

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.342 OF 2017

Shri Deepak Jambukumar Shah	...	Appellant
Versus		
The State of Maharashtra And Another	...	Respondents

Mr. S.A. Rajeshirke for the Appellant.
Mr. Ameet Palkar, AGP for Respondent No.1.

CORAM : S.C. GUPTE, J.

DATE : 24 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2 The First Appeal is admitted and taken up for hearing forthwith by
consent of the parties.

3 The main grievance of the Appellant in the present First Appeal is that the development potentiality of the land on its conversion as non-agricultural land has not been considered by the Reference Court. It is submitted that the subject land is within the city limits of Solapur. The land is admittedly situated just outside the developed area and adjacent to the municipal limit, and is a part of development plan of Solapur Municipal corporation and yet the Reference Court has held, in keeping with the award, that the land under acquisition has no non-agricultural potentiality

and compensation is accordingly ordered only on the basis of its agricultural potentiality. It is clear from the documents placed before the Court, including the Award, that the land clearly has a development potentiality as a prospective N.A. land and the Reference Court, accordingly, had to apply its mind to the development potentiality of the land and accordingly, work out a suitable compensation. There is no such application and infact the matter of non-agricultural potentiality appears clearly to be misconstrued in the sense of actual development potentiality on the basis of existing designated use of the land. The Court had to consider, whether there was possibility of the land being converted to N.A. User, in the peculiar facts and circumstances of the case.

4 In the case of **Patel Jathabhai Punajbhai Vs. North Gujarat University**¹, the Supreme Court, on the basis of proximity of the land under acquisition to the extended municipal limits, has duly considered the non-agricultural potentiality of the land. The principle of this judgment clearly applies even to the present case.

5 In the premises, the impugned order cannot be sustained. The impugned order, in the premises, is set aside and the land acquisition reference, being L.A.R. No.298 of 1990, is remanded to the Court of the Civil Judge, Senior Division at Solapur, for working out compensation on the basis of potential non-agricultural use of the land under acquisition. It will be for the Court to assess such potential and determine the value of the land.

(S.C. GUPTE, J.)

1 2015(1) JT 610