IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1794 OF 2013

1. Siraj Mohiuddin s/o Gulam Mustafa
Age : 60 yrs, occu.: agri.,
R/o Lota Karanja, Aurangabad.

2. Nazhat Fatima d/o Gular Mustafa
(W/o Abdul Razzak Quadri)
Age : 50 yrs, occu.: household
R/o As above.

3. Abdul Razzak Quadri s/o Md. Yaseen
Age : 50 yrs, occu.: business/agri.,
R/o as above. **Appellants**.

Versus

1. State of Maharashtra
Through Collector, Aurangabad.

2. CIDCO Aurangabad
Through its Administrator,
Aurangabad. **Respondents**.

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Mr. A.P. Bhandari, Advocate for the appellants.
Mr. R.B. Bagul, A.G.P. for respondent No.1.
Mr. A.S. Bajaj, Advocate for respondent No.2.

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WITH
FIRST APPEAL NO. 1478 OF 2014

1. State of Maharashtra
Through Collector,
Aurangabad.

2. CIDCO, Aurangabad.
Through its Administrator,
Aurangabad. **Appellants**.

Versus

1. Siraj Mohiuddin s/o
Gulam Mustafa Khan
Age : major, occu.: agri.,
R/o Lota Karanja, Aurangabad.

2. Nuzhat Fatima d/o Gular Mustafa
(W/o Abdul Razzak Quadri)
Age : major, occu.: household
R/o Lota Karanja, Aurangabad.

3. Abdul Razzak Quadri s/o Md. Yaseen
Age : major, occu.: business/agri.,
R/o Lota Karanja, Aurangabad. **Respondents**.

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Mr. R.B. Bagul, A.G.P. for appellant No.1.
Mr. A.S. Bajaj, Advocate for appellant No.2.
Mr. A.P. Bhandari, Advocate for respondent Nos.1 to 3.

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CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 16th October 2018.
Judgment pronounced on : 28th November 2018.

JUDGMENT.

1. First Appeal No.1794 of 2013 is filed by original claimants in L.A.R. No.463/1998 against the judgment and award passed by Civil Judge, Senior Division, Aurangabad for

enhancement of compensation. Respondents in this appeal are State of Maharashtra and City and Industrial Development Corporation (CIDCO), Aurangabad which is Acquiring Body. On the other hand, First Appeal No.1478 of 2014 is a counter appeal filed against the same judgment and award by both respondent Nos.1 and 2. These both appeals being filed against one and the same judgment, are disposed of by this common judgment.

2. Hereinafter the parties are referred to as per their status in the original proceeding.

3. In First Appeal No.1478 of 2014 Civil Application No.12637 of 2018 was filed for production of additional documentary evidence. That application is disposed of by passing separate order and it is partly allowed. Only production of village map of village Tisgaon is allowed and that map is marked as Exhibit 'A'.

4. The facts leading to institution of these both appeals are that the claimants are owners of Gut No.161 situated at village Tisgaon. Out of this land, 91 Aar land is acquired by the respondents for industrial, commercial and residential development as per the development plan of CIDCO area,

Aurangabad. Notification under Section 126 (4) of M.R.T.P. Act was published on 03.03.1994 and award was passed on 18.02.1997. Possession of the acquired land was taken by Acquiring Body on 18.07.1995. Notice under Section 12 (2) of Land Acquisition Act was served on claimants on 02.06.1998 and compensation awarded by Collector was received by claimants on 09.06.1998 under protest. The land reference was filed on 17.07.1998. Under the award, compensation was offered at the rate of Rs. 1,000/- per Aar for 33 Aar dry crop land and at the rate of Rs. 2,000/- per Aar for 58 Aar perennially irrigated land. The Reference Court partly allowed Land Reference and awarded compensation at the rate of Rs. 3,000/- per Aar for 33 Aar dry crop land and at the rate of Rs. 6,000/- per Aar for 58 Aar irrigated land out of 91 Aar acquired land. As both the parties were dis-satisfied with this award, these two counter appeals arise.

5. Heard Mr. A.P. Bhandari, learned Counsel for original claimants, Mr. A.S. Bajaj, learned Counsel for original respondent No.2 – Acquiring Body and learned Additional Government Pleader for original respondent No.1.

6. Learned Counsel for the claimants submits that the claimants relied on two sale instances i.e. Exh.37 dated 16.07.1992 and Exh.38 dated 22.07.1992 regarding Gut No.124. He submits that under these both sale instances, one Acre land was alienated at the rate of Rs. 9,375/- per Aar respectively. He submits that the acquired land has N.A. potential for construction and irrigated crops were taken from 58 Aar area out of the acquired land. Therefore, in view of the case of **"State of Maharashtra Vs. Mishrilal Bansilal Jain" [2009 (3) ALL MR 509]**, for this perennially irrigated land double compensation than the value for dry crop land, deserves to be awarded. He submits that out of these sale instances, the exemplar which fetches higher market price, is required to be considered as comparable sale instance, in view of the law laid down by the Apex Court in the case of **"Mehrawal Khewaji Trust, Faridkot Vs. State of Punjab and others" (AIR 2012 SC 2721)**.

7. The contention of learned Counsel for the claimants is that the land under both sale instances being dry crop land, for the irrigated acquired land, double compensation shall be

awarded than the market price of the land under both sale instances. He submits that locational advantageous factors annexed to the acquired land and annexed to the land under sale instances are identical, and therefore, both sale instances can safely be relied on to determine the fair market price of the acquired land.

8. On the other hand, learned Counsel for Acquiring Body submits that the land under both sale instances is abutting Aurangabad to Pune Highway. On the other hand, the acquired land is abutting Gavthan road, which is not State Highway. Therefore, locational advantage annexed with the land under sale instances is better than the acquired land. Therefore, these both sale instances are not comparable sale instances.

9. His next objection is that the sale instances are not genuine as the consideration was paid by issuing post-dated cheques and the land was sold out only after one month from the date of purchase. He submits that the land under sale instances was sold out for commercial purpose, and therefore, it was sold out at higher price than the normal market price of the said land. Therefore, these both sale instances cannot be considered for

determining the fair market price of the acquired land. He placed reliance on the cases of **"State of Maharashtra Vs. Prashram Jagannath Aute and another" (AIR 2007 Bombay 167)** and **"Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona" [1988 (3) SCC 751]**.

10. In the case at hand, notice under Section 12 (2) of the Land Acquisition Act was served on claimants on 02.06.1998 and the claimants filed reference to the Collector on 16.07.1998 i.e. within six weeks from the date of service of notice under Section 12 (2) of the Land Acquisition Act. Therefore, the Land Reference is filed well within limitation.

11. At the outset, I must make it clear that in view of Section 53 of the Land Acquisition Act, the provisions of the Code of Civil Procedure shall apply to all the proceedings before the Reference Court, except the provisions which are inconsistent with any provision of Land Acquisition Act. Therefore, rules of pleading are strictly applicable in the Land Reference Proceeding.

12. Though learned Counsel for the Acquiring Body has disputed the quality of acquired land and denied locational

advantage annexed with the acquired land on the ground that no important road is abutting the acquired land, the Acquiring Body has not denied the contents in ground No.(A) of Land Reference Petition that Gut No.161 is situated on Aurangabad to Pune State Highway, and therefore, the land is having good market value and there are also number of roads of CIDCO adjacent to the acquired land. In reply to Ground No.(A), the Acquiring Body has merely contended that the development has been effected and carried out by CIDCO, and therefore, there are roads adjacent to the lands as claimed by petitioner. It means that the Acquiring Body has admitted that Aurangabad to Pune State Highway is abutting the acquired land and there are number of roads adjacent to this land, and therefore, it has good market value.

13. Another important aspect is that in Ground No. (L) the claimants have pleaded that out of the acquired land, 33 Aar land is dry crop land and 58 Aar land is irrigated land. The Acquiring Body, in its written statement (Exh.16), has replied Ground No. (L) by pleading that "the price worked out by the petitioner is incorrect and against law and not relevant when the

process was initiated. The claim of enhanced compensation is exorbitant. The rest of the contents of this para need no reply". In view of such evasive denial of Ground No. (L) by Acquiring Body, only one inference is to be drawn that the Acquiring Body is not disputing that out of 91 Aar acquired land, 33 Aar land is dry crop land and 58 Aar land is irrigated land. In view of these admissions given by the Acquiring Body, it has become absolutely clear that the acquired land is abutting Aurangabad to Pune Highway and out of 91 Aar area, 33 Aar is dry crop land and 58 Aar is irrigated land.

14. Even claimant Abdul Razzak (PW-1) has deposed before the Court that out of the acquired land, partly it is perennially irrigated land and partly dry crop land and source of water for irrigation was from the well. He has also contended that the acquired land is black cotton soil and fertile land and it is superior in quality for agricultural purpose. He has again repeated that the acquired land is situated on Aurangabad to Pune Highway and on new Mumbai Highway.

15. It is to be noted that in cross-examination of Abdul Razzak (PW-1), his version that the acquired land is abutting

Aurangabad to Pune Highway and new Mumbai Highway, is not at all disputed by learned Counsels for respondent Nos.1 and 2. On the other hand, in para 4 of the cross-examination of this witness learned Counsel for respondent No.2 has brought on record that Nagpur to Mumbai Highway is passing by the corner of the acquired land. It has been also brought on record that the acquired land is at the distance of one kilometer from Waluj M.I.D.C. area. Even the version of this witness that part of the land is perennially irrigated and remaining part is dry crop land, is not disputed in the cross-examination of this witness. Thus, though the claimants have not filed record of right or other documentary evidence in support of their contention, in view of the admissions given by respondent Nos.1 and 2 in their written statement and in view of unchallenged version of Abdul Razzak (PW-1), the claimants have duly proved that the acquired land is situated on Aurangabad to Pune Highway and new Bombay Highway and out of 91 Aar area, 33 Aar is dry crop land and 58 Aar land is perennially irrigated land.

16. Therefore, though in the village map (Exhibit 'A'), name of the road is not mentioned which is abutting the acquired

land i.e. Gut No. 161, in view of the above undisputed evidence on record, it can be said that the road shown in the village map (Exhibit 'A') abutting the acquired land, is Aurangabad to Pune State Highway. In the circumstances, I have no hesitation to hold that the acquired land is partly perennially irrigated land and partly dry crop land. I hold that the acquired land is abutting Aurangabad to Pune State Highway.

17. In the case at hand, for determining fair market price of the acquired land on the date of publication of notification under Section 126 (4) of M.R.T.P. Act, the claimants have placed reliance on two sale instances. The first sale deed (Exh.37) is executed on 16.07.1992. Under this sale instance, out of Gut No.124 situated in village Tisgaon, the agricultural land admeasuring One Acre was sold out for the consideration of Rs.3,75,000/-. Second sale instance (Exh.38) is executed on 22.07.1992 and under this sale instance, out of the same gut number, One Acre land was sold out for the consideration of Rs.3,75,000/-. Thus, on the basis of these two sale instances, it can be gathered that in the month of July 1992 the market rate of Gut No.124 was Rs. 9,375/- per Aar.

18. These both sale instances are assailed by learned Counsel for Acquiring Body on the ground that the recitals of first sale deed show that the land under said sale instance was purchased on 17.06.1992 by the vendor and it was sold out on 16.07.1992 i.e. within one month from the date of purchase. The consideration was paid by four cheques and out of those four cheques, one cheque was dated 10.11.1992 i.e. post-dated cheque. Second sale instance (Exh.38) also shows that the land under sale instance was sold out within one month from the date of its purchase and its payment was made by three cheques, out of which two cheques were post-dated cheques. According to learned Counsel for the Acquiring Body, these facts on record indicate that these both sale instances are not genuine documents.

19. However, sale of the land within one month after purchase and payment of its consideration by post-dated cheques, cannot be a ground to doubt its genuineness, when these both sale instances are executed 19 months before the date of publication of notification under Section 126 (4) of M.R.T.P. Act. Receiving payment by post-dated cheques is the risk of purchaser

and it has no effect on genuineness of these both sale instances. I do not find any substance in the objection raised by learned Counsel for the Acquiring Body regarding genuineness of sale instances (Exhs.37 and 38).

20. Learned Counsel for Acquiring Body has also pointed out that the land under sale instance (Exh.38) was purchased on behalf of Hotel Mashroom i.e. for commercial purpose, and therefore, it was sold out for higher price than the fair market price.

21. However, it cannot be ignored that even the acquired land was acquired by respondent No.2-CIDCO for commercial purpose i.e. for development of residential, commercial and Waluj M.I.D.C. area. Thus, the acquired land as well as the land under sale instances have N.A. potentiality for building purpose as well as for commercial purpose. In view of this quality of acquired land and the land under sale instances, it can be held that the acquired land and the land under sale instances are of identical quality, having similar advantageous factors i.e. both the lands are abutting State Highway. Even the area of both sale instances are reasonably larger in comparison with 91 Aar acquired land.

Even the date of execution of sale deeds in these both sale instances is reasonably proximate with the date of publication of notification under Section 126 (4) of M.R.T.P. Act i.e. 03.03.1994. Thus, in view of the guiding principles laid down by the Apex Court in the case of **"Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona"** (supra) and **"Printers House Pvt. Ltd. Vs MST Saiyadan" [(1994) 2 SCC 133]**, the sale instances (Exhs.37 and 38) can be considered as comparable sale instances to determine fair market value of the acquired land on the date of publication of notification under Section 126 (4) of M.R.T.P. Act.

22. Out of these both sale instances, the sale deed (Exh.38) was executed on 22.07.1992, and therefore, it is more proximate to the date of publication of notification under Section 126 (4) of M.R.T.P. Act. Therefore, I prefer to accept the sale deed (Exh.38) as comparable sale instance to determine the fair market value of the acquired land on the date of publication of notification under Section 126 (4) of M.R.T.P. Act.

23. As the sale instance (Exh.38) was executed 19 months prior to the date of publication of notification under

Section 126 (4) of M.R.T.P. Act, in view of the law laid down by this Court in the cases of **“State of Maharashtra Vs. Mishrilal Bansilal Jain”** (supra) and **“Maharashtra Vs. Shantaram Govind Tandel and others [2011 (7) ALLMR 273]**, for one year 10% escalation in market value of the acquired land is to be granted. As there is gap of 19 months in between the date of publication of notification under Section 126 (4) of M.R.T.P. Act and execution of sale instance (Exh.38), the escalation of 16% shall be given to the market price of the land under sale instance to determine the fair market price of the acquired land on the date of publication of notification under Section 126 (4) of M.R.T.P. Act. Thus, as on 22.07.1992 the market rate of the land under sale instance (Exh.38) was Rs. 9,375/- per Aar, after granting 16 % escalation to this market price, the fair market price of the acquired land is assessed as Rs.10,875/- per Aar.

24. After going through the sale deed (Exh.38), it also emerges that the land under this sale instance is not irrigated land, and therefore, it is to be treated as dry crop land. Therefore, out of 91 Aar acquired land, for 33 Aar dry crop land, its market rate is to be assessed on the date of publication of

notification under Section 126 (4) of M.R.T.P. Act as Rs. 10,875/- per Aar.

25. Now, question arises as to what rate should be given to 58 Aar perennially irrigated acquired land. The Full Bench of this Court in the case of **"State of Maharashtra Vs. Prashram Jagannath Aute and another"** (supra) has made it clear that the Court has to determine market value of the land on the date of publication of notification under Section 4 of the Land Acquisition Act with reference to the facts and circumstances and also evidence led by parties in each case. It is not permissible nor proper for the Court to led on any straight jacket formula to all land acquisition proceedings. Thus, it is clear that there is no straight jacket formula that the market value of the irrigated land is always double than the market value of Jirayat land. The market value of perennially irrigated land is to be determined after considering the quality of that land, its location and advantageous factors annexed with that land. In the case of **"State of Maharashtra Vs. Mishrilal Bansilal Jain"** (supra) the same principle was followed and as the land in that case was not perennially irrigated land, but as it was well irrigated land,

compensation was awarded at the 1 + ¾ time of the market value of dry crop land.

26. However, in the case at hand, out of 91 Aar acquired land, 58 Aar land is perennially irrigated land with well water and this land is abutting Aurangabad to Pune Highway as well as it has N.A. potential for commercial as well as building construction. This land is admittedly cotton soil good quality land. Considering these all plus factors annexed with this 58 Aar perennially irrigated land, I hold that compensation for this land is to be awarded at the double rate than the rate awarded to dry crop land. In other words, for this 58 Aar perennially irrigated land, the market value of this land is to be assessed as Rs.21,750/- per Aar.

27. No doubt, Abdul Razzak (PW-1) has admitted in his cross-examination that the acquired land is at the distance of One Furlong from Gut No.124 i.e. the land under sale instance (Exh.38). However, the Apex Court in the case of of **"Lal Chand Vs Union of India and another" [(2009) 15 SCC 769]** ruled that, "if the acquisition is in regard to a large area of agricultural lands in a village, and the exemplar sale deed is also in respect of

an agricultural land in the same village, it may be possible to rely upon the sale deed as prima facie evidence of the prevailing market value, even if such land is at the other end of the village at a distance of one or two kilometres". Therefore, when the acquired land and the land under sale instance are situated in village Tisgaon, the distance of One Furlong in between two lands does not matter.

28. Accordingly, I hold that out of 91 Aar acquired land, for 33 Aar dry crop land compensation is to be awarded at the rate of Rs. 10875/- per Aar and for 58 Aar perennially irrigated land the compensation is to be awarded at the rate of Rs.21,750/- per Aar.

29. Claimants are also entitled to statutory benefits under Sections 23 (1A) and 23 (2) of the Land Acquisition Act. In the case at hand, the award was declared on 18.02.1997 and the claimants received compensation awarded by Collector on 09.06.1998 (Exhs. 32 to 34). Possession of the acquired land was taken by Acquiring Body on 18.07.1995 (Exh.35). Therefore, the claimants are entitled to interest under Section 34 of the Land Acquisition Act on compensation amount awarded by Collector at

the rate of 9 % per annum from 18.07.1995 to 18.07.1996 and thereafter at the rate of 15% per annum from 19.07.1996 to 09.06.1998. The claimants are also entitled to interest on enhanced compensation and solatium amount under Section 28 of the Land Acquisition Act at the rate of 9 % from 18.07.1995 till 18.07.1996 and thereafter at the rate of Rs. 15 % per annum from 19.07.1996 till deposit of this enhanced compensation and solatium amount in the Court.

30. The award passed by the Reference Court in L.A.R. No.463/1998 deserves to be modified accordingly. It follows that First Appeal No.1794/2013 filed by claimants deserves to be partly allowed and First Appeal No.1478 of 2014 deserves to be dismissed.

31. Accordingly First Appeal No.1794 of 2013 is partly allowed and First Appeal No.1478 of 2014 is dismissed. The award passed by Civil Judge, Senior Division, Aurangabad in L.A.R. NO.463 is modified as under :-

> "(i) L.A.R. No.463/1998 is partly allowed with proportionate costs.
>
> (ii) Claimants are entitled for enhanced compensation for the acquired land Gut No.161,

admeasuring 91 Aar situated at Tisgaon, at the rate of Rs. 10,875/- per Aar for 33 Aar dry crop land and at the rate of Rs. 21,750/- per Aar for 58 Aar irrigated land.

(iii) Claimants are entitled to additional component under Section 23 (1A) of the Land Acquisition Act at the rate of 12% per annum on the market value of the acquired land from the date of publication of notification under Section 126 (4) of M.R.T.P. Act i.e. 03.03.1994 till the date of taking possession i.e. 18.07.1995.

(iv) Claimants are entitled to solatium at the rate of 30% on the market value of the acquired land, under Section 23 (2) of the Land Acquisition Act.

(v) Claimants are further entitled to interest under Section 28 of Land Acquisition Act on the enhanced compensation, solatium and component amounts at the rate of 9% per annum from the date of award i.e. from 18.07.1995 till deposit of enhanced compensation, solatium and component amounts in the Court. If this enhanced compensation amount, and solatium and component with interest thereon is not deposited till 18.07.1996, the claimants are entitled to interest at the rate of Rs. 15 % per annum from 19.07.1996 till the date of deposit of entire compensation, solatium and component amounts in the Court.

(vi) Claimants are also entitled to interest under Section 34 of the Land Acquisition Act on compensation amount awarded by Collector at the rate of 9% per annum from date of taking possession i.e. 18.07.1995 to 18.07.1996 and thereafter at the rate of 15% per annum from 19.07.1996 to 09.06.1998.

31. Parties to bear their respective costs of the appeals.

32. The appeals are disposed of in above-said terms.

(SUNIL K. KOTWAL)
JUDGE

vdd/