

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1157 OF 2007

Sudhakar s/o Baburao Tanpure,
age: 53 years, Occ: Agriculture,
R/o Rahuri, Taluka Rahuri,
District Ahmednagar.

Appellant

Versus

The State of Maharashtra,
through District Collector,
Ahmednagar, District Ahmednagar.

Respondent

Mr.V.V.Tarde, advocate for the appellant.
Mr.A.M.Phule, A.G.P. for the Respondent.

WITH
FIRST APPEAL NO.2982 OF 2008

The State of Maharashtra

Appellants

Versus

Sudhakar Baburao Tanpure,
age: 38 years, Occ: Agriculturist,
R/o Rahuri, Tal. Rahuri,
District Ahmednagar.

Respondents

Mr.A.M.Phule, A.G.P. for the appellant.
Mr.V.V.Tarde, advocate for the Respondent.

CORAM : M.S.SONAK, J.
DATE : 19th January, 2018.

ORAL JUDGMENT :

1 Heard Mr.Tarde, learned Counsel for the appellant in
F.A. No.1157/2007 and for Respondent in F.A. No.2982/2008; and
Mr.Phule, learned A.G.P. for the appellant in F.A.No.2982/2008

and for Respondent in F.A. No.1157/2007.

2 These two cross appeals challenge the judgment and award dated 03.04.2007 made by the Reference Court enhancing compensation from Rs.55/- per square meter, awarded by the Special Land Acquisition Officer to Rs.450/- per square meter in respect of acquisition of land admeasuring 10500 square meters, situate at Rahuri, District Ahmednagar, for the purpose of Civil Court building and residential quarters of Judicial staff.

3 Mr.Tarde, learned Counsel for the appellant in F.A. No.1157/2007, submits that there is ample evidence on record that the acquired land was non agricultural land located at a distance of hardly 150 feet from Nagar-Manmad Highway. He pointed out that around the acquired land, there situate Central Bank Colony, Gadage Maharaj Ashram, Cinema Theaters and Hotels, etc. The S.T. Bus stand is hardly at a distance of 1500 feet, market yard is at the distance of 1600 to 1700 feet, the State Bank is at a distance of 2000 feet and the Police Station is at the distance of 2500 feet. He submits that the sale deed was produced at Exhibit-37 which relates to the year 1986. In terms of the sale deed, the rate reflected was Rs.391/- per square meter, it is pertinent that the land, which was the subject matter of the said land, is comparable to the acquired land. He submits that there was no justification whatsoever for making any deduction. He submits that upon grant of escalation @ 10%, the rate ought to have been determined @ Rs.600/- per square meter, if not Rs.1930/-, as claimed by the claimant. He submits that the Reference Court erred in making deduction of 25%. He submits that taking into consideration

evidence on record, no deduction was warranted.

4 Mr.Phule, learned A.G.P. for the Respondent-State in F.A.No.1157/2007, submits that the rate of Rs.450/- awarded by the Reference Court is itself excessive. He points out that the sale deed Exhibit-37 was in respect of small plot of land admeasuring 102.12 square meter. He submits that the acquired land was admeasuring 10500 square meters and, therefore, deduction was required to be made by determining the market rate. He submits that standard deduction would be atleast 33% and the Reference Court has been indulgent in making deduction of only 25%. On this basis, Mr.Phule submits that rate of compensation should not have been enhanced. Mr.Phule submits that the Reference Court has totally erred in awarding interest from the date of possession i.e. 06.03.1990. This was not a case where Section 17 of the Land Acquisition Act was ever invoked by the State Government. He relied upon the decision of the Full Bench of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari**, 2016 (4) ALL MR 513 (F.B.), to submit that the interest is to be computed from the date of award and not from the date of possession. He submits that the impugned award warrants modification on this ground as well.

5 The rival contentions fall for determination.

6 In this case, although the claimant has produced several sale deeds, the Reference Court has quite correctly held that the only comparable sale instance is Exhibit-37, the sale deed in respect of land admeasuring 102.12 square meters, which was

from Rahuri itself. On the basis of material on record, the Reference Court has rightly held that this this was a comparable sale instance. The Reference Court, however, has made deduction of 25% because the sale deed Exhibit-37 is in respect of small area and the acquired land is in respect of larger area.

7 No doubt, some deductions are due when comparison is made between the sale instance in respect of small plot and the acquired land, which is a larger property. However, there is nothing like a standard deduction. The deduction will depend upon the fact situation in each case. In this case, the sale instance was in respect of the land situate at Rahuri, which is a Municipal area. So also, the acquired land is found to be within the Municipal limits of Rahuri. There is no evidence on record that the acquired land was already put to non agricultural use. In the course of evidence, it was admitted that the acquired land was substantially developed and there was no even necessity to lay internal roads. The acquired land was in the close proximity of Nagar-Manmad State Highway and several structures like Central Bank Colony, Ghadage Maharaj Ashram, Cinema Theaters and Hotels were in the vicinity of the acquired land. Taking all these circumstances into consideration, it does appear that the deduction of 25% was on the higher side. However, the contention of the claimant that no deduction was due, also cannot be accepted. Based upon the evidence on record and upon comparison of the land in the sale instance and the acquired land, this is a fit case where deduction could have been 15% and not 25%. The Reference Court, by correctly granting escalation of 10% p.a., from 1989 to 1996, determined the market rate @ Rs.600/-

per square meter. Since, the Reference Court had granted deduction at 25%, the rate was determined at Rs.450/- per square meter. Since the proper deduction, in the peculiar facts and circumstances of this case, can be 15%, the rate will have to be determined at Rs.510/- per square meter. Upon such determination, the claimant will, *inter alia*, be entitled to statutory benefits as prescribed under the Land Acquisition Act, 1894.

8 In view of the aforesaid, it is not possible to accept Mr.Phule's submission that the rate of Rs.450/- per square meter, as determined by the Reference Court, was itself excessive in the facts and circumstances of this case. However, Mr.Phule is right in his submission that interest in this case would not have been awarded from the date of possession, but had to be awarded from the date of award in terms of ruling of the Full Bench in the case of **Kailash** (*supra*). In this case, the Reference Court has observed that the acquisition was not after invoking clause 17 of the Land Acquisition Act. The Reference Court, has, however, given a reason that the claimant had consented to the acquisition provided he will be paid compensation @ Rs.25/- per square feet. Since, this rate was not acceptable to the State Government, the consent stood withdrawn. The acquisition is, therefore, required to be construed as an acquisition by invoking Section 17 of the said Act. This type of reasoning cannot be approved. The question is whether the possession was taken by invoking Section 17 of the Land Acquisition Act or not. The principle laid down by the Full Bench in **Kailash** (*supra*) will squarely apply to the facts of the present case. The impugned award, therefore, warrants modification inasmuch as, interest will have to be construed from the date of

award and not from the alleged date when possession was taken.

9 As a result, both the appeals will have to be partly allowed. The rate of compensation will have to be marginally increased from Rs.450/- to Rs.510/- per square meter. To that extent, appeal instituted by the claimant will have to be allowed. Similarly, excess interest, which the claimant has received in terms of the impugned award, will have to be held as illegal and a direction will have to be made to refund this amount to the State. Learned Counsel for the parties submit that the two figures will be more or less proportionate and, therefore, though, the two appeals may be partly allowed, there need not be any direction for refund or re-adjustment. This is quite fair. Accordingly, both the appeals are partly allowed. However, either parties will be entitled to raise any monetary claim from each other. This means that the claimant shall be deemed to have been paid compensation @ Rs.510/- per square meter along with proportionate statutory benefits thereon. Similarly, the appellant-State shall be deemed to have received refund of excess interest paid or payable by it to the claimant in pursuance of the impugned award. In view of this adjustment, there will be no liability on each of the parties to pay to the other any further amount.

10 Both the appeals are partly allowed to the aforesaid extent. There shall be no order as to costs.

M.S.SONAK
JUDGE