

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 1012 OF 1992
WITH
FIRST APPEAL NO. 964 OF 1992**

Ramchandra D. Phadke (since deceased)
by LRs. Ambibai R. Phadke & Ors. ... Appellants
Vs.
The State of Maharashtra ... Respondent

Mr. M.S. Karnik a/w. Sanskar Marathe and Ms. Nazia S.A. Shaikh,
Advocate for the appellants.
Mr. A.R. Patil, AGP for the respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **AUGUST 20, 2015**

P.C.:

As similar issue is involved in these two Appeals, they are taken together and disposed of by a common order.

2. These two First Appeals are directed against the judgment and award dated 31st March, 1990 passed by the Joint Civil Judge, Senior Division, Raigad at Alibag thereby granting enhancement in the amount of land acquisition award. The lands in issue is situated at Village Kamothe, Taluka Panvel and it was acquired by the Government for New Bombay Project. A notice dated 3rd February, 1970 was issued under section 4 of the Land Acquisition Act and was published in the Government Gazette on 4th February, 1970. The Special Land Acquisition Officer valued the said lands @Rs.3.50 per sq. m. and accordingly gave

total compensation. The said award of Special Land Acquisition Officer was challenged by the claimant by referring the matter to the Collector. The claimant demanded minimum compensation of not less than Rs.20/- per sq.m. from the date of notification under section 9(3)(4) of Land Acquisition Act. A Reference under section 18 of the Land Acquisition Act was preferred before the District Court and the District Court, after considering the evidence adduced by the claimant and the case of the State, has valued Rs.10/- per sq.m. and accordingly enhanced the amount. Being aggrieved by the said rate, these Appeals are preferred for enhancement by the claimants.

3. At the time of hearing of these Appeals, the learned counsel for the appellants has placed reliance on the judgment of this Court in **First Appeal No. 604 of 1995 in the State of Maharashtra vs. Prakash Vasudeo Deodhar and other group Appeals dated 12th June, 2008**. The learned counsel for the appellants submitted that the Division Bench of this Court has considered the NA potentiality of the lands in village Kamothe and Kalamboli, Taluka Panvel and after considering all the aspects, maximum rate is fixed at Rs.25/- per sq.m. and the same may be given to the claimant.

4. Learned AGP while opposing the Appeals, though conceded that

the Division Bench of this Court has fixed the rate of the lands, however, he pointed out that the rates are fixed in three categories depending on the distance of the land from the highway. He pointed out that nowhere it is mentioned in the judgment what is the distance of the lands in issue from the highway. He submitted that as it is the lands falling beyond 1500 metres from the national highway, then the lands are to be valued at Rs.21/- per sq.m.

5. The value of the lands in village Kamothre and Kalamboli is already covered by the judgment of Division Bench in the **State of Maharashtra vs. Prakash Vasudeo Deodhar** (*supra*). In paragraph 17 the Division Bench has held that:

“The claimants would be entitled to compensation for acquisition of their lands as under:

- a) Lands falling within 750 metres of the National Highway – Rs.25/- per sq.m.
- b) Lands falling within 750 to 1500 metres of the National Highway – Rs.23/- per sq.m.
- c) Lands falling beyond 1500 metres of the National Highway – Rs.21/- per sq.m.

6. Perused the judgment and evidence in the present case. In the

judgment dated 31st March, 1990, the learned Judge has observed that the lands under reference are adjacent to Highway near Jawahar industry and Panvel town, Motha Khanda and Dhakata Khanda is at the distance of ½ mile so also Johnson industry ad factory of colour is situated nearby. Considering these observations, though there is no specific mention in respect of distance, on the basis of observation it can be held that the lands were falling in the second category, i.e., at the distance of 750 to 1500 metres away from the border of Highway. I am of the view that rate which is fixed at Rs.10/- per sq.m. is to be enhanced. Instead of Rs.10/- per sq.m., the land is to be valued at Rs. 23/- per sq. m. and accordingly the compensation is awarded. The amount of solatium under section 23(2) of Land Acquisition Act is to be calculated and rate of interest remains the same. The statutory benefits are to be awarded from the date of application.

7. First Appeals are partly allowed.

(MRS.MRIDULA BHATKAR, J.)