

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 205 OF 1994
WITH
CROSS OBJECTION STAMP NO. 26118 OF 1997**

The State of Maharashtra
(Through the Special Land Acquisition
Officer, Metro Centre No.IV, Thane) ... Appellant
(Original Opponent)

Versus

1. Balaram Undraya alias
Uttamrao Patil
2. Shyamrao Undraya alias
Uttamrao Patil ... Respondents
(Original Claimants)

**WITH
FIRST APPEAL NO. 1015 OF 2004
WITH
CROSS OBJECTION STAMP NO. 42388 OF 2000**

The State of Maharashtra
(Through the Special Land Acquisition
Officer, Metro Centre No.IV, Thane) ... Appellant

Versus

- Gosavi Krishna Tandel ... Respondent
(Since deceased through his legal heirs) (Original Claimant)
- a. Gopinath Gosavi Tandel
 - b. Giridhar Gosavi Tandel
 - c. Kisan Gosavi Tandel
 - d. Kabir Gosavi Tandel
 - e. Kashinath Gosavi Tandel
 - f. Shridhar Gosavi Tandel
 - g. Nos. a to f residing at Karave Taluka
& District: Thane, Belapur Road,
Widow Bebibai Gangaram Mhatre

- h. Widow Gangabai Vasant Mhatre
Nos. g and h residing at Karave Taluka
& District Thane, Belapur Road.
- i. Laxmibai Meghanath Patil
residing at Nerul
- j. Mathura Janardhan Navdekar
residing at Morabi, Dist.Raigad.
- k. Gitabai Harichandra Gavandi
residing at Palaspur, Dist. Raidag.

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Mr. A. R. Patil, Assistant Government Pleader for the State.

Mr. Rajesh S. Datar, Advocate for Respondent Nos. 1 and 2.

Mr. R.P. Lote, Advocate i/b Ms. Rupali L. Dhivar for Respondent
in FA No.1015 of 2004.

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CORAM : A. S. CHANDURKAR, J.

DATE : 18th DECEMBER, 2018.

ORAL JUDGMENT :

1. Both these appeals along with the cross objections filed by the claimants raised a challenge to the common judgment of the Reference Court dated 28th January, 1991. By that judgment the Reference Petitions filed by the claimants seeking enhancement in the amount of compensation were partly allowed and compensation at the rate of Rs.15/- per square meter came to be awarded. The State of Maharashtra being aggrieved by the quantum of compensation has filed the aforesaid appeals, while

the claimants not being satisfied with the amount of compensation as awarded have filed cross objections seeking enhancement.

2. By notification dated 04/02/1970 issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the said Act'), the lands of the claimants came to be acquired for the new Bombay project. The award in question is dated 31/01/1986. The Land Acquisition Officer awarded compensation of Rs.2.50 per square meter for some of the lands and Rs.3.60 per square meter for other lands. Common evidence was led in both the reference proceedings. The respondent in First Appeal No. 205 of 1994 examined himself at Exhibit-12. He deposed that the acquired lands were abutting Sion-Panvel highway. Village Karave is about 17 to 18 km from Thane and about 3 to 4 kms from Vashi bridge. Various amenities were available in the village and a number of factories were also located there. The acquired lands were fertile and therefore compensation at the rate Rs.50/- per square meter ought to be awarded. The witness also deposed that the lands in reference No.67 of 1985 at Exhibit-10 were located at Sanpada which was about 3 to 4 kms from his land. The claimant also referred to the adjudication in three land references and the said

judgments were placed on record at Exhibit Nos.9, 10 and 11. In his cross-examination, the claimant admitted that there was no evidence to indicate income of Rs.3600/- to Rs.4000/- per acre being received by the claimants from those lands. There was no also evidence to show that the rate of the acquired land was Rs.300/- per square meter. No sale instances for the lands at Karave in the year 1971 produced. On that basis, the Reference Court enhanced the compensation to Rs.15/- per square meter.

3. Shri. A. R. Patil, learned Assistant Government Pleader for the appellant submitted that this Court in various appeals has granted amount of compensation of Rs.15/- per square meter for village Sanpada. The acquired lands were at the distance from that village and village Darave was located between villages Nerul and Karave. Hence, the rate which was granted for the lands acquired at Sanpada could not have been granted for the lands located at Darave. The amounts awarded ought to have been lesser than Rs.15/- per square meter. In that regard the learned Counsel referred to the decision in **(2009) 11 SCC 171 (Avinash Dhavaji Naik Vs. State of Maharashtra)**. He also submitted that the evidence on record led by the claimants was insufficient to

grant any further enhancement. Without prejudice to the said submission it was urged that since for lands from neighbouring villages an amount of Rs.15/- per square meter came to be awarded, the compensation for these lands cannot be higher. He relied decision in **(2017) 4 SCC 717 (Ali Mohammad Beigh and others Vs. State of Jammu and Kashmir)**. It was thus submitted that the amount of compensation as granted by the Reference Court deserves to be reduced.

4. Shri Rajesh S. Datar and Shri R.P. Lote, the learned Counsel for the respondents opposed the aforesaid submissions. Referring to the judgment in **First Appeal No. 1201 of 1989 (The State of Maharashtra Vs. Shri Gajanan Budhya Thakur)** decided on 04th April, 2006 it was submitted that though rate of Rs.15/- per square meter had been adjudicated for village Sanpada, there were no cross objections in that appeal and hence the question of further enhancement from the rate of Rs.15/- per square meter did not fall for consideration. It was not disputed that in all State appeals of villages Sanpada and Karave the compensation granted at Rs.15/- per square meter has been maintained. Relying upon the judgment of the Division Bench in **First Appeal No.875 of**

1985 (Abdul Aziz Husenmiya Patel Vs. The Special Land Acquisition Officer) as well as observations in First Appeal No.1201 of 1989 to the effect that compensation at the rate of Rs.15/- per square meter was not on the lesser side, it was submitted that the compensation amount deserves to be enhanced. For said purpose the learned Counsel relied on the decision in **First Appeal No.875 of 1985 (Abdul Aziz Husenmiya Patgel Vs. The Special Land Acquisition Officer)** decided on 16th March, 2000. Reference was also made to the evidence led by the claimant to indicate the location of the lands near Sion-Panvel highway and it was urged by applying the belting method, value of the lands needs to be determined. He also referred to the decision in **Avinash Dhavaji Naik Vs. State of Maharashtra – (2009) 11 SCC 171** in that regard. It was thus submitted that the amount of compensation ought to exceed Rs.15/- per square meter in both these appeals.

5. I have heard the learned Counsel for the parties and I have perused the evidence on record. The only witness examined was the claimant in First Appeal No. 205 of 1994. In his deposition it was stated that the lands were abutting Sion Panvel

highway and village Darave was located at 17 to 18 kms from Thane. In First Appeal No. 1201 of 1989 acquisition of lands under the same notification from village Sanpada was under consideration. It was noted that considering the location of said village in some references the amount of compensation was fixed at Rs.18/- per square meter. Therefore, the amount of compensation granted at Rs.15/- per square meter came to be maintained. Similar is the position in First Appeal No.24 of 1995, which pertains to lands from village Karave. The notification under Section 4 of the said Act therein is dated 24th September, 1986 and the rate fixed is Rs.50/- per square meter. In ***First Appeal No. 462 of 1996 (The State of Maharashtra Vs. Bhikamchand Kaluramji Jain)*** lands from village Shahabaj, Taluka Thane acquired under the same notification was under consideration. The appeals filed by the State came to be dismissed by maintaining the rate of Rs.15/- per square meter by observing that the said villages were located near Bombay - Pune National Highway.

6. The learned Judge of the Reference Court has relied upon the earlier adjudication in LAR Nos.148/1987, 67/1985 and

38/1985 at Exhibits- 9 to 11. Insofar as the reference at Exhibit-9 is concerned the lands were situated at Shirvane, while in the other two reference proceedings the lands were situated at Sanpada. The notification in question is also dated 04/02/1970 and the purpose for acquisition is also similar. In the light of the non-agricultural potentiality of those lands that were acquired coupled with the similarity in the properties, the market value of the acquired lands which was Rs.15/- per square meter in those cases has been followed and applied in the present reference. On perusing the judgments at Exhibits-9 to 11, I do not find that there is any reason to come to any other conclusion from the one drawn by the Reference Court. As noted above, in other First Appeals preferred by the State this Court has maintained the rate of Rs.15/- per square metre for lands from various adjoining villages. Though it was strenuously urged on behalf of the claimant by filing cross-objections that the belting method ought to be applied for enhancing the amount of compensation as granted, for which purpose reliance was placed in judgment of the Division Bench in *Abdul Aziz Husenmiya Patel(supra)*, it is to be noted that in those proceedings expert valuers had submitted their valuation

reports and those valuers had also been examined. It is on the basis of that expert evidence that this Court adopted the belting method to grant compensation based on the location of the acquired lands. However, this evidence is not available in the present case. Except the claimant deposing at Exhibit-12 in LAR No.78/1986 there is no further evidence to adopt that method for determining the market value. Thus in absence of sufficient evidence to indicate entitlement of the claimants for enhancement in the amount of compensation, above the rate of Rs.15/- per square metre cannot be granted. The ratio of the decision in Avinash Dhavaji Naik (Supra) does not support the case of the claimants. There is no reason either to reduce the same as prayed for by the State of Maharashtra nor enhance the same as prayed for by the claimants.

7. In that view of the matter the First Appeals filed by the State of Maharashtra as well as the Cross Objections filed by the claimants stand dismissed. The parties shall bear their own costs.

(A. S. CHANDURKAR, J.)