

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL No. 1551 OF 2005

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| 1. Smt. Sharda Gajanan Bhat | |
| 2. Ravindra Gajanan Bhat | ... Appellants |
| Vs. | |
| Special Land Acquisition Officer | ... Respondent |

a/w.

FIRST APPEAL No. 888 OF 2008

WITH

FIRST APPEAL NO. 2588 OF 2007

- | | |
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| Shankar Hari Patil | ... Appellant |
| Vs. | |
| The State of Maharashtra | |
| through Special Land Acquisition Officer | ... Respondent |

Mr. S.S. Kulkarni, Advocate for the appellants in both the First Appeals.
Mr. Yogesh Dabke, AGP for the State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **5th October, 2017.**

JUDGMENT:

These three First Appeals are taken together, as in all these appeals, the judgment and award passed by the learned Civil Judge Senior Division, Alibag in respect of land references are under challenge. However, all the lands in these three Appeals are situated at village Pendhar and they were acquired by the Government for New Bombay Project under notification dated 3rd February, 1970 issued under section 4 of the Land Acquisition Act . In all these three

Appeals, the appellants have prayed for enhancement of the amount of the compensation which is awarded by the Reference Court. As the issues involved in all these Appeals are one and the same, all these Appeals are disposed of by a common order.

2. In First Appeal No. 1551 of 2005, the appellants were the land owners of Survey no. 173 situated at Pendhar village, Taluka Panvel, District Raigad. The Special Land Acquisition Officer has granted the compensation approximately @ Rs.1.50/- per sq. mtr. The Reference Court in Land Acquisition Reference No. 288 of 2000 (Old No. 486 of 1986) increased the compensation @ Rs.19/- per sq. mtr. with interest by the judgment and award dated 27th March, 2002 .

3. In First Appeal No. 888 of 2008 and First Appeal No. 2588 of 2007, the appellant/owner of the land bearing Survey nos. 29, 30, Survey no. 34 Hissa No. 1, Survey No. 69 Hissa No. 1 situated at Pendhar village, Taluka Panvel, District Raigad. The Special Land Acquisition Officer has granted the compensation approximately @ Rs.1.50/- per sq. mtr. The learned Joint Civil Judge Senior Division, Alibag in Land Acquisition Reference Nos. 289 of 2000 (Old No. 498 of 1986) & Land Acquisition Reference Nos. 290 of 2000 (Old No.

499 of 1986) increased the compensation @ Rs.19/- per sq. mtr. with interest by the judgment and award dated 27th March, 2002.

4. In these Appeals, on the point of enhancement, only two factors are to be considered -

(i) Whether the Reference Court has erred in fixing the compensation mainly on the basis of distance of the lands from the National Highway?

(ii) Whether the Reference Court has erred in deducting 10% out of the total compensation towards the development cost?

5. In all these agricultural lands, the Reference Court has accepted the evidence on the point that these lands have NA potentiality and good commercial value. The Reference Court has also discussed the proximity of the industrial area and railway and commutation facilities available even on the date of the acquisition to the villagers of village Pendhar and nearby villages like Nauada and Taloja. In all these References, the claimants have asked the compensation @ Rs.30/- per sq. mtr. and have relied on the evidence of the claimants as well as one Smt. Manjiri Joshi, an

Architect/valuer. The Reference Court while fixing the rate of Rs.20/- per sq. mtr. has taken into account the distance of village Pendhar from Mumbai Pune Highway, i.e., how closer the lands situate from National Highway. It held that considering the distance from the National Highway, the compensation can be fixed at Rs.20/- per sq. mtr. However, it also held that 10% is to be deducted from the compensation towards the development cost and therefore, has considered Rs.19/- per sq. mtrs. as just and reasonable compensation.

6. The learned counsel Mr. Kulkarni has pointed out that the proximity of the lands acquired from the Mumbai Pune Highway is not a criteria to give compensation. He submitted that the Bombay High Court in the land acquisition of Village Pendhar has fixed the compensation @ Rs.25/- per sq. mtr. and the same view is to be adopted in the present case. In support of his submissions, he relied on the judgment of Division Bench of this Court **dated 16th March, 2000 in First Appeal No. 875 of 1985 in the case of Abdul Aziz Husenmiya Patel & connected Appeals** in which the lands situate in village Pendhare, Taloja, Kharghar, Belpada were acquired for the same New Bombay Project. He also relied on the judgment of

Division Bench of this Court **dated 10th August, 2004 in the case of State of Maharashtra vs. Laxman Bhiva Patil in First Appeal No. 1074 of 1989** wherein the value of land of village Pendhare was fixed at Rs.25/- per square meter. The learned counsel has submitted that the distance from the National Highway is not to be considered as a correct yardstick to grant compensation. On this point, he relied on the judgment of Hon'ble Supreme Court in the case of **Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) by LRs. & Ors. vs. Special Land Acquisition officer & Ors., reported in (2012) 7 SCC 595.**

7. Let me point out that in the judgment of the Division Bench **dated 31st March, 2004 in the case of the State of Maharashtra vs. Smt. Kamali Keshav Mhatre & Ors. in First Appeal No. 757 of 2003** it is held that the proximity from the highway of the lands acquired is to be taken into account and in the judgment, the Division Bench has laid down the guidelines of three categories of distance of 750 mtrs. and 1500 mtrs. and thereafter. This view was reiterated by the Division Bench of this Court in the case of **State of Maharashtra vs. Prakash Vasudeo Deodhar reported in 2008(4) Mh. L.J. 897.** In this case, the Division Bench has held that the Court has to apply

certain guess work within its reasonable limits to adopt a fair market value of the lands acquired.

8. In the case of **Sabhia Mohammed Yusuf Abdul Hamid Mulla** (*supra*) , the Supreme Court was dealing with the issue of fixing the rate of compensation in the land in Roadpali (Kolhekar) village, Panvel taluka, Raigad District which was also acquired by notification dated 3rd February, 1970 under section 4(1) for the New Bombay Project. In the said case, the compensation granted by the Reference Court was reduced by the Division Bench of the High Court keeping in view the distance of the acquired land from Mumbai Pune Highway and held that the appellants are not entitled to compensation which was granted by the Reference Court. Therefore, the order of reduction of the compensation was challenged before the Supreme Court. The Supreme court in the case of **Sabhia Mohammed Yusuf Abdul Hamid Mulla** (*supra*) has determined the amount of compensation @ Rs.25/- per sq/ mtr. and also held that *“The High Court did not advert to the factors noted by the Reference Court and reduced the amount of compensation by mechanically applying the distance criteria, i.e., distance of the acquired land from Bombay-Pune Highway adopted in the earlier*

judgments". The Supreme Court allowed the Appeals and fixed the compensation @Rs.25/- per sq. mtr. for the acquisition of the said land.

9. In the case of **Abdul Aziz Husenmiya Patel** (*supra*), the market value of the land was fixed at Rs.25/- per sq. mtr. for village Pendhare. I also rely on the judgment of Hon'ble Supreme Court in the case of **Union of India vs. Harinder Pal Singh & Ors.**, reported in **(2005) 12 SCC 564** wherein the lands in five different villages were acquired for the same project for establishment of cantonment of Amritsar. The Supreme Court held that it is necessary to take a pragmatic approach in fixing the market value of the lands forming the subject matter of the acquisition proceedings at a uniform rate. The Supreme Court held that "*the lands situated in five different villages can be consolidated into one single unit with little to choose between one stretch of land and another*" and the Court fixed the uniform rate of compensation of the lands acquired in all those villages. I, therefore, follow the same view and also adopt the rate of Rs.25/- per sq. mtr. as was fixed in the case of **Abdul Aziz Husenmiya Patel** (*supra*).

10. On the point of deducting the development charges, the evidence of Manjiri Joshi is to be considered. She has valued the land for Rs.30/- per sq. mtr. and has also said that the deduction will be very negligible because the land in village Pendhare is plain. In the judgment of the Division Bench in the case of **Abdul Aziz Husenmiya Patel** (*supra*), the Division Bench after deduction, has fixed the rate of Rs.25/- per sq. mtr..

11. In view of this, Rs.25/- per sq. mtr. is a correct rate. The remaining order in respect of interest and other statutory benefits passed by the learned Judge of the Reference Court is hereby maintained. Thus, the State shall deposit the amount within three months from today along with interest therein.

12. First Appeals are partly allowed.

(MRIDULA BHATKAR, J.)