

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

**CIVIL APPLICATION NO. 12637 OF 2018
IN
FIRST APPEAL NO. 1478 OF 2014**

The State of Maharashtra & anr.

Applicants.

Versus

Siraj Mohiuddin Gulam Mustafa
Khan & others.

Respondents.

Mr. A.S. Bajaj, Advocate for the applicants.

Mr. A.P. Bhandari, Advocate for respondent Nos.1 to 3.

CORAM : SUNIL K.KOTWAL,J.

Order reserved on : 16th October 2018.

Order pronounced on : 28th November 2018.

ORDER.

1. Original respondent Nos.1 and 2 in L.A.R. No.463/1998 have preferred appeal against the judgment and award passed by Civil Judge, Senior Division, Aurangabad. In that appeal the appellants have filed this Application under Order XXXXI Rule 27 of the Code of Civil Procedure for production of additional documentary evidence in the form of certified copies of three registered sale deeds, one village map

and certified copies of index registration of sale deeds.

2. Heard Mr. A.S. Bajaj, learned Counsel for Acquiring Body (original respondent No.2), Mr. A.P. Bhandari, learned Counsel for respondent Nos.1 to 3 (original claimants).

3. Learned Counsel for Acquiring Body submits that these three sale deeds are necessary to bring on record the fair price of acquired land on the date of publication of notification under Section 126 (4) of Maharashtra Regional Town Planning Act (hereinafter referred to as the "M.R.T.P. Act"). He submits that even the certified copy of village map of village Tisgaon is necessary to ascertain the exact location of acquired land and land under sale instance as well as location of highway and other public roads. His contention is that for passing proper judgment in this appeal as well as for ascertaining the truth by proper interpretation of maps and documentary evidence placed on record, production of this document is necessary. He placed reliance on the cases of of **"North Eastern Railway Administration, Gorakhpur Vs. Bhagwandas"** [(2008) 8 SCC 511] and **"Maria Margarida Sequeira Fernandes and others Vs. Erasmo Jack De Sequeira"** [(2012) 5 SCC 370].

4. Learned Counsel for the claimants submits that though the opportunity was available to the applicant before the Reference Court, no evidence was led by the applicant to prove its contentions. He submits that neither the applicant is diligent nor the documents are necessary for proper adjudication of this litigation, and therefore, production cannot be allowed.

5. It is to be noted that production of the documents at appellate stage is permissible only if the conditions prescribed under Order XXXXI Rule 27 of the C.P.C. are fulfilled. The additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist. The circumstances under which the additional evidence can be adduced are :

- (i) *the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted or;*
- (ii) *the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within the knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed;*
- (iii) *the appellant Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause”.*

6. The Apex Court had an occasion to consider this provision and in the case of **“North Eastern Railway Administration, Gorakhpur Vs. Bhagwandas”** (supra) the Apex Court held that,

“The High Court was bound to consider the application under Order 41 Rule 27 of C.P.C. before taking up the appeal on merits. The question whether looking into the documents, sought to be filled as additional evidence, would be necessary to pronounce judgment in a more satisfactory manner, has to be considered by the Court at the time of hearing of the appeal on merits. The appellate court has the power to allow additional evidence not only if it requires such evidence “to enable it to pronounce judgment” but also for “any other substantial cause”. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 C.P.C., which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 C.P.C.”

7. In view of this legal position, production of additional evidence by the applicant can be permitted only when the documents proposed to be produced are necessary to enable this Court to pronounce judgment. No doubt the appellant cannot make out a case that despite exercise of due diligence the above-

said record was not within its knowledge or could not be produced after exercise of due diligence at the time of recording of evidence before the Reference Court. However, it cannot be ignored that in the case of **“Maria Margarida Sequeira Fernandes and others Vs. Erasmo Jack De Sequeira”** (supra) the Apex Court held that the Court's serious endeavour has to be to find out where in fact the truth lies. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The judges at all levels have to seriously engage themselves in the journey of discovering the truth. Therefore, production of additional evidence can be allowed, if those documents are necessary to bring true factual situation on record.

8. In the case at hand, after hearing learned Counsels for both the parties, it reveals that the debatable point in between the parties is that whether the acquired land is abutting the State Highway or not, because the land under sale instance is abutting Aurangabad to Ahmednagar Highway. The village map of village Tisgaon was not filed on record before the Reference Court by either of the parties. Therefore, to ascertain the exact

location of the acquired land and the land under sale instance as well as to ascertain location of roads and whether any road is abutting the acquired land, production of village map of village Tisgaon is justified as it will be useful for passing proper judgment in the present appeal. Therefore, production of copy of village map of village Tisgaon deserves to be allowed.

9. However, though the applicants have sought permission to file three sale deeds on record, after going through these sale deeds, I am fully satisfied that production of these documents is not necessary for passing proper judgment in the appeal, because these sale deeds cannot be considered as comparable sale instance, for the following reasons.

10. The first sale deed executed by one Gulab s/o Khushal Suryawanshi and others in favour of Laxman s/o Khushal Suryawanshi is executed on 07.10.1995. In the case at hand, notification under Section 126 (4) of M.R.T.P. Act was published in Maharashtra Government Gazette on 03.03.1994. Thus, this sale deed was executed after more than 1 ½ year after the date of publication of notification. In view of the guidelines issued by the Apex Court in the case of “**Chimanlal**

Hargovinddas Vs. Special Land Acquisition Officer,

Poona” [1988 (3) SCC 751], post notification sale deed can be

considered if it is very proximate and genuine. However, in the case at hand, as observed above, the sale deed proposed to be produced is not very proximate with the date of publication of notification under Section 126 (4) of M.R.T.P. Act. So also, from the recitals of this sale deed, it becomes clear that it is a sale transaction in between two brothers who are extremely close relatives. Therefore, transfer of that land for depressed price cannot be ruled out. Thus, this sale deed is not useful 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.

11. The second sale deed is executed by one Jaideep Baburao Sakhare in favour of Gurupalsingh Gurumukhsingh Bindra on 25.06.1993 and third sale deed is executed by Bhaulal Parasram Zalke in favour of Ashutosh Vishwanathji Nawandar on 20.05.1994. After going through the first page of these both sale dedds, it emerges that these both sale deeds are under-valued sale deeds, to save the payment of stamp duty. For stamp

duty purpose the land under first sale deed executed by Jaideep Sakhare was valued for Rs. 1,05,000/-, but the transaction was made for the consideration of Rs. 70,000/-. So also the second sale deed executed by Bhaulal Zalke was executed for consideration of Rs. 80,000/-, but value for the purpose of stamp duty is shown as Rs. 1,20,000/-. Thus, obviously even both sale deeds were executed for depressed price of the land. In the circumstances, none of these three sale deeds are useful to ascertain 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.

12. The Apex Court in the case of **“Lal Chand Vs Union of India and another”** [(2009) 15 SCC 769] ruled that, undervalued sale deeds cannot be used as evidence in land acquisition matters to determine fair market value of the acquired land on the date of notification. In view of this legal position, as in the above-said three sale deeds, the land was sold at depressed market value instead of real value, those sale deeds cannot be used as comparable sale instances to determine the market value of the acquired land on the date of notification.

13. Therefore, production of these three sale deeds

cannot be allowed for the purpose of passing proper judgment in this appeal.

14. Otherwise also, in all above sale deeds the market price of the land sold was much lessor than the two sale instances produced by claimants. In the case of **“Mehrawal Khewaji Trust, Faridkot Vs. State of Punjab and others” (AIR 2012 SC 2721)**, the Apex Court held that when there are several exemplars with reference to the similar lands, it is the general rule that higher exemplar, if it is satisfied with its bonafide transaction, has to be considered and accepted.

15. Thus, otherwise also, these all sale deeds are of no use for passing proper judgment in the present appeal. Therefore, production of these all sale deeds cannot be allowed.

16. So also, the sale indexes proposed to be filed are of no use to determine the fair market price of the acquired land, because on the basis of certified copies of sale index registration, it cannot be ascertained as to what was the nature of land under those sale indexes. Thus, these sale indexes cannot be used as comparable sale instances. Being useless document production of this sale index registration cannot be allowed.

17. In view of the above discussion, this Civil Application can be partly allowed only to permit the applicant to produce copy of village map of village Tisgaon.

18. Accordingly, Civil Application No.12637 of 2018 is partly allowed. Only production of village map of village Tisgaon is allowed and in First Appeal No.1478 of 2014, it is marked as Exhibit 'A'.

19. Civil Application is disposed of in above-said terms.

(SUNIL K. KOTWAL)
JUDGE

vdd/-