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

FIRST APPEAL NO.1302 OF 2009
WITH
CROSS OBJECTION NO.30 OF 2011
WITH
CIVIL APPLICATION (CAF) NO.1893 OF 2012

Rahim Haji Aziz Nagani, Pandharkawada Road, Yavatmal … Applicant/Intervener

WITH
CIVIL APPLICATION (CAF) NO.2951 OF 2018

M/s Nemichand Damodardas, Tajnapeth, Akola … Applicant/Intervener

M/s Nemichand Damodardas,
A Partnership firm by Partner
Hareshkumar Dhirajlal Bilakhiya,
Adult, Businessman R/o A-2, Ajinkya
Apartment, Tapadia Nagar, Near Bharat
Vidyalay, Tq. And Dist. Akola, and firm
having Shop at Tilak Road, Tajnapeth, Akola,
Tq. and Dist. Akola … Appellant

-vs-

1. The State of Maharashtra, Through
   Collector, Yavatmal, Dist. Yavatmal
   for self and for Acquiring Authority,
   Telecommunication Department,
   Union of India, Yavatmal and also through
   S.D.O. & Land Acquisition Officer, Yavatmal

2. B.S.N.L. Through its Telecom General Manager,
   Yavatmal

3. The Sub Divisional Officer and
   Land Acquisition Officer, Yavatmal,
   Tq. And Dist. Yavatmal.

Shri C. S. Kaptan, Senior Advocate with Shri Harshawardhan Chawhan, Advocate for appellant.
Dr R. S. Sundaram, Advocate for respondent Nos.2-cross-objector.
Shri M. A. Kadu, Assistant Government Pleader for respondent Nos.1 and 3.
Shri Rohit Vaidya, Advocate with Shri A. Parchure, Advocate for Intervener.

<u>CORAM</u> : **A. S. CHANDURKAR AND N. B. SURYAWANSHI JJ.**

Date on which the arguments were heard : December 10, 2020
Date on which the judgment was pronounced : January 20, 2021

Judgment : (Per A. S. Chandurkar, J.)

This appeal under Section 54 of the Land Acquisition Act 1894 (for short, the said Act) takes exception to the judgment of the reference Court in LAC No.101/2001 decided on 07/07/2009.

2. The appellant-firm is the owner of land bearing Survey no.7, plot No.4 in all admeasuring 10 acres 8 gunthas. A portion thereof admeasuring 19330.76 sq. mt-1H 91R was proposed to the acquired by the Bharat Sanchar Nigam Ltd. for construction of its office. The Notification under Section 4 of the said Act was issued on 07/06/1995 and award was thereafter passed by the Land Acquisition Officer on 26/03/1998. Compensation of Rs.14,33,703/- per hectare was granted for the land, Rs.565/- was granted for a mango tree and Rs.1,37,000/- was granted as value of the house standing therein. The claimant not being satisfied with the quantum of compensation filed a reference under Section 18 of the said Act seeking enhancement in the amount of compensation. Evidence was led before the reference Court and after considering the same the reference Court was pleased to enhance the amount of compensation to Rs.21/- per sq. ft. Rs.22,60,000/- per hectare was determined as the market value and compensation accordingly was

granted. The claimant not being satisfied with the enhancement as granted has preferred the present appeal while the respondent No.2-acquiring body being aggrieved by the enhancement as granted by the reference Court has preferred cross-objection. Civil Application Nos.1893/2012 and 2951/2018 have been filed by the parties who claim interest in the acquired land and seek a share in the amount of compensation.

3. Shri C. S. Kaptan, learned Senior Advocate for the appellant-firm in support of the prayer for enhancement in the amount of compensation submitted that the reference Court was not justified in granting meagre enhancement at the rate of Rs.21/- per sq.ft. The acquired land was converted for non-agricultural use and was situated within the municipal limits. On one side of the acquired land was a road which indicated its prime location and thus its great commercial potentiality. Referring to the evidence on record as well as sale instances at Exhibits-87 and 88 it was submitted that adjoining lands were sold at higher rates than what was found as the market value by the reference Court. He referred to the adjudication in LAC No.378/2000 Exhibit-85 wherein land admeasuring 0.79 R from adjoining Survey No.8 came to be acquired for construction of by-pass road. By the judgment dated 22/12/2005 the reference Court has granted compensation at the rate of

Rs.140/- per sq. ft. The acquired land was at a distance of 200 meters from that land and in that regard he referred to the deposition of the witness examined at Exhibit-113. He also referred to the sketch map at Exhibits-114 and 115 to indicate the location of the acquired land along with other plots. Further reference was made to the adjudication by this Court in First Appeal No.833/2006 on 07/12/2017 (*State of Maharashtra, through the Collector, Yavamal and ors. vs. Chandrashekhar s/o Purushottam Rathi*) wherein 0.62R land from adjoining Survey No.7 was held entitled to compensation at the rate of Rs.100/- per sq. ft. It was thus submitted that considering the market value of the adjoining lands which were also the subject matter of acquisition it was clear that the reference Court committed an error in granting compensation only at the rate of Rs.21/- per sq. ft. It was then submitted that the remaining portion of the land from Survey No.7 after its acquisition admeasuring about 5 acres came to be sold on 07/02/2001 for an amount of Rs.51,00,000/-. The sale-deed at Exhibit-95 was placed on record. The land was sold at approximately Rs.23/- per sq.ft which indicated that after 2000 the price of lands started falling. This sale-instance was not of much relevance in view of the fact that after acquisition of the land in question the remaining land did not have access from the main road. As regards the ready reckoner and determination of market value on that basis it was submitted that the State Government had taken a policy decision on 31/10/1994 by which the prevailing ready reckoner rates were also to be taken into consideration while determining the market value of the acquired land. The claimant had brought on record the ready reckoner rates from 1993 onwards and the same ought to have been taken into consideration by the reference Court. The reference Court was not justified in granting meagre compensation especially when the acquired land had good potentiality and had been acquired for construction of an office. In support of his submissions the learned Senior Advocate placed reliance on the decision in ***Lal Chand vs. Union of India and anr. (2009) 15 SCC 769, Trishala Jain and anr. vs. State of Uttaranchal and anr. AIR 2011 SC 2458, Municipal Corporation of Greater Mumbai vs. State of Maharashtra and ors. 2006(1) ALLMR 499 Shalini Vaman Godbole vs. Special Land Acquisition Officr, Special Unit, Solapur and ors. 2009(5) Mh.L.J.884*** and ***Vitthal Rao and anr. vs. Special Land Acquisition Officer (2017) 8 SCC 558***. It was thus submitted that on consideration of the entire material on record the claimant was entitled for higher compensation.

4. On the other hand Dr R. S. Sundaram, learned counsel for respondent No.2 in support of cross-objection submitted that the reference Court enhanced the amount of compensation without there being any evidence or legal basis for the same. No proper reason was given by the reference Court for determining the market value of the acquired land at

Rs.21/- per sq. ft. Referring to para 23 of the impugned judgment he submitted that merely on the basis of conjectures the amount of compensation had been enhanced. There was no evidence on record to support the observation that the rate of land in urban areas appreciated at 7% per annum to 15% per annum. The acquired land being situated at a distance about 1km from the land which was the subject matter of LAC No.378/2000 (Exhibit-85), that piece of evidence could not have been taken into consideration at all. The other sale-deeds at Exhibits-87 and 88 were post Section-4 Notification and were also not relevant pieces of evidence. In absence of any comparable sale instance being brought on record by the claimant there was no basis to enhance the amount of compensation either by the reference Court or by this Court. The learned Advocate sought to rely upon the observations made in paragraphs 27 and 28 of the decision in ***Trishala Jain and anr***. (supra) to contend that the exercise conducted by the reference Court while enhancing the compensation was based on conjectures. He also referred to the observations made in paragraph 28 of the decision in ***Vitthal Rao and anr.*** (supra). Reliance was placed on the decisions in ***Gulzara Singh and ors. vs. State of Punjab and ors. (1993) 4 SCC 245, State of Maharashtra vs. Prashram Jagannath Aute 2007(5) Mh.L.J. 403*** and ***State of U.P. vs. Major Jitendra Kumar and ors. AIR 1982 SC 876*** in support of the submission that compensation awarded by the Land Acquisition Officer in his award was just and proper and the same was not liable to be enhanced by the reference Court. He therefore sought for setting aside the judgment of the reference Court.

5. On hearing the learned counsel for the parties and after perusing the entire material on record the following points arise for determination :

(i) *Whether the claimant has proved that it is entitled for enhancement in the amount of compensation from that awarded by the reference Court ?*

(ii) *Whether in the facts of the case the Government Resolution dated 31/10/1994 (Exhibit-110) is liable to be taken into consideration for determining the fair market value or whether the reference Court was justified in ignoring the same ?*

(iii) *Whether the acquiring body has proved that the compensation awarded by the Land Acquisition Officer was fair and it did not require any enhancement ?*

6. We have heard the learned counsel for the parties at length and with their assistance we have also perused the records of the case. The claimant examined seven witnesses to support the claim for enhanced compensation. The acquiring body however did not lead any evidence.

7. Reference may be made initially to the various sale transactions brought on record as well as adjudication by the reference Court and this

Court with regard to adjoining lands. At Exhibit-85 is the judgment of the reference Court dated 22/12/2005 in LAC No.378/2000. In those proceedings land admeasuring 0.79R from survey No.8 situated at Yavatmal came to be acquired for construction of by-pass road. The notification under Section 4(1) of the said Act was published on 01/01/1998 and the award was passed on 13/01/2000. The Land Acquisition Officer had granted compensation at the rate of Rs.5,00,000/- per hectare. The reference Court in that case after considering the evidence on record was pleased to enhance the amount of compensation to Rs.140/- per sq. ft. In the deposition of the witness examined on behalf of the claimant at Exhibit-113, he has stated that the land which was acquired in LAC No.378/2000 was at a distance of about 200 meters from the acquired land. Its location can also be gathered from the sketch maps at Exhibits-84, 114 and 115. It is seen that the said land which was the subject matter of LAC No.378/2000 is a corner plot and there is a road abutting its two boundaries. The acquired land is situated beyond an adjoining plot of said corner plot and has a frontage of a road on one side.

At Exhibit-87 is a sale-deed dated 28/12/1998 by which plot No.7/1 from Nazul Sheet No.35/D alongwith the structure standing thereon came to be sold. 72863 sq. ft. land was the subject matter of that sale-deed for a consideration of Rs.1,80,00,000/-. The rate comes to about Rs.247/- per sq. ft. At Exhibit-88 is another sale-deed dated

06/08/1997 by which 3989 sq. ft. land from Nazul plot No.3/1 came to be sold for Rs.90,00,000/-. The rate comes to about Rs.2256/- per sq. ft. At Exhibit-95 is yet another sale-deed for land admeasuring about 223236.74 sq. ft. which is about 2 hectares approximately. This sale-deed is executed by the claimant itself of land situated at the rear portion Survey No.7 being the remaining portion of land that was acquired on 07/06/1995. The sale-deed is dated 07/02/2001 and the consideration mentioned is Rs.51,00,000/-. The rate of the land comes to about Rs.23/- per sq. ft. or Rs.245/- per square meter or Rs.25,50,000/- per hectare approximately.

All these transactions are post Section 4 notification of the acquired land that was issued on 07/06/1995. Though these transactions may not have a direct bearing on the exercise of determining market value of the acquired land, they can be taken note of by observing that after acquisition of this land, there was a steady increase in the prices of lands in the surrounding areas.

8. First Appeal No.833/2006 was filed by the acquiring body for challenging the judgment of the reference Court in LAC No.208/2002 determining compensation for land admeasuring 0.62R out of Gat Nos.7 from Nazul Sheet No.44 which was part of Survey No.7. The appeal was decided by this Court on 07/12/2017. The notification under Section 4

of the said Act was published in the gazette on 22/05/1997. The reference Court therein had determined the market value of the acquired land at Rs.100/- per sq. ft and this adjudication was challenged by the acquiring body. This Court observed that the compensation granted by the reference Court at the rate of Rs.100/- per sq. ft. was reasonable and not warranting any reduction. There was no prayer for enhancement by the land owner therein. This land is also in the near vicinity of the acquired land. However, this land has been acquired about two years after acquisition of the land in question. Thus, all this evidence brought on record by the claimant relates to post Section 4 notification acquisitions and transfers. Considering the nature of evidence available on record, we do not find the aforesaid evidence of much assistance for determining the fair market value, reasons for which we would indicate a bit later.

9. It is also necessary to refer to the proceedings that were initiated for determining the true market value of the land owned by the claimant. The Collector of Stamps found that the value of the land in the sale-deed dated 15/03/1990 which was shown at Rs.20,50,000/- was on a lower side and that the claimant had paid inadequate stamp duty. Proceedings were thus initiated under provisions of the Bombay Stamps Act, 1959 by the Tahsildar. In these proceedings the Tahsildar valued

the said land at Rs.31,83,148/- on the basis of ready reckoner rates prevailing in 1990. Against said adjudication the claimants filed an appeal before the Deputy Inspector General of Registration. By the order dated 20/03/1991 that appeal came to be dismissed (Exhibit-80). The claimant then challenged the said order by filing Writ Petition No.1207/1991 which came to be dismissed on 05/09/1991 (Exhibit-79). The aforesaid material thus indicates that on finding the market price of the land in question to be shown on a lower side proceedings were initiated by the State for recovery of deficit stamp duty and that deficit stamp duty was thereafter recovered pursuant to such proceedings. As the claimant suffered that adjudication the valuation of the land as determined in said proceedings will have to be taken into consideration for determination of proper market value of the acquired land. The claimant's first witness at Exhibit-59 has clearly stated that for determining true market value to recover stamp duty, reference was being made to the ready reckoner rates. However the ready reckoner rates were not being referred to for determining the market value for paying fair compensation.

It can thus be said that as per the adjudication by the Tahsildar, the market value of the land that was purchased by the claimant on 15/03/1990 was Rs.31,83,148/-. This value also finds mention in the award. The total area of this land has been shown to be 39839.2 sq.

meters which would approximately be 40,000 sq. meters or 4 hectares. Thus the rate of the said land per hectare would be 31,83,148/4 or Rs.7,95,787/- per hectare rounded of to Rs.8,00,000/- per hectare.

10. To substantiate the claim for grant of enhancement in the amount of compensation before the Reference Court the claimant sought to place heavy reliance on the ready reckoner rates prescribed by the State Government. The claimant led evidence in that regard and it would therefore be necessary to refer to the same. According to the PW-1 (Exhibit-59) in the award passed by the Land Acquisition Officer the ready reckoner rates of the land sought to be acquired were referred to but they were not taken into consideration while awarding compensation. He deposed that in the year 1995 the ready reckoner rate of the land sought to be acquired was Rs.1870/- per square meter or Rs.174/- per square foot. The said ready recknor rates were exhibited at Exhibit-83. The claimant also examined the Assistant Town Planner, Yavatmal at Exhibit-107 and the Government Resolution dated 31/10/1994 was exhibited in his deposition at Exhibit-110. At Exhibit-119 is a communication dated 22/12/1994 issued by the Assistant Director, Town Planning Department, Nagpur to the Commissioner, Amravati Division, Amravati wherein it has been stated that the Government Resolution dated 31/10/1994 should be relied upon while determining market value of the land sought to be

acquired. The claimant also examined one Raju Sawant at Exhibit-105 who was a Senior Clerk in the office of the Sub-Registrar, Yavatmal. In his deposition the ready reckoner rates of the land situated on Dhamangaon Road, Yavatmal from 1993 onwards till the year 2000 were exhibited. On the strength of this evidence led before the reference Court a case was set up by the claimant that if the market rate of a piece of land was less than the rate indicated in the ready reckoner, then while determining the amount of fair compensation the rate as indicated in the ready reckoner ought to be awarded. The claimant rightly relied upon its own sale-deed dated 15/03/1990 which was held to be insufficiently stamped based on the ready reckoner rates of 1990.

11. Since the aforesaid stand of the claimant is based principally on Government Resolution dated 31/10/1994 (Exhibit-110) it would be necessary to refer to the same. This Government Resolution 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 capitalisation 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.

There was some debate on the applicability of the said Government Resolution for the purposes of determining fair market value of the acquired land. According to the learned counsel for the respondent No.2 the ready reckoner rates acted as a guide for levy of appropriate stamp duty and the same could not be taken into consideration for determining the market value of the acquired land. On the other hand the learned Senior Advocate for the claimant placing reliance on the decision in ***Shalini Vaman Godbole*** (supra) urged that this very Government Resolution was found to be valid for the purposes of determining fair market value of land acquired under the said Act. In the said decision an identical contention was raised before the Division Bench of this Court that ready reckoner rates or for that matter the Government Resolution dated 31/10/1994 could not have been relied upon for determining the market rate of the acquired land. Negating such contention the Division Bench in paragraph 10 of the aforesaid decision observed as under :

> ***" 10. It was submitted by Mr Jamdar as well as Mr Patil, AGP that the Reference Court was in error in relying upon the GR dated 31-10-1994. We do not find any force in these submissions. If the***

> *Government of Maharashtra in its wisdom has laid down a policy for offering compensation to the owners of the land which has been acquired for public purposes, it would be proper for the Reference Court to rely upon such a policy as well. The said GR clearly states that the compensation for the acquired land is to be granted on the basis of the valuation of the land by way of sale-purchase transaction method and the valuation as per ready reckoner, whichever is higher. On the date of the publication of the notification under section 4 of the Land Acquisition Act, 1894, the rate prescribed in the ready reckoner by the Government is found to be higher than the market rate as reflected in the sale transactions, it would be necessary that the Reference Court grants market rate on the basis of the valuation as appearing in the ready reckoner. The Government Resolution clearly speaks of the State's intention to offer a better/higher price of land which is acquired for public purposes. It would be, therefore, appropriate that the market rate in the instant case is fixed by following the GR dated 31/10/1994 and in our opinion the Reference Court did not commit any error in relying upon the same."*

From the aforesaid it becomes clear 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. We thus find that the claimant was justified in relying upon this Government Resolution at Exhibit-110 while seeking determination of fair compensation for the acquired land. Moreover as per the document at Exhibit-119 instructions were also issued to the revenue authorities to abide by this Government Resolution while determining the amount of compensation.

12. In this backdrop therefore reference would be required to be made to the ready reckoner rates of the relevant period pertaining to the locality where the acquired land was situated. As stated above by examining the Senior Clerk from the office of Sub-Registrar Yavatmal at Exhibit-105 the ready reckoner rates for the relevant period were sought to be brought on record. As per Exhibit-83 the ready reckoner rate during 1993 to 1995 for the area where the acquired land was situated was Rs.1870/- per sq. meter. Thereafter in the year 1996 it was Rs.2060/- per sq. meter and in 1997 it was Rs.2470/- per sq. meter. It is also pertinent to note that these very rates find mention in the award passed by the Land Acquisition Officer at Exhibit-92. However the Land Acquisition Officer did not take into consideration these rates on the ground that there was no basis to indicate as to how the said rates had been determined.

In the light of the Government Resolution dated 31/10/1994 (Exhibit-110) and the law as laid down in ***Shalini Vaman Godbole*** (supra) the ready reckoner rates for the year 1995 would have to be taken into consideration while determining the fair market value of the acquired land. The Land Acquisition Officer despite referring to the said rates in the award failed to take the same into consideration. Similarly the learned Judge of the Reference Court did not have benefit of the decision of the Division Bench referred to herein above as that decision was rendered shortly prior to passing of the impugned judgment.

13. It is also seen from the record that on 07/02/2001 the claimant sold the remaining land from Survey No.7 that was owned by it admeasuring about 20739.20 sq. meters for a consideration of Rs.51,00,000/- (Exhibit-95). It is from this Survey No.7 itself that land admeasuring 19330.76 sq. meters has been acquired and the fair rate of compensation is the subject matter of this appeal.

Though the learned counsel for the acquiring body sought to urge that the sale-deed of the remaining land executed on 07/02/2001 was at a price not proportionate to the expected appreciation of land and therefore the claimant would not be entitled for higher compensation, that contention cannot be accepted. As stated above the ready reckoner rates from 1995-2001 were brought on record. Though there was a steady increase in the ready-recoker rates of the area where the acquired land is situated from 1995, in the year 2001 the ready reckoner rates drastically fell down. This aspect has been explained by the claimant in its notes of arguments at Exhibit-161 wherein it has been stated that in the year 1999 the ready reckoner rate was Rs. 3165/- per sq. meter. In the year 2000 it was Rs.3420/- per sq. meter and in year 2001 it fell to Rs.1000/- per sq.

meter. This perhaps indicates the reason why the claimant executed the sale-deed at Exhibit-95 on 07/02/2001 for a consideration of Rs.51,00,000/-. In any event this sale-deed has been executed more than five years after the issuance of Section 4 notification on 07/06/1995. This sale-deed therefore not being proximate in time it would not become a comparable sale instance.

14. The ratio of the decisions relied upon by the learned counsel for the acquiring body do not admit of any doubt. However while applying the ratio therein the facts of the case in hand and the evidence on record would have to be taken into consideration. When the claimant had specifically approached the reference Court for enhancement in the amount of compensation by relying upon the Government Resolution dated 31/10/1994 (Exhibit-110) and had also led evidence in that regard the law as laid down in ***Shalini Vaman Godbole*** (supra) would have to be applied to the case in hand.

15. In that view of the matter we are of the considered opinion that as held in ***Shalini Vaman Godbole*** (supra) it being the intention of the State Government to offer a better/higher price of land that is acquired for public purpose and the market rate on the basis of the valuation as appearing in the ready reckoner ought to be granted, the reference Court

committed an error in ignoring the said Government Resolution dated 31/10/1994. Similarly the instructions at Exhibit-119 directing all revenue Authorities to abide by that Government Resolution while determining the amount of compensation has also been ignored. The reference Court however failed to properly take into consideration the said Government Resolution. It did not adopt the proper mode of determining the amount of compensation as a result of which the enhancement as prayed for by the claimant was not granted. Moreover, in the present case when the claimant was directed to pay proper stamp duty on its sale-deed based on the valuation determined on the basis of the prevailing ready reckoner rates, there is no justifiable reason not to award it compensation on the basis of the market value of its land on the basis of the prevailing ready reckoner rates of 1995.

Thus for aforesaid reasons and in the light of substantial evidence in the form of Exhibits-83, 110 and 119 the claimant would be entitled to receive compensation as per the ready reckoner rate of the land that was prevailing in the year 1995. That rate is Rs.1870/- per sq. meter or Rs.174/- per sq. foot. To that extent the judgment of the reference Court is liable to be modified.

16. Civil Application Nos.1893/2012 and 2951/2018 have been filed by the persons claiming interest on the acquired land and on the

basis of such interest they have sought to be joined as parties in the appeal. In view of the earlier order passed on 19/06/2013 it can only be said that the rival claims of interest in the acquired property cannot be decided in this appeal and it is open for such persons who are claiming interest in the acquired land to agitate their rights in proceedings under Section 30 of the said Act. We have therefore not gone into the rival contentions of the parties in that regard.

17. The points as framed are accordingly answered by holding that the claimant is entitled to receive compensation for the acquired land admeasuring 19330.76 sq. meters at the rate of Rs.1870/- per sq. meter in accordance with the ready reckoner rates of 1995. This entitlement springs from the policy decision of the State Government dated 31/10/1994 (Exhibit-110). The acquiring body is not successful in substantiating its contention that the amount of compensation granted by the reference Court was just and proper.

Consequently the judgment of the reference Court dated 07/07/2009 in L.A.C. No.101/2001 is partly modified. It is held that the claimant is entitled to receive compensation at the rate of Rs.1870/- per sq. meter for 19330.76 sq. meters of acquired land. This enhancement would be payable with all statutory benefits. The balance amount of compensation be deposited in the reference Court within period of twelve weeks from today.

18. First Appeal No.1302/2009 is partly allowed in aforesaid terms. Cross-objection No.30/2011 stands rejected.

Civil Application Nos.1893/2012 and 2951/2018 are disposed of in terms of observations made in paragraph 16 herein above.

The parties shall bear their own costs.

JUDGE **JUDGE**