IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1433 OF 2012

Sangita w/o Sopanrao Solankar
Age : 44 years, occu.: household
R/o Baswantpur, Taluka and
District Latur. **Appellant**.

Versus

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

2. The Deputy Chief Engineer,
(Constructions), Central
Railway Division, Pune. **Respondents**.

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Mr. N.P. Patil (Jamalpurkar), Advocate for the appellant.
Mr. M.M. Nerlikar, A.G.P. for respondent No.1.
Mr. D.V. Soman, Advocate for respondent No.2.

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CORAM : T.V. NALAWADE AND SUNIL K.KOTWAL, JJ.

Dated : 9th January 2019.

JUDGMENT (Per Sunil K. Kotwal).

1. This appeal is directed by the original claimant in Land Acquisition Reference No. 128/2000 against the judgment and order passed by 2nd Joint Civil Judge Senior Division, Latur, dismissing the said Land Reference.

2. Undisputedly the claimant is the owner of Survey No.17 situated at village Baswantpur. Out of this land, 1.01 Hectare (109989 sq.ft.) land was acquired by respondent No.1-State of Maharashtra and respondent No.2-Railway Administration, for conversion of metre-gauge railway line into broad-gauge railway line, running from Miraj to Kurduwadi. Notification under section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred as to the "Act") was published in the Official Gazette of Government of Maharashtra on 26.10.1995. Possession of the acquired land was taken by Acquiring Body before the date of publication of notification under section 4 (1) of the Act. The award was passed on 31.01.1999 and compensation was awarded at the rate of Rs.1,48,500/- per Hectare for the acquired land i.e. Rs. 1.46 Paisa per square foot. Claimant received compensation under the protest and subsequently filed Land Reference for enhancement of compensation at the rate of Rs.750/- per sq.ft. on the ground that Baswantpur is a developed village and on the date of notification the acquired land having N. A. potential, valued at the rate of more than Rs. 1,000/- per sq.ft.

3. By filing written statements (Exhs.6 and 7), respondent Nos.1 and 2 disputed the claim of the claimant contending that the Special Land Acquisition Officer rightly assessed the market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act and rightly awarded the compensation.

4. The learned Reference Court, after hearing both the parties and after considering the evidence placed on record, rejected the Land Reference. Therefore, this appeal arises.

5. Heard Mr. Jamalpur, learned Counsel for the claimant, Mr. Soman, learned Counsel for the Acquiring Body and the Learned Additional Government Pleader.

6. Learned Counsel for the claimant assailed the judgment of the Reference Court on the ground that the evidence of valuer Anil Phulari (PW-2) was erroneously rejected by the Reference Court. His next submission is that the comparable sale instance (Exh.23) and the relevant judgment of the Land Reference passed by the same Court in respect of the land situated at nearby villages, was erroneously rejected by the Reference Court. He has drawn our attention towards sale

instance dated 13.09.1995 (Exh.X-2) executed by same claimant of the part of survey No.17 and submits that as the village Baswantpur has been declared within the limits of Municipal Council, Latur under Government Notification dated 16.09.1988 (Exh.65), the acquired land fetches higher value. He submits that the learned Reference Court did not consider N.A. potentiality of the acquired land. Relying on the sale instance (Exh. X-2) of the portion of survey No.17 of the claimant, he prays for enhancement of the compensation. He placed reliance on the case of **"Nelson Fernandes and others versus Special Land Acquisition Officer, South Goa and others", [2007 SAR (Civil) 350]** to substantiate his contention that as the purpose of acquisition of the land was for laying railway line, no value can be deducted towards development charges.

7. Learned Counsel for the Acquiring Body has supported the judgment passed by Reference Court and drawn our attention towards cross examination of Valuer and other witnesses. He contends that the acquired land was used as agricultural land on the date of publication of notification under Section 4 (1) of the Act and it was never converted into N. A.

plots. He submit that Baswantpur is a small village and it is not a developed city like Latur, and therefore, compensation need not be enhanced as claimed by the claimant. He placed reliance on the case of **"Bhule Ram versus Union of India and another", [(2014) 11 SCC 307]** to substantiate his contention that the use for which the land is sought to be acquired and its remote potential value in future, should not be taken into consideration. The market value of the land is to be assessed taking into account its value as it occurs on the date of notification under Section 4 of the Act. He submits that the compensation is to be determined after considering the existing use of the land, geographical situation, location of the land along with its advantages and disadvantages. He has also placed reliance on the case of **"Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona" [1988 (3) SCC 751]** to draw attention of this Court towards the guideline principles settled by the Apex code for determining the market value of the acquired land.

8. Before touching to the merits of the matter the guidelines principles laid down by the Apex Court in the case of

"Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona" (supra) need to be considered, which are as follows :-

> " (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.
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> (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 535 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.
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> (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.
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> (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.

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. The same view was also reiterated by the Apex Court in the case of **"Bhule Ram versus Union of India and another"** (supra).

10. Thus, the legal position is absolutely clear that determination of market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act on the basis of comparable sale instance, is the proper method approved by the Apex Court in number of cases. The guidelines principles settled by the Apex Court in the case of **"Chimanlal Vs. S.L.A.O"**. (supra) holds the field till today.

11. After going through the judgment passed by the Reference Court, it becomes clear that the sale instance of the land situated at village Arvi (Exh.18) is rightly rejected by the Reference Court on the ground of lack of proximity with the acquired land, so far as the distance and location is concerned, after considering village maps of village Arvi and Baswantpur

(Exhs.66 and 67). So also the judgment passed by the concerned Reference Court in L.A.R. No.159/2004 (Exh.23), was rightly discarded by the Reference Court, as the land which is the subject-matter of the above-said Reference, is situated at village Harangul, which is not adjoining to village Baswantpur.

12. Though the learned Counsel for the appellant has heavily placed reliance on the evidence of Valuer Anil Phulari (PW-2), after going through his cross examination, it emerges that he has not placed on record the data on the basis of which he prepared the report of valuation. So also the report of valuation (Exh. 21) was prepared after 12 years from the date of visit of Valuer to the acquired land. Thus, we are satisfied that even the report of Valuer Anil Phulari (PW-2) was rightly rejected by the Reference Court.

13. The claimant has also placed reliance on the evidence of Bharat Panhale (PW-3), who is the Clerk from the office of Collector for Rehabilitation Work. However, the evidence of this witness is useless for the claimant, as this witness has admitted that N.A. permission was not granted for the acquired land, for the reason of non-compliance of the objection by the claimant,

raised by Town Planner. So also the evidence of Uday Gaderao (PW-4), who is Shirastedar of T.I.L.R. Office, Latur is also useless piece of evidence, as he has not placed on record the joint measurement map of the acquired land.

14. Even the Government notification (Exh.65) does not show that Survey No.17 was included within the municipal limit of Latur. Therefore, by no stretch of imagination it can be said that the acquired land being within the municipal area of city Latur, fetches higher value on the date of publication of notification. On the other hand, from the cross examination of the claimant (PW-1), it emerges that the village Baswantpur is at the distance of 4 to 5 kms. from Latur. She has also admitted that the sale deeds have been executed in her village Baswantpur. However, she did not file any sale instance of the land situated at Baswantpur before the Reference Court. Thus, the oral testimony of the claimant (PW-1) is not sufficient to hold that the acquired land fetches higher value than awarded by the Special Land Acquisition Officer.

15. However, in this appeal the claimant has filed copy of judgment delivered by the same Judge in L.A.R. No.913/2000 to

show that for Survey No.43 situated at village Baswantpur the compensation was awarded at the rate of Rs.101/- per sq.ft. However, after going through this is judgment, it cannot be ascertained whether Survey No.43 also carries the same advantages and disadvantages like the acquired land. Even the quality of Survey No.43 cannot be ascertained only on the basis of the judgment of above-said Land Reference. On the other hand, after going through the map of village Baswantpur, it becomes clear that the acquired land and Survey No.43 are at two opposite ends of the village Baswantpur. Therefore, there is no proximity in between the acquired land and Survey No.43 regarding the distance and quality. Therefore, on the basis of compensation awarded by Reference Court in L.A.R. No.913/2000, the compensation in the present case cannot be enhanced to the tune of Rs. 101/- per sq.ft. Therefore, the judgment of L.A.R. No.913/2000 (Exh. X-1) cannot be considered to enhance the compensation of the acquired land.

16. However, after going through the sale deed dated 13.09.1995 (Exh.X-2), filed in the appeal, it emerges that on the above-said date the same claimant alienated private plot No.35

admeasuring 1897 sq.ft. situated at village Baswantpur to one Balprasad Vishnudas Bang, for the total consideration of Rs.87,500/- i.e. Rs. 46/- per sq.ft. The plot which is subject-matter of the sale instance (Exh. X-2) is the part of Survey No.17 from which the land is acquired by the respondents for broad gauge railway line. Thus, the question of distance in between the acquired land and the land under sale instance does not arise. On the other hand, it is most proximate land with the acquired land. The date of execution of this sale deed is 13.09.1995 and the date of publication of notification under Section 4 (1) of the Act is 26.10.1995. Thus, there is proximity regarding date of execution of sale deed and date of publication of notification. This sale instance is executed prior to publication of notification under section 4 (1) of the Act. Therefore, its genuineness cannot be doubted. Even during the course of argument learned Counsel for the Acquiring Body and learned Additional Government Pleader for the State have not disputed the genuineness of this sale instance. Therefore, in view of the guidelines principles laid down by the Apex Court in the case of **"Chimanlal Vs. S.L.A.O"**. (supra), the sale instance (Exh. X-2) can be relied on to determine the market price of the acquired land on the date of publication of notification under Section 4 (1) of the Act.

17. However, it cannot be ignored that the sale instance (Exh. X-2) is of small piece of land out of survey No.17. The Apex Court in the case of **"Lucknow Development Authority Vs. Krishna Gopal Lahori and others" (AIR 2008 SC 399)**, observed that, "*where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. It cannot, however, be laid down as an absolute proposition than in such cases, the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions / adjustments have to be made while determining the prices*".

18. In the case at hand, no evidence has been laid by the respondents to prove that other sale instances of the land situated at village Baswantpur are available to determine the proper market value of the land. Therefore, the sale instance

(Exh. X-2) can be considered, though it is of a small piece of land. Only there shall be deduction in the market value of the acquired land. So also, after going through the sale deed (Exh. X-2), it emerges that the plot which was the subject-matter of this sale instance, is situated abutting 35 ft. wide road. Therefore, for this advantageous factor annexed with the land under sale instance (Exh. X-2), there shall be reasonable deduction from the value of the acquired land.

19. Considering small size of the land under sale instance and above-discussed advantageous factor, there shall be 40% deduction from the market value of the acquired land. As the land was acquired for railway line, in view of the law laid down by Apex Court in the case of **"Nelson Fernandes and others versus Special Land Acquisition Officer"** (supra), no amount is deducted towards development charges.

20. On the basis of sale instance (Exh. X-2) the value of the acquired land comes to Rs. 46/- per sq.ft. After deducting 40% from this amount, the fair market price of the acquired land, on the date of publication of notification under Section 4 (1) of the Act, comes to Rs.27/- per sq.ft. Therefore, the claimant is

entitled to compensation at the rate of Rs. 27/- per sq.ft. In addition to this, claimant is entitled to statutory benefits under Section 23 (1A) and 23 (2) of the Act together with interest under Section 28 of the said Act from the date of award, as ruled by the Full Bench of this Court in the case of **"State of Maharashtra Vs. Kailash Shiva Rangari" [2016 (3) Mh.L.J. 457]**, as the possession of the acquired land was taken by Acquiring Body before the date of publication of notification under Section 4 (1) of the Act. It follows that the award passed by Reference Court deserves to be set aside and modified. For rental compensation, the claimant would be at liberty to approach competent authority as the same cannot be awarded under the Act.

21. In the result, First Appeal No.1433 of 2012 is partly allowed. The judgment and award passed by 2nd Joint Civil Judge, Senior Division, Latur in L.A.R. No.128/2000 is set aside and it is modified as under :-

"(i) L.A.R. No.128/2000 is partly allowed with proportionate costs.

(ii) Respondent Nos.1 and 2 do jointly and severally pay compensation to the claimant for the acquired land i.e. Survey No. 17, admeasuring 1.01. Hectare (1,09,989 sq.ft.) situated at village Baswantpur at the rate of Rs. 27/- (Rupees Twenty Seven) per sq. ft.

(iii) The claimant is entitled to component under Section 23 (1A) of the Land Acquisition Act at the rate of 12 % per annum on the market value of the acquired land from the date of notification i.e. 26.10.1995 to passing of award dt. 31.01.1999.

(iv) The claimant is also entitled to solatium of 30% on the market value of the acquired land, under Section 23 (2) of the Act.

(v) The claimant is also entitled to interest under Section 28 of the Land Acquisition Act on enhanced (excess) compensation, solatium and component at the rate of 9% per annum from the date of award i.e. 31.01.1999 for the period of first year and thereafter from 01.02.2000, at the rate of 15% per annum till the date of deposit of entire compensation amount in the Court by the Acquiring Body or State.

(vi) The award be drawn up accordingly".

22. Appeal is disposed of in the above-said terms. Parties to bear their respective costs of the appeal. Civil Application No.3008 of 2014 is disposed of.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

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