IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPAL NO. 884 OF 2017

Shakuntalabai w/o Ramshetti Salve,
Age; 52 years, Occupation; Agril & household,
Resident of Togri, Taluka; Chakur,
District; Latur. **APPELLANT**
(Original Claimant)

VERSUS

1) The State of Maharashtra,
Through The Collector,
District; Latur.

2) The Executive Engineer,
(Sinchan Division),
Zilla Parishad, Latur. **RESPONDENTS**
(Original Respondents)

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Shri. S.S. Halkude, Advocate for Appellant
Shri. S.B. Narwade, AGP for Respondent No.1.
Shri P.R. Tandale, Advocate for Respondent No. 2
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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 17.10.2018

Date of Pronouncing Judgment : 24.10.2018

J U D G M E N T :

This appeal is directed against the judgment and award, passed by the Joint Civil Judge Senior Division, Udgir in Land Acquisition Reference No. 547 of 2010 (Original Land Acquisition Reference No. 68 of 2005) (hereinafter referred to as 'LAR'), awarding compensation for the acquired land at the rate of 70,000/-

per acre, i.e. Rs. 1750/- per Are, with other statutory benefits and interest. Respondents are the State of Maharashtra and The Executive Engineer (Irrigation), Zilla Parishad, Latur.

2. Facts leading to the institution of this appeal are that, appellant is the owner of land Gut No. 101, situated at village Togri. Respondents acquired 92 Are land out of Gut No. 101. The date of publication of notification is 31.12.2001. The date of passing of award is 16.6.2003. Under the award offer of the compensation was at the rate of Rs. 31,280/- per acre. Therefore, being satisfied with the said offer, the claimant submitted the application to the Collector and in the result, the above said Land Reference was referred to the Civil Judge Senior Division, Udgir. The Reference Court awarded enhanced compensation at the rate of Rs. 70,000/- per acre, that is Rs. 1750/- per Are. Therefore, the claimant has preferred this appeal for enhancement of the compensation.

3. Heard Shri S.S.Halkude, learned counsel for appellant. Shri. S.B. Narwade, learned AGP for respondent No.1 and Shri P.R. Tandale, learned counsel for respondent No. 2.

4. The learned counsel for appellant submits that the acquired land is situated at Udgir -- Bidar State High Way and the purpose of acquisition is for the percolation of tank. He submits that

in every year, for two times irrigated crops are taken from the acquired land. According to the learned counsel for appellant, he placed reliance on one sale instance, dated 19.11.1996 of the land situated in the same village. He submits that under this sale instance, 10 Are land was alienated for the consideration of Rs. 40,000/-. Therefore, the market value of the land under sale instance in the year 1996 was Rs. 1,60,000/- per acre. It was dry crop land. However, while considering this sale instance, the Reference Court without any reasonable cause, deducted 40% value from the market value of the acquired land. Even thereafter, the compensation was awarded at meager rate of Rs. 70,000/- per acre. He submits that the sale instance is five years preceding the date of publication of notification under Section 4 (1) of the Land Acquisition Act. Therefore, there shall be escalation of 10 % per annum in the market value of the land, which was on 19.11.1996. He submits that considering the N.A. potentiality of the acquired land, no amount shall be deducted from the market value of the acquired land. He prays for enhancement of compensation.

5. Learned counsel for respondent No. 2 submits that he has nothing to say, as no liability is saddled on respondent No. 2, Zilla Parishad.

6. Learned AGP for respondent No. 1 submits that the sale

instance relied on by the learned counsel for the claimant is of a small piece of the land and therefore, it is not ideal sale instance. His next submission is that no evidence is placed on record to show that the acquired land is abutting Udgir Bidar State High Way like the land under the sale instance. Therefore, deduction of 40% value for small area of the sale instance and for advantageous factors annexed to the sale instance is just and proper.

7. The learned counsel for appellant submits that the possession of the acquired land was taken by the acquiring body on 20.03.1992 and the award does not show any specific date of taking possession of the acquired land. No other documentary evidence has been placed on record by the claimant to show the exact date of delivery of possession of the acquired land by the acquiring body.

8. In **"Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona, and Anr" [1988 AIR 1652 SCR Supl. (1) 531]**, the Apex Court issued following guidelines which are to be followed while determining the compensation for acquired land.

"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.

(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 suit 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.

(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 sec. 4 of the Land Acquisition Act (dates of Notifications under secs. 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 sec. 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. (Some times 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.

(l0) 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 there after to be deduced 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:

Plus factors	Minus factors
1. smallness of size.	1. largeness of area.
2. proximity to a road.	2. situation in the interior at a distances from the Road.
3. frontage on a road.	3. narrow strip of land with very small frontage compared to death.
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 disadvantageous 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”.	

9. In view of these guidelines, the Reference Court cannot take into consideration the material relied upon by the Land Acquisition Officer in his award. Whatever material the claimant or the respondents want to rely, is to be placed on record in Reference proceeding and the Reference proceeding shall be treated as the original proceeding to determine the market value of the acquired land on the date of publication of notification under Section 4 of the Act. While determining the fair market value of the acquired land, the Court has to sit in the chair of hypothetical purchaser willing to

purchase the land from the open market for reasonable price on the date of publication of notification under Section 4 of the Act. The Court has to co-relate the market value reflected in most comparable sale instance which provides index of the market value. Only genuine sale instance has to be taken into account and it is to be identified on the basis of proximity from time angle and proximity from situation angle. While determining the market value there shall be deductions or escalations in the market value depending on plus minus factors annexed to the acquired land.

10. The claimant Shakuntala Savle (PW 1) stepped into the witness box. She deposed that the possession of the acquired land was obtained by the acquiring body on 20.3.1992. According to this witness, village Togri is situated at Udgir -- Bidar High Way and it is a developed village. According to the claimant, Rabbi and Kharip crops are taken in every year and at the time of acquisition, the market value of the acquired land was Rs. 2,00,000/- per acre. She has referred sale instance of Gut No. 259, ad-measuring 10 Are land which was sold for the consideration of Rs. 40,000/- on 19.11.1996. From her cross-examination, it emerges that on the eastern side of land under sale instance, Bidar State High Way is situated and on the Northern side, there is water canal.

11. Thus, from the cross-examination of claimant, it has

been brought on record that the land under sale instance (Exh. 15) was sold out at the market rate of Rs. 1,60,000/- per acre. There are two advantageous factors annexed to that land i.e. abutting the Bidar State Highway and one water canal. Therefore, certainly the land under sale instance fetched more value than the market rate of the acquired land. So also, the land in the sale instance is small piece of the land. However, even the acquiring body or the State of Maharashtra has not filed any other comparable sale instance which can be considered as ideal sale instance for determining the market value of the land. Therefore, I have no other alternative, but to consider the sale instance (Exh. 15) for determining the fair market price of the acquired land on the date of notification under Section 4 of the Act.

12. In **"State of Maharashtra vs Fulyabai Kisan Govardhane and Ors." [2008 (1) ALL MR 207]**, the Division Bench of this Court held that on the basis of sale instance of small piece of land, market value of the acquired land can be determined subject to deduction of 25% of the value .

13. Therefore, even the sale instance of small piece of 10 Are dry crop land (Exh. 15), dated 19.11.1996, situated in the same village Togri, can be considered for determining the market value of the land on the date of notification under Section 4 of the Act. Thus,

the market value of the land under the sale instance on 19.11.1996 is 1,60,000/- per acre. As this sale instance is a small piece of land for determining the market value of the acquired land, which admeasures 92 Are, there shall be deduction of 25% from the value of Rs. 1,60,000/-, which comes to Rs. 40,000/-. Therefore Rs. 1,60,000 – 40,000 = Rs. 1,20,000/-. For advantageous factors of abutting Bidar High Way Road and Water Canal abutting land under the sale instance, 20% value is to be deducted, which comes to Rs./ 24,000/-. Therefore, Rs. 1,20,000 – 24,000 = Rs. 96,000/- per acre is the market value of the acquired land.

14. There shall be escalation of 10% per year in the market value of this land, because the sale instance is of preceding five years than the date of publication of the notification. So 10% of Rs. 96,000 comes to Rs. 9,600/- per year, and for five years 9,600 x 5 = Rs. 48,000/-. So 96,000 + 48,000 = Rs. 1,44,000/- per acre is the fair market price of the acquired land on the date of publication of the notification under Section 4 (1) of the Act.

15. After going through the judgment passed by the Reference Court, it emerges that even the Reference Court determined the market value of the acquired land on the date of notification as Rs. 1,44,000/- per acre and Rs. 3,600/- per Are. However, though the acquired land and land under sale instance are

dry crop lands, for no reasonable cause, the Reference Court has reduced the market price of the acquired land to the extent of Rs. 70,000/- per acre, only because both the lands are at the distance of four to five survey numbers in between them. On its own imagination the Reference Court held that the productivity and fertility of the land under sale instance and the acquired land is different, when no material is on record to show the said difference. Therefore, I hold that the reduction of half market value of the acquired land, without reasonable cause by the Reference Court is absolutely against the principle of law applicable for determining a fair price of the market value of the acquired land on the date of notification under section 4 (1) of the Act.

16. I hold that fair market value of the acquired land cannot be less than Rs. 1,44,000/- per acre i.e. Rs. 3,600/- per Are. Therefore, by partly allowing this appeal, the compensation for the acquired land deserves to be enhanced to the extent of Rs. 1,44,000/- per acre. Other statutory benefits under section 23 (1A) and 23 (2) of the Act and interest under Section 28 as awarded by Reference Court is confirmed as it is. Accordingly, First Appeal No. 884 of 2017 is partly allowed. The award passed by the Joint Civil Judge Senior Division, Udgir in LAR No. 547 of 2010 (LAR No. 68 of 2005) is modified to enhance the compensation for acquired land at the rate of Rs. 1,44,000/- per acre that is Rs. 3,600/- per Are for the

land Gut No. 101 ad-measuring 92 Are, situated at village Togri. Other statutory benefits under Section 23 (1A) and 23 (2) of the Act and the interest under Section 28 of the Act as awarded by the Reference Court is confirmed as it is. Parties to bear their respective costs of the appeal. Appeal is disposed of in above said terms. Deficit Court fees be recovered from the claimant.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/