLICATION NO. 1354 OF 2015
CIVIL APPLICATION NO. 10237 OF 2014**

Union of India through
Divisional Engineer (Lines)
DEN, Nanded Division,
South Center Railway,
Nanded

...Appellant

versus

1. Deccan Flour Mills Ltd.,
Company incorporated under Companies
Act 1956 having it's registered office
at Paithan Road, Aurangabad through
it's Director R.M. Jalan Occ: Business,
R/o. Paithan Road, Aurangabad.

2. The State of Maharashtra,
Through Collector, Aurangabad

...Respondents

.....

Mr. P.G. Godhamgaonkar, Advocate for appellant
Mr. A.P. Bhandari, Advocate for respondent No.1
Mr. D.R. Korde, A.G.P. for respondent No.2

.....

**WITH
CROSS OBJECTION (ST) NO.20886 OF 2014
IN
FIRST APPEAL NO.1428 OF 2014**

Deccan Flour Mill Ltd.,
A Company incorporated under Companies
Act 1956 having it's registered office
at Paithan Road, Aurangabad through
it's Director Rajkumar Sudamrao
Dhamdhere, Age: 52 years, Occ: Business,
Director of Deccan Flour Mill,
R/o. Paithan Road, Aurangabad.

...Cross objection
petitioner

versus

1. Union of India through
Divisional Engineer (Lines)
DEN, Nanded Division,
South Central Railway,
Nanded/
2. The State of Maharashtra,
Through Collector, Aurangabad ...Respondents

.....
Mr. A.P. Bhandari, Advocate for cross objection petitioner
Mr. P.G. Godhamgaonkar, Advocate for respondent No.1
Mr. D.R. Korde, A.G.P. for respondent No.2
.....

CORAM : N.W. SAMBRE, J.

DATE : 27TH JULY, 2015

ORAL ORDER :

This appeal is by the acquiring body questioning the legality and validity of the award delivered by the Reference Court under Section 18 of the Land Acquisition Act on 06/01/2014 in L.A.R. No. 158 of 1999 by the Civil Judge, Senior Division, Aurangabad enhancing the compensation to Rs.18.53 per sq. ft. for acquired area 6529 sq. mtrs.

2. Facts as are necessary for deciding the present appeal are as under :

The appellant Department of Railway has decided to upgrade existing facilities and as such, sought acquisition of the land of the respondent-claimant bearing CTS No.19048 situated at Padampura, within municipal limits of Aurangabad city to the extent of 6529 sq. mtrs, which was notified under Section 4 of the Land Acquisition Act (hereinafter shall be referred to 'the Act' for the sake of brevity) on 02/06/1984. The Special Land Acquisition Officer has passed consolidated award on 07/05/1987 and notice under Section 12(2) of the Act was received by the claimant on 07/05/1987.

3. The claimant, feeling aggrieved thereby sought enhancement of compensation @ Rs.750/- per sq. mtr.

4. The claimant-respondent herein alleged that the land in question situated within municipal limits is adjacent to State high way and railway station, industrial and commercial areas are located within the same vicinity. According to claimant, the Land Acquisition Officer since has failed to consider the said aspect, hence the matter of enhancement.

5. The S.L.A.O. having regard to the location of the land, was pleased to award compensation of Rs.7,49,610/- and claimant claimed entitlement for Rs.15,35,540/-.

6. The claim was resisted by the State by filing written statement at Exhibit-8/B and denied the contentions raised by the claimant. The appellant herein – acquiring body filed its written statement at Exhibit-23/B and opposed the enhancement on the ground that the compensation awarded by Land Acquisition Officer is after considering market value, location of the land. It is also alleged by the appellant that there was an amendment to claim petition preferred under Section 18 of the Act which was granted by the Court.

7. According to the appellant herein, the Reference was liable to be dismissed.

8. Reference Court in the wake of pleadings framed following issues at Exhibit-4 and answered the same.

ISSUES	FINDINGS
1. Whether the claimant proves that the valuation made by the Land Acquisition Officer is improper and inadequate and not as per market value?	In the affirmative
2. Whether the claim petition is in limitation?	In the affirmative

3. Whether the claimant proves that she accepted compensation amount under protest? If yes, what is its effect? In the affirmative
4. Whether the claimant is entitled to additional amount of compensation claimed? In the affirmative
5. What order? As per final order

9. While doing so, the Reference Court has dealt with the aspect of amendment to the reference by seeking enhanced compensation and has ruled in favour of claimant, as according to reference Court, the Apex Court in the matter of Ambya Kalya Mhatre (d) through legal heirs & Ors vs State of Maharashtra reported in SC 2011(12) LJSOFT (S.C.) 277 in Civil Appeal No. 7784 of 2011 has ruled that the claimant is not required to specify the amount of compensation. Hence amendment if any to the amount of claim is permissible. The Reference Court then has proceeded to consider the evidence of the claimant PW-1 Rajkumar Dhamdhare at Exhibit-28, other documentary evidence i.e. copy of resolution of the company at Exhibit-47, reply given by the claimant to the notice under Section 9 of the Act at Exhibit-42, certified copy of the judgment passed in First Appeal No. 20 of 1988 in the matter of

Osman Khan Abdul Majid Khan and others vs. The State of Maharashtra decided on 08th and 9th February, 1994 at Exhibit-49.

10. The Reference Court, upon analysis of the oral and documentary evidence, has proceeded to fix the market value of the land under acquisition @ Rs.18.53 sq. ft. As such, present appeal.

11. Mr. Godhamgaonkar, learned Counsel for the appellant strenuously urged that enhancement order under Section 18 of the Act is without any basis and is at exorbitant rate and as such, liable to be set aside. According to him, the reliance placed upon the judgment of this Court in First Appeal No. 20 of 1988 is misplaced in view of the fact that location of the said land, excess compensation awarded therein is required to be reappraised by this Court in the present matter. According to him, the appeal is liable to be allowed.

12. Learned Counsel for the respondent-claimant supported the judgment passed by the Reference Court.

13. So as to analyze the oral and documentary evidence that is placed on record, with the assistance of learned Counsel for respective parties, I have perused the record and proceedings and it is required to be noted here that the claimant Rajkumar Dhamdhare

who was examined at Exhibit-28 has supported the case for enhancement of the claim before the Reference Court. It is required to be noted that foremost and the important piece of evidence that was relied upon by the claimant was the judgment delivered by the Division Bench of this Court in First Appeal No. 20 of 1988 in the matter of Osman Khan Abdul Majid Khan and others vs. The State of Maharashtra decided on 08th and 9th February, 1994 at Exhibit-49. The land acquired was having CTS No.19049/1 and owner of the said land, feeling aggrieved by the meager compensation awarded by the Land Acquisition Officer, preferred reference and feeling aggrieved by the decision of the Reference Court, preferred First Appeal No. 20 of 1988 before this Court, which was decided on 9th February, 1994. In the said matter, this Court has fixed the market price of the acquired land of CTS No.19049/1 @16/- per sq. ft. (Rs.172/- per sq. mtr.). It is also required to be noted that the period between two notification i.e. land acquired under the present appeal and that of F.A. No. 20 of 1988 is about 18 months. The Reference Court, as such, relied upon the said judgment of the Division Bench of this Court, particularly having regard to the location of the land acquired bearing CTS No.19049/1 in the same vicinity/adjacent to the land acquired in the present proceedings.

14. The cross examination of PW-1 has elicited nothing in

favour of the present appellant rather he was able to establish through his evidence about location of the acquired land in the thickly populated area which is identified as Padampura from which place the industries, commercial activities, location of high way and that of railway station in same vicinity was clearly established.

15. The sale instance at Exhibit-41 dated 25/11/1982 is in relation to the property located in the same area i.e. Padampura. Perusal of the judgment of this High Court in First Appeal No. 20 of 1988 which is at Exhibit-49, it is required to be noted that the Division Bench has taken into account certain sale instances in the same locality and has proceeded to enhance the compensation. All these aspects were duly weighed before learned Reference Court while calculating and awarding compensation.

16. In view of above, in my opinion, it will be appropriate to dismiss the present appeal, as no illegality or arbitrary approach of the Reference Court is noticed.

17. Reliance placed by learned Counsel for the appellant in the judgment of Apex Court in the matter of **Shaji Kuriakose vs. Indian Oil Corporation Limited** reported in **2001(7) SCC 650** so as to canvass that the land covered in First Appeal No. 20 of 1988 was

in the same vicinity was not established and as such said judgment cannot be relied upon for deciding the enhancement is liable to be rejected in view of the evidence and C.T.S. Number of both the properties. The claimant in his evidence has specifically established that the land covered in F.A. No. 20 of 1988 is adjacent to his property and C.T.S. number of land which was subject matter of F.A.No. 20 of 1988 was 19049/1 whereas the land which is subject matter of present appeal is 19048.

18. In view of above, in my opinion, no case for interference is made out. The appeal fails, same stands dismissed.

19. Learned Counsel for the respondent-claimant has filed above referred Cross Objection seeking certain enhancement of compensation to the extent of Rs. 28.85 per sq. ft. as against the enhancement of Rs. 18.53 per sq. ft. granted by the Reference Court. According to him, he has brought on record certain sale instances which depicts the value of the land in question to be Rs.28.85 per sq. ft. i.e. sale deed dated 25/11/1982 in relation to plot in the same area.

20. It is required to be noted that the Reference Court while awarding the compensation has taken into account the Division Bench judgment of this Court in the matter of Osman Khan Abdul Majid Khan and others vs. The State of Maharashtra in First Appeal

No. 20 of 1988 decided on 8th and 9th February, 1994. Once Division Bench of this Court has already appreciated factual matrix and evidence and has awarded compensation @ Rs.16/- per sq. ft. which was subsequently enhanced by the Reference Court to Rs. 18.53 sq. ft. in the matter of claim of the appellant in the Cross Objection, in my opinion, there is hardly any evidence to consider the said enhancement. The enhancement of Rs. 18.53 per sq. ft. rather is reasonable enhancement, which order was passed after considering aspect of the matter including that of time difference between notification under Section 4 of the Land Acquisition Act in First Appeal No. 20 of 1988 and present matter.

21. As such, in my opinion, there is no substance in the cross objection, same fails, stand dismissed.

22. The claimant/land owner will be entitled to withdraw the amount after the appeal period.

23. In view of dismissal of the first appeal, civil applications also disposed of accordingly.

[N.W. SAMBRE, J.]