

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 1007 OF 2014

1. The State of Maharashtra
Through The Collector, Wardha.
2. The Special Land Acquisition Officer,
(General), Collectorate Office,
Wardha, Tah and Dist-Wardha.
3. The Executive Engineer,
Public Works Division, Civil Lines,
Wardha, Tah and Dist-Wardha. **.. APPELLANTS**

...Versus...

1. Vinayakrao Arjunji Umate (Dead),
Thr. LRs
- 1-A Smt. Champabai Vinayakrao Umate,
(wife)
Aged about 75 years,
R/o. Civil Lines, Jail Road, Near
Church, Tah. and Distt. Wardha.
- 1-B Pradip Vinayakrao Umate (Son)
Aged about 57 years,
Plot No. 9, Mauli Darshan Building,
Flat No.1101, Sector 15, Kharghar,
Navi Mumbai, Pink Road 410210.
- 1-C Dilip Vinayakrao Umate (Son)
Aged about 54 years,
R/o Near Yamuna Lawn, Near
Adv.Ashok Pawde House,
Gopuri Chowk, Post Nalwadi,
Distt. Wardha.

1-D Anil Vinayakrao Umate (Son)

Aged about 42 years,
R/o in front of Varma Nursing Home,
Shehal Nagar, Sewagram Road,
Wardha.

1-E Kalpna Vinayakrao Umate (Daughter)

Aged about 48 years,
C/o Shri Vikas N. Potdukhe, D-27,
ONGC Nagar, Phase-1, Dhumas Road,
Magadhale, Surat, Gujrat. 394518.

1-F Mohan Vinayakrao Umate (Son)

Aged 45 years,
R/o Civil Lines, Jail Road,
Near Church, Tah. and Distt. Wardha.

1-G Varsha Vinayakrao Umate (Daughter)

Aged 40 years,
C/o Dr. Sanjay Devtale, B-34,
Vijayanand Society Narendra Nagar
Nagpur.

~~1-H Jeevan Vinayakrao Umate (Son)~~

~~Aged 36 years,
R/o Civil Lines, Jail Road,
Near Church, Tah. and Distt. Wardha.~~

**Deleted as per
Court's order
dated
31.08.2021.**

2. Jiwan Vinayakrao Umate,

Aged about 31 years, Occ-Cultivator,
R/o. Jail Road, Civil Lines, Wardha,
Tah and Dist-Wardha.

.. RESPONDENTS

Mrs. M.H. Deshmukh, AGP for the Appellants/State.
Shri K.R. Lule, Advocate for LR's of Respondent No. 1 & 2.

CORAM : PUSHPA V. GANEDIWALA, J.

DATED : 31st AUGUST, 2021.

ORAL JUDGMENT :-

On oral request made by Shri K.R. Lule, learned counsel for the respondents, to delete the name of respondent No.1-H from the array of the respondents, as his name is already on record as respondent No.2. Request is accepted. Learned counsel for the respondents has carried out the necessary amendment forthwith.

2. In this Appeal, the appellants-State have challenged the judgment and award dated 30.07.2012 passed by the Civil Judge, Senior Division, Wardha in L.A.C. No. 518/2007 wherein the learned Reference Court enhanced the compensation at the rate of Rs. 1200/sq. mtr. against the compensation at the rate of Rs. 59/sq. mtr. granted by the learned Special Land Acquisition Officer.

3. The facts in brief may be stated as under:

The land admeasuring 0.02 H.R. and 0.69 H.R. out

of Survey Nos. 33 and 34 respectively, owned by the respondents-claimants, situated at village Masala, Tah. and District Wardha came to be acquired by the Special Land Acquisition Officer for the construction of Wardha by-pass road. The Notification under Section 4(1) of the Land Acquisition Act, 1894 (“**the Act**”) was published on 13.01.2000. The award came to be passed on 17.05.2003. The Special Land Acquisition Officer awarded Rs. 4,40,727/- towards compensation for the acquired land @ Rs.5,90,000/- per hectare i.e. Rs. 59/per sq. mtr.

4. Being aggrieved and dissatisfied with the award of SLAO, the respondents/claimants filed a reference proceedings under Section 18 of the said Act and claimed compensation at the rate of Rs.1200 per Sq.mt. The appellants-State resisted the claim of the owners of the land in its written statement vide Exhibit-26 and supported the award passed by the learned SLAO.

5. Learned Reference Court framed necessary issues vide Exhibit-27 and recorded evidence as adduced by the

parties. The claimants examined Jeevan Vinayak Umate, appellant No.2 at Exhibit-9 and brought on record the following documents:

- (i) Copy of Award (Exhibit-11).
- (ii) Valuation of land (Exhibit-12).
- (iii) Statement of Well (Exhibit-13).
- (iv) Notice issued under Section 12(2) of the said Act (Exhibit-14).
- (v) Claim of the claimants before Special Land Acquisition Officer under Section 9(3) of the said Act (Exhibit-15).
- (vi) Sale instances (Exhibit Nos. 16 to 21) and
- (vii) N.A. order (Exhibit-35).

6. The appellants-State examined one Shailendra Mahadeorao Meshram, Deputy Collector, Land Acquisition, Wardha below Exhibit-31.

7. The learned Reference Court on the basis of oral and documentary evidence on record, allowed the reference proceedings and fixed the market value of the acquired land at the rate of Rs.1200 per sq.mt., and calculated compensation for 0.71 H.R. land at Rs.80,79,273/- with other statutory benefits and interest. This judgment and award of the reference Court is assailed in this appeal by the appellant-State.

8. I have heard Mrs. M.H. Deshmukh, learned AGP for the appellants State and Shri K.R. Lule, learned counsel appearing on behalf of the respondents claimants.

9. Mrs. Deshmukh, learned AGP on behalf of the State submits that the learned reference Court failed to appreciate the evidence in its correct perspective. The learned reference Court ought to have appreciated that the claimants have not filed any sale instance showing market rate at the rate of 1200 per sq.mt. and therefore, granting enhancement at the rate of 1200 sq.mt. is excessive and exorbitant in nature. Learned AGP urged to quash and set-aside the impugned judgment and award.

10. On the contrary Shri K.R. Lule, learned counsel appearing for the respondents/ claimants while supporting the judgment and award submitted that the land of the claimants is converted into non-agricultural use in the year 1993-94, and therefore, considering the value of the land and considering the material on record with regard to the location of the acquired land amid adjoining development, the learned reference Court has correctly fixed the market value @ of Rs. 1200 per sq.mt.

11. I have considered the rival submissions and gone through the record with the assistance of learned counsel for both the parties. The principles to determine the quantum of compensation are contained in Section 23(1) of the Act. The Court in fixing the amount has to take into consideration the prevailing market value of the land at the date of the notification under Section 4(1) and the said market value has to be determined by reference to the price which a willing seller might have reasonably expected for similar property from a willing purchaser. The underlying principle of fixing the market value with reference to comparable sales is to reduce the

element of speculation. In a comparable sale, the features are:

(i) it must be within a reasonable time of the date of notification under Section 4(1); (ii) it should be a *bonafide* transaction; (iii) it should be a sale of the land acquired or of the land adjacent to the land acquired; and (iv) it should possess similar advantages.

12. The Hon'ble Supreme Court in the case of *Printers House (P) Ltd. v. Saiyadan*, (1994) 2 SCC 133 at page 140, held that where there is evidence of sales or awards of land(s), which could be compared with the acquired land(s), the Court, as a matter of course, adopts the 'Comparable Sales Method of valuation of land', in preference to other recognised methods of valuation of lands, such as 'Capitalisation of Net Income Method' or 'Expert Opinion Method' for determining the market value of the acquired land(s). 'Comparable Sales Method' is the most favoured method, since the prices paid within a reasonable time in bona fide transactions of purchase or sale of the very acquired land or a portion thereof, or of the lands adjacent to those acquired and possessing similar advantages, could furnish to the court the 'price basis' for determination of the market

value of the acquired land, in that, there can be no better evidence of what the willing purchaser would pay for the acquired land if it had been sold in 'the open market at the time of publication of preliminary notification'.

13. It is not disputed that the land of the claimants admeasuring 0.69 H.R. land from survey No.34 and 0.02 H.R. land from survey No.33 have been acquired by the appellants-State for the construction of Wardha by-pass road. The total area of the lands of survey Nos. 34 and 33 are 2.48 H.R. and 2.60 H.R. respectively, situated at Village Masala, Tahsil and District Wardha.

14. The claimants have brought on record the sale deeds during the period between 1998 to 2000 whereby the claimants have sold some portions of these survey Nos. 33 and 34 during this period for the rates in between 400 to 500 per sq.mt. The details of these transactions are as under:

- i. Sold 146.37 sq.mtr. Land to Mr. Sanjay Shankarrao Dhongade vide sale deed dated 03/07/1997 for Rs.40,000/- (Rs.420/- per sq. mtr.)

(Exh.16).

ii. Sold 146.46 sq.mtr. Land to Ramdas Shamrao Bahirseth vide sale deed dated 06/08/1998 for Rs.45,000/- (Rs.420/- per sq. mtr.).

iii. Sold 151.04 sq.mtr. Land to Mr. Sanjay Wasudeorao Dhok vide sale deed dated 25/05/1999 for Rs.50,000/- (Rs.470/- per sq. mtr.) (Exh.17).

iv. Sold a plot to Pundalik Krushnaji Vairagade on 16/12/1999 vide registered sale deed for Rs.60,000/- (Rs.470/- per sq. mtr.) (Exh.18).

v. Sold 246.38 sq.mtr. Land to Mr. Ramu Hiralal Chhatre vide sale deed dated 07/11/2000 (Rs.500/- per sq. mtr.) (Exh.19).

15. Apart from the aforesaid sale deeds, there is absolutely no other material brought on record by the claimants justifying the rate of Rs.1200 per sq.mtr. A careful perusal of the impugned judgment to find out as to what inspired the learned Reference Court to adjudicate the rate at Rs.1200 per sq.mtr., I

am at loss to find out any convincing material in support of the said rates. Learned reference Court in paras 15 & 16 of the judgment observed that the SLAO has failed to consider the position of increase in Government value of N.A. land while determining compensation amount. It is further observed that Mouza Mhasala is at a distance of around 2 to 3 K.M. from Wardha City and it is known as part and parcel of the Wardha. It is further observed that it is clear from the evidence of claimants that, Wardha city, Sewagram Railway Station and Bus Stand are adjoining to Mhasala and it is further observed that prestigious persons of Wardha city are residing at Masala. Paras 15 & 16 from the impugned judgment is reproduced below :

“15. Thus, from above referred sale transactions it is clear that Govt. value of N.A. land is increasing day by day. As against this SLAO failed to consider this position of increase in Govt. value of N.A land while determining compensation amount. In my opinion mouza Masala is only at a distance of 2 to 3 K.M. from Wardha city and presently it is known as part and parcel of Wardha. It is clear from evidence of petitioners that, Wardha city, Sewagram Railway Station and Bus Stand are adjoining to Masala. It is further deposed that prestigious persons of Wardha city are residing

at Masala. Similarly, M.I.D.C. area, Civil Court, Government Offices, Medical College, Engineering College, Market etc. are at a short distance of 2 to 3 K.M. from Masala. Therefore, in my view after considering above facts and circumstances it is clear that market value of property located at Masala is increasing day by day.

16. It is pertinent to note that all the sale deeds filed on record at Exh.16 to Exh.21 are relating to N.A. property and from alleged sale deeds it is clear that, Government value of N.A property has increased day by day. On the basis of above referred sale deeds market value and importance of plots located at Masala can be easily gathered. Considering above reasons I am of the opinion that petitioners are certainly entitled to get enhanced market value at Rs.1200 per square meter for their acquired land admeasuring 7100 square meter. Why SLAO refused to grant market value to acquired property on the basis of per square meter no valid reasons are given either in the affidavit evidence Exh.31 or in the written statement. So also on which basis SLAO refused valuation of acquired property on the basis of per square meter nothing is explained. Therefore I have no reasons to disbelieve and to discard the case made out by petitioners on the basis of bulky documentary evidence.”

16. The aforesaid observations regarding development are made on the basis of evidence on affidavit of the claimants' witness as if it is a gospel truth. There is absolutely no material to justify the rate at Rs. 1200/- sq. mtr. There was no reason for the learned Court below to enhance the rate directly at the rate of 1200/- per sq. mtr. The claimants claimed Rs. 1200/- per sq. mtr. and the same rates has been awarded by the Reference Court without any demure and any supporting material.

17. Interestingly, just prior to one month of the publication of the notification under Section 4 (1) of the Act in the present case, the claimants had sold some portion of their lands from the aforesaid survey numbers on 16.12.1999 at the rate of Rs. 470 per sq.mtr. Even the claimants have brought on record two sale deeds of their lands which were sold post-notification period, i.e., 07.11.2000 and 22.03.2001, at the rate of Rs.500 per sq.mt. and Rs.550 per sq.mt. respectively, which indicates that even after publication of notification for the acquisition of the lands from Masala village, there is no considerable increase in prizes of the lands.

18. The claimants have produced the sale instances which are just prior to the issuance of notification under Section 4 (1) of the Act, that too for the non-agricultural land which is part of the same survey numbers owned by the claimants. In the opinion of this Court the sale instance of 16.12.1999 is the best sale instance depicting the true market value of the acquired property at the time of issuance of notification under Section 4(1) of the Act. The learned reference Court, without any concrete material on record and only because the claimants in their affidavit have stated about development in the vicinity of Village Masala, the rate of Rs. 1200 per sq.mt., came to be fixed as against Rs.59 per sq.mt. which was granted by the learned SLAO. In the considered opinion of this Court, the learned reference Court has failed to appreciate the comparable sale instance which has been brought on record by the claimants, which, according to me, is the most comparable sale instance to determine the market price of the acquired land at the time of issuance of Section 4 (1) of the notification.

19. For the reasons aforestated, the rates fixed by the learned Reference Court in the impugned judgment cannot be

sustained and deserves to be modified. Hence, I pass the following order :

ORDER

- (1) The Appeal is **partly allowed**.
- (2) The appellant Nos. 1, 2 and 3 are jointly and severally directed to pay the compensation at the rate of Rs.470/- per sq.mt. for the land 0.71 H.R. out of survey Nos. 33 and 34, Village Masala, Taluqa and District Wardha with statutory benefits and interest.
- (3) It is informed that the decree has already been satisfied before the Execution Court in R.D. No. 141/2012. The respondents claimants are directed to refund the excess amount over and above the decretal amount in terms of this order with interest at the rate of 6% per annum from the date of withdrawal till the date of this judgment within a period of three months, and thereafter, at the rate of 9% per annum till the date of deposit. No costs.

JUDGE