IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.974 OF 2000

The State of Maharashtra,)
Through the Special Land Acquisition)
Officer No.1, Nashik.) .. Appellant

Vs

1. Rustom Burzor Joshi (deceased),)
Through LR Nos.3 to 5,)

2. Gulabi Rustom Joshi (deceased),)
Through L.R. Nos.3 to 5 & 6.)

3. Sherin Rustom Joshi,)

4. Framroj Rustom Joshi,)

5. Zarir Rustom Joshi,)

6. Burzor Rustom Joshi.) .. Respondents

–

Shri A.R. Patil, AGP for the Appellant.
Shri A.J. Ahuja for the Respondents.

--

CORAM : A.S. OKA & A.P.BHANGALE, JJ
DATED : 9TH APRIL 2015

ORAL JUDGMENT (PER A.S. OKA, J)

. By this Appeal, the State of Maharashtra has taken an exception to the judgment and award dated 31st November 1999 passed by the learned Joint District Judge, Nashik, in a Reference under

Section 18 of the Land Acquisition Act, 1894 (for short "the said Act") made at the instance of the Respondents/Claimants.

2. A Notification under Section 4(1) of the said Act in respect of the acquired land dated 31st January 1987 was published in the Government Gazette on 26th February 1987. A Notification under Section 6 of the said Act was published on 2nd July 1987. The award was made under Section 11 of the said Act on 21st July 1989. The said subject matter of acquisition is Survey No.118/1-2, admeasuring 28,747 sq. meters situated at Deolaligaon, Taluka and District – Nashik. The acquisition was for the public purpose of Telephone Exchange with Staff Quarters and Divisional Stores Department. The Special Land Acquisition Officer offered market value at the rate of Rs.64/- per sq. meter. By the impugned judgment and award, the Reference Court has fixed the market value at the rate of Rs.200/- per sq. meters.

3. The learned AGP appearing for the Appellant has taken us through the entire record. He pointed out that the Respondents relied upon two sale instances of non-agricultural land having an area of 1018.50 and 695 sq. meters, respectively. He pointed out that as far as the land admeasuring 1018.50 sq. meters is concerned, the sale deed is of 26th June 1984. He urged that both the plots cannot be said to be comparable with the acquired land as the same were small layout plots

which were already developed. He pointed out that on the other hand, the acquired land which admeasures 28,747 sq. meters had many negative factors including the fact that it was an agricultural land. He urged that even if the sale instance at Exhibit-52 i.e. Sale Deed dated 13th January 1987 is considered, it is a sale instance of a developed layout plot of land having small area of 695 sq. meters. He submitted that considering the large area of the acquired land and considering the several negative factors in respect of the acquired land, maximum deduction of 75% to 80% will have to be made for determination of the market value of the acquired land on the relevant date on the basis of the sale instance at Exhibit-52. He urged that there was no reason to discard the sale instance at Exhibit-75 on which reliance was placed by the Appellant. He urged that the learned Trial Judge has adopted a complete erroneous approach by fixing the market value of the acquired land by taking the average of the rates reflected from all the three sale instances. His submission is that the burden was not discharged by the Claimants to prove that the market value offered in the award under Section 11 of the said Act was inadequate.

4. The learned counsel appearing for the Respondents urged that as there was no other sale instance available, the sale instance at Exhibit-52 dated 13th January 1987 will have to be considered. He pointed out that as compared to location of the land subject matter of

the said sale instance, the acquired land was far more better located as it was abutting the jail road (which is a main road) and was having roads on three sides of the said plot. In view of the findings recorded by the Trial Court in Paragraph 16 of the judgment, he submitted that at highest, nominal deduction of 10% to 20% can be made for determining the market value of the acquired land on the basis of the sale instance at Exhibit-52. He would, therefore, urge that the rate of Rs.200/- per sq. meter fixed by the Reference Court is legal and proper. He relied upon the observations made by the Apex Court in the case of *Valliyammal and Another v. Special Tahsildar (Land Acquisition) and Another*[1] He also relied upon what is held by the Apex Court in the case of *Ambya Kalya Mhatre (Dead) Through LRs. and Others v. State of Maharashtra*[2] He urged that all the lands adjacent to the acquired lands were already put to non-agricultural use on the material date. He pointed out that on the material date, the acquired land was within the limits of Nashik Municipal Corporation and, therefore, enormous potential for non-agricultural use was available in respect of the acquired land. He would, therefore, urge that no interference is called for with the impugned award. He pointed out that the benefit of interest under Section 28 of the said Act has been denied to the Respondents.

---

1 (2011)8 SCC 91
2 (2011)9 SCC 325

5. We have carefully considered the submissions. It will be necessary to make a reference to the evidence adduced by the Respondents/Claimants to show that the offer made under the award under Section 11 of the said Act was inadequate. The first witness examined by the Respondents is one Shaikh Gayas Hussain. He claimed that he was working as a Manager with the First Claimant who had authorized him to depose in the Reference. We may also note here that the Respondent No.6 Shri Burjor Rustom Joshi stepped into the witness box who, after deposing that the market value of the acquired land was between Rs.263/- to Rs.300/- per sq. meters, stated that he was adopting the deposition of Shri Shaikh Gayas Hussein.

6. In Paragraph 3 of his deposition, Shri Shaikh specifically stated that “when our property was acquired, the market value was Rs.150/- sq. per meter”.

7. We have carefully analyzed the entire evidence on record. Several negative and positive factors in respect of the acquired land were brought on record in the evidence. The said positive and negative factors on the material date can be summarized as under:

Sr. No	Positive Factors	Sr. No	Negative Factors
(i)	The India Security Press was half furlong away from the acquired property;	(i)	The acquired land was a barren agricultural land and in the year 198-85, a Jawar cop was taken on the acquired land;
(ii)	The currency note press is 40 to 50 feet away from the acquired property;	(ii)	Even an Application was not filed for converting the acquired land for non-agricultural use till the acquisition;
(iii)	The acquired land was abutting the jail road which is one of the main roads in the City of Nashik. Even on the two other sides, the land viz. East and West, there were roads abutting the land.	(iii)	The proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 in relation to the acquired land had not become final.
(iv)	St. Philomena High School was close to the said acquired land.		

8. The Respondents relied upon two sale instances. The first sale instance is at Exhibit-50 which is a Sale Deed dated 26th June 1984 in respect of a plot of land admeasuring 1018.50 sq. meters. We must note here that the relevant date in the present case is 22nd July 1987. Moreover, perusal of the Sale Deed at Exhibit-50 shows that the said plot was a non-agricultural plot forming part of a layout. The Sale Deed specifically refers to a permission under Sub-section (1) of Section 26 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the ULC Act") and non-agricultural permission granted way back on 21st December 1978. Shri Ramesh Jethanand Chhapru was examined for proving the said sale transaction. He is one of the Vendors under the Sale Deed at Exhibit-50. In the cross-examination, he admitted that when he purchased the said plot in the year 1979, it was already a developed plot and after he purchased the said plot of land, the owners of the nearby plots constructed bungalows.

9. The second sale instance relied upon by the Respondents is the Sale Deed dated 13th January 1987 in respect of a plot having an area of 695 sq. meters. We have perused the Sale Deed at Exhibit-52. For proving the said Sale Deed, one Shri Hemant Shamji Chavan was examined who is one of the purchasers under the said Sale Deed. Perusal of the said Sale Deed shows that the same is executed by a Registered Co-operative Housing Society. From the description of the

Sale Deed, it appears that it is in respect of a layout Plot No.18 having an area of 695 sq. meters. There is a recital in the said Sale Deed that a permission under Sub-section (1) of Section 26 of the ULC Act was obtained for the sale. From the boundaries of the plot, it is apparent that it was a part of the layout plot. On two sides of the said plot, there was a Colony Road.

10. As stated earlier, Exhibit-50 is a Sale Deed dated 26th June 1984. The Sale Deed at Exhibit-52 is of 13th January 1987. The Notification under Sub-section (1) of Section 4 of the said Act is of 13th January 1987 which was published in the Gazette dated 26th February 1987 and the last date of publication is 22nd July 1987 when it was affixed on village Chavdi. Thus, it can be said that the Sale subject matter of the sale instance at Exhibit-52 was within a close proximity of the relevant date. As compared to the acquired land, the sale instance land was away from the Jail Road. From the cross-examination of Shri Hemant Chavan, it appears that when the plot was purchased, the layout of the plots was already sanctioned.

11. As far as the sale instance at Exhibit-75 in respect of the Sale Deed dated 21st October 1986 relied upon by the Appellant is concerned, the Appellant examined Shri Somabhai Prabhudas Patel, the purchaser of the land subject matter of the said sale instance. In the

cross-examination, he accepted that the Vendor has sold the plot to him at a lesser price as he was in a need of money . Therefore, it was a case of distress sale which will not reflect the true market value.

12. As far as the Sale Deed at Exhibit-52 is concerned, the market value reflected therefrom is Rs.251/- per sq. meter. Comparing the acquired land with the land subject matter of the sale instance Exhibit-52, it can be said that the only the positive factor in respect of the acquired land is that it was better located as compared to the plot subject matter of Exhibit-52. However, the area of the plot forming part of the Sale Deed at Exhibit – 52 was only 695 sq. meters. It was a layout plot which was already developed which was held by a Co-operative Housing Society. As evident from the Sale Deed, the plot was situated in a residential layout. The Sale Deed also recites that a permission was granted by the Competent Authority under the ULC Act for the sale of the said plot. Thus, the sale instance plot was a developed layout plot which was available for non-agricultural use. On the other hand, the acquired land was a very large land having 28,747 sq. meters which was an agricultural land on the relevant date. It was a barren land. Before the relevant date, a jawar crop was being taken thereon. An Application for grant of permission to use the said land for non-agricultural use was not made before the relevant date. There is an admission by Shri Hussein that the proceedings in respect of the said

land under the ULC Act had not become final. This is very relevant in the context of the fact that the area of the acquired land was very large. Therefore, the market value of the acquired land which was having several negative factors will have to be determined on the basis of the market value of a very small layout plot which had several positive factors. As held by the various decisions of the Apex Court, the deduction to be made in such cases on account of development charges and other items ranges between 20% to 86%.

13. In the facts of this case, for arriving at the market value of the acquired land on the basis of the sale instance of the plot of land Exhibit-52, a substantial deduction will have to be made on account of the cost of the development. As stated earlier, the sale instance plot was a residential layout plot which was a very well developed plot held by a Co-operative Housing Society. Apart from this fact, the Application for grant of permission to non-agricultural use was not made in relation to the acquired land apart from the fact that the proceedings under the ULC Act was not final. The area of the acquired land was nearly 41 times more than the area of the sale instance plot.

14. As pointed out earlier, the last date of publication of the Notification under Sub-section (1) of Section 4 of the said Act is dated 2nd July 1987. For the gap of six months between the date of Exhibit-52

(13th July 1987) and the relevant date (22nd July 1987), escalation can be granted at the rate of 5% per annum. Therefore, the market value of the plot subject matter of Exhibit-52 on the relevant date (i.e. on 22nd July 1987) can be reasonably taken as Rs.263/- per sq. meter.

15. In normal course, maximum deduction of not less than 75% was required to be made towards the development cost. But there is one positive factor in respect of the acquired land viz. its location abutting the Jail Road. There were two other smaller roads on two other sides of the acquired land. Moreover, the acquired land had a potential for non agriculture use in future. Therefore, in the facts of the case, the deduction can be between 40% and 50%. The law is well settled. In the process of fixation of the market value under Section 23 of the said Act, some guess work is always inherent. Shri Hussein who deposed on behalf of the Claimants candidly stated that the market value of the acquired land on the relevant date was Rs.150/- per sq. meter. Reliance placed by the learned counsel appearing for the Respondents on the decision in the case of Valliyammal v. Tahsildar will not help the Respondents as the finding recorded by the Apex Court was in the light of the peculiar facts of that case. Therefore, the market value of the acquired land will have to be fixed at the rate of Rs.150/- per sq. meter.

16. From the operative part of the impugned judgment and award, we find that the learned counsel appearing for the Respondents is right to the extent that the Respondents are entitled to the benefit under Section 28 of the said Act on all the three components of the compensation viz; the market value, solatium under Sub-section (2) of Section 23 and interest under Sub-section (1A) of Section 23 of the said Act. Though there is no Appeal or Cross-objection preferred by the Respondents, they are entitled to the statutory benefits as a matter of right. Therefore, the impugned judgment and award will have to be corrected by exercising the power under Rule 33 of Order XLI of the Code of Civil procedure, 1908.

17. Therefore, the Appeal must succeed in part and we pass the following order:

ORDER :

(a) The impugned judgment and award is modified. The market value of the acquired land shall be Rs.150/- per square meter;

(b) In addition to the market value at the rate of Rs.150/- per square meter, the Respondents shall be entitled to the statutory benefits under Sub-Sections

(1-A) and (2) of Section 23 as well as under Section 28 of the Land Acquisition Act, 1894;

(c) It is made clear that the interest under Section 28 of the said Act will be payable on all the three components of the compensation (market value of the land, interest under Sub-section (1A) of Section 23 and the solatium under Sub-section (2) of Section 28) forming part of Section 23 of the said Act;

(d) The Respondents Claimant shall be entitled to proportionate costs of the Reference from the State Government;

(e) The Reference Court shall complete the exercise of computing the total compensation payable in terms of the modified award within a period of three months from the date on which the writ of this judgment is received by the said Court. The Reference Court shall also pass consequential orders of restitution and/or deposit and/or withdrawal of the amount depending upon the total compensation payable in terms of the modified award;

(f) Before computing the amount payable as per the modified award, the Reference Court shall hear both the parties;

(g) The Appeal is partly allowed on above terms with no order as to costs;

(h) Writ to be sent early.

(A.P.BHANGALE, J) (A.S. OKA, J)