

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 188 OF 1992

Subhash Krishnaji Athalye (Deceased)
Through LRs.

- 1] Smt. Shanta Subhash Athalye, aged about 60 yrs.
wife of Subhash Krishnaji Athalye (now deceased)
residing at 303, Naren Nagar Co-operative
Housing Society Ltd., Thakurli Station Road,
Behind Happy Home Building, Thakurli (East),
Dombivali, Taluka Kalyan, District Thane.
- 2] Smt. Revtee Shailendra Karmalkar,
aged about 43 years, daughter of Subhash
Krishnaji Athalye (now deceased)
residing at 303, Naren Nagar Co-operative
Housing Society Ltd., Thakurli Station Road,
Behind Happy Home Building, Thakurli (East),
Dombivali, Taluka Kalyan, District Thane.
- 3] Chandrashekhar Subhashl Athalye
aged about 41 years, Son of Subhash
Krishnaji Athalye (now deceased)
residing at 303, Naren Nagar Co-operative
Housing Society Ltd., Thakurli Station Road,
Behind Happy Home Building, Thakurli (East),
Dombivali, Taluka Kalyan, District Thane.
- 4] Nilkanth Subhash Athalye,
aged about 38 years, Son of Subhash
Krishnaji Athalye (now deceased)
- 5] Bhalchandra Subhash Athalye,
aged about 38 years, daughter of Subhash
Krishnaji Athalye (now deceased)
residing at 303, Naren Nagar Co-operative
Housing Society Ltd., Thakurli Station Road,
Behind Happy Home Building, Thakurli (East),
Dombivali, Taluka Kalyan, District Thane. ... Appellants

vs.

- 1] The State of Maharashtra
Through the Collector of Statara
- 2] The Special Land Acquisition Officer, No. 12,
Satara. ... Respondents

Mr. Roshan D'Souza i/by Sharmila D'Souza, Advocate for the appellants.
None for the respondents.

Coram : Smt. R. P. SondurBaldota, J.
Date : 2nd April, 2016.

JUDGMENT :

1. This appeal is directed against the judgment and award dated 1st February, 1991, by which reference made by the original appellant for enhancement of the compensation for acquisition of his land, was partly allowed and the respondent is directed to pay compensation at a higher rate. The enhancement in the rate was from Rs.26.25 ps. per sq. mtr. to Rs.88/- per sq. mtr.
2. The challenge to order is on two grounds. Firstly that a portion of the acquired land i.e. portion admeasuring 10 sq. mtrs. was not considered by the respondent for computation of the compensation and secondly that the appellant is entitled to receive compensation at the rate of Rs.205/- per sq. mtr. As regards the first contention, the reference Court noted that the oral evidence

of the appellant of area of the land at 910 sq. mtrs. has not been established. The documents refer to the measurement of the land at plot no.30 as nine gunthas. The reference Court found that the actual area of plot no.30 and the actual area of the land acquired out of it has not been stated anywhere by the original appellant. Consequently, it accepted the area of the land acquired as stated in the record to hold that the actual area under acquisition is 900 sq. mtrs. and granted compensation in respect of 900 sq. mtrs. Even before this Court Mr. D'Souza has not been able to point out any material from record that the actual area of the land acquired is 910 sq. mtrs. Hence, there is no infirmity in this finding of the reference Court.

3. As regards the rate for calculation of the compensation, the reference Court found that the evidence of the sale instance produced by the appellant was not relevant for the property acquired. It noted that the date of publication of notification under Section 4 of the Land Acquisition Act was 3rd October, 1995 and the sale instance brought on record by the appellant was of the year 1989. The sale instance of a distance of a period of four years could not have been indication of the value of the land in the year 1995. But at the same time it considered the other material on record to rule that the amount of compensation at the rate of

Rs.88/- per sq. mtr. in respect of the land under acquisition was reasonable and proper and accordingly calculated the compensation and the other aspects of the compensation to be awarded to the appellant. Since there was no material, whatsoever, produced by the appellant before the reference Court to justify compensation at the rate of Rs.205 per sq. mtr, no infirmity can be found with the finding of the reference Court on the rate of calculation also. Hence, the appeal is dismissed.

[Smt. R. P. SondurBaldota, J.]