

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.580 OF 1996**

The State of Maharashtra through  
Special Land Acquisition Officer,  
Metro Centre No.1, Motibazar,  
Station Road, Than ...Appellant

Versus

Lalchand Chango Madhavi, adult,  
Res. At Khairane Pade, Bomkode,  
Post Turbhe, Thane, New Bombay. ...Respondent

.....

Mr. Yogesh Dabke, AGP for the Appellant -State.  
Mr. D.S. Mhaispurkar with Mr. S.M. Mangaonkar, i/b. Ms V.S.  
Mhaispurkar for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**

**DATED: 14<sup>th</sup> OCTOBER, 2019.**

**ORAL JUDGMENT:-**

The Appellant-State has challenged the judgment and award dated 15<sup>th</sup> December, 1992, passed by the Land Reference Court, Thane in Land Acquisition Reference No.144 of 1988.

2. The brief facts leading to this appeal are as under:-

The land owned by the Respondent admeasuring 1391 sq. meters along with structures and trees from survey no.225/3 of Village Khairane came to be acquired for New Bombay Project. The

notification under Section 4 of the Land Acquisition Act, 1894 was published in the Government Gazette dated 10<sup>th</sup> October, 1968. This was followed by a notification under Section 6 published on 23<sup>rd</sup> July, 1971. The Land Acquisition Officer passed an award on 21<sup>st</sup> April, 1986 and awarded compensation @ Rs.6/- per square meter in respect of the land, Rs.22,374/- in respect of the structures and Rs.290/- for trees, along with statutory benefits.

3. The Respondent accepted the compensation under protest and sought reference under Section 18 of the Land Acquisition Act. The Respondent claimed enhanced compensation in respect of the land @ Rs.25/- per square meter, Rs.51,000/- towards structures, Rs.2000/- towards trees and Rs.40,000/- towards loss of income from poultry and dairy business. The Respondent thus claimed total compensation of Rs.1,20,000/-.

4. The Reference Court relied upon the judgment in L.R. No.14/1985 (Exhibit - 13) and L.R.No.8/1985 (Exhibit-12) to determine the market rate of the land at Rs.14/- per square meter. The Reference Court also awarded additional compensation of Rs.12,226/- towards structures and Rs.15,000/- for loss of business.

The Reference Court has enhanced the compensation towards the trees from Rs.290/- to Rs.2,500/-. The Reference Court has further held that the Respondent was compelled to shift his residence and business because of the acquisition and hence awarded Rs.10,000/- towards shifting and transportation charges.

5. Mr. Yogesh Dabke, the learned AGP submits that the market rate of the land determined by the Reference Court is highly excessive. Relying upon the decision of this Court in First Appeal No.940/1990 and 941/1990, he submits that this Court has determined the market rate of the land at Village Pavne at Rs.13/- per sq. mtrs. He submits that the acquired land is situated at a distance of about 2km from village Pavne, and as such the market rate of the acquired land could not have been more than Rs.13 per sq. meter. He therefore contends that the Reference Court was not justified in awarding compensation @ Rs.14/- per square meter. He also submits that the Reference Court has enhanced the compensation in respect of the suit structures without there being any evidence.

6. The learned counsel for the Respondent submits that the land from Village Sanpada was also acquired under the same

notification and that by judgment dated 4<sup>th</sup> April, 2006 in First Appeal No.1201 of 1989 and other connected appeals this Court has fixed market rate @ Rs.15/- per square meter. The learned counsel for the Respondent submits that considering the fact that several industries had come up in the vicinity of the acquired land, the Reference Court was justified in granting compensation @ Rs.14/- per square meter.

7. He further submits that the Reference Court has taken note of the fact that the acquired structures were built in burnt brick and cement and considering the nature of the structures, the Tribunal has enhanced compensation by Rs.12,226/-. He submits that the impugned judgment and award does not warrant interference.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. There is no challenge to the enhancement of compensation in respect of the trees or the compensation awarded towards shifting and transportation. The challenge in this appeal is mainly to the market rate of the land and compensation awarded in respect of the subject structures. The evidence on record clearly indicates that the acquired land is situated at village Khairne, which is at a distance of

7.8 kms from Thane, which is undisputedly a developed city. It is in the evidence that the acquired land is adjacent to Thane Belapur Road. All other amenities such as electricity and water supply, schools, public transport, etc were available in and around the acquired land. The evidence on record further indicates that since 1964 several factories such as Indian Aluminium Company, PIL, NOCIL, Standard Alkali, etc. have been set up in the vicinity of the acquired land.

10. Undisputedly, large tract of land from village Turbhe, Pavne and Khairne were acquired for the same public purpose. The evidence on record indicates that the land from Village Pavne was acquired for the same purpose and notification in respect of the said acquisition was issued on 4.2.1970. In Land Reference No.8/1985, the Reference Court had determined the market rate of the land at village Pavne at Rs.13/- per sq. mtr. The said rate has been confirmed by this Court in First Appeal Nos.941/1990 and 942/1990.

11. It is also on record that the land situated at Sanpada was also acquired for the same purpose by the same notification dated 10<sup>th</sup> October, 1968 as in the present case. Considering the location and potentiality of the said land and relying upon the judgment in Land

Reference No.3/1987 in respect of the land acquired from village Turbhe, the Reference Court had enhanced the compensation @ Rs.15/- per square meter. The said award has been confirmed by this Court in First Appeal No.1201/1989 and other connected appeals.

12. It is in evidence that the acquired land is at a distance of 2 km from Village Turbhe. It is also in evidence that the acquired land is closer to Thane which is a developed City. Furthermore, the evidence of the Respondent indicates that since 1964 several industries have been set up in village Khairne. There is no cross-examination on this aspect. Hence, the acquired land had better potentiality as compared to the lands at Pavne. Considering the nature, location as well as the potentiality of the acquired land, the Reference Court was justified in fixing the market rate @ Rs.14/- per square meter. The impugned judgment and award to that extent needs no interference.

13. The impugned judgment and award indicates that there were two residential chawls, admeasuring 666.69 sq.ft and 632.69 sq.ft, a stable and godown of 997.67 sq. ft, a poultry of 318.93 sq.ft, a plinth area of 759.87 sq.ft, a well and a pump house in the acquired land. The Land Acquisition Officer has awarded total compensation of

Rs.22,374/- in respect of all these structures. Taking note of the fact that the said structures were constructed with burnt bricks and had cement masonry walls, the Reference Court has enhanced the compensation in respect of these structures from Rs.22,374/- to Rs. 34,600/-. The difference in compensation is barely Rs.12,226/- and would not warrant any interference.

14. The Reference Court has also considered the fact that the Respondent was conducting poultry as well as dairy business in the acquired land and on this count, the Reference Court awarded Rs.15,000/- towards loss of business. It is well settled that estimation of market rate or compensation depends largely upon evaluation of many imponderables and involves to some extent conjecture and guess work. Considering the above, I am not inclined to interfere with the compensation awarded towards loss of business.

15. Under the circumstances and in view of discussion supra, the Appeal is devoid of merits and hence dismissed with no order as to costs.

**(SMT. ANUJA PRABHUDESSAI, J.)**

**Megha  
Parab**

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by Megha Parab  
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