IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 568 OF 1989

Shri Sat Dev Prakash of Bombay
Indian Inhabitant residing at
R/o 'Amrita', Napean Road,
Bombay 400 006
(Since deceased, through LRs)

1. Ravi Prakash, Indian Inhabitant
residing at "Amrita", Flat No.10,
L.D. Ruparel Marg,
Mumbai – 400 006.

2. Mrs. Manjula Bhatia, Indian
Inhabitant, residing at "Amrita",
Flat No.9, L.D. Ruparel Marg,
Mumbai – 400 006. ... Appellants

Vs.

The Special Land Acquisition Officer,
Metro Centre No.2, 3rd Floor,
Panvel Taluka, Panvel,
District Raigad. … Respondent

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None for the Appellants.
None for the Respondent.

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CORAM : B. R. GAVAI AND
RIYAZ I. CHAGLA, JJ.

DATE : JULY 13, 2017.

ORAL JUDGMENT (PER B. R. GAVAI, J.) :

1. The matter was called out initially at 12.00 noon. Since none appeared either for the appellants or for the respondent, the matter was kept back by us. It was again called out at 1.20 p.m. and on the second call also none appeared for the appellants, so also for the respondent. The Appeal is of the year 1989, and therefore, we have scrutinized the record and are deciding the Appeal on the basis of the record available with us.

2. The factual background out of which the present Appeal arises, is as under:

3. The appellant had entered into an agreement dated 31st March 1965 for purchase of land bearing plot Nos. 6 and 7 (Survey No. 437) admeasuring 54,650 sq. meters, situated in village Morapalli (Ambetarkhar) of Panvel Tahsil in Raigad District (hereinafter referred to as, “the said land”). The appellant agreed to purchase the said land for a price of Rs.4,500/- per acre. The land in question was agricultural land at the relevant time. However, in the agreement, there was a stipulation that the land

would be converted into non-agricultural land before the deed of conveyance of the said land is executed in favour of the appellant. On 17th March, 1966, the order of granting N.A. permission was passed. As such, on 17th September, 1966, the deed of conveyance came to be executed in favour of appellant. It is the case of the appellant that, thereafter, he had started obtaining permissions from various Government departments for starting a manufacturing industry comprising of a ball-bearing unit. On 1st February, 1970, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as, “the said Act”) came to be issued by the State Government. In the month of April 1970, the N.A. Permission, which was granted earlier, came to be cancelled in view of the notification issued under Section 4 of the said Act. On 24th September, 1972, a notification as required under Section 6 of the said Act came to be issued. However, it appears that there was some litigation between the appellant and the State and the matter went up to the Hon'ble Apex Court. In view of the order dated 3rd February, 1984 passed in Special Leave Petition No. 7688 of 1982, the 1st July, 1977 was directed to be considered as the relevant date for valuation of the land for determination of compensation. The respondent-Special Land Acquisition Officer had initially, on 3rd February, 1970, determined the market value of the land at the rate of Rs.4.80/- per sq. meter. However, after the order was passed in the Special Leave Petition by the Hon'ble Apex Court, the Land Acquisition Officer determined the compensation at the rate of Rs.10/- per sq. meter considering the date 1st July, 1977 as the relevant date. Being aggrieved by the award passed by the Special Land Acquisition Officer, the appellant approached the Reference Court by way of Land Acquisition Reference No. 172 of 1986. The learned Reference Judge has allowed the Reference and determined the market rate to be Rs.90/- per sq. meter as on 1st July, 1977 and determined the compensation accordingly. The operative part of the award dated 11th October, 1988 passed by the learned Reference Judge reads thus:

> "The opponent do pay to the claimant compensation as on 1-7-1977 as under:-

A)	*Market value of the land* *(Area Rate pers. M.)* *54650 sq. Ms. X 90/-*	*Rs.9,18,580-00*
	Barbed wire fencing.	*Rs. 40,000-00*

		Rs.49,50,500-00

B) Interest on the amount payable at the rate 12% under Sec.23(1A) of the l.a. act shall accrue in the succeeding year and at the end of every year thereafter till payment as and when the said 12% amount falls due under the said provision;

C) Solatium U/s 23(2) at 30% on the market value as (A) ABOVE.

D) Damages U/s 23(1) of L.A. Act viz:-

i)	*damages in lieu of lease rent income*	*Rs.10,000/-*
ii)	*damages for expenses incurred*	*Rs.10,000/-*

E) Interest U/s 28 of the L.A. Act on the enhanced amount of compensation;

F) Proportionate costs of this reference. The amounts already granted by the Opponent be deducted at source under respective heads."

4. Being aggrieved by the award passed by the learned Reference Judge, i.e. the District Judge, Raigad, the appellant has approached this Court by way of present Appeal. On a perusal of the material placed on record, it appears that the appellant assails the findings of the learned Reference Judge on the following grounds:

I. That the market value of the land as on 1st July, 1977 ought to have been determined at the rate of Rs.200/- per sq. meter instead of Rs.90/- per sq. meter, as determined by the learned Reference Judge.

II. That the learned Reference Judge has failed to properly appreciate the transaction that took place between the City and Industrial Development Corporation (CIDCO) and the Food Corporation of India (FCI) for the purpose of ascertaining the market rate of the plot. The learned Reference Judge, having held that the said land has non-agricultural potential, failed to apply correct market rate of Rs.200/- per sq. meter.

III. That the land in question was in the vicinity of various industries and the industrial area and as such, a higher market value ought to have been determined.

IV. That the learned Reference Judge has failed to take into consideration the development carried out by the appellant on the land in question and has resultantly erred in not granting adequate compensation.

V. That the learned Reference Judge has failed to take into consideration that the witness of the respondent himself had admitted that there was 45% increase in the valuation of the land per year, and as such, it ought to have been held that the claim of the appellant for valuation at the rate of Rs.200/- per sq. meter was just and proper.

VI. That the learned Reference Judge has failed to appreciate the annual reports of the Maharashtra Industrial Development Corporation (MIDC) in its correct perspective.

VII. That the learned Reference Judge has failed to take into consideration that from 1970 to 1977, the rates of the land have increased 9 times.

VIII. That the learned Reference Judge has erred in granting compensation of Rs.40,000/- for barbed wire fencing against the claim of Rs.50,000/- as made by the appellant.

IX. That the learned Reference Judge has also failed to grant compensation to the appellant on account of loss occurred to the appellant since he was deprived of the right to lease the land for the period from 8th August, 1972 to 15th April, 1985.

X. That the compensation awarded by the learned Reference Judge of only Rs.10,000/- under Clause (6) of Section 23(1) of the Land Acquisition Act was grossly inadequate.

5. We have scrutinized the material on record and the judgment delivered by the learned Reference Judge.

6. The main thrust of the appellant appears to be that the market value as on 1st July, 1977, which was the relevant date to be taken into consideration as per the directions of the Apex Court, at the rate of Rs.90/- per sq. meter is inadequate and the same ought to have been determined at the rate of Rs.200/- per sq. meter. All other grounds appear to be consequential to this main ground. Only if the appellant succeeds on this main ground, the other grounds would be required to be gone into.

7. The learned Reference Judge, while determining the market value at the rate of Rs.90/- per sq. meter as against Rs.10/- per sq. meter, as was determined by the Special Land Acquisition Officer, has taken into consideration the voluminous material placed on record. It appears from the material placed on record that the claim of the appellant was resisted by the respondent-State on the main ground that the appellant himself had claimed the rate of

Rs.25/- per sq. meter while compensation before the Land Acquisition Officer was determined. It appears to be the case of the respondent-State that having himself claimed the compensation at the rate of Rs.25/- per sq. meter before the Land Acquisition Officer, the appellant was estopped from claiming higher compensation. However, the learned Reference Judge, and rightly so, has rejected the said contention on behalf of the State. The learned Reference Judge has held that in view of the provisions of Section 28A of the said Act, the appellant is entitled to get compensation at the rate which was determined in the judicial proceedings in respect of the neighbouring pieces of land.

8. The learned Reference Judge has taken into consideration that the land which was purchased by the appellant vide the sale deed executed on 17th September, 1966, was at the rate of Rs.4500/- per acre, i.e. Rs.1.10 paise per sq. meter. It was also the ground raised by the respondent-State that the land in question was a barren land and it was under water, as is evident from Exhibit 28, for the period between 1970 to 1972 and as such, the said land cannot be considered to be a non-agricultural land for

the purpose of valuation. Again, and rightly so, the learned Reference Judge has rejected the said contention on behalf of the State. The learned Reference Judge has held that the relevant factor to be taken into consideration while determining as to whether the land could be considered as an agricultural or non-agricultural land is that, whether the land in question has potential to be put to non-agricultural use or not, and not it's actual use. The learned Reference Judge has held that the very fact that the N.A. permission was in operation for a period of three years and it came to be withdrawn only on account of the notification issued under Sections 4 and 6 of the said Act was a factor sufficient for considering the same to be a non-agricultural land. The learned Reference Judge has further found that, the land was abutting the road between Thane and Pune, and that the adjoining areas were subsequently used for industrial and residential purpose, were the factors which went in favour to hold that the land is having a non-agricultural potential. The learned Reference Judge, while deciding the Reference, has taken into consideration the evidence of witness Mr. Keskar which is at Exhibit 47 which had thrown light on the transaction between CIDCO and FCI. The learned

Reference Judge however held that the transaction between CIDCO and FCI was with regard to the lease of the land for 99 years and therefore, while determining the compensation, it will have to be determined to the extent of 65% of the land under the ownership. The learned Reference Judge has also taken into consideration the evidence of the witness Mr. Godbole in that regard. The learned Reference Judge has, on the basis of the evidence of witnesses Mr. Godbole and Mr. Keskar, held that the increase in the price was to the extent of 45% per annum. However, the learned Reference Judge has found that there were no sale instances to show that the price of the land has increased 9 fold from 1970 to 1977.

9. The learned Reference Judge further found that, in the case of lands which are in the vicinity of the appellant's land, in the earlier Reference, the Reference Court has granted the rate of Rs.15/- per sq. meter taking the 3rd February, 1970 date as the relevant date. While determining the rate of Rs.15/- per sq. meter taking the 1970 date as the relevant date, the learned Reference Jduge has also relied on the evidence of a witness of the opponent,

namely Mr. Jayavant Tamhankar. The learned Reference Judge, therefore, held that in view of the orders passed in the References in the similar cases of land, Rs.15/- can be taken as a bottom line of the market rate for the year 1970. The learned Reference Judge, therefore, has held that the enquiry in pursuance to the orders passed by the Hon'ble Apex Court would be only as to what would be the increase in the rate of the land from 1970 to 1977. The learned Reference Judge has observed that normally the increase in the rate would be in the vicinity of 10% to 15% per annum.

10. However, the learned Reference Judge, on the basis of the evidence led before him, has found that taking into consideration that on account of construction of the bridge on Thane creek, the distance between Mumbai and the land in question is reduced by 23 kilo meters, the increase of 10% to 15% per annum could not be justified in the present case and the rate would have to be determined by considering the higher rate. However, the learned Reference Judge, while holding that the land in question would be entitled to a higher rate of increase than the normal 10% to 15% per annum, also held that the same rate cannot be granted as has

been granted in the transaction between CIDCO and FCI. The learned Reference Judge has held that insofar as CIDCO is concerned, it had developed a township and has also provided various amenities like gardens, schools, parking places etc. and had undertaken development of a township. It was therefore, held that the land cannot be valued with the same valuation as to the rate determined by CIDCO in the year 1977.

11. The learned Reference Judge has further observed that the witness of the opponent, namely Mr. Tamhankar, himself had admitted that the rate of the land in Panvel in the year 1975 was Rs.60/- per square meter and in the year 1984, i.e. on the date on which his evidence was recorded, it had gone upto Rs.250/- per square meter.

12. The learned Reference Judge has further taken into consideration that CIDCO has sold the plot to FCI in 1976 at the rate of Rs.50/- per sq. meter. The learned Reference Judge further found that if this rate is applied to the free hold land, it would be around Rs.90/- per sq. meter. It is pertinent to note that between

1970 to 1977, there were no transactions. The learned Reference Judge rightly held that the transactions for the post 1977 period cannot be taken into consideration. Thus, taking into consideration all these factors, the learned Reference Judge has held that the rate of Rs.90/- per sq. meter would be a proper rate as on 1st July, 1977. The compensation has been worked out at the said rate.

13. Insofar as the expenses incurred towards fencing of barbed wire, the learned Reference Judge has observed that the cost incurred by the petitioner for erecting the barbed wire fencing was Rs.10,000/- and taking into consideration the rise in prices, Rs.40,000/- would be a reasonable amount.

14. Insofar as the claim of the petitioner that he was entitled to compensation on account of deprivation of right to lease the land, the learned Reference Judge found that the appellant did not lead any evidence in that regard and as such, the claim of Rs.10 lakhs in that regard was exaggerated. The learned Reference Judge, therefore, found that an amount of Rs.10,000/- under the said head would be a reasonable amount. It can thus be seen that the

view taken by the learned Reference Judge is upon a correct and proper appreciation of the evidence that was led before him. The learned Reference Judge has taken into consideration all the relevant factors which are to be taken into consideration while determining the value of the land as on 1st July, 1977.

15. In that view of the matter, we find that there is no merit in the matter. The First Appeal is dismissed.

(RIYAZ I. CHAGLA, J.) **(B. R. GAVAI, J.)**