IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.522 OF 2016
WITH
CIVIL APPLICATION NO.7010 OF 2018

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

2. The Sub-Divisional Officer and
   The Land Acquisition Officer, at Udgir,

3. The Principal,
   Industrial Training Institute,
   Chakur, Tq. Chakur, Dist. Latur. ..Appellants

Versus

Avinash s/o. Balasaheb Jadhav,
Age-30 yrs, Occu: Service & Agril.,
R/o. Shirur Tajband, Tq.Ahmadpur,
Dist. Latur.

Through Power of Attorney Holder,

Balasaheb s/o. Kishanrao Jadhav,
Age-58 yrs, Occu. Agril.,
R/o. Shirur Tajband, Tq. Ahmadpur,
Dist. Latur. ..Respondent

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Mr. A.M. Phule, AGP for Appellants/State.
Mr. Abhay R. Rathod, Advocate for Respondent-Sole.

WITH
FIRST APPEAL NO.881 OF 2015

Avinash s/o. Balasaheb Jadhav,
Age-30 yrs, Occu: Service & Agril.,
R/o. Shirur Tajband, Tq.Ahmadpur,
Dist. Latur. ..Appellant

Versus

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

2. The Sub-Divisional Officer and
The Land Acquisition Officer, at Udgir,

3. The Principal,
Industrial Training Institute,
Chakur, Tq. Chakur, Dist. Latur. ..Respondents

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Mr. Abhay R. Rathod, Advocate for Appellant.
Mr. A.M. Phule, AGP for Respondents-State.

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CORAM : P.R. BORA, J.
DATED : 03rd MAY, 2019.

ORAL JUDGMENT:

. Since both these appeals are arising out of the judgment and award dated 26.09.2014 passed by the Special Judge, Latur in L.A.R. No.733 of 2002, common arguments were heard in these matters and I deem it appropriate to decide both these appeals by a common reasoning.

2. First Appeal No.522 of 2016 is filed by the State whereas, First Appeal No.881 of 2015 is filed by the original claimant. The appellant in First Appeal No.881 of 2015 is hereinafter referred to as 'the claimant' whereas, the Special Court is referred to as the 'Reference Court'.

3. Claimant was the owner of the land ad-measuring

1H 66R involved in the present appeal. It was situated at village Chakur. 1H 61R was acquired from gat no.263 whereas, 5R land was acquired from gat no.264. The lands were acquired for the construction of Industrial Training Institute at Chakur, District Latur. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the act') in that regard was published in the official gazette on 08.02.2001. The award under Section 11 was passed on 07.07.2001. The Special Land Acquisition Officer offered the compensation to the claimant at the rate of Rs.17.56 per sq.ft. Dissatisfied with the amount of compensation so offered, the claimant filed an application under Section 18 of the Act to the Collector, Latur seeking enhancement in the said amount. The learned Collector referred the said application to the Civil Court for its adjudication.

4. In the reference application, the claimant had claimed the compensation at the rate of Rs.250 per sq.ft. In order to substantiate the claim so raised by him, the claimant in addition to his oral testimony had brought on record four sale instances. No oral as well as documentary evidence was adduced on behalf of the respondents. The learned Reference Court after having assessed the oral as

well as documentary evidence brought on record before it by the claimant, determined the market value of the acquired land at the rate of Rs.52.50 per sq.ft and accordingly enhanced the amount of compensation.

5. According to the claimant, since the Reference Court also did not awarded the just and fair amount of compensation, he has preferred the appeal bearing First Appeal No.881 of 2015 seeking enhancement in the said amount of compensation. Whereas, according to the State, the Reference Court has determined the market value of the acquired land on higher side and the State has, therefore, preferred First Appeal No.552 of 2016 challenging the said order.

6. The learned AGP Shri A.M. Phule has assailed the impugned judgment and award on various grounds. The foremost objection as has been raised by the State Government is that the Reference Court has determined the market value of the acquired land, which is a large tract land ad-measuring 1H 66R on the basis of the sale instance pertaining to a small piece of land ad-measuring 2000 sq.ft. The learned AGP submitted that the Reference Court is not precluded from determining the market value of a large

tract land, even on the basis of sale instance pertaining to a small piece of land but in such case, the deduction has to be appropriately made in the market value received to a small piece of land while determining the market value of a large tract of land on the basis of the said sale-deed. The learned AGP submitted that in the present matter, the Reference Court has relied upon the sale instance at Exhibit-31, which pertains to a small plot ad-measuring 2000 sq.ft which was sold for the total consideration of Rs.1,00,000/- i.e. at the rate of Rs.50 per sq.ft. The learned AGP submitted that without making appropriate deductions the Reference Court has determined the market value of the acquired land at the rate of Rs.52.50 sq.ft. To support his argument, the learned AGP relied upon the judgment of the Hon'ble Apex Court in the case of ***"Union of India Vs. Dyagala Devamma and Ors, 2018 ALL SCR 2341"***.

7. Another objection which has been raised by the learned AGP pertains to inappropriate deductions by the Reference Court in the area of land acquired while holding the said land to be having N.A. potentials. The learned AGP submitted that the Reference Court must have deducted 1/3rd of the total amount of compensation towards the development charges. It was further argued by the learned

AGP that the Reference Court has also failed in not considering the fact that the entire acquired land was not sale-able even though N.A. permission was obtained for the said land. According to the learned AGP, towards the road and the open spaces for the public utility services, 1/3rd of the acquired land was liable to be utilized and as such, the sale-able area from the acquired land could only be to the extent of 2/3rd of the said land. The learned AGP submitted that the Reference Court has erred in applying the deductions in that regard only to the extent of 25%. The learned AGP in the circumstances, prayed for setting aside the impugned award and consequently to restore the award passed by the Special Land Acquisition Officer.

8. As against the submissions made by the learned AGP Shri Phule, the learned counsel Shri A.R. Rathod sappearing for the claimant submitted that in spite of sufficient evidence placed on record by the claimant, the Reference Court has failed in properly determining the market value of the acquired land. The learned counsel submitted that having regard to the object of the Land Acquisition Act to provide due and fair compensation to the owner of the land acquired for the public purpose, the Reference Court must have determined the market value of

the acquired land on the basis of the sale instance which is more favourable to the claimant. The learned counsel submitted that in the instant matter, the claimant had brought on record the sale instance at Exhibit-37 wherein, the land which was the subject matter of the said sale-deed was sold at the rate of Rs.100 per sq.ft. that too in the year 1998. The learned counsel further pointed out that another sale instance was brought on record by the claimant at Exhibit-36 wherein, the market value was received to the land involved in the said sale instance at the rate of Rs.66 per sq.ft. The learned counsel further submitted that the Reference Court has also manifestly erred in deducting 25% of the total amount of compensation towards development charges.

9. The learned counsel placing reliance on the judgment of the Hon'ble Apex Court in the case of ***"Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) by Lrs and Ors Vs. Special Land Acquisition Officer and Ors, (2012) 7 SCC 595"*** and more two judgments of the Hon'ble Apex Court first in the case of ***"Kasturi and Ors Vs. State of Haryana, (2003) 1 SCC 354"*** and the other in the case of ***"Trishala Jain and Anr Vs. State of Uttaranchal and Anr, (2011) 6 SCC 47"***, submitted that,

when the acquired land falls in the fully developed area, the deductions may not be more than 10% towards the development charges. The learned counsel, in the circumstances, prayed for adequate enhancement in the amount of compensation.

10. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties in both these appeals. I have perused the impugned judgment and the evidence on record. It is not in dispute that the respondents i.e. the acquiring body and the State Government did not adduce any oral or documentary evidence before the Reference Court. While deciding the reference application, the only evidence which was before the Reference Court was the oral testimony of the claimant and the four sale instances brought on record by him. In the circumstances, it is evident that on the basis of the evidence, which was available on record as aforesaid, the market value of the acquired land was liable to be determined.

11. The acquired land is situated at village Chakur and was acquired for the purpose of construction of the Industrial Training Institute at Chakur. In the award passed

by the SLAO under Section 11 of the Act, the SLAO had observed that the acquired land is adjacent to the city limits of village Chakur and is at shorter distance from the Latur Road. It is further observed that the area wherein the acquired land is situated is fully developed area and the lands around the acquired land are already converted for non-agricultural purposes and the plots are laid in the said lands. The SLAO has also noted that the portion in front of the acquired land has already been acquired for the MIDC and small industrial units have already started functioning therein. It is also mentioned that the area around the acquired land is developed and there are hotels and constructed houses.

12. As noted herein-above, the claimant had claimed the compensation at the rate of Rs.150/- per sq.ft. Total four sale instances were brought on record by the claimant in order to support his claim in addition to his oral testimony as about the quality and location of the acquired land. The sale-deed at Exhibit-36 was pertaining to Grampanchayat House No.97 ad-measuring 1200 sq.ft and the same was sold by the registered sale deed executed on 05.12.1997 for the consideration of Rs.80,000/- i.e. at the rate of Rs.66/- per sq.ft. The land which was the subject matter of Exhibit-

37 was an open plot ad-measuring 1000 sq.ft. and it was sold for the consideration of Rs.1,00,000/- i.e. at the rate of Rs.100 per sq.ft. vide the registered sale-deed executed on 13.08.1997. Exhibit 38 was the sale-deed pertaining to an open plot of 2000 sq.ft. and it was sold on 09.02.1999 for the price of Rs.1,00,000/- i.e. at the rate of Rs.50/- per sq.ft. The plot ad-measuring 2000 sq.ft was the subject matter of Exhibit-39 and the same was sold on 11.06.1999 for the value of Rs.1,00,000/- i.e. at the rate of Rs.50/- per sq.ft. According to the claimant, the plots and the lands which were the subject matter of the aforesaid sale-deed were in the vicinity of the acquired land and as such, the market value of the acquired land was liable to be determined on the basis of the said sale instances.

13. It was the assertive contention of Shri Rathod, the learned counsel appearing for the claimant that the sale instance wherein the highest price is received to the property involved therein has to be considered while determining the market value of the acquired land. In this background, it was claimed by Shri Rathod that the Reference Court must have determined the market value of the acquired land at the rate of Rs.100/- per sq.ft and not less than that. As against it, as noted earlier, according to

the learned AGP the market value of the acquired land could not have been determined on the basis of the sale instances brought on record by the claimant since, all were pertaining to the small areas. The State has placed reliance on the judgment of the Hon'ble Apex Court in the case of 'Union of India Vs. Dyagala Devamma and Ors' (cited supra), to canvass the proposition that, if the market value of a large tract of land is to be determined on the basis of the small plot, the deductions must be at 50%.

14. The Reference Court has relied upon the sale-deed at Exhibit-39 which was executed on 11.06.1999. Having regard to the fact that the subject land was acquired on 08.02.2001, the sale-deed at Exhibit-39 was most proximate in time. The plot ad-measuring 2000 sq.ft was the subject matter of the sale-deed at Exhibit-39 which was sold at the rate of Rs.50 per sq.ft. Reliance was also placed by the learned AGP on the sale-deed at Exhibit-38 which was executed on 09.02.1999 i.e. within the period of one year of issuance of Section 4 notification wherein also the land involved had earned the price of Rs.50/- per sq.ft. In view of the judgment of the Hon'ble Apex Court in the case of 'Union of India Vs. Dyagala Devamma and Ors' (cited supra), according to the learned AGP, the market value of

the acquired land was therefore liable to be fixed at the rate of Rs.25/- per sq.ft i.e. half of the value which was received to the small plots ad-measuring 2000 sq.ft and 1000 sq.ft respectively.

15. I am, however, not convinced with the argument so advanced by the learned AGP. During the course of his argument, the learned counsel Shri Rathod had relied upon the judgment of the Hon'ble Apex Court in the case of 'Trishala Jain and Anr Vs. State of Uttaranchal and Anr' (cited supra). The Hon'ble Apex Court in Para 33 of the said judgment has quoted certain paragraphs from the earlier judgment of the Hon'ble Apex Court in the case of "***Bhagwathula Samanna Vs. Tahsildar & Land Acquisition Officer, (1991) 4 SCC 506",*** to the effect that "The proposition that large are of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the large tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value

for purpose of comparison is not warranted.” In the present matter, as has been noted by me herein-above, in the award passed by the Special Land Acquisition Officer under Section 11 of the Act itself, it has been noted that the acquired land is in the fully developed area and the lands around the acquired lands are already converted for N.A. use and plots are laid in the said lands. In the circumstances, according to the observations made by the Hon'ble Apex Court referred to herein-above, it does not appear to me that the Reference Court has committed any error in determining the market value of the acquired land on the basis of the sale-deed at Exhibit-39.

16. The next question arises whether, the deductions made by the Reference Court of 25% of the market price of the acquired lands towards the development charges is sustainable? The rival submissions are made in this regard on behalf of the claimant and the acquiring body. According to the claimant, deductions could not have been more than 10% of the total amount of compensation whereas, according to the acquiring body, it should not have been less than 33.33%. Both the propositions are liable to be rejected. First of all, it has to be stated that there is no such universal formula as about the deductions to be made

towards the development charges or for the other purposes while determining the market value of acquired land. Each case has certain distinguishing features and it has to be decided on its own merits.

17. As has been held by the Hon'ble Apex Court in the case of 'Kasturi and Ors Vs. State of Haryana' (cited supra), “It is well-settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3 amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for the residential or commercial purposes.” Applying the said criteria, the learned Reference Court has directed the deduction of 25% of the total amount of compensation towards the development of the acquired land. It appears to me that no error has been committed by the Reference Court in directing the deductions at the aforesaid rate.

18. After having considered the entire material on

record, in light of the authorities cited by the parties, it does not appear to me that any indulgence is required in the impugned judgment and award. The learned Reference Court has passed a well reasoned order on the basis of the evidence which was brought before it. There is no scope for causing any modification in the award so passed. Neither the claimant has made out any case for enhancement in the amount of compensation, nor there is any merit in the appeal filed by the State seeking modification of the impugned award alleging the same to be on higher side. Both the appeals, therefore, fail and are accordingly dismissed. The amount of compensation, if any, deposited by the acquiring body in this Court is permitted to be withdrawn by the claimant with interest accrued thereon.

(P.R. BORA, J.)

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