

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 1374 OF 2015
WITH
CIVIL APPLICATION NO. 4310 OF 2015 IN F.A. NO. 1374 OF 2015**

The State of Maharashtra	...	Appellant
Vs.		
Atul Gangadhar Puranik	...	Respondent

Mr. A.R. Patil, AGP for the appellant/State.
Mr. Hemant Ghadigaonkar, Advocate for the respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **4th March, 2016.**

P.C.:

Admit. The learned counsel for the respondent waives service. By consent, the Appeal is heard finally and decided at the stage of admission.

2. This appeal is directed against the judgment and award dated 27th March, 2014 passed by the learned Civil Judge Senior Division, Raigad-Alibag in L.A.R. No. 79 of 2004 in respect of 1/3rd share in the land admeasuring 1863.33 sq. mtrs from Survey No. 167 thereby fixing the compensation @ 30/- per sq. mtr. This land was acquired for New Mumbai Project by a notification dated 3rd February, 1970 under section 4 of the Land Acquisition Act. A notice under section 9(3)(4) was issued to the applicant and while replying to the notice, the original claimant demanded a compensation at the rate of Rs.50/- per sq. mtr. However, the Special Land Acquisition Officer fixed the compensation @ Rs.5.50 per

sq. m. and passed the award under section 11 of the Act on 28th February, 1984. The said award was accepted under protest by the claimant and therefore, approached the Collector. Thereafter, a reference was made before the Civil Court under section 28A(3) of the Land Acquisition Act. The learned Civil Judge Senior Division, Alibag considered the evidence tendered by the applicant and accepted that the said land is located near Pune Mumbai Highway. It has good potential as Non-Agricultural land and also considered the other industrial development and increased the rate of compensation to Rs.30/- per sq. mtr. Being aggrieved by the said order, this Appeal was filed by the State of Maharashtra.

3. The learned AGP while arguing the Appeal has submitted that the learned trial Court has committed an error that the claimant is entitled to enhanced compensation. The learned Judge ought to have considered the ratio laid down by the judgment of the Division Bench of this Court in the case of **State of Maharashtra vs. Prakash Vasudeo Deodhar, reported in (2008) 5 BCR 708**. As per the ratio laid down in the said judgment, if the land falling within 750 meters of the National Highway, then rate is Rs.25/- per sq. mtr.; if the land is falling within 750 to 1500 metres of the National Highway, then rate is Rs.23/- per sq. mtr. and if the land is falling beyond 1500 metres of National Highway, then rate is Rs.21/- per sq. mtr. The learned AGP submitted that the land is falling

within 750 to 1500 metres from the National highway and therefore the rate should have been fixed at Rs.23/- per sq. mtrs. Hence, the Appeal is to be allowed.

4. In reply, the learned counsel for the respondent submitted that the view taken by the Division bench of this Court in respect of fixing the compensation on the basis of distance of the land from the Highway is re-examined by the Supreme Court in the case of **Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by LRs and Ors., vs. Special Land Acquisition Officer & Ors., reported in 2012 DGLS (Soft) 309**. The learned counsel further submitted that the land bearing Survey No. 167 is hardly 100 mtrs. away from Survey no. 161 and for the land bearing Survey no. 161, the court has fixed the compensation @ Rs.30/- per sq.mtr. and that was accepted and confirmed by the State of Maharashtra by memorandum issued on 11th February, 2016. As the lands are from the same village, considering their proximity, the same rate is to be given to Survey no. 167.

5. Both the land bearing survey nos. 161 and 167 are owned by one and the same person. For land bearing survey no. 161 the Government of Maharashtra has issued memorandum dated 11th February, 2016 and has accepted the rate of compensation fixed by the Reference Court at Rs.30/- per sq. mtr. The distance between survey nos. 161 and 167 is

approximately 100 mtrs. and so the rate can be adopted as adequate and reasonable rate.

6. In the case of **State of Maharashtra vs. Prakash Vasudeo Deodhar** though the Division Bench has fixed the rate of compensation on the basis of distance of the land from the Highway, the Hon'ble Supreme Court in the case of **Sabhia Mohammed Yusuf Abdul Hamid Mulla** (*supra*) has relied and referred to the ratio laid down in the case of **Revenue Divisional Officer vs. L. Kamalamma, reported in (1998) 2 SCC 385** wherein it was held that:

“When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and therefore classification of the same into different categories does not stand to reason.”

7. In the case of **Sabhia Mohammed** (*supra*) the issue of determining the compensation of land was from Roadpali (Kolekhar) village, Panvel taluka and it was acquired for New Mumbai Project by notification under section 4 on 3rd February, 1970. The Reference Court has fixed the

compensation @ Rs.25/- per sq. m. and the High Court has reduced it by applying the distance criteria. The Supreme Court held that such criteria cannot be applied mechanically and therefore, the rate of Rs.25/- per sq. mtr. was restored. In view of this, the land bearing survey no. 167 is from Village Panvel itself and the Reference Court has considered the factors while determining the rate of compensation and as mentioned earlier of the memorandum issued by the Government and considering the distance between the land bearing survey nos. 161 and 167, I am of the view that the rate of compensation of Rs. 30/- per sq.m. fixed by the Reference Court is correct and adequate. The order of the Reference Court is hereby maintained.

8. First Appeal is dismissed. In view of this, Civil Application does not survive and the same is accordingly disposed of.

9. Considering the age of the respondent, the Government to expedite the payment within three months after the receipt of writ of this order.

(MRIDULA BHATKAR, J.)