Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 40 OF 2014

Indumati Yoginath Bhogade (Dead) through her legal heirs ...Appellants

Versus

The State of Maharashtra & Ors ...Respondents

WITH
FIRST APPEAL N O. 41 OF 2014

Umabai Gangadhar Munde (Dead) through her LRs Gangadhar Vishwanath Munde & Ors ...Appellants

Versus

The State of Maharashtra & Ors ...Respondents

WITH
FIRST APPEAL NO. 63 OF 2014

Tangava Chanbasappa Bhogade (Deceased) through Legal Heirs & Ors ...Appellants

Versus

The State of Maharashtra & Ors ...Respondents

WITH
FIRST APPEAL NO. 64 OF 2014

Rajkumar Siddhappa Gudapalli & Anr ...Appellants

Versus

The State of Maharashtra & Ors ...Respondents

WITH
FIRST APEPAL NO. 70 OF 2014

Vimal Shankar Mane & Anr ...Appellants
Versus
The State of Maharashtra & Ors ...Respondents

WITH
FIRST APEPAL NO. 148 OF 2014

Bhimsha Kallappa Chougule (deceased), through
legal heir Vishwanth Chougule & Ors ...Appellants
Versus
The State of Maharashtra & Ors ...Respondents

WITH
FIRST APEPAL NO. 159 OF 2014

Kantilal Ratanchand Bhandari (dead) through
legal heir Dagadibai Kantilal Bhandari & Ors ...Appellants
Versus
The State of Maharashtra & Ors ...Respondents

WITH
FIRST APEPAL NO. 160 OF 2014

Mahadevi Sharanappa Bhogade ...Appellant
Versus
The State of Maharashtra & Ors ...Respondents

WITH
FIRST APEPAL NO. 161 OF 2014

Suresh Shrikisan Bhaiyya, his POA holder of
Prakash Rajaram ...Appellant
Versus
The State of Maharashtra & Ors ...Respondents

WITH
FIRST APPEAL NO. 325 OF 2014

Vijaykumar Barkatram Soni & Ors ...Appellants
Versus

The State of Maharashtra & Ors ...Respondents

WITH
FIRST APPEAL NO. 323 OF 2014

Dr MN Wadwan ...Appellant
Versus
The State of Maharashtra & Ors ...Respondents

WITH
FIRST APPEAL NO. 324 OF 2014

Dr MN Wadwan ...Appellant
Versus
The State of Maharashtra & Ors ...Respondents

Dr Ramdas Sabban, *for the Appellants in all Appeals.*
Mr YY Dabke, *AGP, for the Respondent-State.*
Mr Nitin Deshpande, *for Respondent No. 3-MHADA.*

CORAM: G.S. PATEL, J
DATED: 20th July 2017

PC:-

1. This entire group of matters will need to be remanded to the Reference court. All these First Appeals pertain to acquisition of lands of varying areas in Solapur City Municipal limits. They share a common history in that that they were all once affected by Urban Land Ceiling restrictions, and possession of these lands was taken under the provisions of that Act, well before the notifications under Section 4 of the Land Acquisition Act came to be issue.

2. The Collector found a rate of Rs.720/- per sq mt on the basis of the Ready Reckoner rates for the year 2000. He also had before him a computation of rates on a hypothetical layout plot basis. These rates were significantly higher, at about Rs.1,150/- per sq mt. The Collector accepted the hypothetical layout method rates, being higher, but made several deductions.

3. Dr Sabban for the Appellants, in response to a specific query from the Court, confirms that his quarrel is not with the Ready Reckoner rate of Rs.720/- per sq mt, but only to what he describes as the apparently arbitrary reductions from that rate. Specifically, Dr Sabban points out that there is no logical, discernible, rational or legal basis for these reductions, which seem to have been worked out only on the basis of the acreage or size of the plot being acquired: the larger the plot, the larger the deduction. This has not been done on the basis that the larger plots required more development. It has been done on the basis of some slab-wise methodology. The argument is that while ostensibly adopting the 'higher' hypothetical layout method, the Collector and the Reference Court both fell into error in adopting for comparison this unsubstantiated slab-wise Ready Reckoner rate. Thus, in First Appeal 159 of 2014, where the land admeasures 1,16,409.93 sq mts, the award was of Rs.4,00,84,532/-, a net rate of Rs.344/- per sq mt, far lower than either the Ready Reckoner or hypothetical layout rates. If there is no basis for the slab-wise breakdown of the Ready Reckoner rate, and it is applied at Rs.720/- per sq mt, which Dr Sabban accepts, then the award would be Rs.8,38,15,149.96, about 48% more.

4. There appears to be no explanation for the adoption of this slab-wise, reduced Ready Reckoner rate in the impugned order. The only explanation, if it can be called that, is to be found in Clauses 16 and 17 of the Collector's award, which the Reference Court seems to have accepted. The same wording is used in all matters and I will, for convenience, take the following extract from First Appeal No. 159 of 2014:

"16. **READY RECKONERS RATE:-**

As per the ready reckoner in the year 2000 of Solapur City the land under acquisition if pertains in area described at 'Vijapur Road' plots in between Solapur Municipal Corporation's Old Extended boundary to Railway Line and South boundary of city, i.e., Group 33(2) in ready reckoner. And the rate of open plot in this area is mentioned as Rs.720/- per meter.

As per the Government G.R. Dated 31.10.1994, the valuation of land comes from sales instances method and valuation obtained by the rate quoted in ready reckoner in the locality, and in between those for valuation whichever is maximum is adopted for land under acquisition in Award. In this case the compensation comes by sales instances, i.e., Hypothetical Layout method is Rs.4,00,84,532.00 and the valuation as comes by ready Reckoner that valuation is as under:

READY RECKONER METHOD OF VALUATION

As described in **Ready Reckoner instructions** for valuation of bulk land is as follows:

(i) Area up to 1000 sq.mt
(for corporation limit)
Area x Rate (**100%**)

	1000 x 720/-	Rs.7,20,000.00
(ii)	Area above 1000 sq.mt to 4000 sq.mt., i.e., Area x Rate (**<u>80% of full rate</u>**) 3000.00 x 720 x 0.8	Rs.17,28,000.00
(iii)	Area above 4000 sq.mt 20000 sq.ft, i.e., Area x Rate (**<u>40% of full rate</u>**) 16,000.00 x 720 x .40	Rs.46,08,000.00
(iv)	Area above 20,000 sq.mt i.e., Area x Rate (**<u>15% of Full rate</u>**) 36,409.93 x 720 x 0.15	Rs.1,04,12,272.00
	Total of (i) to (iv)	Rs.1,74,68,272.00

Hence the amount of compensation obtained from hypothetical method is seen maximum than the amount of compensation obtained by ready reckoner method and hence the amount obtained in this award. Hence, the total compensation works out as below:-

(*Emphasis added*)

5. It is difficult to understand what is to be made of this reference to 'Ready Reckoner instructions'. There is no Government Resolution produced on record evidencing any such reduction in the Ready Reckoner rates depending only on the size of the plot, or effecting a slab-wise percentage reduction. There is no such 'instruction' marked in evidence. The deposition of the Special Land Acquisition Officer (**"SLAO"**) does not make any reference to such slab-wise deductions depending on the area. This may be some internal practice note, but no supporting document is to be found in the record. None was led in evidence.

6. Even in the hypothetical layout method, the Special Land Acquisition Officer seems to have, on some unknown theoretical basis, reduced the per sq mt rate depending on the road frontage.

7. This is of significance because of the second aspect of the matter, viz., the deductions effected. These range from 6% to 79% on the Ready Reckoner rate (using the slab-wise methodology) and from 54% to 77% on the hypothetical layout method. In the latter, deductions have been made under various heads such as cost of construction of roads, water supply, architects' fees, etc. Neither the Collector nor the Reference Court seem to have addressed the issue that possession of these lands was taken under the ULC Act on 29th January 1983 even before the Section 4 notifications were issued under the Land Acquisition Act on 20th September 2001; and that, by the time the lands were 'acquired' under the Land Acquisition Act, these were already developed and allotted by MHADA. Leaving aside the question of the correctness of rates applied for various development works, the Special Land Acquisition Officer apparently deducted MHADA development charges at Rs.30 per sq mt *in addition* to other deductions for development.

8. Mr Deshpande for MHADA, the acquiring body, states that there is such a document requiring slab-wise reductions in the Ready Reckoner rate. What he has with him does not have any indication of being an official document issued the State

Government or one that can fairly be said to have the force of law. He also says that there is the opinion of one Smt Sadhana Naik, a valuation expert and Deputy Director, Town Planning, Pune who says that larger plots fetch lower per square meter rates. Unfortunately, Smt Naik was not examined as a witness or even as an expert witness. Her testimony was not before the court. Nobody had an opportunity to cross-examine her. It is well-settled that such evidence has relevance only if it is placed in the context of properly proved sale instances and the expert evidence is relatable to such sale instances.

9. That deductions are permissible is beyond doubt. For example, if the land is required by MHADA for housing but is on uneven or irregular terrain requiring levelling, this may be a ground for arriving at a reasonable deduction. The land being situated at a considerable distance without easy access, electricity, water supply and so on are all factors that may also be taken into consideration. The result of these would necessarily be a uniform deduction or at least a uniform set of cogent and rational deductions. I can understand a lower deduction being made for lands that are more proximate to a highway or a railhead. What is incomprehensible is this kind of a deduction sought to be made in a slab-wise rate from the Ready Reckoner so that land up to 1000 sq. metres is paid at 100% of the ready reckoner rate but between 1000 and 4000 sq. metres is only paid only at 80% of the rate, and so on down the line. There is no disclosed basis for this at all and certainly there is no evidence on record that I can tell. It then matters little that the hypothetical layout rate was taken because the two comparisons were inapt.

10. Other than this there appears to be no basis for the deduction. Dr Sabban argues that the deduction should in no case be higher than 50%, and that in any case, apart from a cap or maximum for the deduction, a uniform rate should be applied for the land that are in the same area and are more or less contiguous. This is an aspect that will have to be kept open.

11. The matters will all have to be remanded for a *de novo* reconsideration. A Reference in land acquisition proceedings is to be approached like a suit with the claimant being in the position of a plaintiff in a suit. The award by the Special Land Acquisition Officer has to be kept out of consideration. The matter is not to be addressed as an appeal. The Reference Court must specifically consider (i) whether there is any legal basis for adopting the slab-wise reduction in the Ready Reckoner rate; (b) if not, and the rate of Rs.720 is to be applied, and given the peculiar facts of previous development by MHADA, what deductions, if any, are permissible from this flat rate; (c) whether development costs and development charges can both be simultaneously reckoned; and (d) whether after weighing all these factors, which of the two (Ready Reckoner or hypothetical layout) yields the higher rate per square metre. The State Government and MHADA are at liberty to place before the Reference Court additional material showing how, in their view, the deductions ought to be computed. The land owners will be at liberty to lead additional evidence in rebuttal. Liberty also to MHADA and the State Government to lead the evidence of Smt Sadhana Naik or any other expert on the question of appropriate standards to be adopted in valuation and specifically on the question of permissible deductions from ready reckoner or hypothetical layout rates.

12. The Reference Court is requested to dispose of all these cases at its earliest convenience and preferably on or before 30th September 2018. Parties will appear before the Reference Court on 28th August 2017 with an authenticated copy of the order and obtain the necessary directions for completion of the hearings.

13. There remains one other aspect. The Reference Court and the Collector are all assumed that all the land owners have relinquished their claim to interest prior to the issuance of the Section 4 notification. In fact, it is only the appellant in First Appeal No. 40 of 2014, Indumati Bhogade, who specifically relinquished this interest claim. All the others have not so relinquished their claim. This claim for interest will also have to be considered by the Reference Court on its merits.

14. All First Appeals are disposed of in these terms. No costs.

(G. S. PATEL, J)