IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 697 OF 2017

Gorakshan Sanstha
(Through its Secretary,
Shivshankarerppa Bakayya
(Bakappa), Nagure.
Since deceased
Through President
Ramprasad Narsingdas Lakhotiya.
Age : 55 yrs, occu.: medical practitioner
R/o Udgir, Taluka Udgir,
District Latur. **Appellant**.

Versus

1. The State of Maharashtra
Through Collector, Latur.

2. The Land Acquisition Officer,
S.D.O. Udgir, Taluka Udgir,
District Latur.

3. The Executive Engineer,
P.W.D. Latur. **Respondents**.

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Mr. S.S. Chillarge, Advocate for the appellant.
Mr. A.P. Basarkar, Advocate for respondent Nos.1 and 2.

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CORAM : SUNIL K.KOTWAL,J.

Judgment reserved on : 10th September 2018.
Judgment pronounced on : 19th September 2018.

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. This appeal is directed against the judgment and award passed by the Joint Civil Judge, Senior Division, Udgir in Land

Acquisition Reference No. 298/2012, awarding compensation for 10 Acres acquired land at the rate of Rs. 70,000/- per hectare.

2. The appellant is the original claimant / land owner. Respondent No.1 is the State, respondent No.2 is Land Acquisition Officer, Udgir and respondent No.3 is Acquiring Body.

3. Facts leading to institution of the Reference are that the appellant is the owner of Survey No.3/B/2, admeasuring 24 Acres 28 Gunthas, situated at Somnaghpur, Taluka Udgir, District Latur. The respondents proposed to acquire the area of 10 Acres out of this land for the purpose of construction of Transit Type and Pool Quarters. They obtained possession of the land by private negotiations. Thereafter notification under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as the "L.A. Act") was published in official gazette on 31.10.1985. The appellant demanded value of the acquired land at the rate of Rs. 50,000/- per acre. However, by passing an award on 30.09.1987, the Land Acquisition Officer awarded compensation at the rate of Rs. 12,500/- per hectare. Therefore, on the application moved by appellant, the Collector referred the Reference to the trial Court for adjudication.

4. The appellant places reliance on the comparable sale deed (Exh.31) dated 20.01.1984 under which 61 Aar land was sold out for a consideration of Rs. 97,000/- i.e. at the rate of Rs.1,59,000/- per hectare. The Reference Court valued the

acquired land at the rate of Rs. 1,75,000/- per hectare, but after deducting 60 % amount towards small area of sale instance and dis-advantage factor that the land under the sale instance is adjacent to the road, ascertained the market value of the acquired land at the rate of Rs. 70,000/- per hectare. Accordingly, awarding compensation of the acquired land at the enhanced rate of Rs.70,000/- per hectare with other statutory benefits under Sections 23 (1-A) and 23 (2) of the L.A. Act and interest on enhanced compensation at the rate of 9% per annum from 31.10.1985 to 30.10.1986 and at the rate of 15 % per annum from 31.10.1986 till the payment, partly allowed the above-said Land Reference Petition. The correctness of that award is challenged in the present appeal.

5. Heard strenuous arguments submitted by Mr. S.S. Chillarge, learned Counsel for the appellant and learned A.G.P. for the State.

6. Learned Counsel for the appellant submits that though the sale instance relied by the appellant is not of small piece of land, the learned Reference Court gave unnecessary importance to the area of the land under sale instance. He submits that the land which was subject-matter of the sale instance (Exh.31) and the acquired land carry identical N.A. potentiality for construction of buildings. Both the lands are un-irrigated lands. Therefore, deduction of 60% amount from the market value of acquired land is un-reasonable.

He placed reliance on the judgment in the case of State of "**Maharashtra Vs. Valu Yesu Suryawanshi", [2008 (3) Bom.C.R. 181 (Bombay High Court)**]

7. In reply, learned Additional Government Pleader for the State submits that the area of the acquired land is 10 Acres and the land under sale instance is only 61 Aar land. He also submits that the land under comparable sale instance is adjoining to the road. This advantage is not available to the acquired land, which is not abutting to any road or highway. According to the learned Additional Government Pleader, the deduction of 60 % amount from the market value of the land is just and proper. He places reliance on the judgment in the case of "**Chandrashekar Vs. Land Acquisition Officer", [2012 (3) Mh.L.J. 8.**].

8. In the case at hand, undisputedly possession of the acquired land was obtained by Acquiring Body by private negotiations before the date of publication of notification under Section 4 (1) of the L.A. Act. The acquired land is situated at Somnathpur, which is at a distance of only 3 kilometers from Taluka place – Udgir. The approximate market value of the acquired land on the date of publication of notification under Section 4(1) of the L.A. Act i.e. 31.10.1985 is the deciding factor. It is also a settled position of law that for ascertaining the market value of the acquired land, use of genuine comparable sale instance, proximity between

the time of publication of notification under Section 4 (1) of L.A. Act and the sale instance, and proximity in between acquired land and the land under sale instance, needs to be considered.

9. In the case of **“Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and another”, (AIR 1988 Supreme Court 1652)** the Honourable Supreme Court in para 4 of the Judgment has issued guidelines as under :

> “4. The following factors must be etched on the mental screen :
>
> (1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.
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> (2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.
>
> (3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.
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> (4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved

by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under S.4 of the Land Acquisition Act (dates of Notifications under Sections.6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under S.4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of land.)

(9) 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.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations :

(I) Proximity from time angle.
(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deducted by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors :-

Sr. No.	**Plus factors.**		**Minus factors.**
1	Smallness of size.	1	Largeness of area.
2	Proximity to a road.	2	Situation in the interior at a distance from the road.
3	Frontage on a road.	3	Narrow strip of land with very small frontage compared to depth.
4	Nearness to developed area.	4	Lower level requiring the depressed portion to be filled up.
5	Regular shape.	5	Remoteness from developed locality.
6	Level vis-a-vis land under acquisition.	6	Some special dis-advantageous factor which would deter a purchaser.
7	Special value for an owner of an adjoining property to whom it may have some very special advantage.		

15)...........

> (16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.
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> These are general guidelines to be applied with understanding informed with common sense."

10. Considering this settled legal position, if the evidence placed on record by both the parties is considered, it is evident that on behalf of claimant, Mr. Ramprasad Lakohtiya (PW-1) stepped in witness box. He has also filed a copy of registered sale deed (Exh.31) to be used as a comparable sale instance. Ramprasad Lakhotiya (PW-1) deposes that Somnathpur is at a distance of 2 to 3 kilometers from Udgir taluka place. The population of this city is Ten Thousand and it is well developed, having Post Office, electricity and water supply facilities, and it is adjacent to Nagar Parishad boundary. He deposes that the land under sale instance dated 20.01.1984 having area 61 Aar situated in the same village Somnathpur was sold out for a consideration of Rs. 97,000/- per hectare. The quality of the land under sale instance and quality of the acquired land is identical and both lands carry N.A. potentiality for construction of building. When this witness was subjected to cross-examination, he has admitted that the land under sale instance (Exh.31) is adjacent to the Government road. However, this witness remained constant on his statement that the land under sale instance and acquired land are situated near each other.

11. No evidence has been adduced by the respondents. No other sale instance has been placed on record by the respondents to ascertain the market value of the land.

12. After going through the copy of sale deed dated 20.01.1984, it emerges that out of Survey No. 6/13 situated at village Somnathpur, 1 Acre 20 Gunthas area was sold out for the total consideration of Rs. 97,000/-. Thus, obviously the land under sale instance and the acquired land are situated in one and the same village and in the same vicinity. The land under sale instance was sold out to Ambika Co-operative Housing Society for construction of building and the purpose of acquisition of the acquired land is also for construction of Government quarters. Thus, the land under sale instance and the acquired land have equally N.A. potentiality for construction of building. Thus, the proximiting situation of these both lands and their identical N.A. potentiality is sufficient to hold that the sale instance dated 20.01.1984 is genuine sale instance which can be used to ascertain true market value of the acquired land.

13. The market rate under sale instance on 20.01.1984 was Rs. 1,59,000/- per hectare, as the the sale consideration of the sale instance is Rs. 97,000/- for 61 R i.e. 1 Acre 20 gunthas land. The sale instance is one year prior to the date of publication of notification under Section 4 (1) of the L.A. Act i.e. 31.10.1985.

14. In the case of **"Defence Research and Development Organization Vs. Anjanappa and another", [2014 SAR (Civil) 560]**, the Supreme Court approved the view taken by the High Court about adoption of method of 10% increase every year in the market value of the land. Therefore, by application of this analogy, if 10 % value is added in the market value of the land under sale instance, the market value of the acquired land on the date of issuance of notification under Section 4 (1) of the L.A. Is calculated as Rs. 1,74,900/- (In round figure, Rs. 1,75,000/-) per hectare.

15. Learned A.G.P. for the State submits that on account of small size of the land under sale instance, 30 % amount needs to be deducted from the market value of the acquired land and 30 % amount needs to be deducted as the acquired land is not adjoining to road alike the land under sale instance.

16. No doubt, in view of the law settled by Apex Court in the case of **"Chandrashekhar Vs. Land Acquisition Officer"** (supra), there can be deductions up to the limit of 75% of the market value of the acquired land towards development of infrastructure and developmental expenditure and expenses, if large tract of land is acquired for development of residential layout.

17. However, the above Authority is distinguishable on facts for the simple reason that in the case of **"Chandrashekhar"** (supra), 144 Acres tract of land was acquired for development of

large residential layout. However, in the case at hand, comparatively small piece of 10 Acres land is acquired for construction of some Transit and Pool Quarters. So, in the case at hand, for development of the acquired land, except the area required for development of internal road, no more infrastructural development needs to be carried out. Therefore, considering the small scale construction of quarters in the acquired land, at the most 20% amount can be deducted from the market value of the acquired land. So also, as the acquired land is not adjoining to any road, like the land in sale instance, 10 % more amount can be deducted from the market value. However, the size of land under sale instance is not comparatively very less than the area of the acquired land. Therefore, no amount can be deducted from the market value of the land towards large size of the acquired land. Therefore, I hold that at the most 30 % amount can be deducted from the market value of the acquired land.

18. As observed above, market value of the acquired land is ascertained as Rs. 1,75,000/- per hectare. After deducting 30 % amount i.e. Rs. 52,500/- from this value, the true market value of the land would come to Rs. 1,22,500/- per hectare on the date of publication of notification under Section 4 (1) of the L.A. Act.

19. The appellant is entitled to compensation of acquired land at the rate of Rs. 1,22,500/- (Rupees One Lakh Twenty Two

Thousand Five Hundred) per hectare. The appellant is also entitled to statutory benefit under Section 23 (1-A) of the L.A. Act and 30% per annum on the enhanced value of the land under Section 23 (2) of the L.A. Act. The appellant is also entitled to interest under Section 28 of the L.A. Act as awarded by the Reference Court. The compensation amount already received by the appellant needs to be deducted from the above-said compensation amount.

20. It follows that this appeal deserves to be partly allowed.

21. The appeal is accordingly partly allowed. It is held that the appellant is entitled to compensation at the rate of Rs. 1,22,500/- (One Lakh Twenty Two Touhsand Five Hundred) per hectare for the acquired land. The remaining part of the award regarding grant of statutory benefits and interest to the appellant on enhanced compensation amount is maintained as it is. Deficit Court-fees, if any, be recovered from the claimant.

22. Parties to bear their respective costs of the appeal.

(SUNIL K. KOTWAL)
JUDGE

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