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

**FIRST APPEAL NO.3713 OF 2016**

Sadashiv Sakharam Lokhande (Dead)
Through Legal Heirs

1. Vishnu s/o Sadashiv Lokhande
   Age : 59 years, Occu : Service

2. Arun s/o Sadashiv Lokhande
   Age : 54 years, Occu : Service

3. Uddav s/o Sadashiv Lokhande
   Age : 46 years, Occu : Service

4. Pralad s/o Sadashiv Lokhande
   Age : 44 years, Occu : Service

5. Sow Pushpabai w/o Atmaram Bidve
   Age : 65 years, Occu : Household

6. Sow. Nirmala w/o Vishwanath (Vishwasrao) Pimple
   Age : 53 years, Occu : Household

7. Sow Kesharbai w/o Sadashiv Lokhande
   Age : 84 years, Occu : Household,

All R/o Bhausingpura, Aurangabad
Tal. & Dist. Aurangabad .. Appellants
(Orig. Claimants)

Versus

1. The State of Maharashtra
   Through Special Land Acquisition Officer,
   Special Unit, Aurangabad

2. The Municipal Corporation
   Aurangabad, through the Municipal
   Commissioner, Aurangabad .. Respondents
   (Orig. Respondents)

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Shri M.S. Karad, Advocate, h/f. Shri S.S. Thombre,
Advocate for the appellants
AGP for Respondent No.1 – State : Shri S.P. Sonpawale
Advocate for Respondent No.2 : Shri Dilip Bankar Patil
…....

**CORAM : P.R. BORA, J.**
Dated: 07.03.2019

**ORAL JUDGMENT** :

1. The claimants in Land Acquisition Reference No.7 of 2012 (Old Land Acquisition Reference No.308 of 2002) have preferred the present appeal seeking enhancement in the amount of compensation awarded by the Court of Civil Judge, Senior Division (Corporation Court) at Aurangabad vide Judgment delivered by the said Court on 22.03.2016.

2. The land admeasuring 25100 Sq. Meter out of Survey No.32/1 situated at Bhausingpura, Aurangabad, owned by the present appellants - claimants was acquired by Municipal Corporation, Aurangabad (hereinafter referred to as the 'Acquiring Body') for primary school, road, open space and play ground. Notification under Section 126 (4) of the Maharashtra Regional and Town Planning Act, 1966 read with Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was published in the Government Gazette in that regard

on 22.07.1999, whereas the Award under Section 11 of the Act came to be passed on 01.03.2002. The SLAO had offered the compensation to the claimants at the rate of Rs.400/- per square meter. Dissatisfied with the amount of compensation so offered, the claimants filed the reference application under Section 18 of the Act, which was adjudicated by the Court of Civil Judge, Senior Division (Corporation Court) at Aurangabad. The said Court is hereinafter referred to as the 'Reference Court'. The claim so raised by the claimants was opposed by the Acquiring Body as well as the State Government.

3. In the reference proceedings, the claimants had claimed the compensation at the rate of Rs.719/- per square meter. In order to substantiate the claim raised by them, one of the claimants namely Vishnu Sadashiv Lokhande testified before the Court. The claimants also examined one Sumedh Kharwadkar, the Special Land Acquisition Officer. The claimants also placed on record three sale instances in support of their claim. No oral or documentary evidence was adduced on behalf of Acquiring Body or the State. The learned Reference Court, after having assessed the oral and documentary evidence

brought on record before it, determined the market value of the acquired lands at the rate of Rs.505/- per square meter and directing certain deductions from the said amount towards the development and betterment charges, enhanced the amount of compensation at the net rate of Rs.105/- per square meter for an area of 18825 square meter with the statutory benefits and the interest under the provisions of the Land Acquisition Act. According to the claimants, since the Reference Court also did not enhance the amount of compensation as per their expectation, they have preferred the present appeal.

4. Shri S.S. Thombre, learned Counsel appearing for the claimants submitted that, in spite of recording a finding to the effect that, from the available sale instances, the market value of the acquired land was liable to be determined at the rate of Rs.617/- per square meter, the Reference Court has ultimately determined the market value of the acquired land at the rate of Rs.505/- per square meter and directed certain deductions even from the said amount. The learned Counsel further submitted that, the Reference Court has not assigned any reason for bringing down the market value from Rs.617/- per

square meter to Rs.505/- per square meter. The learned Counsel, in the circumstances, prayed for determination of the market value at the rate of Rs.617/- per square meter and to enhance the amount of compensation accordingly.

5. Shri Bankar Patil, learned Counsel appearing for the Acquiring Body opposed the submissions made on behalf of the claimants. The learned Counsel submitted that, the Reference Court has appropriately considered the oral as well as the documentary evidence brought on record and has correctly determined the market value of the acquired lands. The learned Counsel submitted that, the Reference Court has passed a well reasoned order and warrants no interference.

6. I have given due consideration to the submissions made on behalf of the appellants – claimants and the Acquiring Body as well as the State Government. I perused the impugned Judgment and the evidence on record.

7. Though, now it seems to be the contention of the claimants that, the Reference Court must have determined the

market value of the acquired land on the basis of the sale instances brought on record by the claimants respectively at Exhs.34, 35 & 36, the perusal of the application filed by the claimants under Section 18 of the Act reveals that, the claimants had relied upon the sale instance at Sr. No.8.2.8 in Appendix-II to the Award passed under Section 11 of the Act by the Special Land Acquisition Officer. The land, which was the subject matter of the said sale instance was plot no.146 from out of survey No.26/3/2 (part) and was sold by registered sale-deed executed on 27.08.1999 at the rate of Rs.553/- per square meter. The land, which was the subject matter of the said sale deed was at the distance of less than 150 meters from the land acquired of the present claimants. The other sale instances, which were considered while passing the Award under Section 11 of the Act as well as the sale instances produced on record by the claimants in the reference proceeding, were of the lands which were at a longer distance from the land, which was the subject matter of the sale instance at Sr. No.8.2.8.

8. Secondly, the land which was the subject matter of the sale-deed at Sr. No.8.2.8 was sold by a registered sale-deed

executed on 27.08.1999. The land of the present claimant was acquired vide notification under Section 126(4) of the MRTP Act dated 22.7.1999. It is thus evident that the sale instance at Sr. No.8.2.8 was also proximate in time comparing to other sale instances.

9. It was sought to be contended by Shri Bankar Patil that the sale instance at Sr. No.8.2.8 shall not be considered since, it was executed after about a month of acquisition of the subject land. I am, however, not convinced with the argument so made. It is the matter of record that the claimant has brought on record three sale instances from the area of Bhavsingpura which were executed prior to 22.07.1999. The sale-deed at Exhibit-34 was executed on 22.12.1997 wherein, the rate was received at the rate of Rs.741/- per square meter. The land which was the subject matter of Exhibit-35 was sold on 22.06.1998 at the rate of Rs.893/- per square feet, whereas, the land which was involved in the sale instance at Exhibit-36 was sold on 17.06.1998 at the rate of Rs.811/- per square meter. It is also the matter of record that before the Special Land Acquisition Officer, the owner of the land survey no.26/1, which was also

acquired for the same purpose for which the land of present claimant was acquired had placed on record several sale instances wherein, the market value was received more than Rs.553/- per square meter which was received to the land which was the subject matter of the sale instance at Sr. No. 8.2.8. After having considered the aforesaid material, I have no doubt in my mind that the Reference Court must have determined the market value of the land which is the subject matter of the present appeal at par with the market value received to the land which was the subject matter of sale instance at Sr. No.8.2.8 at the rate of Rs.553/- per square meter.

10. It was then argued by Shri Thombre that the compensation needs to be paid at the aforesaid rate of Rs.553/- per square meter for the entire land acquired of the claimant without directing any deductions therein. It was the contention of Shri Thombre that the area around the subject land was fully developed area and as such, there was no reason for directing any further deductions towards the development charges of the acquired land. As against it, it was vehemently argued by Shri Bankar Patil that the acquired land being a large tract of land

even though having N.A. potentials, the deductions were liable to be made on both the counts i.e. towards the development/betterment charges as well as towards the roads, open spaces for civil amenities in the acquired land. According to Shri Bankar Patil, at-least 25% portion of the acquired land was to be excluded while determining the amount of compensation towards the area under open space, road, playground etc. It was the further contention of Shri Bankar Patil that betterment charges at the same rate i.e. at the rate of 25% were liable to be deducted for laying out plots in the acquired land on account of leveling, demarcation, architecture fees etc.

11. I am, however, not convinced with the submissions made by both the learned counsel. It is not in dispute that the rate of Rs.553/- per square feet was received to an open plot ad-measuring 190 square meter. It cannot be disputed that the rate so received to a small plot ad-measuring 190 square meter was not liable to be received to a large tract of land ad-measuring 25,100 square meter. However, there may not be a dispute that if the subject land is divided into residential plots, which the

claimant was likely to do, then for the said plots of the size ranging from 150 square meter to 200 square meter, certainly the same price could have been received. It is thus evident that the rate of Rs.553/- per square meter can be applied to the sale-able area of the land. The learned counsel for the claimant and the learned counsel for the acquiring body both were ad-idem on the issue that, if the lay out is to be prepared of the land which has been converted for non-agriculture use, approximately 25% of the said land will have to be reserved and utilized for the purposes of road, open spaces, playground etc. As such, there may not be a dispute for deducting 25% of the acquired land for the said purpose, which has also been done by the learned Reference Court, i.e. towards the roads, open spaces and other civil amenities. Such area comes to 6275 square meter. Excluding the said area, the price of Rs.553/- per square meter can be determined for the remaining area of 18,825 square meter.

12. As noted earlier, it was the contention of Shri Bankar Patil that development charges would also be required to be deducted from the aforesaid market value. The contention so

raised by Shri Bankar Patil however, cannot be accepted. In the award itself, the Reference Court has mentioned that the area around the acquired land is fully developed. It has also come on record that the area under acquisition is having 15 meter wide road from three sides and 90% of the plots have frontage of the said 15 meter development plan road. As has been mentioned by the Special Land Acquisition Officer in final award, the infrastructure facilities are available to the land under acquisition, and locality is already developed having housing society by name Trimurti Housing Societies as well as, there is an access from 15 meter wide existing development plan road passing through the land under acquisition. Considering the facts as aforesaid, it does not appear to me that any amount is liable to be further deducted towards the development charges of the acquired land.

13. After having considered the entire material on record, I determine the market value of the acquired land at the rate of Rs.553/- per square meter. As elaborately discussed herein-above, excluding 25% of the acquired land to the extent of 6275 square meter, the claimant is held entitled to receive the

compensation at the enhanced rate of Rs.553/- per square meter for his remaining land ad-measuring 18,825 square meter. The Special Land Acquisition Officer had awarded the compensation to the aforesaid land at the rate of Rs.400/- per square meter. The Reference Court enhanced it to Rs.505/- per square meter. Now, this Court has enhanced it further to Rs.553/- per square meter. Net enhancement in the amount of compensation is thus Rs.48/- per square meter. Needless to state that the claimants shall be entitled to receive the statutory benefits under Sections 23-1A and 23(2) of the Act, as well as the interest under Sections 28 and 34 of the Act, on the enhanced amount of compensation. Modified award be prepared accordingly. Appeal, thus, stands allowed in the aforesaid terms.

**( P.R. BORA, J. )**

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