

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.846 OF 2012

Nisar Ahmed Ramzan-Momin.	]	
Age – 51 years, Occ. : Agriculturist & Business	]	
Residing at 127/A, R. N. Compound, Kaneri,	]	
Taluka Bhiwandi, District Thane.	]	... Appellant / (Orig. Applicant)

Versus

1. The Special Land Acquisition Officer,	]	
District Thane.		
2. State of Maharashtra,	]	
3. Bhiwandi-Nizampur City Municipal	]	
Corporation,	]	
Having its office at Old S. T. Stand,	]	
Kap Ali, Bhiwandi, District Thane.	]	... Respondents / (Orig. Opponents)

Mr. Rajesh Datar for Appellant.
 Mr. A. R. Patil, AGP for Respondent Nos.1 and 2.
 Mr. N. R. Bubna for Respondent No.3.

**CORAM :- K. K. TATED &
SARANG V. KOTWAL, JJ.**

RESERVED ON :- 09 JANUARY, 2018

PRONOUNCED ON :- 14 FEBRUARY, 2018

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. By way of the present Appeal, the Appellant has challenged the Judgment and Award dated 24/02/2012 passed by the

2nd Civil Judge Senior Division, Thane, in Land Acquisition Reference No.65 of 2011. By the impugned Judgment and Award, the learned Judge had allowed the Land Reference partly.

2. The above-mentioned Land Acquisition Reference was in respect of two plots i.e. C.T.S. No.4053 (Part) corresponding to Survey No.72 (Part) admeasuring 4325 sq. meters and C.T.S. No.4047 (Part) corresponding to Survey No.125 (Part) admeasuring 4178 sq. meters (since the learned Judge has referred to these plots as Plot No.1 and Plot No.2 respectively, for the sake of brevity and convenience, the said plots are referred to as 'Plot No.1' and 'Plot No.2' respectively); both situated within the limits of Village Nizampur, Taluka Bhiwandi, District Thane. The development plans for Bhiwandi town was sanctioned by the State Government and was brought into force on 25/06/1976. In the said plan, these two plots were shown as having been reserved for open space. On 10/02/1994, a notification under Section 6 of the Land Acquisition Act, 1894 (for short, 'the said Act') read with Section 126 (4) of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'MRTP Act') was published in the Maharashtra Government Gazette. The Special Land Acquisition Officer (for short, 'SLAO') issued notices under Sections 9 and 10(1) of the said Act. The SLAO, after completing the procedure and inquiry, passed an Award on 08/02/1996 under Section 11 of the said Act granting the rate of Rs.275/- per sq. meter in respect of the Plot No.1 and Rs.300 per sq. meter for the Plot No.2.

3. On 27/08/1997, Reference, under Section 18 of the said Act for additional compensation, was made at the instance of the Appellant. Same was numbered as Reference No.9 of 1999 before the Joint District Judge, Thane. Subsequently, it was re-numbered as Land Acquisition Reference No.65 of 2011. At the first instance, the said Reference was dismissed by the Reference Court vide its Order dated 08/03/2011; as according to the Reference Court, the Reference was not lodged within six weeks from the date of service of notice under Section 12 (2) of the said Act. The said Order was challenged by the Appellant by preferring First Appeal No.1213 of 2011 before this Court. This Court, vide its Order dated 24/08/2011, was pleased to allow the Appeal and the impugned Order dated 08/03/2011 was set aside and the Land Acquisition Reference No.65 of 2011 was remanded back to the Reference Court for a fresh decision on merits regarding the market value of the acquired land. The present Respondent No.3 was directed to be added as the Opponent No.3 in the Reference and liberty was granted to adduce evidence or additional evidence. Pursuant to the said Order, the proceedings in Land Acquisition Reference No.65 of 2011 were conducted before the 2nd Civil Judge Senior Division, Thane and as mentioned earlier, the impugned Judgment and Award was passed on 24/02/2012.

4. During the Reference proceedings, the Appellant examined himself and the Valuer. M/s. Miyaji and Associates had prepared the valuation report for the said land. The Appellant as well

as the Valuer were cross-examined on behalf of the Respondents. During the proceedings, the Appellant produced certified copies of the Index II Register in case of sale transactions of other lands and he also produced a certified copy of a ready reckoner for the year 1994 showing the price in respect of both these plots. The Reference Court held that the Reference was bad for non-joinder of necessary party in respect of the Plot No.1. The Reference Court further held that the Reference was made within the prescribed period in view of the Order passed by this Court in First Appeal No.1213 of 2011 and finally the Reference Court awarded a revised compensation at the rate of Rs.325 per sq. meter for the Plot No.2. The Appellant had claimed that at the time of notification, the market price was Rs.3,000/- per sq. meter. In the evidence, he had claimed that he could have fetched a market value of Rs.4,000/- per sq. meter in the year 1994. Thus, his claim was only partially allowed and was substantially rejected by the Reference Court.

5. We have heard Mr. Rajesh Datar, learned Counsel for the Appellant, Mr. N. R. Bubna, learned Counsel for Respondent No.3 and Mr. A. R. Patil, learned AGP for Respondent Nos.1 and 2. After hearing the parties and after perusing the evidence before us, the following points arise for our consideration.

SR. NO.	POINTS	FINDINGS
1	Whether impugned Judgment and Award is just and proper ?	No

2	Whether the Land Acquisition Reference No.65 of 2011 suffers from non-joinder of necessary party in respect of C.T.S. No.4053 (Part) corresponding to Survey No.72 (Part) i.e. Plot No.1 ?	No.
3	Whether the Appellant is entitled for enhanced compensation ?	Yes
4	What Order ?	As per the Final Order

REASONS

6. Mr. Rajesh Datar, learned Counsel for the Appellant, submitted that the learned Judge erred in holding that Mustaq Ahmed Mohommad Yusuf Baudi was a co-sharer of the Plot No.1 and therefore he was a necessary party to the Reference. Mr. Datar further submitted that the learned Judge erred in observing that the Appellant ought to have got his share determined in Plot No.1 and that the Reference Court further erred in observing that it could not award enhanced compensation to the Appellant for the entire area of Plot No.1 unless his share was determined. Mr. Datar submitted that the Appellant had submitted the 7/12 Extract of his plot in respect of Survey No.72 (Part) and the name of the said Mustaq appeared only in the Award passed by the SLAO and this should not bind the Appellant. Mr. Datar further submitted that the question of apportionment of the compensation was not before the Reference Court and the said issue could not have precluded the Reference Court from deciding the rate of compensation. Mr. Datar further submitted that if one of the co-sharers does not choose to challenge the Award, it does not affect the right of the other co-sharer. Mr. Datar relied on

the Judgment passed by the Hon'ble Supreme Court in the case of *Ambey Devi (Smt.) Vs. State of Bihar and Another*¹. The said Judgment was followed by this Court in the case of *Hafiz Ismail Shaikh and others Vs. Special Land Acquisition Officer, Panvel and others*².

7. Mr. Datar further submitted that the learned Judge of the Reference Court erred in not relying on the sale instances of adjoining land and that the Respondent No.1 has unjustifiably fixed a price at a much lower rate without taking into consideration similar sale instances. Mr. Datar further submitted that in any case, it was incumbent on the Respondent No.1 to have taken into consideration the prices given in the ready reckoner for the year 1994 in respect of those plots, in view of the Government Resolution (for short, 'G.R.') dated 31/10/1994. The said G.R. has laid down the guidelines that the value should be arrived at by taking into consideration the sale instances, potentiality of the land or ready reckoner; whichever provides for the higher valuation. Mr. Datar further submitted that this Court, in the case of *Shalini Vaman Godbole Vs. Special Land Acquisition Officer, Special Unit, Solapur and others*³ and in the recent case of *The Municipal Corporation of City of Thane Vs. Special Land Acquisition Officer, Special Unit, Thane*⁴, has held that the said G.R. was the basis on which the rates should be fixed.

1 (1996) 9 Supreme Court Cases 84

2 2005 (3) Mh.L.J. 232

3 2009 (5) Mh.L.J. 884

4 High Court A. S. Writ Petition No.6180 of 2002, decided on 06/09/2017

8. As against the submissions of Mr. Datar, Mr. N. R. Bubna, the learned Counsel for the Respondent No.3, submitted that the Reference Court has properly and correctly appreciated the facts and law and the impugned Judgment did not suffer from any infirmity. He further submitted that the sale instances given by the Appellant were bereft of any particulars and showed no connection with the plots which are the subject-matter in the present case. He further submitted that the plots were under reservation and therefore, they would not have fetched the market price in any case. He further submitted that the area of these two plots is much higher and therefore, the sale instances in respect of the smaller plots could not be a guiding factor for determining the value of the plots. He further submitted that the ready reckoner could not be relied on for the purpose of valuation of the acquired property. He further submitted that the Valuer examined by the Appellant was not authorized to give valuation report and he was not a member of any association which was authorized to give such valuation report. He further submitted that the Appellant was not able to substantiate his claim and therefore, the Appeal should be dismissed.

9. Since the question of limitation was concluded by the Order dated 24/08/2011 passed by this Court in First Appeal No.1213 of 2011, we need not go into the question of limitation and in any case, the question of the said issue is decided in favour of the present Appellant by the Reference Court.

10. The next question is in respect of non-joinder of the aforementioned Mustaq in the Reference before the Reference Court. The Award passed by the Respondent No.1 shows that the Respondent No.1 had mentioned the present Appellant as well as the said Mustaq in the column of names of interested persons in respect of Survey No.72 (Part). The Appellant has produced certified copy of 7/12 Extract in respect of Plot Nos.72/2, 72/3 and 72/4 wherein only his name appears. From the 7/12 Extract, it is clear that Survey No.72 (Part) consists of various parts and at least for the Plot Nos.72/2, 72/3 and 72/4, the present Appellant was the only interested party. Therefore, he was entitled to raise the objections in respect of the Award as far as his plots were concerned. The Hon'ble Supreme Court in the case of *Ambey Devi (supra)* has observed that by no stretch of imagination, the application under Section 18 (1) by one of the co-sharers would be treated as one made on behalf all the co-sharers. In the said case, the Hon'ble Supreme Court was considering the question as to whether one of the co-sharers could claim enhancement of the compensation in a Reference at the instance of one of the co-sharers without seeking Reference under Section 18 of the said Act himself. In answer to this question, the Hon'ble Supreme Court had observed that such co-sharers who had not sought Reference under Section 18 could not claim enhancement of the compensation in a Reference at the instance of one of the co-sharers. This observation of the Hon'ble Supreme Court would clearly mean that one of the co-sharers can insist on his own reference irrespective of the fact that the other co-sharers do not choose to apply for their own

reference. Thus, applying the said ratio to the present case, we hold that the Appellant was entitled to seek his own Reference irrespective of the fact that the aforementioned Mustaq had not sought any Reference for higher compensation. The Appellant certainly cannot be made to suffer if the said Mustaq had not chosen to seek Reference. Therefore we hold that the finding of the Reference Court that the Reference was bad for non-joinder of necessary party in respect of the Plot No.1, was not correct. The apportionment of entitlement of the Appellant in respect of the Plot No.1 will have to be decided by the Reference Court.

11. The next question which arises for our consideration is in respect of the determination of quantum of the compensation. It is the case of the Respondents that the SLAO has properly applied all facts in reaching the figure mentioned in his Award and that even the Reference Court has enhanced it to a certain extent. In respect of his claim, the Appellant has relied on various aspects. The Appellant has submitted the Valuer's report mentioning that the value of the plot in the year 1994-1995 was Rs.2,500/- per sq. meter. The Valuer has given his reason that the land was situated within the limits of Bhiwandi-Nizampur Municipal Corporation, it had tar road for access, electricity and water were available, the land was levelled and was situated in one of the best localities. The report further mentions that there were no polluting industries nearby, the title of the land was clear and the land was legally converted into non-agricultural land, it was situated within 200 meters from the national highway, there were

no slums near the land and it was in the residential zone having markets, schools, colleges and hospitals within near vicinity. The said report was challenged by the Respondents by cross-examining the Valuer. It was admitted by the Valuer that he was not belonging to any registered professional body authorized to give valuation reports. He had admitted that he was an Architect by profession. He had admitted that the road adjoining to the surface of the land was 2 ft. on higher side and the land would require filling to make it suitable for construction activity. We are not impressed by his evidence and we are not taking into consideration his evidence to accept his valuation report. The said Valuer was merely an Architect and he was not even a member of any authorized association to conduct such survey for valuation. He was clearly employed by the Appellant to his own benefit and there were glaring defects in his valuation report which were brought out in the cross-examination. Therefore, we outrightly reject the valuation report.

12. The Appellant has relied on the sale instances which he had brought on record through his evidence. The Appellant has given further evidence by way of further examination-in-chief after the matter was remanded back by this Court. In his evidence, he has stated that he had purchased the said lands in the year 1964 and had got it converted into non-agricultural lands in the year 1974. He produced 5 Index II extracts at Exh.24 to Exh.28 which were in respect of the sale instances of lands adjoining his land. In his additional examination-in-chief, he has produced the ready reckoner

in respect of these lands for the year 1994. He was cross-examined on behalf of the Respondents.

13. As far as the Index II extracts produced vide Exh.24 to Exh.28 are concerned, Mr. Bubna has rightly submitted that the Appellant has not given an detail in respect of those lands and in the absence of the copies of the Sale Deed, it was not possible to infer or understand the circumstances in which the sale of those lands has taken place. The Appellant could not show any material to indicate that the lands corresponding to these entries Exh.24 to Exh.28 were situated in the vicinity of the present lands in question. Mr. Bubna has rightly pointed out that some of the lands mentioned in those entries were so small that the sale transactions in respect of those lands could hardly be of any assistance in determining the price of the lands in the present Reference. In this regard, Mr. Bubna rightly relied on the Judgment of the Hon'ble Supreme Court passed in the case of ***Major General Kapil Mehra Vs. Union of India and Another***⁵ wherein the factors which merit consideration as comparable sale are mentioned as (i) when the sale is within a reasonable time of the date of issuance of notification under Section 4(1), (ii) it should be a *bona fide* transaction, (iii) it should be of the land acquired or of the land adjacent to the land acquired; and (iv) it should possess similar advantages. Similar view was expressed by the Division Bench of this Court in the Judgment passed in First Appeal No.751 of 2003 with First Appeal No.1392 of 2004. In the present case before us, the

⁵ (2015) 2 SCC 262

Appellant has failed to establish by cogent evidence that these factors for the comparable sale were attracted. We are of the opinion that the Appellant has not brought on record sufficient evidence of comparable sale. We accept the submission of Mr. Bubna and we are unable to agree with Mr. Datar that these sale instances could be used for determining the value of the lands under Reference.

14. The only question which now remains as to in which situation can the Appellant rely on the ready reckoner for the year 1994 for claiming the compensation. In this regard, we are inclined to accept the submissions of Mr. Datar in view of the two earlier Judgments referred by him passed by this Court in this behalf. Mr. Datar has invited our attention to the G.R. dated 31/10/1994 wherein it is clearly laid down that the valuation given in the ready reckoner was an important consideration and the valuation arrived at by different methods viz. sale instances, potentiality and the price mentioned in the ready reckoner should be taken into consideration and whichever was higher, should be granted as compensation. This Court has upheld the efficacy and application of this G.R. in such situation as mentioned in the Judgments of *Shalini Godbole (supra)* and *The Municipal Corporation of City of Thane (supra)*. Thus, it was incumbent on the SLAO to have taken into consideration the ready reckoner for the year 1994 in deciding the rate of compensation. Such exercise was not done by the SLAO. The impugned Award passed by him shows that he has referred to the rate as per the ready reckoner but he has referred to the rate given in the

ready reckoner for the year 1992. He, on his own, had considered rise of 10% for the year 1994 and fixed the price at the rate of Rs.300/- per sq. meter in respect of the present Plot No.2. The SLAO has further mentioned that the lands under acquisition fell in Division No.1, Sub-Division No.2, Column No.4 of the said ready reckoner. As against this, the Appellant has produced a certified copy of the ready reckoner for the year 1994. The said ready reckoner was provided to him vide the letter dated 01/11/2011 by the office of the Sub-Registrar, Bhiwandi-1. The said copy is a certified copy and is produced on record at Exh.54.

15. The said copy of ready reckoner was brought on record by the Appellant and it was issued to him in response to his application. The Respondents have not challenged the authenticity or admissibility of this ready reckoner and therefore, it can safely be relied on for determination of the market value of these two plots in the light of the G.R. dated 31/10/1994. In fact, the SLAO has taken into consideration the rate as per the ready reckoner applicable for the year 1992. In the Award, it is mentioned that the lands under acquisition fell in Division No.1, Sub-Division No.2, Column No.4 of the said ready reckoner. The SLAO has considered the rate mentioned therein for the two plots as Rs.25/- per sq.ft. and thereafter has applied rise of 10% for the year 1994 and has arrived at the figure of Rs.300/- per sq. meter for these lands. In our opinion, instead of undertaking such indirect exercise, the SLAO should have relied on the ready reckoner for the year 1994.

16 Certified copy of the relevant extract from the ready reckoner for the year 1994, as provided to the Appellant, is already brought on record on his behalf. During the course of hearing of this Appeal, we specifically directed the Respondent No.3 to point out which of the entries from the ready reckoner for the year 1994 were applicable to the two suit plots which are the subject-matter of the present Appeal. However, vide the Affidavit dated 01/02/2018 affirmed by the Assistant Director of Town Planning of Respondent No.3, filed in this Court on 05/02/2018, the Respondent No.3 took a stand that the relevant information was not available in the records of the Respondent No.3. It is stated in the Affidavit that the ready reckoner was prepared by the Inspector General of Registration, Government of Maharashtra. In our view, the Respondent No.3 failed in his duty to assist the Court in that behalf and no efforts were taken by them though the matter was adjourned twice. In this view of the matter, we think it fit apply the ready reckoner for the year 1994 for Division No.1, Sub-Division No.2 for the non-agricultural land. The rate mentioned therein is Rs.90/- per sq.ft. Thus as per the aforementioned G.R., the market value of Plot No.2 can be fixed at Rs.90/- per sq.ft. which amounts to Rs.968.40 approximately per sq. meter.

17. The SLAO has fixed the price at Rs.275/- per sq. meter for the Plot No.1; which is lesser than the rate of Rs.300/- per sq. meter for Plot No.2. He has mentioned that the Plot No.1 was irregular in shape and there was no approach from D. P. Road. In our opinion, this differentiation between these two plots is reasonable. The SLAO

has fixed the rate for the Plot No.1 which is 8.34% less than that for the Plot No.2. Therefore, we are fixing the rate for the Plot No.1 at Rs.887.64 i.e. at Rs.888/- as the rounded off figure

18. Mr. Bubna submitted that since the plots were under reservation for open space in the plan of Bhiwandi-Nizampur Municipal Corporation, the Appellant is not entitled to its market value. Mr. Bubna could not point out any provision or any precedent to show that the reserved plot of land would not fetch the market value under the Award under the said Act.

19. However, considering the facts of the present case, some deductions from the market value mentioned in the ready reckoner are required to be made. While applying various deductions, we are guided by the observations made by the Hon'ble Supreme Court in the case of ***Bhupal Singh and others Vs. State of Haryana***⁶. In this case, after discussing in para 16 various Judgments of the Hon'ble Supreme Court, in para 17 of this Judgment, the Hon'ble Supreme Court has observed thus :

“17. After taking note of the aforesaid cases and placing reliance upon the principles laid down therein, this Court in Chandrashekar and Ors. (supra) observed as under :

“It is essential to earmark appropriate deductions out of the market value of an exemplar land, for each of the two components referred to above. This would be the first step towards balancing the differential factors. This would pave the way for determining the market value of the undeveloped acquired land on the basis of market value of the developed exemplar land.

⁶ AIR 2015 SUPREME COURT 2073

As far back as in 1982, this Court in Brig. Sahib Singh Kalha case held, that the permissible deduction could be up to 53%. This deduction was divided by the Court into two components. For the "first component" referred to in the foregoing paragraph, it was held that a deduction of 20% should be made. For the "second component", it was held that the deduction could range between 20% to 33%. It is therefore apparent that a deduction of up to 53% was the norm laid down by the Court as far back as in 1982. The aforesaid norm remained unchanged for a long duration of time, even though, keeping in mind the peculiar facts and circumstances emerging from case to case, different deductions were applied by this Court to balance the differential factors between the exemplar land and the acquired land. Recently however, this Court has approved a higher component of deduction.

In 2009 in Lal Chand case and in 2010 in A.P. Housing Board case it has been held that while applying the sale consideration of a small piece of developed land, to determine the market value of a large tract of undeveloped acquired land, deductions between 20% to 75% could be made. But in 2009 in Subh Ram case, this Court restricted deductions on account of the "first component" of development, as also, on account of the "second component" of development to 33% each. The aforesaid deductions would roughly amount to 67% of the component of the sale consideration of the exemplar sale transaction(s)."

In the light of the observations made by the Hon'ble Supreme Court in this Judgment, we propose to apply the principles for making deduction from the rate arrived at in the foregoing paragraphs.

20. As per the cross-examination of the Appellant's own witness, the road adjacent to the Reference land was about 2 ft. higher side and the land would have required filling to make it

suitable for construction activity. Therefore, it is clear that some expenses for development of these plots are required which we fix at the rate of 30% of the market value mentioned above. Moreover, the area of these two plots is quite large. Therefore, these plots could not have fetched higher price than the smaller plots. Moreover, some area would have been lost in the construction or road and preparing layout. Therefore, some further deductions in view of this is required to be made which we fix at the rate of 30%. Thus, there could be a total deduction of 60% of the market value arrived at by using the ready reckoner. Thus, deducting the 60% of the amount in respect of the plot bearing C.T.S. No.4053 (Part) corresponding to Survey No.72 (Part) admeasuring 4325 sq. meters, the price is fixed at Rs.355.20/- (Rs.888 less 60%) and in respect of the plot bearing C.T.S. No.4047 (Part) corresponding to Survey No.125 (Part) admeasuring 4178 sq. meters, the price is fixed at Rs.387.36 (Rs.968.40 less 60%). Hence, the order.

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Appellant is entitled to get Rs.355.20/- per sq. meter for the plot bearing C.T.S. No.4053 (Part) corresponding to Survey No.72 (Part) admeasuring 4325 sq. meters and Rs.387.36/- per sq. meter for the plot bearing C.T.S. No.4047 (Part) corresponding to Survey No.125 (Part) admeasuring 4178 sq. meters situated within the limits of Village Nizampur, Taluka Bhiwandi, District Thane.

- (iii) Payment already made to the Appellant shall be deducted from the amount mentioned in Clause (ii) above.
- (iv) The Reference Court to decide the apportionment according to the entitlement of the Appellant in respect of the plot bearing C.T.S. No.4053 (Part) corresponding to Survey No.72 (Part) admeasuring 4325 sq. meters.
- (v) The Special Land Acquisition Officer to submit the calculation within four months to the Reference Court.
- (vi) The Appellant is entitled to get the statutory benefits under Sections 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894.
- (vii) Decree be drawn accordingly.

(SARANG V. KOTWAL, J.)

(K. K. TATED, J.)