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

FIRST APPEAL NO.571 OF 2017
WITH
CROSS-OBJECTION ST. NO.12892 OF 2020

FIRST APPEAL NO.571 OF 2017

1. The Executive Director,
V.I.D.C. Sinchan Bhawan,
Nagpur. Respt.4/OnR.A.

2. The Executive Engineer,
Arunavati Project Division,
Digras, Tah. Digras,
District-Yavatmal. Respt.2/OnR.A.

... Appellants

.. Versus ..

1. Shri Rajesh Prabhakar Bokinpillewar,
Aged about 40 years. Claimant No.1

2. Gajanan Shalikram Kange, Claimant No.2
Aged about 35 years,

Both R/o. Digras, Tah. Digras,
Dist. Yavatmal.

3. State of Maharashtra, Respt.1/On R.A.
through Collector, Yavatmal,
Collector Office, Dist. Yavatmal.

4. Special Land Acquisition Officer, Respt.2/On R.A.
Affected area, Yavatmal,
Dist. Yavatmal.

... Respondents

<u>WITH</u>

<u>CROSS-OBJECTION ST. NO.12892 OF 2020</u>

1. Executive Director,
   Vidarbha Irrigation Development
   Corporation, Sinchan Bhawan,
   Nagpur. Respt.4/On R.A.

2. Executive Engineer,
   Arunavati Project Division,
   Digras, Tah. Digras, Respt.2/On R.A.
   District-Yavatmal. … <u>Appellants</u>

.. <u>Versus</u> ..

1. Shri Rajesh Prabhakarrao Bokinpillewar,
   Aged about 49 years,
   R/o. Digras, Tah. Digras,
   Distt. Yavatmal. Claimant No.1-Objector

2. Gajanan Shalikram Kange,
   Aged about 44 years,
   Occupation-Agriculturist,
   Resident of Digras, District-Yeotmal. Claimant No.2

3. State of Maharashtra,
   through Collector, Yavatmal,
   Collector Office, Yavatmal,
   Dist. Yavatmal. Respt.3/On R.A.

4. Special Land Acquisition Officer,
   Affected area, Yavatmal,
   Distt. Yavatmal. Respt.4/On R.A.
   … <u>Respondents</u>

……….

Mrs. J.J. Alkari, Advocate for the appellants,
Shri M.M. Agnihotri, Advocate for respondent nos.1 and 2,
Shri M.A. Kadu, AGP for respondent nos.3 and 4.

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CORAM : A.S. CHANDURKAR AND
N.B. SURYAWANSHI, JJ.

RESERVED ON : 21.12.2020
PRONOUNCED ON : 13.01.2021

JUDGMENT [PER : N. B. SURYAWANSHI, J.]

1. This First Appeal filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the said Act') and the cross-objection filed under Order 41, Rule 22 of the Code of Civil Procedure, 1908 take exception to the impugned judgment and award in reference LAC No.198/2002 passed by the Joint Civil Judge, Senior Division, Nagpur, hence, they are decided together by this common judgment.

2. Land survey no. 116/1 admeasuring 2H 65R owned by the claimants situated at Mouza Digras, Tahsil-Digras, District-Yavatmal was acquired as it was falling under the submergence area of Arunavati Project. The Notification u/s 4 (1) was published on 31.05.2007 in the Government gazette and the award was published on 13.05.2010. The Land Acquisition Officer (for short, 'the LAO') granted total compensation of Rs.49,18,977/- for the acquired land. Since the claimants were not satisfied with the

same, they filed LAC No. 19/2019 claiming compensation at the rate of Rs.500/- per sq. ft. for their acquired land. The reference Court granted compensation at the rate of Rs.170/- per sq. ft. to the acquired land, however towards development, deducted 35% area from the acquired area of claimant Rajesh and granted enhanced compensation for 172.25R land of Rajesh and for 19.05R land of claimant Ravindra. The enhanced compensation is granted along with statutory benefits.

3. The acquiring body, by filing first appeal, has challenged enhanced compensation granted by the reference Court. The claimants are seeking further enhanced compensation by filing cross-objection.

4. Heard the learned advocate for the appellants and the learned advocate for the cross-objectors. The learned advocate for appellants submitted that the reference Court has erred in granting enhanced compensation at the rate of Rs.170/- per sq. ft. There was no material on record to grant enhanced compensation. The land of the claimants was not converted into non-agriculture. The LAO had given correct rate and there was no occasion for the reference Court

to interfere in the same. She further submitted that since the acquired land was a agricultural land and no NA permission was granted to the same, merely because nearby lands are used for non-agricultural purposes, the compensation for the acquired land should not have been given by the reference Court at commercial rate. In support of submissions, she placed reliance on the judgment in the case of **Abdul Hamid s/o Abdul Majid ..vs.. State of Maharashtra and another***, 2017 (5) Mh.L.J. 799. She, therefore, submitted that the impugned judgment of the reference Court is unsustainable and the same is liable to be quashed and set aside and the compensation awarded by the LAO needs to be sustained.*

5. On the other hand, arguing the cross-objection, the learned advocate for claimants submitted that the claimants have produced sufficient material before the reference Court in the form of sale instances and on the basis of which, the reference Court ought to have granted compensation claimed at the rate of Rs.500/- per sq.ft. for the acquired land. Sufficient material was brought on record

before the reference Court in respect of potentiality of land and facilities available there. The area around the acquired land was entirely developed. The claimants have examined witness in support of the claim for enhanced compensation. He further submitted that the reference Court has committed an error in only considering the sale instance at Exh.34, in fact, the reference Court ought to have considered the sale instance at Exh.37. In view of sale instance at Exh.37, he submitted that higher exemplar of Rs.216/- per sq. ft. should have been taken into consideration by the reference Court. By placing reliance on the decision of the Apex Court, he submitted that higher sale instance/exemplar should have been considered by the reference Court. He submitted that the claimants have proved higher potentiality of the acquired land, therefore, the claimants are entitled for increased compensation. By placing reliance on the decision of the Apex Court in **General Manager, Oil and Natural Gas Corporation Limited ..vs.. Rameshbhai Jivanbhai Patel and another,** ***(2008) 14 SCC 745,*** he submitted that increased compensation should be granted at cumulative rate. Further submission is that taking into consideration the fact that the acquired land was in semi urban area, 15% increase should be granted on the rate at which the lands were sold in the sale instances. Learned Advocate further argued that the reference Court has committed an error in deducting

35% area from the acquired land towards development, since the land was acquired for submergence, there was no occasion for any deduction towards development. In support of this submission, he relied upon the decision of the Hon'ble Supreme Court in **Sajan ..vs.. State of Maharashtra and others** ***(Civil Appeal Nos.2170-2171 of 2020).*** He therefore urged that there is sufficient material on record to justify the claim of Rs.500/- per sq. ft. of the claimants lodged before the reference Court and the same needs to be allowed along with statutory benefits. In support of his submissions, he placed reliance on the following decisions :

(1) *Mehrawal Khewaji Trust (Registered), Faridkot and others,* **(2012) 5 SCC 432.**

(2) *Krishi Utpadan Mandi Samiti, Sahaswan, District-Badaun .vs. Bipin Kumar and another,* **(2004) 2 SCC 283.**

(3) *Thakarsibhai Devjibhai and others .vs. Executive Engineer, Gujarat and another,* **(2001) 9 SCC 584.**

(4) *C.R. Nagaraja Shetty (2) .vs. Special Land Acquisition Officer and Estate Officer and another,* **(2009) 11 SCC 75.**

6. In reply, the learned advocate for the acquiring body submitted that the facts and the decisions relied upon by the learned advocate for the claimants are different. She further submitted that

though the claimants have relied upon the decision in ***2017(5) Mh.L.J. 799,*** review against this decision is pending. Therefore, they may not be of any help to the claimants.

7. Learned AGP has adopted the argument of the acquiring body and further submitted that the enhancement granted by the reference Court is exorbitant and excessive. He further submitted that the claimants are not entitled for further enhancement of compensation. He, therefore, submitted that the first appeal be allowed and the cross-objection be dismissed.

8. We have perused the record. After hearing the contesting parties, following points arise for consideration :

1) Whether the compensation granted by the reference Court is liable to be reduced or enhanced ?

2) Whether the reference Court was justified in deducting 35% area towards development cost ?

9. For considering the rival contentions, it is necessary to appreciate the evidence brought on record. Claimants examined special Power of Attorney holder Prabhakar Narayan Bokinpillewar (who was claimant in LAC No.20/2019). In his evidence he stated that the acquired land had N.A. potential. The process for converting

the land to non-agriculture purpose was already initiated on 27.06.2000, as the land was intended to be used for residential purpose. However, the permission was rejected by the competent authority, as the land of the claimants was in the submergence area of Arunavati Project. Since the year 2000, the area around acquired land was developed, the adjacent lands were converted into non-agriculture. Digras is a Tahsil place and the population is near about 75000. All the facilities like Tahsil Office, SDO Office, various Government Offices, many schools and colleges are there at Digras. Digras Tahsil is famous for Cotton centre and for Cattle market. Residential colonies like Vaibhav Nagar, Laxmi Nagar, Viraj Nagar, Ghansham Society, Deaf and Dumb School, Court Premises, Panchayat Sammittee, M.S.E.B. Quarters, Bapu Nagar, Vitthal Nagar, Shankar Nagar and Datta Nagar were adjacent to the acquired land at a distance of approximately 30 mtrs to 100 mtrs. Stadium D.V.S.P. College, M.S.E.B. Office, Tahsil Office, Dhurve Nagar, Radha Nagari, Patil Nagar, Government rest house and Laxminagar Part-II are about 120 mtrs to 300 mtrs away from the acquired land.

He claimed that the area of acquired land was prime area of town. In the year 1995, the Government of Maharashtra acquired 1H 21R land from land bearing survey no.118/3 which is adjacent to the acquired land for construction of Court building and Judges quarters. Civil Judge Senior Division in LAC No.18/1997 awarded compensation at the rate of Rs.100/- per sq.ft. for the said survey number considering its N.A. potential. If 10% increase in the market rate per year is applied, then the claimants are entitled for increased compensation. The claimants relied upon sale instances at Exh-34, Exh-35 and Exh-36. Reliance is also placed on mutation entry at Exh-37 of plot no. 3 ad-measuring 111.60 sq. mtr of survey no. 66/67 at Mouza Digras which was purchased on 03.09.2005 for consideration of Rs.2,60,000/-.

10. In cross-examination this witness admitted that one can see the dam water by standing on the first floor of the house of claimants, that firstly the dam water came in the land of the claimants, and thereafter, the land was acquired. Whenever the dam gets overloaded, the water used to come in the acquired lands before its acquisition. The acquired land of the claimants was purchased at the rate of Rs.2,48,619/- per hectare in the year 2000. He denied the suggestion that as the dam water comes in the acquired land, the same is neither suitable for residential purpose nor for the agriculture purpose.

11. Civil Engineer Anil Ramdas Hankare, a consulting engineer was examined by the claimants as PW-2 who prepared location plan for gat no.116/1 of the claimants. He visited the acquired land on 29.04.2008. He found that the acquired lands were in the middle of heavy locality. According to him, the acquired lands had high N.A. potential, many agricultural lands surrounding the acquired land were converted into N.A. He stated that if the acquired land was converted into N.A., the claimants could easily utilize about 70% of land for residential purposes. He confirmed that the Court Premises, M.S.E.B. Quarters and other residential colonies were in close proximity of the acquired land. In cross-examination he admitted that there cannot be a layout of submergence area. He denied that at the time of his visit, the acquired land was in submergence area.

12. The acquiring body examined C. V. Vakode, Assistant Executive Engineer as their witness. He stated that in Arunavati Project since 1995 water was being stored and the entries of date wise water storage were recorded in the register. He gave the figures of water storage in the Arunavati Project between 29.10.1996 till 25.10.2000. He stated that the land of the claimants survey no. 116/1 ad-measuring 2H 65R was acquired and the said land was

under water since 1998. Therefore, the land could not have been converted into N.A. In spite of knowing this, the claimants in the year 2000 deliberately applied for N.A. permission with a view to get more compensation, which was rejected as the acquired land was under submergence area of Arunavati Project. According to him, the LAO has given much more compensation to the claimants than the rate at which the claimants purchased the acquired land. In cross-examination he admitted that when he went for spot inspection at the acquired land, it is mentioned in award at Exh-19 that most of the lands adjoining the acquired land were converted into non-agriculture purpose and that in the three directions of the acquired land, there was thick population. He further admitted that the building of Civil Court was adjacent to the acquired land on the northern side, in the year 1995-96 the Government has paid compensation @ Rs.110/- sq.ft. for the land acquired for the Court premises. He further admitted that since the year 2000 onwards, there was development around the acquired land. It is also admitted that if the acquired land was not submerged, the claimants could have used it by converting the same into N.A. He denied the suggestion that at the time of acquisition, the adjoining lands were fetching Rs.500/- per sq.ft. rate.

13. The sale instances at Exh-35 and 36 are of the year 1992 and they are of small plots of the lands. Considering the fact that Notification under Section 4 in the present case was issued in the year 2007, it would not be proper to consider them while arriving at the market value of the acquired lands. Though the learned advocate for the claimants vehemently argued that the reference Court ought to have relied upon the mutation entry at Exh-37 while arriving at the market value. The said argument does not appeal to us for the reason that on perusal of map at Exh-26, the land referred in Exh-37 is a plot in survey no. 66 and 67, which is at a substantial distance of about more than 500 mtrs from the acquired land. On the other hand, vide Exhibit 34, plot no.45 out of survey no.109/2 was sold at the rate of Rs. 150/- per sq. ft. in the year 2006. This land is nearer to the acquired land, hence, sale instance at Exh-34 needs to be relied upon for arriving at market value of the acquired land. Taking into consideration the development around the acquired land as residential colonies, M.S.E.B. Quarters and the proximity of Court Premises, and the fact that Digras is a Tahsil place and semi urban area, in the light of decision in *Mehrawal Khewaji Trust* (supra) and *General Manager, ONGC* (supra), escalation @ 15% per annum over the price in the year 2006 would be reasonable and the same needs to be granted to the claimants. Adding 15% escalation in Rs.150/-

per sq.ft., the market value of the acquired land would be @ Rs.172.50/- per sq.ft. The point no. 1 is answered accordingly.

14. The arguments of the claimants that since the land was acquired for submergence area of Arunavati Project, the reference Court committed an error in deducting 35% area for development deserves to be accepted. The learned advocate for the claimants rightly relied upon the ratio in *Sajan* (supra), wherein the Hon'ble Supreme Court was considering as to whether the High Court was justified in reducing the compensation by giving 40% deduction towards development cost, the land was acquired for construction of Hiwra Dam Project. The Hon'ble Supreme Court, therefore, held that much of the development like in the case of a layout for housing colony is not required. The Hon'ble Supreme Court, therefore, held that 20% deduction for development cost would be reasonable. In the case in hand, since the land was acquired for submergence of Arunavati Project, the question of development would not arise. In the light of ratio in *Sajan* (supra) 20% area deduction towards development would be reasonable. We are of the considered view that the reference Court was not justified in deducting 35% area towards development. According to us, 20% area deduction towards

development would be reasonable. We, therefore, answer the point accordingly.

15. According to us, the decision in *Abdul Hamid* (supra) would not be of any help to the acquiring body as there is sufficient material on record to show the potentiality of the acquired land, the proximity of the acquired land from the adjoining residential colonies as well as the Court Premises and other Government Offices, hence, the land of the claimants could have been used for N.A. purposes.

16. We have already held that sale instance at Exhibit 34, taking into consideration the proximity of time and distance is required to be relied upon as a comparable sale instance. Since sale instance at Exhibit 34 is of a non-agricultural plot which is of smaller dimension i.e. 210 sq.m. and the acquired land is of a larger size i.e. 2H 65R, the aspect of deduction is, therefore, will have to be taken into consideration. In ***Trishala Jain and anr. Vs. State of Uttaranchal and anr. 2011 (6) SCC 47***, the Hon'ble Supreme Court held that :

> *82. It is a well established principle that the value of sale of small pieces of land can be taken into consideration for determining even the value of a large tract of land but with a rider that the Court while taking such instances into*

consideration has to make some deduction keeping in view the other attendant circumstances and facts of that particular case. We have already held that keeping in view the surrounding developed areas and location and potential of the land, it will meet the ends of justice if 10% deduction is made from the esteemed market value of the acquired land.

Applying the above ratio to the case in hand, though the sale instance at Exhibit 34 is of a smaller plot and the acquired land is bigger, taking into consideration its location, potential and the fact that the acquired land was in the close proximity of Court premises and was surrounded by residential colonies, Government Offices and as the surrounding area of acquired land was thickly populated, we hold that deduction of 10% on account of acquired land being large in size would meet the ends of justice. Thus while awarding compensation, deduction of 20% towards development and 10% on account of size i.e. total deduction of 30% needs to be made.

17. In the light of aforesaid discussion, we answer the point no. 2 by holding that the reference Court was not justified in deducting 35% area towards development charges and we hold that 30% deduction needs to be made in the facts of the present case. Hence, the following order :

i) First Appeal No. 571 of 2017 is dismissed.

ii) Cross-objection No.12892 of 2020 is partly allowed and the judgment of the reference Court in LAC No.198 of 2002 is partly modified as follows :

The claimants are entitled for compensation for the acquired land @ Rs.172.50/- per sq.ft. with deduction of 30% on the same.

iii) The compensation shall be paid with all statutory benefits.

iv) The acquiring body at the time of admission of this appeal has deposited 50% amount of enhanced compensation. The balance amount of compensation shall be deposited in this Court within twelve weeks. After the acquiring body deposits the remaining amount of compensation, the claimants will be entitled to withdraw the same.

v) Parties to bear their own costs.

(N. B. SURYAWANSHI, J.) **(A. S. CHANDURKAR, J.)**

TAMBE/wasnik