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

FIRST APPEAL NO. 896 OF 2016

1. The State of Maharashtra, through Land Acquisition Officer for Katepurna and Morna Project, Akola, Distt. Akola.

2. The Executive Engineer, Minor Irrigation Division No.2, near District Hospital, Akola. Distt. Akola.

.... **APPELLANTS**

// **VERSUS** //

Sau. Dwarkabai w/o Pandurang Ingle, Aged about 50 years, Occ. - Nil, R/o Dhobi Khadan, behind godown, Hingna, Distt. Akola.

....**RESPONDENT**

Ms. T.H. Udeshi, A.G.P. for Appellant no.1.
Shri M.A. Kadu, A.G.P. for Appellant no.2.
Shri S.A. Mohta, Advocate for Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 18/02/2021.

JUDGMENT :

Heard learned Counsel for respective parties.

2. The Acquiring Body has filed this appeal under Section 54 of Land Acquisition Act, 1894 (for short 'the L.A. Act') challenging the Judgment and Award dated 17/07/2014 in L.A.C. No.01/2001. By the impugned Judgment and Award, the Reference Court has enhanced the compensation from Rs.56,588 per hector, equivalent to 52 paise per sq. ft. to Rs.100/- per sq. ft.

3. The brief facts necessary to decide this appeal are as under:

i) The Appellant/Acquiring Body had acquired land ad-measuring 0.86 hectors from Gat No.4/2 village Hingna, Mhaispur for the purpose of construction of flood protection wall for Akola city. Notification under Section 4 of the Land Acquisition Act was published on 11/03/1999 and the Award under Section 11 came to be declared on 22/06/2000. The Land Acquisition Officer awarded compensation at the rate of Rs.56,588 per hector, which is stated to be 52 paise per sq.ft. Being dissatisfied with the quantum of compensation awarded by the Land Acquisition Officer the Respondent sought reference under Section 18 of the L.A. Act claiming enhanced compensation at the rate of Rs. 30/- per sq.ft.

ii) The Appellant/Acquiring body contested the claim of the Respondent, on the ground that the Land Acquisition Officer has determined the market rate after considering the relevant material. It is stated that the subject land was not fertile and that the Respondent was not entitled for enhanced compensation.

iii) The Respondent examined herself and three other witnesses. The Appellant/Acquiring body did not adduce any evidence. Upon considering the evidence on record, and relying mainly on the judgment dated 15.01.2005 in Land Reference Case No.183 of 2000. The Reference Court enhanced the compensation to Rs.100/- per sq.ft. This Judgment and Award is under challenged in this appeal.

4. Shri M.A. Kadu, learned A.G.P. states that the judgment in L.A.C. No.183/2000 is challenged in First Appeal No.155/2005. He submits that the market rate cannot be determined on the basis of the judgment which has not attained finality. He submits that the land which was the subject matter of L.A.C. No. 183 of 2000, was located in a different village and the land was not similar in nature. Learned A.G.P. furhter submits that the learned Judge has determined the market rate of the acquired land on the basis of a previous judgment

without considering its acceptability on judicial parameters. Shri M.A.Kadu, learned A.G.P. further submits that the sale-deeds relied upon by the Respondent /Claimant also relate to small non-agricultural plots which had construction potentiality. He submits that the said sale-deeds plots are not comparable instances. He has submitted that in First Appeal No.1210/2008 arising from L.A.C. No.140/2000, this Court vide Judgment dated 17/06/2013 has dismissed the appeal filed by the Claimant for further enhancement, and allowed the First Appeal No.06/2009 filed by the State and set aside the Judgment and Award of the Reference Court awarding enhanced compensation at the rate of Rs.100/- per sq.ft. He submits that in the said case the Land Acquisition Officer had awarded compensation of Rs.5.30 per sq.ft. and by the Judgment dated 17/06/2013 this Court has maintained the rate of compensation awarded by the Land Acquisition Officer.

5. Shri S.A. Mohta, learned counsel for respondent states that though the land in question is situated in village Hingna, the said village is separated from village Akoli(Bk) only by a bullock cart track. He submits that all civic amenities were available in and around the acquired land. Though the land was classified as agricultural land, it had contruction potentiality. He submits that apart from the Judgment

in L.A.C. No. 183/2000, the Claimant had also relied upon sale-deeds dated 04.05.1999 (Exhibit 40), 11/06/1998 (Exh. 41) and 15/07/1998 (Exh. 42) which show that the land located in the same vicinity was sold at the rate of Rs.15210/- per sq.ft. He submits that there is absolutely no evidence to prove that the subject land was along the river bank and that it was prone to flooding. He submits that the judgment in First Appeal No.1210/2008 has not attained finality as the same is challenged before the Hon'ble Apex Court and that the order of refund is stayed by the Apex Court. He submits that considering the location, nature and potentiality of the land, the compensation awarded by the Reference Court is just and reasonable and does not warrant any interference.

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

7. It is not in dispute that the acquired land under Gat No. 4/2 of village Hingna Mhaispur is an agricultural land and situated on the bank of river Morna. The Claimant has deposed that the said land was fertile with rich black soil having high yielding capacity. She has deposed that she used to take two crops in a year by cultivating hybrid

Jawar, Wheat, Gram etc. and earn Rs.50,000/- approximately per annum. It may be noted that the Claimant has not produced survey records to substantiate her contention that she used to grow crops such as Jawar, Wheat, Gram etc. in the acquired land. P.W.2 Brijmohan Modi, the expert witness examined by the Claimant has also not valued the property on the basis of capitalization of the net income.

8. The Reference Court has determined the market rate of the acquired land on the basis of the judgment in L.A.C. No.183/2000. In the case of ***Majoj Kumar and ors vs. State of Hariyana and ors (2018) 13 SCC 96,*** the Hon'ble Apex Court has considered the relevance of previous judgment/Awards for determination of compensation under Section 23 of the Land Acquisition Act, 1894. The Apex Court has held thus :

> *"12. We have come across several decisions where the High Court is adopting the previous decisions as binding. The determination of compensation in each case depends upon the nature of land and what is the evidence adduced in each case, may be that better evidence has been adduced in later case regarding the actual value of property and subsequent sale deeds after the award and before preliminary notification under Section 4 are also to be considered, if filed. It is not proper to ignore the evidence adduced in the case at hand. The compensation cannot be determined by blindly following the previous award/judgment. It has to be considered only a piece of evidence not beyond that. Court has to apply the judicial*

mind and is supposed not to follow the previous awards without due consideration of the facts and circumstances and evidence adduced in the case in question. The current value reflected by comparable sale deeds is more reliable and binding for determination of compensation in such cases award/judgment relating to an acquisition made before 5 to 10 years cannot form the safe basis for determining compensation.

13. The awards and judgment in the cases of others not being inter parties are not binding as precedents. Recently, we have seen the trend of the courts to follow them blindly probably under the misconception of the concept of equality and fair treatment. The courts are being swayed away and this approach in the absence of and similar nature and situation of land is causing more injustice and tantamount to giving equal treatment in the case of unequal's. As per situation of a village, nature of land its value differ from the distance to distance even two to three-kilometer distance may also make the material difference in value. Land abutting Highway may fetch higher value but not land situated in interior villages.

14. The previous awards/judgments are the only piece of evidence on a par with comparative sale transactions. The similarity of the land covered by previous judgment/award is required to be proved like any other comparative exemplar. In case previous award/judgment is based on exemplar, which is not similar or acceptable, previous award/judgment of court cannot be said to be binding. Such determination has to be out rightly rejected. In case some mistake has been done in awarding compensation, it cannot be followed on the ground of parity an illegality cannot be perpetuated. Such award/ judgment would be wholly irrelevant.

15. There is yet another serious infirmity seen in following the judgment or award passed in acquisition made before 10 to 12 years and price is being determined on that basis by giving either flat increase or cumulative increase as per the choice of individual Judge without going into the factual scenario. The said method of determining compensation is available only when there is absence of sale transaction before issuance of notification under section 4 of the Act and for giving annual increase, evidence should reflect that price of land had appreciated regularly and did not remain static. The recent trend for last several years indicates that price of land is more or less static if it has not gone down. At present, there is no appreciation of value. Thus, in our opinion, it is not a very safe method of determining compensation.

16. To base determination of compensation on a previous award/ judgment, the evidence considered in the previous judgment/ award and its acceptability on judicial parameters has to be necessarily gone into, otherwise, gross injustice may be caused to any of the parties. In case some gross mistake or illegality has been committed in previous award/judgment of not making deduction etc. and/or sufficient evidence had not been adduced and better evidence is adduced in case at hand, previous award/judgment being not inter-parties cannot be followed and if land is not similar in nature in all aspects it has to be out-rightly rejected as done in the case of comparative exemplars. Sale deeds are on a par for evidentiary value with such awards of the court as court bases its conclusions on such transaction only, to ultimately determine the value of the property."

9. In ***Vitthal Rao and anr vs. The Special Land Acquisition Officer (2017) 8 SCC 558***, the Hon'ble Supreme court has reiterated

general principles of law on the question of valuation of the lands under acquisition, 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.*
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> *26) In Chimanlal 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.*
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> *27) In Para 4 of the judgment, this Court laid down as many as 17 principles, which are reproduced below for perusal:*
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> > *"(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 Sections 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:

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

(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 vs. Raj Kumar Baghal Singh (Dead) Through Legal Representatives & 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)".

10. The issue raised in the Appeal needs to be decided keeping in mind the aforesaid principles. The record reveals that the Tribunal has relied upon the said judgment though there is no evidence on record to prove similarity as regards locality, shape, size, nature and potentiality of the land which was the subject matter of L.A.C. No.183/2000 visa-a-viz the acquired land. Be that as it may, a perusal of the judgment in L.A.C. No.183/2000 indicates that, the said judgment pertains to a small plot from Survey No.7/2 from village Akoli (Bk.) and the said land was converted way back in the year 1982. Unlike the subject land, the said land was not along the river bank and had construction potentiality. These factors were relevant in determining the market rate of the said land. The Reference Court could not have relied upon the said judgment without examining the relevant factors relating to the similarity of land as regards shape, size, location, potentiality of the land.

11. The Respondent had also relied upon the sale-deed dated 04/05/1999 at Exh.40, which is a post notification transaction. The said sale-deed as well as sale-deeds dated 11/06/1998 at Exh.41 and 15/07/1998 at Exh. 42 relate to plot Nos.117, 162 and 12 respectively

carved out from Survey No.6,7 and 60 of village Akoli (khurd), which was converted to non-agricultural land way back in the year 1982. These sale-deed plots were sold at the rate of Rs. 50-60 per sq.ft. It is not in dispute that these sale-deed plots are situated in village Akoli khurd which is separate from village Hingna by a bullock cart track. These sale-deed plots were small in size and were suitable for construction purpose. Moreover, these sale-deed plots were away from the river bank and were not prone to getting submerged during rainy season or floods.

12. As compared to the the sale-deed land, the acquired land is a vast track of agricultural land, along the river bank and was prone to getting inundated during rainy season and hence was not suitable for construction purpose. On account of these dissimilarities, the acquired land would not have fetched the same price as that of the sale-deed land. The above stated disadvantages factors possessed by the acquired land would warrant appropriate deductions.

13. The above referred sale-deed plots were sold in the year 1998 at the rate of Rs. 50-60 per sq.ft.. Considering the fact that the notification under Section 4 is of the year 1999, and further

considering increase in the price of land at 10% per annum, the rate of these developed plots can be considered at Rs.60/- per sq.ft. upon deducting 30% towards development charges, 30% towards the difference in area and 15% in view of disadvantages location of the acquired land visa-a-viz the sale-deed land, the price works to of Rs.15/- per sq.ft.

14. Under these circumstances, and in view of discussion *(supra)*, the following order is passed :

(a) The appeal is partly allowed.

(b) The impugned judgment and award is set aside.

(c) The market rate of the acquired land is fixed at Rs.15/- per sq.ft. Resultantly, the Respondent-Claimant would be entitled for compensation at the rate Rs.15/- per sq.ft. with all other statutory benefits.

(d) The Respondent is permitted to withdraw the compensation at the rate of Rs.15/- per sq.ft. with all other statutory benefits.

(e) The balance amount with proportionate interest accured thereon is ordered to be refunded and the Appellant-Acquiring Body.

JUDGE

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