

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

FIRST APPEAL NO. 3202 OF 2016

The Bharat Sanchar Nigam Ltd.
Through Sub-Divisional Engineer,
(Group) Bhoom, Tal. Bhoom,
District Osmanabad.

Appellant.

Versus

Purushottam Martandarao Deshmukh
(Died) Through legal heirs.

1. Chandrashekhar Purushottam Deshmukh
Age : 40 years, occu.: agri.,
R/o Osmanabad.
2. Santosh Purushottam Deshmukh
Age : 38 years, occu.: agri.,
R/o as above.
3. Shradhdha w/o Shamrao Joshi
Age : 36 years, occu.: household
R/o as above.
4. Arun Purushottam Deshmukh
Age : 30 years, occu.: agri.,
R/o Bhoom, Dist. Osmanabad.
5. The State of Maharashtra
Through Collector, Osmanabd.
6. Sub-Divisional Officer and Land
Acquisition Officer, Bhoom,
Tal. Bhoom, Dist. Osmanabad.

Respondents.

Mrs. M.A. Deshpande, Advocate for the appellant.
Mr. Dhananjay Mane, Advocate for respondent Nos.1 to 4.
Mr. A.M. Phule, A.G.P. for respondent Nos.5 and 6.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 15 April 2019.

Judgment pronounced on : 24 April 2019.

JUDGMENT.

. This appeal is directed by the Acquiring Body - Bharat Sanchar Nigam Ltd. ("BSNL" for short), Osmanabad against the judgment and award passed by Civil Judge Senior Division, Bhoom in Land Acquisition Reference (L.A.R.) No. 148/2014, whereby the Reference Court granted compensation for the acquired land i.e. Survey No. 322, area 40 R situated at Bhoom, at the rate of Rs. 790/- per sq. mtr. The Reference Court also awarded rent for the acquired land from the date of possession i.e. from 31.10.1992 up to the date of publication of notification under section 126 (2) of MRTP Act (2) of the Maharashtra Regional Town Planning Act (hereinafter referred to as "MRTP Act") on 04.10.2002.

2. Respondent Nos. 1 to 4 are the original claimants, respondent No. 5 is the State of Maharashtra and respondent

No.6 is the Land Acquisition Officer, Bhoom.

3. Undisputedly the claimants are owners of acquired land i.e. Survey No. 322, area 40 R situated at Mauje Bhoom, which is converted into non-agricultural land prior to the date of publication of notification under section 126 (2) of MRTP Act. It is not disputed that the acquired land is situated within the municipal limits of Bhoom Municipal Council and notification under section 126 (2) of MRTP Act was published in Official Gazette on 03.10.2002. Possession of the acquired land was obtained by the Acquiring Body prior to the date of publication of notification i.e. on 31.10.1992 and the award was declared by the Collector on 31.03.2004. Under the award, the Collector offered compensation at the rate of Rs. 375/- per Sq. Metre. Being aggrieved with that rate, the claimants submitted Land Acquisition Reference which was decided by the Reference Court and the Reference Court enhanced compensation to the tune of Rs. 790/- per Sq. Metre. Being agreed with this award, the Acquiring Body has preferred this appeal.

4. Heard Smt. M.A. Deshpande, learned Counsel for the Acquiring Body, learned Counsel Mr. Dhananjay Mane for the claimants (respondent Nos.1 to 4) and Additional

Government Pleader for the State of Maharashtra and Land Acquisition Officer i.e. respondent Nos.5 and 6.

5. Learned Counsel for the appellant submits that before the Reference Court the claimants relied on only single sale instance dated 30.08.2000 (Exh.19) of the small piece of land out of Survey No.322 situated at Bhoom, which was executed by the father of the claimants. She has pointed out that this sale instance was not considered by the Reference Court as not genuine, because only one small plot was sold out after taking possession of the acquired land by the Acquiring Body on 31.10.1992. She submits that against that finding no cross objection is filed by the claimants, and therefore, that sale instance need not be considered.

6. The next objection of the learned Counsel for the appellant is that the Reference Court, though considered sale instance dated 18.07.2002 (Exh.32) placed on record by the Acquiring Body excluding the other two sale instances (Exhs.31 and 33), the Reference Court did not assign reasons as to why the sale instance (Exh.32) is acceptable as a comparable sale instance. She submits that before the Reference Court the claimants have not led evidence to prove that the compensation

offered by the Collector was inadequate.

7. The next contention of the learned Counsel for the appellant is that though the Reference Court considered sale instance (Exh.32) of small non-agricultural plot out of Survey No.220 admeasuring 50' X 30' situated at Bhoom, no deductions were made by the Reference Court towards small size of the plot. She has also pointed out that though the purpose of acquisition was for construction of BSNL office and staff quarters as well as tower, no deductions were made towards development charges of the acquired land. She prays for reduction of the rate of compensation for the acquired land after making appropriate deductions. In support of her contention she placed on the cases of **“Kasturi Vs. State of Haryana” [2003 AIR (SC) 202]**, **“Maj. Gen. Kapil Mehra Vs. Union of India and another” [2014 AIR (SCW) 6086]** and **“Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona” [1988 AIR (SC) 1652]**.

8. In reply, learned Counsel for the original claimants submits that the sale instance (Exh.19) relied by the claimants fetches more value of Rs. 1086/- per Sq. Metre which was wrongly

discarded by the Reference Court. His next contention is that the acquired land was converted into non-agricultural land prior to the date of publication of notification under section 126 (2) of MRTP Act. The acquired land is a developed land having commercial potentiality. He has also pointed out that in view of the admission given by the witness Rajkumar Kulkarni (DW-2) examined by the Acquiring Body, the surrounding area of the acquired land is already developed. The acquired land is also situated in the municipal area. According to the learned Counsel for the claimants, the compensation rate awarded by the Reference Court is appropriate.

9. At the outset I must make it clear that while rejecting the sale instance dated 30.08.2000 (Exh.19) relied on by the claimants, the Reference Court has assigned appropriate reasons that possession of the acquired land was taken on 31.10.1992 and subsequently father of the claimants sold out very small piece of the land out of Survey No. 322 on 30.08.2000 which fetches value at the rate of Rs. 1086 per Sq. Metre. The Reference Court rightly found that the other plots out of Survey No. 322 were not sold out even after 30.08.2000 till the date of publication of notification. These facts indicate that the father of the

claimants created sale deed (Exh.19) for the purpose of ensuing land acquisition proceeding. Against that finding no cross-objection is filed by the claimants. Otherwise also, I hold that the sale instance dated 30.08.2000 (Exh.19) was rightly rejected by the Reference Court as not a genuine sale instance, by assigning the above-referred proper reasons.

10. In the case of **“Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona”** (supra) the Apex Court laid down the following guidelines.

“ (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.

(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 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.

(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.

(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.

(10) 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

1. smallness of size.
2. proximity to a road. `
3. frontage on a road.

Minus factors

1. largeness of area.
2. situation in the interior at a distances from the Road.
3. narrow strip of land with very small frontage compared to death.

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| 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. “ | |

11. Same legal principles are reiterated by the Apex Court in the cases of “**Kasturi Vs. State of Haryana**” and **Maj. Gen. Kapil Mehra Vs. Union of India**” (supra).

12. In view of the above guidelines, burden lies on the claimants to prove, on the basis of material produced in the Court, that the price offered for the land in award is inadequate. The Apex Court has also made it clear that the material placed and proved by the other side can also be taken into account for this purpose. Therefore, the contention of learned Counsel for the Acquiring Body is not acceptable that the sale instance file by the

Acquiring Body (Exh.32) cannot be considered while holding that the rate of compensation offered by the Collector was inadequate.

13. In view of the law settled by the Apex Court, the market value of the land under acquisition has to be determined as on the crucial date of publication of notification under section 4 (1) of the Land Acquisition Act (under Section 126 (2) of MRTP Act). Even the most comparable sale instance out of genuine instances has to be identified on the basis of (i) proximity from time angle and (ii) proximity from situation angle. After identification of proper comparable sale instance the Court has to consider plus and minus factors and then after making necessary adjustment towards plus and minus factors, it has to evaluate the acquired land by sitting in the armchair of *bona fide* purchaser at prevailing market value on the date of publication of notification under section 4 (1) of the Land Acquisition Act (under section 126 (2) of MRTP Act).

14. In the case at hand, though the Acquiring Body has placed on record three sale deeds dated 16.07.2002 (Exh.31), dated 18.07.2002 (Exh.32) and dated 07.08.1992 (Exh.33), the sale instance (Exh.33) being 10 years preceding the date of publication of notification under section 126 (2) of MRTP Act,

cannot be considered as a comparable sale instance. So also the sale instance (Exh.31) is regarding sale of small plot admeasuring 146 Sq. Metre for the consideration of Rs. 90,000/-. On the other hand, the sale instance (Exh.32) dated 18.07.2002 is regarding the plot admeasuring 50' X 30' out of Survey No. 220 situated at Mauje Bhoom which was sold out for the consideration of Rs.1,10,000/-. Thus, so far as the proximity in between the date of execution of sale instance and date of publication of notification under section 126 (2) of MRTP Act is concerned, these both sale instances are equivalent. However, under sale instance (Exh.32), similar land situated at Mauje Bhoom fetches more value than the value of the land under sale instance (Exh.31).

15. The Apex Court in the case of **“Mehrawal Khewaji Trust Vs. State of Punjab and others”** [2012 (4) ALL M.R. 470] has made it clear that when the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a *bona fide* transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. When

there are number of sale instances having equal plus minus factors, the sale instance which fetches highest value is to be considered as a comparable sale instance. In view of these settled legal principles, certainly the Reference Court is justified while choosing the sale instance (Exh.32), which fetches highest value for the similar land, as a comparable sale instance.

16. The acquired land and the land under sale instance (Exh.32) are situated within the municipal limits of Bhoom city. Both the lands are non-agricultural lands. The notification under section 126 (2) of MRTP Act for acquisition of Survey No. 322 area 40 R was published on 03.10.2002. The sale instance (Exh.32) was executed on 18.07.2002. Thus, this sale instance is more proximate with the date of the publication of notification. Like the acquired land, the land under sale instance is also abutting the road on western side. Thus, even the plus and minus factors for the acquired land and the land under sale instance are identical. Thus, the market value of the land under sale instance on 18.07.2002 can be safely considered as just and reasonable market value of the acquired land on the date of publication of notification under section 126 (2) of MRTP Act i.e. on 03.10.2002. Under sale instance (Exh.32) out of Survey No.220

the small plot of area i.e. east-west 50 ft. and north-south 30 ft. was sold out for the consideration of Rs. 1,10,000/-. Thus, as calculated by the Reference Court, this land fetches market value at the rate of Rs. 789. 37 per Sq. Metre. By rounding up this figure as Rs. 790/- per Sq. Metre, the market value of the acquired land is to be determined at the rate of Rs. 790/- per Sq. Metre on the date of publication of notification under section 126 (2) of MRTP Act.

17. However, as rightly pointed out by the learned Counsel for the Acquiring Body, the sale instance (Exh.32) is of very small piece of land in comparison with 40 R area of the acquired land. So also, though the acquired land is converted into non agricultural land before the date of acquisition, yet it is not fully developed by demarcating plots and by carving out roads.

18. No doubt, Rajkumar Kulkarni (DW-1) examined by the Acquiring Body has admitted in his cross examination that the acquired land is situated within the jurisdiction of Bhoom Municipal Council in the area Samarth Nagar at Bhoom city and the surrounding area is well developed by construction of houses with all facilities like electricity, drainage line, tar road, water supply of Nagar Parishad etc. It cannot be ignored that this

witness has admitted these all developments surrounding the acquired land on 26.07.2013 which is the date of cross examination of this witness. I have to consider the condition of acquired land on the date of publication of notification under section 126 (2) of MRTP Act i.e. on 03.10.2002. Thus, the admissions given by Rajkumar Kulkarni (DW-1) regarding development of surrounding area of the acquired land in the year 2013 cannot be considered while determining the market value of the acquired land in the year 2002. So also, because the permission has been obtained by the claimants before acquisition to use the acquired land for non agricultural purpose, conclusion cannot be drawn that the acquired land was developed. Therefore, as ruled by the Apex Court in the case of **“Chimanlal Hargovinddas”, “Kasturi Vs. State of Haryana”** and **“Kapil Mehra Vs. Union of India”** (supra), from the market value of the acquired land certain deductions are to be made towards development charges, after considering the purpose of acquisition of the acquired land.

19. In the case at hand, from the award passed by the Collector, it emerges that purpose of the acquisition of acquired

land is for the construction of BSNL office, tower and residential quarters for the staff members. If this purpose of acquisition is considered, certainly the acquired land has to be a developed land by preparing layout, carving out roads, plotting out smaller plots for construction of other buildings. So also the acquired land is developed by laying down underground drainage, sewages, erection of electric lines and other amenities for office purpose as well as for residential purpose of the staff members. If scope of these required developments is considered, there should be minimum deduction of 35% value from the market value of the acquired land which can be considered as just and fair compensation. If 35% value is deducted from market value of the acquired land i.e. Rs. 790/- per Sq. Metre, the just and reasonable compensation rate for the acquired land comes to Rs. 513/- per Sq. Metre. By rounding up this figure the rate of compensation is to be fixed as Rs. 520/- per Sq. Metre.

20. As awarded by the Reference Court, the claimants are entitled to statutory benefits under section 23 (1A), 23 (2) and interest under section 28 of the Land Acquisition Act.

21. However, it cannot be ignored that the Reference Court erroneously awarded rental compensation to the claimants

at the rate of Rs. 5% per annum on the market value of the land from 31.10.1992. However,, the larger Bench of the Apex Court in the case of **“R. L. Jain versus DDA and others” [2004 AIR (SC) 1904]**, has made it clear that when possession of the acquired land is taken by Acquiring Body prior to the date of publication of notification under section 4 (1) of the Land Acquisition Act, the claimant can claim damages or rent from the date of taking possession till the date of passing of award. However, such rental compensation cannot be awarded in land acquisition proceeding, but for recovery of rental compensation the claimant has to approach the appropriate authorities under law. T herefore, the award passed by the Reference Court needs to be modified by deleting the relief of rental compensation at the rate of Rs. 5% per annum on market value of the acquired land.

22. In view of the above discussion First Appeal No. 3202 up 2016 deserves to be partly allowed and the award passed by the Reference Court deserves to be modified.

23. Accordingly, First Appeal No. 3202 of 2016 is partly allowed. The award passed by Civil Judge, Senior Division, Bhoom in L.A.R. No.148/2014 is modified to reduce the rate of

compensation for Survey No.322 area 40 R situated at Mauje Bhoom to the tune of Rs.520/- per Sq. Metre.

24. The other statutory benefits awarded by the Reference Court under sections 23 (1A) and 23 (2) and interest under Section 28 of the Land Acquisition Act are confirmed as it is.

25. The claim of the claimants regarding rental compensation from 31.10.1992 till 04.10.2002 is rejected. Liberty is given to the claimants to approach the appropriate authority under law for recovery of rental compensation.

26. The award passed by Reference Court in L.A.R. No.148/2014 be modified in above said terms.

27. Parties to bear their respective costs of the appeal.

28. If the excess amount is already withdrawn by the claimants than awarded under the modified award, then the claimants are directed to deposit the excess withdrawn amount in the Court, within the period of three months from the date of passing of this judgment.

(SUNIL K. KOTWAL)
JUDGE

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