

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

FIRST APPEAL NO. 52 OF 1988

Smt. Kamalabai Bhaskar Mule
(since deceased through legal heirs)
& Ors.

..Appellants

v/s.

Special Land Acquisition Officer (No.1),
Nashik & Ors.

..Respondents

Mr.M.S.Lagu for the Appellant.

Mr. Yogesh Dabke AGP for the State-Respondent No.1.

Mr.P.B.Shah i/b. Mr. Kayval P.Shah for the Respondent No.2-Acquiring
Body.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
RESERVED ON : 03.10.2019
DATED : 29th JUNE, 2020.**

JUDGMENT.

1. The Appellants have challenged the Judgment and Award dated 26.01.1987, whereby the learned Joint District Judge, Nashik has dismissed the Land Reference No.169 of 1982, filed under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act').

2. The subject matter of the reference is the land under Survey No.673

sub divisions 1 to 54 admeasuring 66 Hectares 4 Ares, at Nashik. The said land shall be hereinafter referred to as the acquired land. The acquired land was originally owned by Kamalabai Bhaskar Mule, now represented by her legal representatives, who shall be hereinafter referred to as the claimants,. The said land was acquired for a public purpose, namely construction of School, College, Hospital Building, Staff Quarters, Playground, by the Maratha Vidya Prasarak Samaj, Nashik pursuant to Notification under Section 4 (1) of the Act published in the Official Gazette dated 5.10.1972. By Award dated 20.7.1982, passed under Section 11 of the Act, the Special Land Acquisition officer determined the market value of the land at the rate of Rs.60,000/- per hectare. The Land Acquisition Officer also awarded compensation of Rs.24,400/- towards value of the trees and Rs.500/- towards value of the well. Being dissatisfied with the quantum of compensation awarded by the Land Acquisition Officer, the claimants sought reference under Section 18(1) of the Land Acquisition Act.

3. The claim was premised on the basis that the Land Acquisition Officer has undervalued the acquired land, which is situated in a developed locality. The layout in respect of the acquired land was sanctioned in the year 1966 under T.P. Scheme No.II and the acquired land was suitable for construction purpose. It is the case of the claimants that the market rate of

the acquired land as on the date of Section 4 notification was not less than Rs.50/- per sq. meter. The Claimants have further claimed compensation of Rs.5000/- for the structure existing in the acquired land, Rs.57,000/- and Rs.20,000/- towards the value of the trees and the well and Rs.2000/- towards value of the compound wall. In addition, the Claimant also sought compensation of Rs.25,000/- as damages for diminishing profits of the land. The claimants relied upon sale transactions at Ex. 39, 40, 43, 50 and 52 and adduced oral evidence to justify their claim for enhanced compensation.

4. The Respondent No. 3 also adduced documentary and oral evidence to justify the valuation made by the Land Acquisition Officer.

5. By impugned judgment and Award dated 26.1.1987, the Reference Court dismissed the reference mainly on the ground that the sale transactions relied upon by the claimants are not comparable instances. The Reference Court has observed that the sale instances are in respect of plots of land in a well-developed residential locality whereas the acquired land was uneven, prone to get submerged during rains and not suitable for construction. Relying upon Agreement for Sale dated 2.5.1969 in respect of the same land and sale transaction dated 16.7.1966 the Reference Court held that the value of the land determined by the Land Acquisition Officer

was just and reasonable. The Reference Court therefore rejected the claim for enhanced compensation. Being aggrieved by this Judgment and Award, the Claimants have filed this appeal under Section 54 of the Act.

6. On 17.7.2008, in the course of the hearing, the learned Counsel for the Respondent No.3 offered to pay to the Claimants a lump sum amount of Rs. 55,000/- over and above the amount already paid, subject to the condition that the claimants would not claim any other statutory benefit under the Act. The learned counsel for the Claimants accepted the offer. Hence, by Judgment dated 17.7.2008 the appeal came to be disposed of by consent, with directions to the Respondent No.3 to pay to the claimant lump sum compensation of Rs. 55,000/ within a period of eight weeks from the date of the order.

7. The claimants challenged the said judgment before the Hon'ble Supreme Court in Civil Appeal No. 8429-8430 of 2011 mainly on the ground that they had not instructed their counsel to accept the offer made on behalf of Respondent no.3. By Order dated 30.9.2011, the Hon'ble Supreme Court allowed the appeal, set aside the judgment dated 17.7.2008 and remitted the matter for fresh disposal after giving reasonable opportunity of hearing to the parties.

8. Heard learned Counsel for the respective parties. Mr. Lagu, learned Counsel for the Claimants submits that the Acquiring Body (Respondent No.3) had not filed its written statement before the Reference Court. Relying upon the decision of this Court in ***Central Bank of India vs. Sion Bakers and Confectioners Pvt. Ltd. 2008(3) Bom. CR 553*** he contends that the evidence adduced by Respondent No.3 without written statement was not admissible and hence could not have been relied upon.

9. Learned Counsel for the Claimants submits that the acquired land abuts the main Gangapur Road. Furthermore, the acquired land is situated in a developed locality with all infrastructural facilities available in and around the acquired land. The adjoining land was already acquired for construction of educational institution. He submits that the layout plan of Survey No.673 was sanctioned in the year 1966 and that the Claimants had already carved out 54 plots, which were suitable for construction purpose. He submits that the learned Judge has grossly erred in relying upon the report of site inspection, which was prepared about 5 years after taking of the possession. He submits that the learned judge has grossly erred in recording a finding that the major part of the acquired land is uneven, that the land is likely to be submerged in rainwater and further in holding that

the acquired land had no construction potentiality.

10. Learned Counsel for the claimants submits that Claimants had relied upon sale instances of the adjoining land to prove that the market rate of the land was between Rs.50/- to Rs.70/- per sq.meter. It is urged that the learned Judge has totally erred in relying upon the agreement for sale while rejecting sale transactions, which relate to similar plots situated in the close vicinity. The reasons spelt out for rejecting the sale instances are arbitrary and patently illegal. Learned Counsel contends that the learned Judge has failed to apply the relevant criteria in determining the compensation. In support of his contention, learned Counsel for the Claimants has placed reliance on the following judgments of the Apex Court in **(i) *Vithal Rao & Anr. vs. Special Land Acquisition Officer* (2017) 8 SCC 558; (ii) *Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona & Anr* (1988) 3 SCC 751; (iii) *Jai Krishan vs. State of Uttarakhand & Ors.* (2014) 12 SCC 164;**

11. Shri Shah, learned Counsel for the acquiring body submits that the Claimants had not added Respondent No.3- acquiring body as a party to the reference, though it was a proper party. He has relied upon the decisions of the Apex Court in **(i) *Agra Development Authority vs. Special Land***

Acquisition Officer & Ors (2001) 2 SCC 646; (ii) Neyvely Lignite Corporation Ltd. vs. Special Tahsildar (Land Acquisition) Neyvely & Ors. (1995) 1 SCC 221; (iii) Krishi Upaj Mandi Samiti vs. Ashok Singhal & Ors. 1991 Supp (2) SCC 419; (iv) Neelagangabai & Anr. vs. State of Karnataka & Ors. (1990) 3 SCC 617; and the judgment of this Court in Corporation of the City of Panaji vs. Deputy Collector (LA) & Land Acquisition Officer, Panaji & Ors. 2014(5) Mh.L.J. 27 to contend that the acquiring body has a right to participate in proceedings under Section 18 of the Act.

12. Learned AGP as well as learned Counsel for the Acquiring Body submit that the acquired land is towards the northern side of the Gangapur Road and is sandwiched between the said road and the bank of river Godavari. It is further stated that a nullah which emanates foul smell is passing through the acquired land. They further submit that the sale transactions relied upon by the claimants are in respect of the plots situated towards the southern side of Gangapur Road. They contend that the land towards the southern side of Gangapur Road is well developed and several buildings/ housing societies have come up in the said area. Whereas the acquired land was uneven and the major part was prone to get submerged in rainwater. Vehemently defending the Impugned judgment, they contend that

considering the location, nature and potentiality of the acquired land, the sale Deeds relied upon by the Claimants are not comparable instances and are not relevant for determining the market rate of the acquired land.

13. Learned AGP and learned counsel for Respondent No.3 submit that the agreement at Exhibit 81 amply proves that the Claimants had agreed to sell one of the plots of the acquired land at the rate of Rs.6.90/- per sq. meter. Relying upon the said agreement, the Land Acquisition Officer has determined the market rate of the land at the rate of Rs.6/- per sq. meter. They submit that the rate determined by the Land Acquisition Officer is reasonable and adequate. They also submit that the claimants have failed to prove the value of the tress, well and the structure was more than that awarded by the Land Acquisition Officer. They therefore contend that the appeal has no merits and is liable to be dismissed. Reliance has been placed on the decisions of the Apex Court in **(i) Land Acquisition Officer & Mandal vs. V. Narasaiah (2001) 3 SCC 530; and (ii) P. Ram Reddy & Ors. vs. Land Acquisition Officer, Hyderabad & Ors. (1995) 2 SCC 305;**

14. I have perused the records and considered the submissions advanced by learned Counsel for the respective parties. I shall first deal with the objections raised by Shri Shah, the learned Counsel for the Respondent

No.3 regarding non service of Notice under Section 50(2) of the Act.

15. It is not in dispute that acquisition was for the benefit of Respondent no.3, who was ultimately responsible for payment of compensation determined by the Land Acquisition Officer or the Reference Court as the case may be. It is well settled that the Authority for whose benefit the land is acquired is a person interested in the determination of proper compensation. Such interested person has right to participate in acquisition proceedings before the Land Acquisition Officer as well as the Reference Court and adduce evidence to defend the Award or rebut the evidence adduced by the Claimant. Such right carries with it right to be served with notice under Section 50 (2) of the Act. In this regard it would be advantageous to refer to the decision of the Apex Court in Neyveli Lignite Corpn. Ltd. (supra), wherein a three Judge Bench of the Apex Court has held thus:

"12. ... Therefore the consistent thread that runs through all the decisions of this Court starting from Himalayan Tiles case is that the beneficiary, i.e., local authority or company, a coop. society registered under the relevant State law, or statutory authority is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. It flows from it that the beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvass its correctness by filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the court and file the appeal

against the enhanced award and decree of the Civil Court under s.26 or of the judgment and decree under s.54 or is entitled to file writ petition under [Art.226](#) and assail its legality or correctness. When the award made under s. 11 of the Collector is vitiated by fraud, collusion or corruption, the beneficiary is entitled to challenge it in the writ petition apart from the settled law that the conduct of the collector or Civil Judge is amenable to disciplinary enquiry and appropriate action. These are very valuable and salutary rights. Moreover in the language of Order 1 Rule 10 CPC, in the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and effectual determination of binding just and proper compensation to the acquired land would be made. So it is concomitantly a proper party if not a necessary party to the proceedings under Order 1 Rule 10 CPC.. The denial of the right to a person interested is in negation of fair and just procedure offending Art. 14 of the Constitution.

16. In the case of **Smt. Kanak & Anr. v. U.P.Avas Evam Vikas Parishad And Ors. AIR 2003 SC 3894** the Apex Court has held thus:

" 31. It is not in doubt or dispute that no formal notice was served upon the respondent. A notice to a person, for whose benefit the land is acquired or who is responsible for payment of compensation amount, was mooted before the courts of law on the construction of Section 50 of the Land Acquisition Act. It was held that Sub-section (2) of Section 50 must be construed as conferring a right of notice to the local authority for whom at the stage of determination of the amount of compensation before the Collector as well as the - reference court. It is not in dispute that the respondent was not represented even before the Collector. In the aforementioned situation, this Court in *Gyan Devi (supra)* held:

"In other words the right conferred under Section 50(2) of the L.A. Act carries with it the right to be given adequate notice by the Collector as well as the reference court be-

fore whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority under Section 50(2) of the L.A. Act, can, therefore, be regarded as an Integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference court and has not suffered any prejudice on account of failure to give such notice."

32. It is not correct to contend that by reason of non-service of notice the respondent was not prejudiced. The exception carried out by this Court in the matter of service notice to the local authority is not only confined to its knowledge about the pendency of the acquisition proceedings before the Collector or the reference court but also any prejudice on account thereof. The said two conditions are to be read conjunctively and not disjunctively.

17. In the instant case, it is not in dispute that the Respondent No. 3 was not served with the notice under section 50 (2) of the Act. Nevertheless, Respondent No.3 appeared before the Reference Court and adduced evidence to prove that the rate offered by the Land Acquisition Officer was just and reasonable. Hence no prejudice has been caused to the respondent no.3 by reason of non service of notice. It is also pertinent to note that the Reference Court has dismissed the reference, which order is in favour of the respondent No.3. Having accepted the said award, the respondent no.3 now cannot allege that the proceedings are vitiated for non service of notice.

18. The next question is about the evidentiary value of the evidence adduced by the Respondent No.3 in the absence of the written statement. It is to be noted that in the case of Central Bank (supra), this court has followed the dictum of the Apex Court in ***Ram Sarup Gupta (dead) by L.Rs. v/s Bishun Narain Inter College and Ors. AIR 1987 SC 1242***, that :

'In the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is equally settled that no party should be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that the other party may not be taken by surprise.'

19. The question is whether these principles can be made applicable to the reference under section 18 of the Act. It is to be noted that section 18 (1) of the Act enables a person, who has not accepted the Award, to make a written application to the Collector to refer the matter to the Court when the objections relate to the measurement of the land, the amount of compensation, the person to whom it is payable and the apportionment of the compensation among the persons interested. Once the application meets the requirement of section 18, the Collector is enjoined to make a reference to the Court with all the information in writing, as indicated in sub-section (1) of Section 19. On receipt of the reference, Section 20 enjoins the Court

to have notices served on the applicant and all the persons interested in the objections, as indicated in Clauses (a) to (c) of Section 20. Section 21 restricts the inquiry in every such proceeding to a consideration of the interest of the persons affected by the objections. Section 53 makes all the provisions contained in Civil Procedure Code applicable to such proceedings so long as there is no inconsistency between the provisions of the Act and the CPC.

20. A plain reading of these provisions clearly indicates that the proceedings under section 18 come within the realm of the Court only by virtue of a reference made by the Collector. In the case of ***Rajmani vs. The Collector, Raipur (1996) 5 SCC 701***, the Apex Court has observed thus:

"It is settled law that the Statement under Section 19 in terms of the objection under Section 18 of the Act is not treated as a plaint. Upon service of the notice on the claimant or interested person he is treated to be a plaintiff and Land of conducting the proceedings as envisaged under Section 22 of the Act. they are entitled to be represented by counsel. On receipt of the application, it is the duty of the claimant and burden is always upon him, who seeks higher compensation to adduce evidence and prove in the Court that the compensation awarded by the Collector was inadequate and that the acquired lands possessed of higher value for award or the compensation to be just and adequate compensation. The Land Acquisition Officer is to rebut the evidence adduced by the claimant/interested person. The burden is always on the claimant. Ultimately, it is the duty and power of the Court to determine just and adequate compensation on relevant facts and law sitting in the arm chair of a prudent purchaser in an

open market.

21. It is thus well settled that the objections under section 18 and the statement under section 19 cannot be treated as a plaint or suit. As a consequence thereof strict rules of pleading as well as the consequences of non filing of the written statement as envisaged under Order VIII CPC would not be applicable to proceedings under section 18 of the Act.. In such proceedings, wherein objections are restricted to the quantum of compensation, burden is on the claimant to prove that the compensation awarded by the Collector is not reasonable and that the land possessed higher value. The beneficiary of the acquisition, though not entitled to seek a reference, has right to adduce evidence, which is restricted to and relevant for the purpose of determining the amount of compensation. Eventually, it is for the reference court to decide the value of the land as on the date of Section 4 notification.

22. Reverting to the facts of the case, the Award indicates that vide letter dated 30.3.1976, Respondent no.3 had informed the Land Acquisition Officer that the acquired land was full of thorny bushes. It was uneven and unfit for construction or cultivation. It is to be noted that being the beneficiary of the acquisition, Respondent No. 3 had statutory right to

participate in the proceedings before the Reference Court and lead evidence to defend the Award or to rebut the evidence adduced by the Claimants. Hence it was mandatory for the Reference Court to issue notice to the Respondent no.3. Despite non service of notice under Section 50(2) of the Act, Respondent No.3 participated in the proceedings. The Reference Court gave an opportunity to Respondent no.3 to adduce evidence without there being any objection on the part of the claimants. The evidence adduced by Respondent No. 3 was restricted to the facts relevant to determine the compensation, viz. the nature, location and potentiality and the value of the land. Since the evidence adduced by Respondent No.3 was consistent with the stand taken before the Land Acquisition Officer, there was no question of the Claimants being taken by surprise. The fact that the Claimants had allowed Respondent No. 3 to participate in the proceedings and further to adduce evidence without demur also indicates that there was no element of surprise. Having allowed Respondent No.3 to adduce evidence without protest, the Claimants cannot now complain that Respondent no.3 was not entitled to adduce evidence in the absence of the written statement.

23. The next and most crucial question for determination is whether the Reference Court was justified in holding that the market rate awarded by the Land Acquisition Officer was just and reasonable. Before adverting to

the facts of the case it would be advantageous to consider the decision in ***Vithal Rao & Anr. vs. The Special land Acquisition Officer (2017) 8 SCC 558***, wherein the Apex Court has reiterated general principles of law on the subject in question as under:

"25) Before we examine the facts of this case, it is necessary to take note of general principle of law on the subject which is laid down by this Court in several cases some of which were also cited at the bar by the learned counsel for the parties. Indeed, if we may say so, law on the several issues urged herein by the learned counsel for the parties is fairly well settled and what has varied is its application to the facts of each case.

26) In Chimanolal Hargovinddas vs. Special Land Acquisition Officer, Poona & Anr. (1988) 3 SCC 751, this Court dealt with the question as to how the Court should determine the valuation of the lands under acquisition and what broad principle of law relating to acquisition of land under the Act should be kept in consideration to determine the proper market value of the acquired land.

27) In Para 4 of the judgment, this Court laid down as many as 17 principles, which are reproduced below for perusal:

“(1) to (4).....

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of notifications under Section 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 Section 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. (Sometimes 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-à-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 thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of

the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

<i>Plus factors</i>	<i>Minus factors</i>
<i>1. smallness of size</i>	<i>1. largness of area</i>
<i>2. proximity to a road</i>	<i>2. situation in the interior at a distance from the road.</i>
<i>3. frontage on a road</i>	<i>3. narrow strip of land with very small frontage compared to depth</i>
<i>4. nearness to developed area</i>	<i>4. lower level requiring the depressed portion to be filled up</i>
<i>5. regulaqr shape</i>	<i>5. remoteness from developed locality</i>
<i>6. level vis-a-vis land under acquisition</i>	<i>6. some special disadvantageous factor which would deter a purchaser.</i>
<i>7. special value for an owner of an adjoining property to whom it may have some very special advantage</i>	

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a large tract or block of land of say 10,000 sq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately between 20 per cent to 50 per cent to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.”

28) These principles are invariably kept in mind by the Courts while determining the market value of the acquired lands (see also Union of India v. Raj Kumar Baghal Singh (Dead) Through Legal Representatives and Ors. (2014) 10 SCC 422).

29) In addition to these principles, this Court in several cases have also laid down that while determining the true market value of the acquired land and especially when the acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land. It has also been consistently held that at what percentage the deduction should be made vary from 10% to 86% and, therefore, the deduction should be made keeping in mind the nature of the land, area under acquisition, whether the land is developed or not and, if so, to what extent, the purpose of acquisition, etc. It has also been held that while determining the market value of the large chunk of land, the value of smaller piece of land can be taken into consideration after making proper deduction in the value of lands and when sale deeds of larger parcel of land are not available. This Court has also laid down that the Court should also take into consideration the potentiality of the acquired land apart from other relevant considerations. This Court has also recognized that the Courts can always apply reasonable amount of guesswork to balance the equities in order to fix a just and fair market value in terms of parameters specified under Section 23 of the Act. (See Trishala Jain & Anr. Vs. State of Uttaranchal & Anr., (2011) 6 SCC 47)”

24. The issue raised in the appeal needs to be decided keeping in mind the aforesaid principles. It is not in dispute that the acquired land was a

non-agricultural land within Nashik City. Said land is included in Town Planning Scheme, Nashik No.2. The claimant (AW1) has deposed that the adjoining land was acquired for the purpose of construction of school and college. He contends that several buildings had already come up in and around the acquired land and that the acquired land had commercial and residential potentiality. He states that the market rate of the acquired land was around Rs.70,000/- to Rs.95,000/- per square yard. In support of his contention he has relied upon the following sale deeds :

Sr.No	Sale Deed Exh. No.	S. No.	Plot No.	Area	Date and consideration	Rate per sq. mtr.
1.	2.	3.	4.	5	6	7
1.	50	649-A-16	3	578 sq. mtrs	27-1-71 Rs.34,616/-	Rs.50/-
2.	39	656/1/1-B	10	470 sq. mtrs	15.2.71 Rs.28,100/-	Rs.50/-
3.	40	656/1/1-B	8	472 sq. mtrs	15.2.71 Rs.28250/-	Rs.50/-
4.	43	656/1/1-B	43	549.9. sq. mtrs	25.8.72 Rs.39,466	Rs.60/-
5.	52	659/1B	4	462 Sq. mtrs	12.2.71 20,601/-	Rs.44.06

25. The Claimants have examined AW2 Anant Wadalkar , AW3 Keshav Bharti and AW4 Gangaram Patel to prove the genuineness of the aforesaid sale deeds as well as location, nature and potentiality of the said sale deed plots. The evidence of these witnesses clearly reveals that these

sale deeds pertain to small developed plots situated towards southern side of Gangapur Road and are closer to Sharanpur Road. It is in evidence that the land near Sharanpur Road was well developed, wherein several housing societies/ residential colonies having all infrastructural amenities have come up. The Claimant Anil Mule has admitted in cross-examination that the land in close proximity to Sharanpur road was developed prior to 1965 and that the development was rapid after 1965. CW2 has also admitted that the plots relating to sale deed at Ex.39 and 40 are situated amidst a busy and posh locality. CW3 has also admitted that the sale deed land (Ex.50) is abutting Sharanpur Road with road frontage of about 100 yards. He has admitted that the said sale deed plot is situated in a prominent locality of Nasik City.

26. It is thus evident that the sale deed plots are small-developed plots located towards southern side of Gangapur Road. These plots are in the vicinity of Sharanpur Road, which is a posh residential locality with all infrastructural and other amenities like school, hospitals etc in close proximity. These developed plots were ideal for construction purpose. Whereas the acquired land is situated towards the northern side of Gangapur Road. CW3 has admitted that the land towards the northern side of Gangapur road was not developed at the same scale. Though the layout

in respect of the acquired land was sanctioned in the year 1966 under T.P. Scheme No.II, Cw1 has admitted that as on the date of the acquisition the plots and roads as per the sanctioned plans were not carved out. This evidence makes it manifest that as on the date of acquisition, no money was invested for improvement of the land for purposes of making it into a layout as per the sanctioned scheme. The evidence on record also indicates that there was no water supply, electricity connection and other existing civic amenities in and around the acquired land. The acquired land was also not in close proximity to residential or commercial area. The records thus indicate that the sale deed plots are more advantageously located and had better amenities and potential value as compared to the acquired land.

27. It is also an admitted fact that the acquired land is sandwiched between the Gangapur Road and the bank of river Godavari. CW4 has admitted that the acquired land is sloppy. The topography and geographical location of the land would support the contention of the Respondent no 3 that the major part of the acquired land along the bank of the river is prone to getting submerged during the rains. Cw4 has also admitted that a sewage and rain water nalla passes through the acquired land. This is a major disadvantageous factor, which would deter a prudent purchaser from purchasing such land for residential purpose and as a consequence reduce

the value of the land. The admission by CW1 that till the date of the acquisition he was unable to sell a single plot also leads to an inference that there was no demand for the land and there was no possibility of the immediate user of the land for residential purpose. There is thus dissimilarity concerning location, size, nature, and potentiality of the acquired land vis-à-vis sale deed land. As a result, the finding recorded by the learned Reference Court that the sale instances are not comparable instances can hardly be termed as erroneous or contrary to the settled principles of law.

28. It is pertinent to note that AW1 has admitted that by agreement for sale dated 2.5.1969 (Ex. 81) he had agreed to sell a portion of the same land, admeasuring 13 Acres 32 Guntas and 13 sq. yards to one MadhusudanDande for Rs. 30,000/ i.e. @ Rs. 6.90 per sq. mtr. CW1 has stated that the agreement could not be concluded into a sale because of the acquisition. The question is whether the agreement for sale which has not fructified into a sale is relevant to determine the market value of the land. In ***Special Land Acquisition Officer vs Sidappa Omanna Tumari And Ors. Et. 1995 Supp. (2) SCC 168*** three Judges Bench of the Apex Court has observed thus:

"The best evidence of the market value of the acquired land is afforded by a transaction of sale in respect of the very acquired land provided, of course, there is nothing to doubt the authenticity of Such transaction, as is held by this Court in Bangaru Narasingha Rao Naidu v. R.D.O., Vizianagaram, [1980] 1 SCC 75. The best evidence of market value of the acquired land could equally be afforded by a transaction of agreement to sell relating to the very acquired land, provided, of course, there arises absolutely no room for doubting the authenticity of such transaction.

29. It is thus well settled that an agreement for sale cannot be discarded solely on the ground that it does not create interest in the property as envisaged under section 54 Of the Transfer of Property Act, when such agreement is authentic/genuine, pertains to the very same land, and executed prior to publication of section 4 Notification. In the instant case, the claimant was admittedly a party to the agreement at Ex. 81, where under he had offered to sell part of the very same property at Rs. 6.90 per Sq.mtr. The agreement at Ex. 81, genuineness or authenticity of which is not in dispute, reveals that as in the year 1969, the market value of the said land was Rs. 6.90/ per sq.mtr. It is not the case of the Claimants that they agreed to sell the property at a rate lower than he market rate. There is no substantive evidence of rapid change in the condition of the land during the

intervening period resulting in appreciation of its value. There was no development in the vicinity, resulting in steep escalation of price from Rs. 7/- to Rs 50/-. Under the circumstances, the Reference Court was perfectly justified in rejecting the claim for enhanced compensation at Rs 50 per sq.mtr.

30. It is to be noted that the Reference Court has not relied upon the agreement at Ex.81 on a presumption that the Claimant had entered into the said agreement to forestall the acquisition process and or to create evidence to claim higher compensation. It is pertinent to note that the agreement was executed about three years prior to section 4 Notification. There is no direct or substantive evidence to indicate that as on the date of the agreement, the Claimants were aware that Respondent No.3 was interested in the said land or that the acquisition process was likely to be initiated at the instance of Respondent No.3. In the absence of such evidence, the Reference Court was not justified in drawing such presumption and in discarding the agreement, which reflected the prevailing rate.

31. It is to be noted that while dismissing the reference, the Reference Court has observed that the by deed of sale dated 16.7.1966 (Ex.84), the neighboring land was sold at the rate of Rs,2.63/ per Sq. mtr. Taking note of

the time gap between execution of the said sale deed and the acquisition and considering the rise in the price of land, the Reference court has held that the compensation offered by the Land Acquisition Officer is just and reasonable. As stated earlier, the best evidence of the market value of the property is the value reflected in the sale deed or agreement of sale of the very same property. It is only in absence of such decisive evidence that the market value is determined on the basis of comparable sale transactions. In the instant case, the agreement for sale reflected the true value of the land at about the time of its acquisition. The Reference Court was therefore not justified in discarding such decisive evidence and instead relying upon sale deed dated 16.7.1966 Ex. 84, in respect of a neighboring land.

32. Accordingly, considering the value of the land as reflected in the Agreement at Ex.81 and adding 10% per annum towards appreciation of value of the land from the date of the agreement till the date of notification, the market rate is fixed at Rs 10 per sq. mtr. So far as the claim for damages, and enhanced compensation, towards value of the structure, trees and well, there is no evidence forthcoming in support thereof. In the absence of any cogent material, there is no reason to interfere with the valuation as assessed by the Land Acquisition Officer.

33. Under the circumstances and in view of discussion supra, the appeal is partly allowed. The impugned Judgment is hereby set aside. The market rate of the acquired land is fixed at Rs.10 per sq. mtr. The difference in compensation along with other statutory benefits under the Act shall be deposited before the Reference Court within a period of three months from the date of the order.

Prasanna
P.
Salgaonkar

Digitally
signed by
Prasanna P.
Salgaonkar
Date:
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(ANUJA PRABHUDESSAI, J.)