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

FIRST APPEAL NO. 2944 OF 2013

Ashok Sidramappa Yenegure,
age 65 yrs, Occ. Pensioner,
R/o Jevali, Tq. Lohara,
Dist. Osmanabad. ...appellant...
(Orig. Claimant)

VERSUS

1. The State of Maharashtra,
Through District Collector,
Osmanabad.

2. The Special Land Acquisition Officer,
(P.T. & M.I.W.) No.1, Osmanabad.
...Respondents...

...

Advocate for Appellant : Mr Yenegure Apparao
A.G.P. for Respondents: Mr B V Virdhe
Advocate for Respondent 1 : Mr S G Bhalerao
(caveator in FA 3413/2015)

...

WITH

FIRST APPEAL NO. 3413 OF 2015

1. The State of Maharashtra,
Through The Collector, Osmanabad.

2. The Special Land Acquisition Officer,
(P.T. & M.I.W.) No.1, Osmanabad.
...Appellants...
(Orig respondents)

VERSUS

Ashok Sidramappa Yenegure,
age 40 yrs, Occ. Service, now
Pensioner, Through Power of
Attorney Holder :-

Sidramappa Apparao Yenegure,
age 65 years, Occ. Agriculturist,
R/o Jevli, Tq. Omerga, District
Osmanabad. ....Respondent...
(Ori claimant)

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Mr B V Virdhe A.G.P. for appellant State.
Mr. S G Bhalerao Advocate for Respondent No.1.

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CORAM : V.K. JADHAV, J.

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Reserved on : December 12, 2017
Pronounced on : January 05, 2018.

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JUDGMENT :-

1. Being aggrieved by the judgment and award passed by the Jt. Civil Judge S.D., Omerga, dated 6.4.2013 in LAR No.533/2005 (old No.383/1999), the original claimant has preferred First appeal No.2944/2013 and the respondents/State has preferred First Appeal No.3413/2015.

2. Brief facts, giving rise to the present appeals, are as follows :-

a] The land Block No.7, admeasuring 4H 69R situated at village Jevali, Tq.Omerga, District Osmanabad, owned by the claimant is acquired by the Respondents Government for the purpose of rehabilitation of earthquake affected persons of village Jevali. Section 4 notification of the Land Acquisition Act is published in the official gazette on 8.8.1996. In response to the notice under section 9 of the Act, the claimant has submitted his claim before the Land Acquisition Officer claiming compensation of Rs.15,000/- per guntha and separate compensation for the structure. The L.A.O. by award dated 6.12.1997 determined the compensation and awarded the compensation of Rs.21,000/- per hector. Being aggrieved and dissatisfied by the award passed by LAO, the claimant has filed LAR No.533/2005 for the compensation of the acquired land at the enhanced rate. According to the claimant, the village Jewali is having amenities like village, tar roads, colleges, offices, etc. and it is adjacent to National High Way No.9. The acquired land is situated just adjacent to Jewali-Makani and Jewali-Lohara Road. It has been contended by the claimant in the reference petition that, the quarters of the MSEB employees, teacher's colony, market school are also situated near the acquired land. There is also one industry after one land of the acquired land.

Therefore, the claimant was intending to convert the acquired land for non agricultural purpose as acquired land was having N.A. potentiality. Even, the adjacent land owners have already converted their lands to NA use and also sold the same. The claimant has also entered into an agreement of sale of the plots to other persons from the acquired land. Claimant had also filed N.A. proceedings before the Tahsildar, however, no decision was taken on his application seeking N.A. permission with regard to some portion of the acquired land. According to the claimant, the L.A.O. has granted the compensation at a meager rate without considering the N.A. potentiality of the land.

b] Respondent/State by filing written statement has strongly resisted the said reference petition on the ground that, there was no facilities in the vicinity of the land acquired as stated by the claimant. There is no NA potentiality to the acquired land. The claimant has failed to reply the notice under section 9 of the Act and also failed to withdraw the amount of compensation under protest. Claim petition is not filed within limitation. It has been contended that, L.A.O. has awarded just and reasonable compensation by considering the market value of the lands in the vicinity of the acquired land.

c] The claimant has adduced oral and documentary evidence in support of his contentions. Respondent-State has not adduced any evidence. The learned Jt. Civil Judge S.D. Omerga by its impugned judgment and order dated 6.4.2013 partly allowed reference petition and directed the respondents to pay the claimant compensation of Rs.5,000/- per Aar towards enhanced compensation against the land acquired after deducting the amount already paid. The learned Judge of the Trial court has also granted all admissible statutory benefits to the claimant.

d] Being aggrieved and dissatisfied with the Award passed by the Reference Court, the claimant has preferred First Appeal No.2944/2013 and the Respondent-State has also preferred the appeal bearing First Appeal No.3413/2015. Hence, both these appeals are taken together and decided by this common judgment.

3. Learned counsel for the appellant submits that, market price of the acquired land was Rs.15,000/- to Rs.20,000/- Gunthas or Rs.15/- to Rs.20/- per square feet on the date of notice under section 4 of the Land Acquisition Act. Learned counsel submits that, village Jewali is a big village in Omerga Taluka having population of more than 10,000 to 15,000 and there was demand from villagers to grant status of Taluka Place to village Jewali. Facilities like tar road, school, colleges, I.T.I. College, MSEB Sub Stations, Primary health center, Veterinary Hospital, Water Supply Office, Telephone Exchange, Marketing Federation, Banks, Saw Mills, Oil Mills, Hotels, small scale industries, post office, Khadi Gramodyog center, Government Offices etc are in existence at village Jevali. Moreover, there is big industrial unit of production of submersible pump set. Village jevali is adjacent to National High Way No.9. So also Akkalkot-Nagpur tar road is passing from this village and there was and is acute shortage of

accommodation at village Jewali. Due to earthquake in the year 1993, 90% of the houses of the villager were collapsed at Jevali and, as such nobody was willing to reside in the old Gaonthan. There is a river towards south side of village. Therefore, except land of the claimant which is situated towards south-north corner of old village, there was no suitable land available for residential and commercial purpose. So, there was high demand of land and plots for residential and commercial purpose. Learned counsel submits that, acquired land is having N.A. potential value and also useful for construction purpose. The adjacent land holders of the acquired land i.e. land Gat no.4 Shri Ramesh Sakhare and one Mhadabai Karbhari who is owner of land gat no.3 have converted the lands in NA use. There was heavy demand for residential plots from the acquired land and as such, the claimant had agreed to sell some plots to the villagers. Claimant had executed agreement of sale in the year 1992 and 1994 of his land gat no.7 and out of the land S.No.8, some portion was converted into NA plots. On 2.2.1991 claimant has sold 3 gunthas of land for a consideration of amount of Rs.30,000/-. He has also sold one another plot to one Allahasani Tamboli for a consideration of Rs.20,000/- and agreement of sale came to be executed in writing on 3.3.1994. Even the claimant has also filed a proposal to Tahsildar on 19.1.1995 seeking permission for conversion of the land for NA purpose alongwith the map and other necessary documents. Said proposal was not specifically rejected. Learned counsel submits that, in view of the provisions of the Maharashtra Land Revenue code, such a permission shall be deemed to have been granted for proposed use of land for non agricultural purposes, if not rejected specifically within 45 days. N.A use of the land gat no.3 which was known as land Sy.No.3/4 came to be sanctioned by the Revenue authority on 25.9.1984. The land admeasuring 1H 88R out of the land gat no.3 came to be converted for NA purpose accordingly. Even, the owner Mhadabai Ankush Karbhari has sold out some plots and those plots are at a distance of 1000 feet away from the acquired land. Learned counsel further submits that, with reference to section 4 notification of the acquired land which came to be published on 8.8.1996, the claimant has relied upon the sale deed exh.52 dated 22.12.1989, sale deed exh.53 executed on 20.3.1993 and sale deed exh.54 executed on 9.12.1997 (as per agreement of 3.7.1996). These sale instances are from the same village, however, reference court has not considered the same. The learned Judge of the Reference Court in paragraph no.18 of the impugned judgment and award accepted the N.A. potentiality of the acquired land in unequivocal words. Learned counsel submits that, however, reference court has erroneously held that, claimant will be entitled to the compensation of 50 percent of the total area being rest of the area will be utilized for the developments like approach road to any main road, the sub roads and then for the open belts. Learned counsel submits that, even though, reference court has considered the non agriculture potentiality of the acquired land, discarded the sale instances for the reason that, those are the small piece of land and which were under development. Reference Court has thus awarded compensation @ Rs.5,000/- per gunthas to the whole acquired land.

4. The learned counsel for the appellant in order to substantiate his contentions placed his reliance on following cases :-

> 1. Meharwal Khewaji Trust (Regd) and others Vs. State of Punjab and others reported in 2012 (4) ALL MR 470 (S.C.).
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> 2. Tejumal Bhojwani and others Vs. State of U.P. Reported in AIR 2003 Supreme Court 3791.

5. Learned A.G.P. submits that, the acquired land is a Jirayat land and the same is also admitted by the claimant in his cross examination. Acquired lands are the inferior quality and as on the date of publication of the notification under section 4, the use of the acquired land was only for agriculture purpose. The learned AGP submits that, acquired lands are the agricultural lands of inferior quality having no potentiality of NA use. Learned AGP submits that, the Reference Court while enhancing the market value from Rs.210/- per R to Rs.5,000/- per Aar at one hand discarded the sale instances and reached to the imaginary rate of Rs.5,000/- without having any basis. Learned AGP submits that, sale instances relied upon by the

appellant are of pieces of small plots and under development. The claimant is not entitled for the same rate. The said sale instances cannot be relied upon for comparison and to find out the market price of the acquired land which is admeasuring 4 Hector 69R. The reference court has also observed that sale instances relied upon by the claimant are of developed land and acquired land is undeveloped land. The claimant has not produced any map on record to compare the acquired land with the land under sale instances. Apart from the sale instances, no other evidence placed before the Reference Court in support of the demand for enhancement. The learned AGP submits that, compensation as awarded by the reference court at the enhanced rate is totally illegal and against the settled principles of law. The learned AGP submits that, on perusal of the sale deed exh.52, it appears that though it was executed in the year 1989, the land under the sale instances exh.52 was sold for a consideration amount of Rs.6,000/-. On perusal of the sale instance exh.53, though consideration amount shown as Rs.30,000/-, as per boundaries shown in the sale instance Exh.53, purchasers land is adjacent to the land under sale instance and as such, the land under sale instance has been sold at a higher price. It appears from the recitals of the sale instance Exh.53 that Rs.10,000/- only paid before the Registrar and for the remaining amount of consideration, no details are mentioned. It thus doubtful that plot under sale instance has been sold for a consideration amount of Rs.30,000/-. The learned AGP submits that, so far as sale instance exh.54 is concerned, sale deed came to be executed after section 4 notification was published in the official gazette. Learned A.G.P. submits that, sale instance Exh.52, 53 and 54 cannot be considered for the reason that sale instances are not within reasonable time of the notification under section 4 published in respect of the acquired lands. The transactions are not bonafide one and there is no evidence that, these lands possesses similar advantages as compared to the acquired lands. Learned AGP further submits that, the application filed for NA permission is of dated 19.1.1995 and bare perusal of the same clearly reflects that, permission is sought only for land admeasuring 1

Hector when total land acquired is 4H 69R. There is no inward number in respect of the said application filed for NA permission. It is a suspicious document. This record has been created after thought. Learned AGP submits that, claimant has submitted a lay out plan of the year 1992 at exh.45 before the reference court for claiming compensation at the enhanced rate, however, though lay out plan was prepared in the year 1992, application seeking NA permission came to be filed in the year 1995. There was no permission for preparing a lay out plan. The possession of the acquired land has been taken in the year 1996.

6. Learned AGP submits that, there is no justification in the enhanced rate awarded by the reference court. Though reference court has come to the conclusion that the acquired land is the agricultural land at the time of section 4 notification, awarded the compensation at the enhanced imaginary rate of Rs.5,000/- per aar. Learned AGP submits that, agreement to sale is not an evidence for market value of the land. Learned AGP in the alternate submits that, if N.A. potentiality of the

land is considered by this Court, taking into consideration the large extent of the land acquired, appropriate deductions towards development costs needs to be considered as 75%.

7. Learned AGP in order to substantiate his contentions placed his reliance on following judgments :-

1. Chimanlal Hargovinddas Vs. Special Land Acquisition officer, Poona reported in 1988 AIR (SC) 1652.

2. Surat Singh Malli Vs. Union of India reported in 1996 (Supp.1)JT 336.

3. State of Maharashtra Vs. Ismile Abdul Gafur Patel since deceased through his L.Rs. Maimuna Ismail Patel and Others reported in 2006 (2) Mh.L.J. 323.

4. Special Land Acquisition Officer Vs. Sidappa Omanna Tumari reported in 1995 AIR (SC) 840.

5. Karnataka Urban Water Supply and Drainage Board, etc. Vs. K.S. Gangadharappa and Another, etc. reported in (2009) 11 SCC 164.

6. Nawal Singh Vs. Union of India reported in (1995) Suppl. 3 SCC 315.

7. Ranvir Singh Vs. Union of India reported in 2005 AIR (SC) 3467.

8. State of Maharashtra and Others Vs. Yashwant Kahnu Shirsath reported in 2008 (3) AIR Bom R 61.

9. Ramanlal Deochand Shah and Another Vs. State of Maharashtra and Another reported in 2013 (5) AIR

Bom R 772.

10. G.M., O.N.G.C. Ltd. Vs. Sendhabhai Vastram Patel reported in 2005 (7) JT 465. (2005) 6 SCC 454.

11. M.V.K. Gundarao Vs. Revenue Divisional Officer. (Lao), Narasaraopet reported in 1996 AIR (SC) 3241.

12. Government of Goa, through Under Secretary (Revenue) Secretariat, Panji Vs. Jagannath Vamon Khalap (since deceased by his L.Rs.) reported in 1996 (3) All M.R. 507. (1996 (2) BCR 714)

13. Shaji Kuriakose Vs. Indian Oil Corporation Limited reported in 2001 AIR (SC) 3341.

14. Deputy Collector and (S.D.O.) and Another Vs. Diogo Piedade Inacio Falcao and Others reported in 2007 (1) AIR Bom R(NOC) 43. [2006 (2) BCR 769].

15. State of Maharashtra Vs. Digamber Bhimashankar Tandale reported in 1996 (2) JT 528. [1996 (2) SCC 583].

16. Shaikh Rasheed Shaikh Latif (dead) through L.Rs. Vs. State of Maharashtra and Others reported in 2003 B.C.I. 57.

17. Chandrashekar (D) by L.Rs. And others Vs. Land Acquisition Officer and another reported in 2012 AIR (SC) 446.

18. Lal Chand Vs. Union of India and Another reported in 2010 AIR (SC) 170.

19. MAJ. GEN. Kapil Mehra Vs. Union of India and Another reported in 2014 AIR (SCW) 6086.

20. Ashrafi and Others Vs. State of Haryana and Others reported in 2013 AIR (SC) 3654.

8. I have gone through the pleadings, evidence and the impugned judgment and award passed by the

Reference Court carefully. The land gat no.7 admeasuring 4H 69R owned by the claimant came to be acquired by the State for the purpose of rehabilitation of earthquake affected persons of village Jewali. Notification under section 4 of the Land Acquisition act was published on 8.8.1996. The claimant has deposed before the reference court about population of village Jewali and facilities like college, MSEB station, Primary Health Center, veterinary hospital, tar road, telephone exchange, banks, saw mills, hotels, small scale industries, post office are available in the village. Petitioner has also deposed that there is a big industrial unit of production of submersible pump set. According to the claimant village Jewali is adjacent to National high way no.9. So also Akkalkot to Nagpur road passes from village Jewali. The claimant has further clarified that the acquired land is having N.A. value and useful for construction purpose. It is the case of the claimant that adjacent land holders of the acquired lands i.e. land gat no.4 and 3 the owners thereof have already converted their lands into NA use. Thus, the claimant had also submitted an application seeking permission for conversion of the use of the acquired lands to the extent of 1H and also agreed to sell some portion of the lands for certain consideration amount to the claimants. On careful perusal of the cross-examination of the claimant, it appears that, State has not even denied the statements made by the claimant on oath. It is also a part of record that, in response to section 9 notice issued by the Land Acquisition Officer, the claimant has submitted his demand at exh.41 for the compensation with the same contention seeking compensation for the acquired lands by treating the acquired land as NA use. It is also a part of record that, respondent State has not adduced any oral or documentary evidence. Even, the learned Judge of the trial court in paragraph no.18 of the impugned judgment and award has observed that extract of the record of rights exh.47 to exh.51 shows that the land in the vicinity of the acquired land is under residence. The learned judge of the reference court has specifically observed that, the location of Lord Basweshwar's trust, school clearly indicates the use of the land in the vicinity of the acquired land is for NA purpose. The acquired land was not used for any agriculture purpose. After major earthquake occurred at village Jewali, after due inspections, this land owned by the claimant choosed by the authorities for rehabilitation of the earthquake affected persons. There was a potential value for the entire acquired land as a N.A. land.

9. The claimant has placed his reliance on the following sale instances :-

Sr. No.	Exhibit No.	Date of execution	Area (Sq.Ft.)	Rate per Sq. Feet. & location.
1	Saledeed Exh.52	22.12.1989	50 x 40	Rs.5/- same village
2	Saledeed Exh.53	22.3.1993	70 x 30	Consideration of Rs.30,000/- Rs.12.24/- per sq. feet same village.
3	Saledeed Exh.54	9.12.1997 (as per agreement to sale dated 3.7.1996)	80 x 50	Rs.7.14 per sq. feet. location same village.

10. It has come in the evidence of the claimant supported by 7/12 extract produced on record that land gat no.1 which is owned by Basveshwar Devshthan shows that said land was developed before the acquisition. In land gat no.2, there is a college and school and land gat no.3 owned by one Mhadabhai

Karbhari is converted into NA purpose in the year 1984. Said N.A. use of land gat no.3 is supported by mutation entry no.1102 and further gat no.4 owned by one Ramesh Sakhare also converted into NA use in the year 1994. On 22.12.1989 said Mhadabai had sold open plot in S.No.3/4 plot no.20 admeasuring 50x40' for a consideration amount of Rs.10,000/- to one Narmada Motirao Varorkar. Copy of the said sale deed is marked at exh.52. Saledeed exh.53 pertains to open plot measuring 70x30 for a consideration amount of Rs.30,000/-, however, in the boundaries towards northern side, purchaser's house property is shown. Though sale deed exh.54 came to be executed on 9.12.1997, the reference has been given to the agreement executed on 3.7.1996 i.e. just one month prior to section 4 notification published in respect of the acquired land. In the sale deed exh.54 open plot measuring 80 x 50 sq. feet sold for a consideration of Rs.32,000/-. The sale deed exh.52 came to be executed in the year 1989, i.e. seven years prior to section 4 notification, sale deed exh.53 came to be executed three years prior to section 4 notification and sale deed exh.54 as per agreement came to be executed one month prior to section 4 notification published in respect of the acquired land i.e. on 8.8.1996. Even if appreciation @ 10% p.a. from the date of execution of the aforesaid sale deed exh.52 and 53 are considered, till the section 4 notification published in respect of the acquired land and so far as sale deed exh.53 is considered, as purchaser had given more price because his house property is situated towards northern side of the plot under sale instance, it would be just and appropriate to consider the market price of the land converted into N.A. purpose in the vicinity of the acquired land @ Rs.10/- per square feet.

11. In the case of ***Chandrashekhar (D) by L.Rs. And others vs. Land Acquisition Officer and another, reported in 2012 AIR (SC) 446,*** the Apex Court has considered the determination of quantum of deductions to be applied to the market value assessed on the basis of exemplar sale transaction. The Supreme Court in para 15 of the judgment has made the following observations:-

"15. The present controversy calls for our determination on the quantum of the deductions to be applied, to the market value assessed on the basis of the exemplar sale transaction, so as to ascertain the fair compensation payable to the land loser. The only factual parameters to be kept in mind are, the factual inferences drawn in the foregoing paragraph. On the issue in hand, we shall endeavor to draw our conclusions from past precedent. In the process of consideration hereinafter, we have referred to all the judgments relied upon by the learned counsel for the appellants, as well as, some recent judgments on the issue concerned :-

(i) In Brigadier Sahib Singh Kalha & Ors. v. Amritsar Improvement Trust & Ors., (1982) 1 SCC 419, this Court opined, that where a large area of undeveloped land is acquired, provision has to be made for providing minimum amenities of town-life. Accordingly it was held, that a deduction of 20 percent of the total acquired land should be made for land over which infrastructure has to be raised (space for roads etc.). Apart from the aforesaid, it was also held, that the cost of raising infrastructure itself (like roads, electricity, water, underground drainage, etc.) need also to be taken into consideration. To cover the cost component, for raising infrastructure, the Court held, that the deduction to be applied would range between 20 percent to 33 percent. Commutatively viewed, it was held, that deductions would range between 40 and 53 percent.

(ii) Noticing the determination rendered by this Court in Brigadier Sahib Singh Kalha's case (supra), this Court in Administrator General of West Bengal vs. Collector, Varanasi, (1988) 2 SCC 150, upheld deduction of 40 percent (from the acquired land) as had been applied by the High Court.

(iii) In Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona & Anr., (1988) 3 SCC 751, while referring to the factors which ought to be taken into consideration while determining the market value of acquired land, it was observed, that a smaller plot was within the reach of many, whereas for a larger block of land there was implicit disadvantages. As a matter of illustration it was mentioned, that a large block of land would first have to be developed by preparing its lay out plan. Thereafter, it would require carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers (during which the invested money would remain blocked). Likewise, it was pointed out, that there would be other known hazards of an entrepreneur. Based on the aforesaid likely disadvantages it was held, that these factors could be discounted by making deductions by way of allowance at an appropriate rate, ranging from 20 percent to 50 percent. These deductions, according to the Court, would account for land required to be set apart for developmental activities. It was also sought to be clarified, that the applied deduction would depend on, whether the acquired land was rural or urban, whether building activity was picking up or was stagnant, whether the waiting period during which the capital would remain locked would be short or long; and other like entrepreneurial hazards.

(iv) In Land Acquisition Officer Revenue Divisional Officer, Chottor vs. L. Kamalamma (Smt.) Dead by LRs. & Ors., (1998) 2 SCC 385, this Court arrived at the conclusion, that a deduction of 40 percent as developmental cost from the market value determined by the Reference Court would be just and proper for ascertaining the compensation payable to the landowner.

(v) In Kasturi and others vs. State of Haryana, (2003) 1 SCC 354, this court opined, that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation should be deducted, depending upon the location, extent of expenditure involved for development, the area required for roads and other civic amenities etc. It was also opined, that appropriate deductions could be made for making plots for residential and commercial purposes. It was sought to be explained, that the acquired land may be plain or uneven, the soil of the acquired land may be soft and hard, the acquired land may have a hillock or may be low lying or may have deep ditches.

Accordingly, it was pointed out, that expenses involved for development would vary keeping in mind the facts and circumstances of each case. In Kasturi's case (supra) it was held, that normal deductions on account of development would be 1/3rd of the amount of compensation. It was however clarified that in some cases the deduction could be more than 1/3rd and in other cases even less than 1/3rd.

(vi) Following the decision rendered by this Court in Brigadier Sahib Singh Kalha's case, this Court in Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P. vs. Nookala Rajamallu & Ors., (2003) 12 SCC 334, applied a deduction of 53 percent, to determine the compensation payable to the landowners.

(vii) In V. Hanumantha Reddy (Dead) by LRs. vs. Land Acquisition Officer & Mandal R. Officer, (2003) 12 SCC 642, this Court examined the propriety of compensation determined as payable to the land loser by the High Court. The Reference Court had determined the market value of developed land at Rs.78 per sq. yard. The Reference Court then applied a deduction of 1/4th to arrive at Rs.58 per sq. yard as the compensation payable. The High Court however concluded, that compensation at Rs.30 per sq. yard would be appropriate (this would mean a deduction of approximately 37 percent, as against market value of developed land at Rs.78 per sq. yard). This Court having made a reference to Kasturi's case (supra) did not find any infirmity in the order passed by the High Court. In other words, deduction of 37 percent was approved by this Court.

(viii) In para 21 of the judgment in Viluben Jhalejar Contractor (Dead) by LRs. vs. State of Gujarat, (2005) 4 SCC 789, it was held that for development, i.e., preparation of lay out plans, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers, and on account of other hazards of an entrepreneur, the deduction could range between 20 percent and 50 percent of the total market price of the exemplar land.

(ix) In Atma Singh (Dead) through LRs & Ors. vs. State of Haryana and Anr., (2008) 2 SCC 568, this Court after making a reference to a number of decisions on the point, and after taking into consideration the fact that the exemplar sale transaction was of a smaller piece of land concluded, that deductions of 20 percent onwards, depending on the facts and circumstances of each case could be made.

(x) In Lal Chand vs. Union of India & Anr., (2009) 15 SCC 769, it was held that to determine the market value of a large tract of undeveloped agricultural land (with potential for development), with reference to sale price of small developed plot(s), deductions varying between 20 percent to 75 percent of the price of such developed plot(s) could be made.

(xi) In Subh Ram & Ors. vs. State of Haryana & Anr., (2010) 1 SCC 444, this Court opined, that in cases where the valuation of a large area of agricultural or undeveloped land was to be determined on the basis of the sale price of a small developed plot, standard deductions ought to be 1/3rd towards infrastructure space (areas to be left out for roads etc.) and 1/3rd towards infrastructural developmental costs (costs for raising infrastructure), i.e., in all 2/3rd (or 67 percent).

(xii) In Andhra Pradesh Housing Board vs. K. Manohar Reddy & Ors., (2010) 12 SCC 707, having examined the existing case law on the point it was concluded, that deductions on account of development could vary between 20 percent to 75 percent. In the peculiar facts of the case a deduction of 1/3rd towards development charges was made from the awarded amount to determine the compensation payable.

(xiii) In Special Land Acquisition Officer & Anr. vs. M.K. Rafiq Sahib, (2011) 7 SCC 714, this Court after having concluded, that the land which was subject matter of acquisition was not agricultural land

> for all practical purposes and no agricultural activities could be carried out on it, concluded that in order to determine fair compensation, based on a sale transaction of a small piece of developed land (though the acquired land was a large chunk), the deduction made by the High Court at 50 percent, ought to be increased to 60 percent."

12. The Apex Court has treated 67% of deduction as upper Bench mark and further held that the aforesaid two components under the head of development could put together should not exceed upper bench mark. The apex Court in the above cited case has also held that for the remaining deduction, which is in the form of waiting period for sale of developed plots and or built-up areas etc. the permissible range would be up to 8% and the same depends upon the facts and circumstances of each case.

13. Thus, considering the entire evidence on record, deduction of 25% towards development of the land, out of the market value determined on the basis of exemplar of sale deed would be just and proper. Considering the location of the acquired land and the adjacent land being used for NA purpose after obtaining the

permission from the revenue authorities and also the fact that, the appellant-claimant has also applied for conversion of use of his land for N.A. purpose prior to section 4 notification published in respect of the acquired land, deduction of 25% towards development of the land out of the market value determined on the basis of exemplar sale deed would be just and proper.

14. In view of the above discussion, the claimants are entitled for the compensation at the enhanced rate by applying deductions as aforesaid at the rate of Rs.7.5/- per square feet (Rs.7,500/- per aar.) The claimants are entitled for all the statutory benefits as awarded by the Reference Court. Hence, following order.

O R D E R

1. First appeal No.2944/2013 (preferred by the original claimant) is hereby partly allowed with proportionate costs.

2. The judgment and award passed by the Jt. Civil Judge Senior Division, Omerga dated 6.4.2013 LAR No.533/2005 (old LAR No.383/1999) is hereby modified in the following manner :-

a] Respondent shall pay to the claimant the compensation at the enhanced rate @ Rs.7.5/- per square feet [Rs.7,500/- (Rs. Seven Thousand Five Hundred) per aar] towards enhanced compensation.

b] Respondent shall pay the compensation to the claimant for the acquired land after deducting the amount already paid.

3. The claimant is entitled for all the statutory benefits as awarded by the Reference Court.

4. First Appeal No.3413/2015 (preferred by the State) is hereby dismissed.

5. Award be drawn up in terms of the modifications as aforesaid.

6. Both the first appeals are accordingly disposed of.

7. Pending civil applications, if any, also stand disposed of.

sd/-

(V.K. JADHAV, J.)

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AAA/-