IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.831 OF 1995

The State of Maharashtra (through the Special Land Acquicity Officer, Scar No.II, Nashik. …Appellant

Versus

Pandharinath Tukaram Medhane and Ors. ...Respondents

…..

Mr. A.R. Patil, AGP for the Respondent-State.
None for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 7th MARCH, 2019.

P.C.:-

. The Appellant has challenged the judgment and award dated 17/12/1993 passed by the learned Additional District Judge, Nashik in Land Reference No.176 of 1987.

2. The Respondents were the owners of land under Gut No.637 admeasuring 2 H and 52 R in village Lohner. The said land was acquired for the purpose of construction of percolation tank at Satwaichiwadi. The notification under Section 4 of the Land Acquisition Act was issued on 2/2/1983 and the same was published in the Government Gazette on 3/3/1983. The award was made by the

Special Land Acquisition Officer (SLAO) on 14/10/1985 fixing the market value of land to Rs.13,400/- per hectare. Dissatisfied with the quantum of compensation, the respondents made a reference under Section 18 of the Land Acquisition Act.

3. The Reference Court after considering the documentary as well as the oral evidence adduced by the parties, enhanced the compensation to Rs.30,000/- per hectare. Being aggrieved by this judgment and award the State has preferred this appeal.

4. Heard Mr. A.R. Patil, the learned AGP for the Appellant-State. I have perused the records.

5. The records indicate that the acquired land was Jirayati land situated in village Lohner. The evidence adduced by the Respondents i.e. original Claimants clearly indicate that the said land is at a distance of about 10 kms from Satana Town. The evidence on record further indicates that there is a sugar factory and Nashik District Co-operative Spinning Mill located within a radius of 1 to 2 kms from village-Lohner.

6. The respondent has claimed that the market rate of the acquired land was between Rs.40,000/- to Rs.50,000/- as on the date of notification. In support of his claim, the respondents / claimants has relied upon the sale deed dated 02/02/1984 (Exhibit – 21) in respect of the land admeasuring 2H and 90 R situated at a distance of about one kilometer from the acquired land at the rate of Rs.67,000/- per hectare. The second sale instance (Exhibit – 75) is of the year 1953 in respect of 0.49.3 R purchased for Rs.34,000/- per hectare. The Reference Court took the mean of both the sale deeds and fixed the price at Rs.34,000/- per hectare.

7. In ***Anjani Molu Dessai vs State Of Goa & Anr [(2010) 13 SCC 710],*** the Apex Court has held that :-

> *" 13. The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered. Where however there are several sales of similar lands whose prices range in a narrow bandwidth, the average thereof can be taken, as representing the market price. But where the values disclosed in respect of two sales are markedly different, it can only lead to an inference that they are with reference to dissimilar lands or that the lower value sale is on account of under-valuation or other price depressing reasons. Consequently averaging can not be resorted to."*

8. These principles are reiterated by the Apex Court in ***Kapil Mehra***

and ors. v/s. Union of India and Anr. [(2015) 2 SCC 262]. In the light of above principles, the Reference Court has erred in taking average of the sale price of the two sale instances i.e. Exhibit 21 and Exhibit – 75.

9. It is a settled principle that the sale price has to be determined on the basis of the bonafide sale transaction proximate to the point of time and location, possessing similar advantages and having similar potentiality. In the instant case, the sale deed at Exhibit – 21 is a post notification sale transaction. The said sale was executed almost a year after publication of Section 4 notification and hence, would not be a correct indicator of the prevailing rate as on the date of notification. Whereas the sale deed at Exhibit – 77 which is a bonafide sale transaction is in respect of the land situated in the vicinity of the acquired land. The said sale transaction is in close proximity of time and is a comparable instance and hence can be relied upon to determine the market rate of the acquired land as on the date of the notification. The said sale instance at Exhibit-77 shows that market rate of the land in the vicinity was Rs.34,000/-. The Reference Court has fixed the market rate of the acquired land at Rs.30,000/- per sq. meter. Considering the advantages and disadvantages of the sale deed

land viz.a.viz. the acquired land, in my considered view, the market rate determined by the Reference Court cannot be said to be excessive. Hence, there is no reason to interfere with the rate fixed by the Reference Court.

10. Under the circumstances appeal is dismissed. Compensation deposited by the Appellant is ordered to be paid to the respondents as per the award, if the same is not already paid.

(SMT. ANUJA PRABHUDESSAI, J.)