

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 13408 OF 2017
IN
FIRST APPEAL NO. 732 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO. 32001 OF 2018
IN
FIRST APPEAL NO. 732 OF 2015**

The City and Industrial Corporation,
Through its Administrator,
CIDCO, Aurangabad.

Applicant.

Versus

Kasturchand Ramlal Badjate & ors.

Respondents.

Mr. A.S. Bajaj, Advocate for the applicant.

Mr. A.P. Bhandari, Advocate for respondent Nos.1 to 4.

Mr. R.B. Bagul, A.G.P. for respondent No.5.

CORAM : SUNIL K.KOTWAL,J.

Order reserved on : 16th October 2018.

Order pronounced on : 28th November 2018.

ORDER.

1. These two Civil Applications have been filed by the appellant in First Appeal No. 732 of 2015, under Order XXXXI Rule 27 of the Code of Civil Procedure (for short "C.P.C.") for permission to produce additional documentary evidence, in the

form of certified copies of eight registered sale deeds, village map, certified copy of joint measurement report, record of right of Gut No.40 and the map prepared by appellant CIDCO at the time of construction of 60 ft. wide road, through the acquired land. The production of this additional evidence is vehemently objected by respondent Nos.1 to 4 (original claimants).

2. Heard Mr. A.S. Bajaj, learned Counsel for the applicant (original appellant), Mr. Anand Bhandari, learned Counsel for respondent Nos.1 to 4 (original claimants) and learned Additional Government Pleader for respondent No.5 – Special Land Acquisition Officer.

3. Learned Counsel for the applicant submits that production of village map on record is necessary to bring the proper location of the acquired land, land under sale instance relied by the claimants and location of Aurangabad – Paithan Highway as well as other roads, which pass through village Golwadi where the acquired land and the land under sale instances are situated. His next submission is that as the claimants claim that the acquired land is an irrigated land with the help of three wells and the land under sale instances are dry

crop land. The production of 7/12 extract of Gut No.40, which is subject of land under three sale instances relied on by the claimants, is necessary to show the existence of three wells in Gut No.40. His contention is that for passing proper judgment in this appeal as well as for ascertaining truth by proper interpretation of maps and documentary evidence placed on record, the production of these documents is necessary. He placed reliance on the cases of **“North Eastern Railway Administration, Gorakhpur Vs. Bhagwandas”** [(2008) 8 SCC 511] and **“Maria Margarida Sequeira Fernandes and others Vs. Erasmo Jack De Sequeira”** [(2012) 5 SCC 370].

4. Learned Counsel for respondent Nos.1 to 4 submits that though the opportunity was available to the applicant before the Reference Court, no evidence was led by the applicant to prove its contentions. He points out that the Reference Court took 9 years for deciding the Land Reference and till decision of Land Reference, though these documents were within the knowledge of applicant, it did not file it. He submits that neither the applicant is diligent nor the documents are necessary for proper adjudication of this litigation, and therefore, production

cannot be allowed.

5. His next submission is that, even the copy of joint measurement report placed on record by the applicant is undated and production of such document cannot be allowed.

6. It is to be noted that production of the documents at appellate stage is permissible only if the conditions prescribed under Order XXXXI Rule 27 of the C.P.C. are fulfilled. The additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist. The circumstances under which the additional evidence can be adduced are :

- (i) *the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted or;*
- (ii) *the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within the knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed;*
- (iii) *the appellant Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause”.*

7. The Apex Court had an occasion to consider this

provision and in the case of **“North Eastern Railway Administration, Gorakhpur Vs. Bhagwandas”** (supra) the Apex Court held that,

“The High Court was bound to consider the application under Order 41 Rule 27 of C.P.C. before taking up the appeal on merits. The question whether looking into the documents, sought to be filled as additional evidence, would be necessary to pronounce judgment in a more satisfactory manner, has to be considered by the Court at the time of hearing of the appeal on merits. The appellate court has the power to allow additional evidence not only if it requires such evidence “to enable it to pronounce judgment” but also for “any other substantial cause”. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 C.P.C., which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 C.P.C.”

8. In view of this legal position, production of additional evidence by the applicant can be permitted only when the documents proposed to be produced are necessary to enable this Court to pronounce judgment. No doubt the appellant cannot make out a case that despite exercise of due diligence the above-said record was not within its knowledge or could not be produced

after exercise of due diligence at the time of recording of evidence before the Reference Court. However, it cannot be ignored that in the case of **“Maria Margarida Sequeira Fernandes and others Vs. Erasmo Jack De Sequeira”** (supra) the Apex Court held that the Court's serious endeavour has to be to find out where in fact the truth lies. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The judges at all levels have to seriously engage themselves in the journey of discovering the truth. Therefore, production of additional evidence can be allowed, if those documents are necessary to bring true factual situation on record.

9. In the case at hand, after hearing learned Counsels for both the parties in appeal, it emerges that the important debatable point is, whether Aurangabad – Paithan Highway passes abutting the acquired land or not. Even it is disputed whether any other road passes abutting the acquired land. This important factor is to be considered for evaluating the market of the acquired land on the date of notification under Section 126 (4) of Maharashtra Regional Town Planning Act (hereinafter

referred to as the “M.R.T.P. Act”). No doubt, village map of village Golwadi is already placed on record by the claimants at Exh.45. On the basis of that village map, this Court is certainly enable to ascertain whether Aurangabad to Paithan Highway passes abutting the acquired land or whether any other road also passes abutting that land or not. Therefore, production of xerox copy of the same village map as proposed by the applicant, is not at all necessary for pronouncement of judgment in the present appeal.

10. So also, with Civil Application No.13408 of 2017 the applicant has placed on record certified copies of eight sale deeds as comparable sale instances. I have carefully examined these eight sale deeds. The first sale deed dated 22.01.2001 is executed by Shaikh Mohammad Shaikh Ismail in favour of Kasturchand Ramlal Badjate, his wife and two sons. In the case at hand, the notification under Section 126 (4) of M.R.T.P. Act read with Section 6 of Land Acquisition Act, was published in Official Gazettee on 10.12.1998. Thus, obviously this sale deed was executed after about three years from the date of publication of the said notification. No doubt, in the case of “**Chimanlal**

Hargovinddas Vs. Special Land Acquisition Officer,

Poona” [1988 (3) SCC 751], the Apex Court held that even post

notification instances can be taken into account.(1) if they are

very proximate,(2) genuine and (3) the acquisition itself has not

motivated the purchaser to pay a higher price on account of the

resultant improvement in development prospects. In the light of

this position of law, the sale instance executed three years after

the date of notification cannot be treated as very proximate to

consider this post notification sale deed as comparable instance.

Another important aspect is that the recitals of this sale deed

make it clear that the claimants themselves were the purchasers

of that land in the year 2001. The recitals also show that the said

land was purchased by the present claimants as it was reserved

by CIDCO for 15 Metres wide road, GPU play field, Post Office,

play ground and for other reasons. Under that sale deed right

was given to the present claimants to get compensation if the

said land is acquired by CIDCO. Thus, obviously the said sale

deed is obtained by present claimants to get the benefit of

expected acquisition of that land and thus it is not genuine

transaction which reflects the true and fair market value of the

said land. For these two reasons, this first sale deed is of no use in the present appeal to determine the fair market value of the acquired land. This sale deed cannot be used as comparable sale instance.

11. Regarding remaining seven sale deeds dated 13.08.1996, 28.09.1997, 28.09.1996, 23.09.1996, 06.09.1994, 28.09.1999 and 25.10.1996, it is suffice to say that from the very first page of all these sale deeds, it emerges that the land under these sale deeds were under-valued to avoid payment of stamp duty. The Apex Court in the case of **“Lal Chand VS. Union of India and another”** [(2009) 15 SCC 769] ruled that, such under-valued sale deeds cannot be used as evidence in land acquisition matters to determine fair market value of the acquired land on the date of notification. In view of this legal position, as in the above-said seven sale deeds the land was sold at depressed market value instead of real value, those sale deeds cannot be used as comparable sale instances to determine the fair market value of the acquired land on the date of notification.

12. With this Civil Application, certified copies of other sale deeds are filed, which are not included in the list of above-

discussed eight sale deeds. After going through those sale deeds, it emerges that those sale deeds pertain to the land purchased by applicant CIDCO prior to the date of publication of notification. Thus, the possibility cannot be ruled out that those sale deeds were obtained by CIDCO to use it as important weapon in case any land acquisition reference arises in future. Thus, these sale deeds also cannot be considered as genuine sale deeds which can be treated as comparable sale instances.

13. Otherwise also, in all above sale deeds the market price of the land sold was much lessor than the three sale instances (Exhs. 26, 27 and 28) produced by the claimants. In the case of **“Mehrawal Khewaji Trust, Faridkot and others Vs. State of Punjab and others”** (AIR 2012 SC 2721), Apex Court held that when there are several exemplars with reference to the similar lands, it is the general rule that higher exemplar, if it is satisfied with its bonafide transaction, has to be considered and accepted.

14. Thus, otherwise also, these all sale deeds are of no use for passing proper judgment in the present appeal. Therefore, production of these all sale deeds cannot be allowed.

15. With Civil Application No. 13408 of 2017 the applicant CIDCO has also filed true copy of corrected joint measurement report (C-2). However, this document is undated document which does not show on which date the corrected joint measurement report was prepared. Otherwise also, in absence of evidence of Valuer of Sweet Lime trees the dispute regarding exact number of trees standing over the acquired land, does not carry importance. Even by filing cross objection in the present appeal, the claimants have opted for compensation of entire acquired land, excluding the existence of Sweet Lime trees in the acquired land. Therefore, this corrected joint measurement report to determine the exact number of Sweet Lime trees in the acquired land does not carry any importance for passing proper judgment in the appeal. Thus, production of this corrected joint measurement report cannot be allowed.

16. However, with Civil Application (Stamp) No.32001 of 2018 the applicant has filed 7/12 extract (C-2) of Gut No.40 situated at village Golwadi which is the subject-matter of three sale instances relied on by the original claimants. In the present appeal, debatable question arises, whether the land which is

subject-matter of three sale instances, is dry crop land or well irrigated land. For resolving that question, 7/12 extract of Gut No.40 is certainly useful and it is necessary for passing judgment in the present appeal. However, at the same time the map (C-1) prepared by CIDCO to show the location of 60 ft. wide road proposed to be constructed through the acquired land by CIDCO, is of no use as it is not certified copy of public document which can be read in evidence without formal proof. So also construction of 60 ft. wide road through the acquired land can be ascertained from Panchnama dated 29.08.1994 (Exh.22) prepared by the Officers of CIDCO if it is admissible. Therefore, production of map (C-1) cannot be allowed.

17. In view of the above discussion, Civil Application No.13408 of 2017 for production of additional evidence in the form of documents deserves to be rejected. However, Civil Application (Stamp) No.32001 of 2018 deserves to be partly allowed, only to allow production of 7/12 extract (C-2) of land Gut No.40 situated at Golwadi.

18. Accordingly, Civil Application No.13408 of 2017 is rejected. Civil Application (Stamp) No.32001 of 2018 is partly

allowed. Production of 7/12 extract of Gut No.40 situated at village Golwadi is allowed. This document be marked as “Exhibit C-2” for identification in First Appeal No.732 of 2015.

19. Both Civil Applications are disposed of in above-said terms.

(SUNIL K. KOTWAL)
JUDGE

vdd/-