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

**FIRST APPEAL NO. 822 OF 2013**

APPELLANTS :-
Ori. Plaintiffs
(On R.A.)

1. Shri Rudrapratapsing s/o Ramcharansingh Pawar Aged about 65 years, Occ. Agriculturist.
2. Shri Krushnapratapsingh s/o Rudrapratapsingh Pawar, Aged about 39 years, Occ. Agriculturist,
3. Shri Bhanupratapsingh s/o Rudrapatapsingh Pawar, Aged about 35 years, Occ. Agriculturist.
4. Shri Adityapratapsingh s/o Rudrapatapsingh Pawar, Aged about 35 years, Occ. Agriculturist.

All resident of Dhapewada, Tah. Kalmeshwar, Distt. Nagpur.

...VERSUS...

RESPONDENT :-
Ori. Respondents
(On R.A.)

1. The State of Maharashtra, through Collector, Collector building, Civil Lines, Nagpur
2. Special Land Acquisition Officer, (General), Civil Lines, Nagpur
3. The Executive Engineer, Public Works Department No.2, P.W.D., Office, Nagpur

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Shri. P. R. Puri, Advocate for appellants.
Ms. H.N. Jaipurkar, AGP for respondent Nos.1 and 2.

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**CORAM : PUSHPA V. GANEDIWALA, J.**

**ARGUMENTS WERE HEARD ON : 26/07/2021**

**JUDGMENT IS PRONOUNCED ON : 30/07/2021**

**JUDGMENT**

1. Heard.

2. The challenge in this appeal is to the judgment and award dated 15.02.2013 in LAC No.48/2004 passed by the Joint Civil Judge Senior Division, Nagpur whereby the Reference Court fixed the market value of the acquired land admeasuring 1.70 hectare out of Khasra No.21/2 of Mouza Sonapur, Tq. Kalmeshwar, District Nagpur at the rate of Rs.1,00,000/- per hectare against the rate which was originally granted by the Special Land Acquisition Officer, i.e., Rs.68,750/- per hectate.

3. The facts necessary to decide the present appeal may be stated as under:-

(i) The aforesaid land of the appellants was acquired vide notification issued under Section 4 (1) of the Land Acquisition Act, 1894 vide LAC No. 1/A65/1999-2000. It is stated that prior to the said notification, the appellants have initiated proceedings for conversion of the aforesaid khasra number to non-agricultural use, and the competent authority, i.e., S.D.O. Saoner in Revenue Case No. 4/NAP-34/98-99 allowed the applicants' claim vide order dated 09.06.1999. It is stated that the Special Land Acquisition, Officer Nagpur has granted compensation at the rate of Rs.68,750/- for the land admeasuring 1.70 hectares, though the land acquired was two hectares.

(ii) Being aggrieved by the inadequate amount of compensation, the appellants made a reference before the Collector, Nagpur under Section 18 of the Land Acquisition Act, 1894, which was further referred to the Court of Civil Judge Senior Division, Nagpur for adjudication, and the same is registered as LAC No. 48/2004. It is the grievance of the appellants before the Reference Court that the Special Land Acquisition Officer has not considered the non-agricultural potentiality of the acquired land. The appellants claimed enhancement at the rate of Rs.200/- per square meter and also claimed enhancement of amount towards compensation for trees which were standing on the acquired land at the relevant time.

(iii) In response, the respondents, in their written statement, opposed the enhancement of compensation and submitted that the award passed by the Special Land Acquisition

Officer is just, proper, and judicious and commensurate with the prevailing facts and circumstances. The Reference Court framed necessary issues and recorded evidence as adduced by the parties. The appellants examined one of the appellants by name Aditya Pratap Rudrapratapsingh Pawar at Exh.12 and brought on record the following documents :

1. 7/12 extract of land bearing Khasra No.21 (Exh.15).
2. Copy of award dated 9.01.2003 (Exh.16).
3. Notice issued under Section 12(2) of the Land Acquisition Exh.17.

The appellants also examined PW-2 Sahebrao Namdeorao Datonde, Joint District Registrar, Nagpur (Gramin) and brought on record the ready reckoner (Exh. 32) of the relevant time to decide the market value of the non-agricultural lands. Respondents/ State neither examined any witness nor did cross examine any of the witnesses of the appellants.

(iv) The Reference Court fixed the market value of the acquired land at the rate of Rs.1,00,000/- per hectare. This judgment of the Reference Court is impugned in this appeal.

4. I have heard Shri P.R.Puri, learned counsel for the appellants, and Ms H.N. Jaipurkar, learned AGP for the respondents/ State.

5. Shri P. R. Puri, learned counsel for the appellants, restricted his argument only on the issue of enhancement of compensation on the basis of market value as shown in the ready reckoner at Exh.32. Learned counsel would vehemently urged that the Reference Court, without considering the overwhelming evidence on record with regard to prevailing market rates of the acquired land, fixed the rate of the acquired land at the rate of Rs.1,00,000/- per hectare only on basis of guess work as per his whim and fancy. Learned counsel would further submit that in the absence of cross-examination of the witnesses of the appellants, there was no reason for the Reference Court to discard the evidence of the appellants with regard to the market value of the acquired land on the basis of ready reckoner. Learned counsel drew attention of this Court to the contents in the copy of the award at Exh.16 and submitted that it is admitted position on record that the subject land was converted into non-agricultural use vide order of the Sub-Divisional Officer, Saoner dated 09.06.1999 and the same was acquired for construction purpose,

i.e., construction of rest house. Learned counsel urged to enhance the compensation as per the market rates in the ready reckoner (Exh.32). Learned counsel did not press the claim of the appellants for enhancement in compensation towards value of the trees.

6. Per contra, Ms. H.N. Jaipurkar, learned AGP appearing on behalf of the respondents/ State, while supporting the judgment and award of the Reference Court submitted that the rates of the land in ready reckoner are fixed for the purpose of revenue generation and therefore, are on higher side and these rates cannot be considered in fixing the true market value of the acquired land.

7. I have considered the submissions advanced across the bar on behalf of the both the sides. On the basis of submissions advanced and the material on record, the point arose for the determination of this Court is as under:-

> *“ Whether the learned Reference Court committed error in not considering the rates in the Ready Reckoner in determining the market value of the acquired land?”*

8. At the outset, it is not disputed that the subject land was converted for non-agricultural use as per the order of Sub Divisional Officer dated 09.06.1999. The reference of the this order is found mentioned in the impugned award of the Special Land Officer. The aforesaid award also mentioned the potentiality of the land for the agricultural use as per 7/12 extract dated 30.01.1999 showing crops like jwar, tur, kapus, soyabin, gahu and chana. The award also found mention that the subject land is abutting the Kalmeshwar road. It is also not disputed that the land was acquired for the purpose of construction of rest house. Neither the Special Land Officer nor the Reference Court considered the sale instances of the adjoining lands at the relevant time for want of availability. The claimants examined himself and also one witness from the Government to show the market value of the land which is converted into non-agricultural use on the basis of ready reckoner. As per ready reckoner at Exh.32, the rates of the land which is abutting the highway is Rs.120/- per square meter for zone No.3.

9. The respondents/ State preferred not to examine any witness to substantiate its stand that the appellants have deliberately got converted this land into non-agricultural use apprehending

acquisition proceedings. With regard to the question as to whether the market value of the land can be determined on the basis of rates provided in the ready reckoner, in this context, it would be profitable to refer to the judgment of the Division Bench of this Court in First Appeal No.1302/2009 in the case of ***M/s Nemichand Damodardas Vs. State of Maharashtra and others*** decided on 20.01.2021 wherein the issue as to whether the Government Resolution dated 31.10.1994 is liable to be taken into consideration for deciding the fair market value?.

10. The aforesaid Government Resolution dated 31.10.1994 has been issued by the Revenue and Forest Department of the State Government relating to acquisition of land under the said Act and valuation of such acquired land while granting compensation. In the said Government Resolution, it has been stated that the matter, with regard to applicability of the rates indicated in the ready reckoner while determining the amount of compensation for acquired land, was under consideration of the State Government. It was resolved that while determining the amount of compensation for the acquired land, the same could be on the basis of sale instances, income capitalization method or with reference to the valuation as per

ready reckoner. It was further resolved that while determining such value of the acquired land the valuation which was beneficial to the land owner meaning whichever was higher should be preferred. The Division Bench after considering the judgment of this Court in the case of ***Shalini Waman Godbole Vs. Special Land Acquisition Officer, Special Unit, Solapur and others. 2009 (5) Mh.L.J. 884*** have held that this Government Resolution was specifically issued to enable fair determination of the amount of compensation by taking into consideration the valuation of the land as indicated by the ready reckoner and therefore, it was further held that the claimant was justified in relying upon this Government Resolution at Exh.110 while seeking determination of fair compensation for the acquired land. It is also observed that the document at Exh.119 indicates that the instructions were also issued to the revenue authorities to abide by this Government Resolution while determining the amount of compensation.

Apart from this, in the case of ***Nisar Ahmad Ramzan Momin Vs. The Special Land Acquisition Officer and others*** in First Appeal No.846 of 2012 decided on 14.02.2018 this issue *inter-alia* came before the Division Bench of this Court as to in which situation the appellant can rely on the ready reckoner for claiming the compensation. The Court considered the Government Resolution dated 31.10.1994 and observed that it is clearly laid down in this Government Resolution that the valuation given in the ready reckoner was an important consideration and the valuation arrived at by different methods should be taken into consideration and whichever was higher, should be granted as compensation. In this judgment also, the Court referred the judgment in the case of ***Shalini Godbole*** *(supra)* and it is held that it was incumbent on the Special Land Acquisition Officer to have taken into consideration the ready reckoner for the year 1999 in deciding the rate of compensation.

11. Coming to the facts of the present case, in the absence of any other material on record to fix the market value of the subject land, in the considered view of this Court, ready reckoner at Exh.32, which is proved through the Government witness Sahebrao Namdeorao Datonde, Joint District Registrar Nagpur Gramin (PW-2), the market value has to be decided on the basis of ready reckoner. However, the claimants would not be entitled to 100% of the rates in the ready reckoner. On this aspect, the observations of the trial Court for not relying on the ready reckoner on the ground that ready reckoner does not reflect the

true market value as the ready reckoner are prepared with a view to collect the revenue on the transactions of transfer of immovable properties, appears to be misplaced. The trial Court adjudicated the market value at Rs.1,00,000/- per hectare absolutely without any substantive material and only on the basis of guess book which needs to be modified.

12. Considering the admitted facts on record that even after converting land into non-agricultural use, the claimants have not used the said land for non-agricultural purpose. The purpose of the acquisition of the subject land was for constructing guest house which would require further development of the land. In this context, the Hon'ble Apex Court in the case of ***Valliyammal & another etc. Vs. Special Tahsildar (Land Acquisition) and another*** in Civil Appeal Nos. 6127-6128/2011 decided on 1.08.2011 considered the earlier pronouncement on the subject and held that in fixing the market value of the acquired land which is developed or under developed, the Courts have generally approved deductions of 1/3 of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which the land is acquired.

13. The Hon'ble Apex Court in this case referred to the pronouncement in the case of ***Kasturi and ors. Vs. State of Haryana (2003) 1 SCC 354*** wherein it is stated that *"it is well settled that in respect of agricultural land or under developed land which has potential value for housing or commercial purpose, normally 1/3 amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variation taken on its nature, location expenses of expenditure involved for development and the area required for rate and other civil amenities to develop the land so as to make plots for residential and commercial purpose……………..."*

14. Apart from the aforesaid judgments, there is a series of judgments wherein deduction towards development was allowed depending upon nature and location of the acquired land, extent of land acquired to be set apart and expenses involved for development.

15. Coming to the facts of the present case, as stated earlier, in view of the facts and circumstances of the case, 1/3rd deduction towards development charges would be justified.

16. As the prevailing rate in the ready reckoner in the year 1999 for the lands situated in Group 3 of village Sonapur was Rs.120/- per sq. meter and after deducting ⅓ rd therefrom, it would come to Rs.80/- per sq. meter. The appellants/ claimants would be entitled to receive compensation for the acquired land, i.e., 1.70 hectare at the rate of Rs.8,00,000/- per hectare with all statutory benefits and interest. In the circumstances, I proceed to pass the following order :-

**O R D E R**

(i) The Appeal is partly allowed.

(ii) The respondents/ State shall pay to the appellants compensation at the rate of Rs.8,00,000/- per hectare (Rs.80/- per sq. meter for area of land admeasuring 1.70 hectare) with all statutory benefits and interest.

(iii) Needless to say that the respondents/ State are at liberty to deduct the compensation which has already been withdrawn by the appellants.

(iv) The appeal stands partly allowed and disposed of. In the circumstances, no order as to costs.

**JUDGE**

Manisha