

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.143/2014

The Municipal Corporation,
Latur. Dist.Latur.
Through its Commissioner.
...Appellant..

Versus

- 1] Subhash Shankarrao Khalde,
age 49 yrs., occu.business,
r/o Veer Hanuman Wadi, Latur.
Dist.Latur.
- 2] The State of Maharashtra,
through the Collector, Latur.
Dist.Latur.
...Respondents...

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FIRST APPEAL NO.144/2014

The Municipal Corporation,
Latur. Dist.Latur.
Through its Commissioner.
...Appellant..

Versus

- 1] Kishan Gundiba Gawali,
age major, occu.service,
- 2] Sojarbai w/o Vishwanath Gawali,
age 70 yrs., occu.household,

- 2 -

- 3] Simintabai w/o Shrirang Gawali,
(Died) through her L.Rs.

Pandurang Shrirang Gawali,
age 60 yrs., occu.service,

All r/o Veer Hanuman Wadi,
Latur Dist.Latur.

- 4] The State of Maharashtra,
through the Collector, Latur.
Dist.Latur.

...Respondents...

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Shri Ajinkya Deshmukh, Advocate h/f Shri V.D. Hon, Senior
Advocate for appellant.

Shri S.B. Ghute, Advocate for respondent no.1 in FA
143/14 and for respondent nos.2 & 3 in FA 144/14.

Shri P.P. More, AGP for respondent - State.

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CORAM: N.W. SAMBRE, J.

DATE: 23.06.2015

ORAL JUDGMENT :

1] Both these appeals are by the acquiring body
against the award delivered by the Reference Court.

2] Few facts as are necessary for decision of the
present appeals are as under :

The appeals involve Land Acquisition Cases
Nos.100/1991 and 292/2001, which were initiated at the
behest of owners Subhash and Kishan, who were owning

- 3 -

Survey Nos.181/182 and 181/182. At the behest of the appellant, land admeasuring 180.1 Sq.Mtrs. and 303 Sq.Mtrs. was acquired for the purpose of construction of ring road for which the notification u/s 4(1) of the Land Acquisition Act was published on 11.9.1980.

After compliance of Sections 6 and 9 of the Land Acquisition Act, the Special Land Acquisition Officer determined and fixed the compensation of the acquired property at the rate of Rs.72/- per Sq.Meter.

The respondents – land owners, feeling aggrieved thereby, preferred Land Acquisition References through the Collector, before the Civil Judge, Senior Division, Latur.

The Reference Court, by a common judgment dated 15.7.2013, has enhanced the compensation from Rs.72/- per Sq.Meter to Rs.50/- per Sq.Ft. As such, the present appeals.

3] The learned counsel for the acquired body would urge that the enhancement granted by the Reference Court is at a very exorbitant rate. So as to substantiate his contentions, he has invited the attention of this Court to the compensation awarded by the Special Land

- 4 -

Acquisition Officer. According to him, the Special Land Acquisition Officer has awarded amount of Rs.6/- per Sq.Ft., which is enhanced to Rs.50/- per Sq.Ft. i.e. almost eight times, that too without any basis. In view of above, he has prayed for quashing of the judgment delivered by the Reference Court.

4] While supporting the award, the learned counsel for the respondents – land owners would urge that the purpose for which the land was acquired was construction of ring road, which itself speaks of the non-agricultural potential of the property in question. In addition to above, he would urge that there is a theater located adjacent to the land acquired and on the backside of the land acquired, there is a market yard. According to him, the award of the Reference Court is just and proper and is based on sale instances. As such, he has prayed for dismissal of the first appeals.

5] In support of the claim, the respondents – claimants have brought on record before the Reference Court certain sale instances. It is required to be noted that the saledeed dated 3.3.1970 (Exhibit 25), certified

- 5 -

copy of the assessment list issued by Municipal Corporation, Latur (Exhibit 26), original Sanad (Exhibit 27), certified copy of the saledeed dated 2.1.1988 (Exhibit 32) and non-agricultural assessment order, were placed on record.

6] The respondent no.1 - claimant has placed on record copy of the award and his statement at Exhibit 36 and the Commissioner of the Municipal Corporation, Latur, Shri Deshmukh is examined at Exhibit 39.

7] While analysing the evidence placed on record, the learned Reference Court noticed that the claimants have sought enhancement at the rate of Rs.50/- per Sq.Ft. According to Reference Court, reliance is placed on the saledeed (Exhibit 32), which was filed in Land Acquisition Reference No.100/1991. Exhibit 32 - sale instance was proved by the claimants by adducing evidence. The said transaction is pertaining to open plot in Latur city. The said sale transaction was taken into account by the learned Reference Court. According to the learned Reference Court, Exhibit 32 - sale transaction pertains to non-agricultural plot located in

- 6 -

Latur city. The said plot was sold at Rs.1,82,920/- and the price calculated per square meter was Rs.1832/ approximately and the per square foot price comes to Rs.170/.

8] When the witness of the appellant Shri Deshmukh was confronted with the above referred evidence, he has admitted in his cross-examination that on the northern side of the acquired property, the market yard of Latur is located, whereas on the other side of the property, there is a theater located. He has also admitted that the acquired property was fully converted into a commercial place and an adjoining land, which is located just 600 Ft. away, was sold in an auction, which was a cooperative industry. There also locates a Mangal Karyalaya adjoining the property under acquisition. All this evidence has prompted the Reference Court to form an opinion that the enhancement claimed at the rate of Rs.50/- per Sq.Ft. is just and proper.

9] If the contention of the learned counsel for the appellant as regards eight times enhancement than that of the rate granted by the Land Acquisition Officer is

- 7 -

considered with above referred background, it is required to be noted that admittedly the land in question is acquired for the purpose of ring road by the Municipal Corporation. The fact that the land is acquired by the Municipal Corporation speaks about the location of the property within the Municipal limit. It is not in dispute that the land in question has a non-agricultural potential and in view of adjoining structures to the land acquired *vis-a-vis* theater, Mangal Karyalaya, market yard, speaks about the commercial potential of the property in question. Though the Reference Court has taken into account Exhibit 32 – a sale instance, for the purpose of determining compensation at the rate of Rs.50/- per Sq.Ft., however, it is required to be noted that the sale instance is of 2.1.1988. The land in question was acquired in 1980 i.e. Section 4 notification was issued in 1980. The Reference Court as such, while taking into account the said sale instance, has reduced the price from Rs.170/- per Sq.Ft. to that of Rs.50/- per Sq.Ft. for the land acquired. It is also required to be noted that the location of other commercial establishments adjoining the property under acquisition

- 8 -

is not disputed by the Commissioner of the Municipal Corporation, who was examined in the case before the learned Reference Court.

10] In my opinion, having regard to the above referred background, the award of compensation at Rs.50/- per Sq.Ft. is just and proper. No case for interference is made out in these first appeals. The appeals fail and stand dismissed. There shall be no order as to costs. In view of dismissal of the appeals, pending civil applications, if any, in these appeals do not survive and stand disposed of as such.

(N.W. SAMBRE, J.)