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

FIRST APPEAL NO.1117 OF 2019

Appellant : **Assistant Director, Town Planning,**
(Original Respondent No.1) Spl. Planning Tribunal (MHADA),
Chandrapur.

-- Versus --

Respondents : 1] **Kirti Vijay Jadhao,**
(Original Applicant) Aged about 49 Years, Occ : Agriculture & Business,
R/o Mangilal Plots, Camp, Amravati,
Tah. & Dist. Amravati.

(Original Respondent No.2) 2] **The State Government of Maharashtra,**
Through Collector, Chandrapur.

(Original Respondent No.3) 3] **The Sub-Divisional Officer & Land Acquisition Officer,**
Chandrapur.

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Shri P.N. Kothari, Advocate for the Appellant.
Shri S.S. Shingane, Advocate for Respondent No.1.
Shri M.A. Kadu, A.G.P. for Respondent Nos.2 & 3.
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CORAM : **SMT. ANUJA PRABHUDESSAI, J.**
RESERVED ON : **21st JANUARY, 2021.**
PRONOUNCED ON : **12th MARCH, 2021.**

JUDGMENT :-

Heard finally with consent at the stage of admission.

02] The Appellant herein has challenged the judgment and award, dated 12/02/2019 passed by learned Joint Civil Judge (Senior Division), Chandrapur in L.A.C. No.10/2011.

03] The brief facts necessary to decide this appeal are as under :

Respondent No.1 was the owner of land under Survey No.19/2 of village Padoli, District Chandrapur. The Appellant, the Special Planning Authority for the Development of New Chandrapur City, had prepared development plan for the development of city of Chandrapur, which was approved by the State Government. The land under Survey No.19/2, was covered under the development plan. Respondent No.1 sought permission of the Appellant to develop the said land, and entered into an agreement, dated 28/02/2003 to develop the said land. In terms of Clause-2 of the said agreement, Respondent No.1 agreed to keep open the land for 9 metre wide road and to deliver possession of the said road to the Appellant free of costs. As per the agreement, the Appellant was required to construct 24 metres wide road on the said land. The said land was converted to non-agricultural use as per the order of the Collector, dated 01/12/2003

04] The Appellant issued notification under Section 6 of the Land Acquisition Act, 1894 (hereinafter shall be referred to as the "Act" for short) on 10/05/2010 for acquiring 1575 square metres of land under Survey No.19/2 for construction of DP Road. The Land Acquisition Officer passed award on 16/04/2011 and awarded compensation of Rs.555/- per square metre to Respondent No.1 in respect of the said portion of land.

Being aggrieved by the quantum of compensation, Respondent No.1 sought reference before the Civil Court, which came to be registered as L.A.C. No. 10/2011. Upon considering the evidence adduced by the respective parties, learned Judge, mainly relying upon the Sale-Deed dated 27/05/2005 in respect of the same property enhanced the compensation at the rate of Rs.2,231/- per square metre. Being aggrieved by this judgment and award, the Appellant has filed this appeal under Section 54 of the Act.

05] Shri P.N. Kothari, learned Counsel for the Appellant submits that the Reference Court has committed grave error in relying upon the Sale-Deed at Exh.38, which pertains to the plot having construction potentiality, while the land under acquisition was a strip of land, which had no such potentiality. Learned Counsel for the Appellant, therefore, submits that the sale instance at Exh.38 was not a comparable instance and that the Reference Court could not have determined the market value of the acquired land on the basis of the said sale instance.

06] Shri S.S. Shingane, learned Counsel for Respondent No.1 submits that the sale instance relied upon by Respondent No.1 is in respect of the same property. It is well settled that the sale instance in respect of the same property is the best evidence for the purpose of determining the market rate. Learned Counsel for Respondent No.1

further submits that the acquired land forms part of bigger land under Survey No.19/2, which had construction potentiality and, hence, the learned Judge has not committed any error in determining the market rate of the land on the basis of the sale instance in respect of the same property. In support of his submissions, he has placed reliance upon the several decisions, which can be briefly summarized as under :

- *In Mehrawal Khewaji Trust (Regd.), Faridkot & Ors. vs. State of Punjab & Ors. - 2012(5) SCC 432, the Apex Court has held that where there are several exemplars with reference to similar lands, usually highest of the exemplars, which is a bona fide transaction should be considered and averaging of the price is not justified.*

- *In Haridwar Development Authority, Haridwar vs. Raghubir Singh, Etc. - 2010(11) SCC 581, the Apex Court has held that when a small and compact extent of land is acquired and the entire area is similarly situated, it will be appropriate to value the acquired land at a single uniform rate.*

- *In Sangunthala (dead) through L.Rs. vs. Special Tahsildar (Land Acquisition) & others – 2010(4) Mh.L.J. 602, the Apex Court has reiterated the principles in Atma Singh (dead), through L.Rs. & others vs. State of Haryana & another – (2008) 2 SCC 568, when the Apex Court had explained that the market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when let out in* *most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding principle would be the conduct of hypothetical willing vendor who would offer the land and that of a purchaser who, in normal human conduct, would be willing to buy as a prudent man in normal market conditions but not of an anxious purchaser dealing at arm's length nor a fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. It has been further held that the market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when let out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of facts depending upon its condition, situation, user to which it is put and whether it is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration.*

➔ In *Mahesh Dattatray Thirthkar vs. State of Maharashtra – 2009(11) SCC 141,* *the Apex Court has considered the scope of the powers of the High Court as a First Appeal Court and the jurisdiction of the Supreme Court.*

- ➔ The Division Bench of this Court in *Cuncolim Municipal Council vs. Wilson Fernandes alias Wilson A. Columbano Dos Doris Fernandes & another – 2020 (6) Mh.L.J. 411,* *had on facts of the case deducted 50% in view of the location, shape, size of the acquired land vis-a-vis the sale-deed land.*

07] Before adverting to the facts, it is relevant to refer to the decision in *Sangunthala (supra),* wherein the Apex Court has reiterated that the burden of establishing/proving the market value of the lands is always on the claimants and that it is the duty of the Court to determine just and fair market value. It has been held that the Court has to treat the reference as an original proceeding for determination of the market value afresh on the basis of the material produced before it. The claimant in the position of a plaintiff has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in Court.

08] It is not in dispute that the draft development plan for the city of Chandrapur was already sanctioned. Under the draft development plan, the land under Survey No.19/2 was shown for the purpose of DP road. There is no dispute that the owner of the land affected by reservation for public purpose in any plan or scheme under the Act is entitled to either the amount agreed upon, or TDR or Floor Space Index, in lieu of the amount or compensation under the Land Acquisition Act. In the instant case, the Planning Authority has acquired the land under the provisions of the Land Acquisition Act and has offered compensation at the rate of Rs.555/- per sq. mtr. The question is about the adequacy and reasonableness of the compensation offered by the Land Acquisition Officer.

09] In the instant case, the Respondent/Claimant had claimed compensation at the rate of Rs.1,000/- per square metre on the bases that the land was developed and had construction potentiality. PW-1 Vijay Jadhav has deposed that the land under Survey No.19/2 is at a distance of 100 metres from Nagpur-Chandrapur Road. He claims that the land in the vicinity of the acquired land has residential and commercial potentiality. PW-1 has deposed that while granting permission for development, he was compelled to keep 9 metres wide service road even though his property was otherwise accessible by road leading to Chandrapur-Nagpur Road and Shiv Road towards west. The Claimants had placed reliance on Sale-Deed, dated 27/05/2005 in respect of Plot No.2, admeasuring 171 square metre, carved out from Survey No.19/2. The said Sale-Deed plot was sold for Rs.1,388/- per square metre. The question is whether the land reserved for road would command the same price as the sale deed plot, which was a developed plot.

10] It is to be noted that RW-1 Amit Kumbhre, Assistant Director of Town Planning has deposed that the petitioner was required to construct road to serve as an access to the plots as per the layout plan. He states that the value of the land has enhanced due to DP Road. RW-2 Vishnu Beklsare, Civil Engineer, in the Office of Special Planning Authority, Chandrapur has stated that as per the agreement, dated 28/02/2003, the Respondent No.1 had agreed to construct a 9 metre wide road.

11] It is not in dispute that Respondent No.1 had sought permission to convert the land for non-agricultural purposes. Permission was granted on 01/12/2003 and the layout prepared by Respondent No.1 was sanctioned. The Petitioner developed the land taking benefit af the DP road. The DP road has not adversely affected, but has in fact enhanced the value of Respondent’s land. This is fortified by the fact that as on the date of notification, Respondent No.1 had sold all the plots carved out from Survey No.19/2. Thus, as on the date of the notification what remained with the Respondent No.1, was only a strip of land, which has been acquired by the Planning Authority.

12] The potentiality of the acquired land is one of the considerations for ascertaining the market rate. Suffice it to say, that the acquired land which is a narrow strip of land had no construction potentiality as on the date of notification and would have no ready buyers as it only served as a means of access. Under the circumstances, the acquired land cannot be compared to the sale deed plot. The decisions in *Cuncolim Municipal*

Council (supra) and *Executive Engineer, Amravati Municipal Corporation vs. Kantabai Madanmohan Khandelwal & ors.,* in *First Appeal No.522/2008* of this Court, are, therefore, distinguishable and not applicable.

13] It need not be emphasized that while determining the market value of the land, the Court is required to take into consideration advantageous as well as disadvantageous factors possessed by the acquired land vis-a-vis the sale deed land. It has been consistently held that appropriate deductions should be made towards disadvantageous factor while determining the value of the land. In *Vithal Rao & Another Vs. Special Land Acquisition Officer - (2017) 8 SCC 558*, the Hon'ble Supreme Court held that percentage of deduction can vary from 10% to 86% and that the deduction should be made keeping in mind the nature of land, area under acquisition, whether the land is developed or not, if so, to what extent, the purpose of acquisition etc. The percentage of deduction would depend upon the facts of each case. The Reference Court has determined the market rate of the land on the basis of the sale instance at Exh.38, without taking into account disadvantageous factor possessed by the acquired land vis-a-vis the sale deed land. The Reference Court has, therefore, erred in determining the market rate of the acquired land at par with the rate of a developed plot.

14] It is also pertinent to note that the Respondent has relied upon sale deed of only one plot carved out from Survey No.19/2. There can be no dispute over the proposition that the highest of the exemplars should be considered while determining the market rate. The only requirement is that such exemplar should be a bona fide transaction. It is to be noted that the Respondent No.1 was well aware of the likely acquisition in view of the existing DP road. As such, possibility of entering into a transaction with the purpose of creating evidence regarding the market value cannot be ruled out. It was, therefore, necessary for the Respondent to produce other sale instances of the same property to establish the trend of the market rate and dispel any such presupposition. For the reasons best known, the Respondent No.1 has chosen not to do so.

15] Be that as it may, the Sale-Deed at Exh.38 indicates that one of the developed plots from the same property was sold in the year 2005 at Rs.1,388 per square metre. The Reference Court has taken note of the fact that the said transaction was executed about five years prior to the date of Section 6 notification and, hence, added 10% per annum towards increase in price of the land and accordingly fixed the price of the land as on the date of notification as Rs.2,231/- per square metre. Learned Counsel for the Appellant is justified in stating that the Reference Court has committed an error in calculating the market value of the land. Even if the value of the land is considered at Rs.1,336/- per square metre in the year 2005 and 50% is added towards increase in price at the rate of 10% per annum, the total rate as on the date of notification works out to

Rs.2,082/-. Thus, even if the sale deed is relied upon and 75% of the sale price is deducted in view of the shape, size, nature, user and potential value of the land, the rate offered by the Land Acquisition Officer appears to be just and reasonable.

16] Under the circumstances, the Respondent No.1 has failed to make out a case for enhanced compensation. Hence, the following order:

ORDER

i. The appeal is allowed.

ii. The impugned judgment and award, dated 12/02/2019 passed by the Reference Court is set aside.

iii. The amount deposited by the Acquiring Body along with interest accrued thereon be refunded.

iv. There shall be no order as to costs.

(SMT. ANUJA PRABHUDESSAI, J.)

At this stage, learned Counsel for the Appellant prays for stay of the order.

Clause-iii relating to the refund of the amount is stayed for a period of three months.

(SMT. ANUJA PRABHUDESSAI, J.)

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