IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2273 OF 2014

1) Shaikh Rahim S/o. Shaikh Mohammad,
Age: 65 years, Occu.: Agriculture,
R/o. Near Qureshi Masjid,
Chikalthana, Aurangabad.

2) Shaikh Nazir S/o. Shaikh Vazir,
Age: 69 years, Occu.: Agriculture,
R/o. Ward No.5, Iqbal Chowk,
Buldhana, Dist. Buldhana.

...APPELLANTS
(Ori. Claimants)

VERSUS

1) The State of Maharashtra
Through The District Collector,
Aurangabad, Dist. Aurangabad.

2) The Executive Engineer,
Public Works Department,
World Bank Project Division,
Bandhkam Bhavan, Adalat Road,
Aurangabad 431 005.

...RESPONDENTS
(Orig. Respondents)

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Mr. More Ashok A., Advocate for appellants;
Mr. S.P. Sonpawale, AGP for respondents.

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CORAM: P.R. BORA, J.

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Date of reserving the Judgment : 18/07/2017
Date of pronouncing the Judgment : 11/09/2017

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JUDGMENT:

1. The appellants have filed the present appeal against the judgment and award dated 9th of July, 2014, passed by the 8th Joint Civil Judge, Senior Division, Aurangabad, in LAR No.186/2009. The aforesaid application was filed by the present appellants seeking enhancement in the amount of compensation as was awarded to them by the Land Acquisition Officer. The learned Civil Judge (hereinafter referred to as the Reference Court) has enhanced the amount of compensation and held the appellants entitled for the compensation at the rate of Rs.10,760/- per square meter and also for the statutory benefits under the provisions of the Land Acquisition Act. According to the appellants, the compensation, as has been enhanced by the learned Reference Court is also inadequate and they have, therefore, preferred the present appeal seeking further enhancement in the amount of compensation as has been awarded by the Reference Court.

2. The property which is the subject matter of the present appeal was a constructed house abutting to the Aurangabad Jalna Road and was acquired for widening of Aurangabad Jalna Road and more particularly for Four Laning of the said Road. The subject property was acquired vide notification published in the official gazette under the provisions of Section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 read with Section 6 of the Land Acquisition Act (hereinafter referred to as `the Act of 1894') on 14th of August, 2008. The said notification was published in the newspapers and was displayed on the spot on 21st of August, 2008. After having complied with the necessary formalities, thereafter, the award under Section 11 of the Act of 1894 was published on 18th of December, 2008.

3. The Special Land Acquisition Officer determined the market value of the subject property at the rate of Rs.3800/- per sq.mt. and, accordingly, offered the compensation to the appellants who are, hereinafter, referred to as the claimants. Dissatisfied with the amount of compensation so offered, the appellants filed an

application under Section 18 of the Act of 1894 and the same was adjudicated by the Reference Court. The claimants had claimed the market value for the acquired property at the rate of Rs.3,000/- per sq.ft. One of the claimants, namely, Shaikh Rahim Shaikh Mohammad testified before the Court to substantiate the claim raised by the claimants and also filed on record various documents such as valuation report issued by the Sub Registrar and the information received under the Right to Information Act in regard to the MHADA properties offered for sale. The acquiring body or the State neither adduced any oral evidence nor filed on record any documentary evidence. The learned Reference Court, after having assessed the oral and documentary evidence brought on record by the claimants, determined the market value of the acquired property at the rate of Rs.10,760/- per sq.mt. and, accordingly, enhanced the amount of compensation payable to the claimants with all statutory benefits under the provisions of the Act of 1894.

4. As stated hereinabove, since the compensation so enhanced by the learned Reference Court is inadequate

according to the claimants, they have preferred the present appeal seeking further enhancement in the amount of compensation so determined by the learned Reference Court.

5. Shri A.A.More, learned Counsel appearing for the appellants, submitted that the learned Reference Court has failed in properly appreciating the oral and documentary evidence brought on record by the claimants as about the market value prevailing on the date of acquisition of the subject property. The learned Counsel submitted that the subject property was admittedly abutting to the Aurangabad Jalna road i.e. on the main road and was being used for commercial purpose. The learned Counsel submitted that sufficient evidence was produced on record by the claimants to show that a shop was being run in the subject property and it was, therefore, the property being used for commercial purpose. The learned Counsel further submitted that evidence was also brought on record by the claimants showing the Ready Reckoner rates prevailing at the relevant time according to which the market value of the

subject property was liable to be assessed at the rate of Rs.19,000/- per sq.mt. The learned Counsel further submitted that the evidence was also produced bringing on record that, for MHADA properties put to auction, which were in interior part, the offers were received upto Rs.43,000/- per sq.mt. The learned Counsel submitted that failure on the part of the the learned Reference Court in properly appreciating the said evidence has resulted in improper determination of the market value of the acquired property. Learned Counsel, therefore, prayed for determination of the market value of the acquired property on the basis of the evidence brought on record by the claimants and to enhance the amount of compensation accordingly.

6. Shri Sonpawale, learned A.G.P., appearing for the respondent State, supported the impugned judgment and the award. Learned A.G.P. submitted that the learned Reference Court has appropriately taken into account the Ready Reckoner rates as well as the evidence brought on record by the claimants in respect of the market value prevailing on the date of acquisition and has

rightly determined the market value of the acquired property at the rate of Rs.10,760/- per sq.mt. and, as such, no interference is required in the impugned judgment and the award.

7. I have carefully considered the submissions made by the learned Counsel appearing for the appellants and the learned A.G.P. appearing for the State. I have also carefully perused the impugned judgment and the evidence on record, more particularly, the documentary evidence. It is not in dispute that the acquired property was situated abutting to the Aurangabad Jalna Road. It has also not been disputed by the State that the acquired property was having commercial potentials. It is further not in dispute that neither the claimants nor the State has brought on record any sale instance pertaining to the property situated on the Highway i.e. Aurangabad Jalna Road.

8. Perusal of the award passed under Section 11 of the Act reveals that while determining the market value of the acquired property, the sale instances which are taken

into account by the Special Land Acquisition Officer were pertaining to the properties in the interior part i.e. at some distance from the main road, either on the southern side or the northern side but, none was pertaining to the property situated on the highway i.e. Aurangabad Jalna Road.

9. The learned Reference Court has determined the market value of the acquired property on the basis of the valuation provided by the Sub Registrar and the offset price fixed by the MHADA while putting to auction their residential and commercial plots for sale situated at Mukundwadi, Aurangabad, and the offers received to MHADA to the said plots. Perusal of the discussion made by the learned Reference Court reveals that the aforesaid evidence has not been properly appreciated by it. The material on record reveals that MHADA had put to auction total 22 plots from survey nos. 7/1 and 7/2 situate at Mukundwadi, Aurangabad, for sale out of which 11 were only for residential purpose and 11 were for residential cum commercial purpose. For the commercial plots, the offset price was fixed at Rs.7570/- per sq.mt. whereas, for

residential plots the offset price was fixed at Rs.5320/- per sq.mt. The material on record further reveals that the maximum price which was offered by the prospective purchasers was in respect of plot No.P-3 and that was Rs.43,000/- per sq.mt. and the minimum price offered was Rs.11,401/- for plot No.P-6.

10. In so far as the valuation received from the Sub Registrar is concerned, it was at the rate of Rs.3800/- per sq.mt. for the open space; at the rate of Rs.8500/- per sq.mt. for residential, for the property used as an office valuation given was at the rate of Rs.11,000/- per sq.mt.; and for the property in use as a shop, it was at the rate of Rs.19,000/- per sq.mt.

11. The learned Reference Court, taking as a base, the aforesaid evidence i.e. the prices offered by the prospective purchasers to the MHADA plots and the report of valuation as provided by the Sub Registrar, determined the market value of the acquired property at the rate of Rs.10,760/- per sq.mt.

12. As argued by the learned Counsel for the appellants, the Reference Court has erred in not considering the prevailing market rate as provided by the Sub Registrar for commercial property being used as a shop and has also erred in relying upon the minimum rate offered by the prospective purchasers for the sale of MHADA plots put to sale by way of auction situate at Mukundwadi instead of taking into account the maximum rate offered for such plots or at least the average rate offered for the said plots by the prospective purchasers.

13. It was sought to be canvassed by the learned Counsel for the claimants that there were two shops in the acquired property and, as such, while determining the market value of the said property, the Reference Court must have determined the same at the rate of Rs.19,000/- per sq.mt. as per the valuation provided by the Sub Registrar. My attention was invited by the learned Counsel to the report received from the Sub Registrar wherein the existing Ready Reckoner rates are provided. The argument so made by the learned Counsel, however, cannot be accepted. I have minutely perused the contents

of the application which was preferred by the claimants under Section 18 of the Act of 1894 and also the oral evidence of claimant no.1 adduced before the Reference Court. Neither in the application under Section 18 of the Act nor in the testimony of claimant no.1 before the Reference Court, any such contention or averment is noticed that the acquired premises were being used as commercial premises or that any shop was existing in the said premises at the time of their acquisition. In the application under Section 18 of the Act of 1894, it was the case of the claimants that the respondents demolished the house and the belongings and the household articles were crushed because of the arbitrary demolition of the said property by the respondents. In the testimony before the Court, in paragraph no.6 of the examination in chief of claimant no.1, he has deposed that many valuable articles in their **house** alike the T.V. set, furniture, one teakwood cupboard, ornaments were crushed under the bulldozer. It is nowhere the case of the claimants that their shop was demolished or that the articles in the shop were destroyed or crushed under the bulldozer. Further, there is nothing on record to show that in what name the claimants were running the said shop and what articles were being sold or which services were being provided at the said shop. In absence of any such evidence, it is difficult to accept the contention of the claimants that the acquired property was a shop. In the circumstances, it cannot be said that the Reference Court committed any gross error or inherent mistake in not considering the Ready Reckoner value provided by the Sub Registrar to the tune of Rs.19,000/- for the premises used as a shops while determining the market value of the acquired property.

14. In so far as the offers received by the prospective purchasers for MHADA residential and commercial plots are concerned, it is observed by the learned Reference Court that the prices so offered cannot be considered for deciding the market value of the acquired property in view of the infrastructure provided by the MHADA. As has been recorded by the Reference Court, since MHADA provides all necessary infrastructure and the MHADA plots are fully developed, the prices offered for taking the said plots on lease are obviously on higher side compared with the private properties not

having such facilities.

15. I have given anxious consideration to the reasons which are assigned by the Reference Court in not applying the MHADA rates as well as the Ready Reckoner rates in determination of the market value of the subject properties. Ostensibly, though there does not appear any apparent mistake in the reasons as are assigned by the Reference Court, on deeper scrutiny of the evidence on record, it appears to me that some vital aspects are missed and are not considered by the Reference Court. As I discussed hereinabove, in absence of any evidence though the subject property cannot be categorized as a shop so as to apply the Ready Reckoner rate of Rs.19,000/-, as has been prescribed by the Sub Registrar, it would also be unjust to categorize the subject property purely as a residential premises. I need not to repeat that even the Reference Court has accepted the fact that the subject property is having all business potentials. Having considered the fact that the property was abutting to the National Highway, no further evidence is required to draw an inference that the same was more suitable for

being used as a shop than as a residence. The Ready Reckoner rate provided of Rs.8500/- by the Sub Registrar has to be held for purely residential premises not having any business potential. The subject premises, in no case, can be listed in the said category. Though in the Ready Reckoner rates provided by the Sub Registrar, there is no such category prescribing certain premises to be semi commercial and semi residential, it appears to me that while determining the market value of the subject property, it would be, in all fairness, to consider the subject property in the category of semi commercial and semi residential.

16. Secondly, the learned Reference Court has not discussed as to why it has preferred to consider the offer of the lowest price received by the prospective purchasers for the MHADA plots for determining the market value of the acquired land. The evidence on record shows that for residential cum commercial plots, put to auction by the MHADA to be given on lease, had received the offers ranging in between Rs.11,000/- to Rs.43,000/-. Admittedly, none of these plots are not on the highway

but somewhere in the interior portion. Even though it is accepted that MHADA plots may receive some better price since MHADA provides all infrastructure and the plots are fully developed, the fact cannot be ignored that the acquired property was at the National Highway and that may be the most weighty circumstance leading to an inference that it may receive much higher price than offered to the plots at the interior part.

17. After having considered aforesaid two aspects, there remains no doubt that the claimants have certainly made out a case for enhancement in the amount of compensation. If the offers received for MHADA plots are considered, a reasonable inference can be drawn that the price offered to the said residential cum commercial plots was averagely at Rs.18,000/- per sq.mt. Similarly, if the average is drawn of the rates prescribed by the Sub Registrar for the residential and commercial premises, and the same is held to be the rate for residential cum commercial premises, it would come to Rs.13,750/-. It has to be further considered that as has been contended by the claimants, the acquired premises were the only

premises in their possession and since whole of the said premises were acquired, they were required to shift at different location along with all of their belongings. After having considered the entire material on record and for the reasons stated above, I determine the market value of the acquired property to the tune of Rs.16,000/- per sq.mt. and hold that the appellants are entitled to receive the compensation of the acquired property at the said rate. Needless to state that the appellants shall also be entitled to receive all statutory benefits and interest as provided under the provisions of the Act of 1894, on the enhanced amount of compensation. Impugned award be modified accordingly. The Appeal, thus, stands partly allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

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