IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 541 OF 2006

Bhagwanrao S/o Balwantrao Patil
Died through L.Rs.

1. Nanasaheb S/o Bhagwanrao Patil,
   Age 60 years, Occu. : Agri.,
   R/o. Shirur Tajband, Tq. Ahmedpur,
   Dist. Latur.

2. Sou. Pushpabai W/o Madhukarrao Arvikar,
   Age 65 years, Occu.: Housewife,
   R/o Deshpande Galli, Latur.

3. Subhashrao S/o Bhagwanrao Patil,
   Age 55 years, Occu.: Service,
   R/o. Behind Mukteshwar Ashram
   Vasant Nagar, Nanded.

4. Sou. Lalita W/o Subhashrao Kulkarni,
   Age 52 years, Occu.: Service,
   R/o. Bhalkapur, Post Hallikhed,
   Tq. Bhalki, Dist. Bidar.

5. Prakashrao S/o Bhagwanrao Patil,
   Age 50 years, Occu: Agri.,
   R/o. Shirur Tajband, Tq. Ahmedpur,
   Dist. Latur.

6. Uttam S/o Bhagwanrao Patil,
   Age 49 years, Occu.: Agri.,
   R/o. Shirur Tajband, Tq. Ahmedpur,
   Dist. Latur.

7. Pratap S/o Bhagwanrao Patil,
   Age 47 years, Occu.: Agri.,
   R/o. Shirur Tajband, Tq. Ahmedpur,
   Dist. Latur.

8. Dilip S/o Bhagwanrao patil,
   Age 45 years, Occu.: Agri.,
   R/o. Shirur Tajband, Tq. Ahmedpur,
   Dist. Latur.

9. Manblabai W/o Shankarrao Kulkarni,
   Age 48 years, Occu.: Household,
   R/o. Vaigaon, Tq. Ahmedpur,
   Dist. Latur.

10. Sou. Chayabai W/o Rameshrao Kulkarni,
    Age 40 years, Occu.: Housewife,
    R/o. At the address of above no.1 …. Appellants
    (Orig. Claimants)

Versus

1. The State of Maharashtra
   Through Collector, Osmanabad.

2. Madhusudan S/o Ganga Reddy (died)
   Through L.Rs. Respondent no.2

2/1. Gaddam Dharmendra S/o G. Madhusudan Reddy,
Age 46 years, Occu. Agri.,
R/o. Mothad, Tq. & Dist. Nizamabad
Andhra Pradesh.

2/2. Gaddam narendra S/o. G. Madhusudan Reddy,
Age 40 years, Occu.:Agri.,
R/o. Morthad, Tq. Nizamabad,
Andhra Pradesh.

3 Balaji S/o Damkondear
Age Major, Occu. Agri.,
R/o. Shirur Tajband, Tq. Ahmedpur,1
Dist. Latur.

4. Divisional Controller,
   Maharashtra State Road Transport,
   S.T. Stand, Osmanabad now at Latur,
   Dist. Latur. … Respondents.
   (Orig. Defendants)

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Mr. Anand P. Bhandari, Advocate for the Appellants
Mr. A.M. Phule, AGP for Respondent No.1
Ms. Ranjana D. Reddy, Advocate for Respondent No.4
Respondent nos. 2/1 and 2/2 deleted as per leave granted by the Hon'ble Court on 09.03.2012.

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CORAM : SHRIKANT D. KULKARNI, J.

Reserved on : 03.12.2021
Pronounced on : 17.03.2022

JUDGMENT :-

1. Feeling aggrieved by the common judgment and award passed in L.A.R. No. 9 of 2001 with connected L.A.R proceedings, the original claimant in L.A.R. No. 9 of 2001 has preferred this appeal for enhancement of compensation.

2. The brief facts of the appeal are as under:

2(i) The claimant Bhagwanrao was the owner and possessor of land Survey no. 267 admeasuring 11 Acres 30 Gunthas situated at village Shirur Tajband, Tqluka Ahmedpur, District Latur. The respondent no.1 / State and respondent no.4 / M.S.1R.T.C. had acquired 3 Acres 12 Gunthas land out of land Survey no. 267 belonging to the original claimant Bhagwanrao for construction of S.T. Bust stand at Shirur Tajband.

2(ii) Respondent no.1 / State has published the notification under section 4 of the Land Acquisition Act, 1894 on 04.08.1977 for acquisition of 3 Acres 12 Gunthas land out of survey no. 267 and the S.LA.O. passed the award under Section 11 of the Land Acquisition Act on 21.07.1980.

2(iii) According to the appellants, the acquired land was converted into non agricultural purpose vide permission in the year 1972, which was prior to the notification under Section 4. The acquired land was highly useful for residential purpose. The appellants had prepared plots in the said land. The acquired land is adjacent to the *Gaothan* of the village as well as the highway. The Latur-Mukhed, Nanded-Latur and Nanded Udgir State highway passes through the village Shirur Tajband. The big market places like Udgir and Latur are only at a distance of 30 to 140 Kms. From the said village where the acquired land is situated. The Taluka head quarter of Ahmedpur is only 8 Kms. away. All the facilities and infrastructure are available near the acquired land such as electricity, milk dairy, water etc.

2(iv) According to the appellants, the acquired land could have fetched a very high value at Rs. 15 per sq. ft. The Land Acquisition

Officer was pleased to determine the compensation of the acquired land at Rs. 0.65 paise per sq. ft. The Special Land Acquisition Officer had not considered the comparative sale instances while awarding the compensation.

2(v) It is further contended that though the reference Court was pleased to enhance the compensation in respect of acquired land at Rs. 1.50 paise per sq. ft. same is also inadequate.

2(vi) According to the appellants / original claimants, the compensation awarded by the reference Court as well as the Special land Acquisition Officer is inadequate having regard to the location of the acquired land and its use and proximity with various State highways and the *Gaothan*. The appellants / claimants have prayed to enhance the compensation of acquired land at Rs. 15 per sq. ft.

3. Heard Mr. Anand Bhandari, learned counsel for the appellants / original claimants, Mr. A.M. Phule, learned AGP for Respondent no.1 / State and Ms. Ranjana Reddy, learned counsel for respondent No.4 / M.S.R.T.C. Respondent no.3 though duly served, remained absent. The appeal came to be dismissed against respondent nos. 2/1 and 2/2.

4. Mr. Bhandari, learned counsel for the appellant vehemently submitted that the acquired land was converted into non agricultural purpose in the year 1972, much before the issuance of notification under Section 4 of the Land Acquisition Act. The acquired land was highly useful for residential purpose and accordingly the appellant had prepared plots in the acquired land. The acquired land is adjacent to *Gaothan* of the village as well as various State highways. The reference Court has not considered these important aspects in a proper way.

5. He submitted that the Land Acquisition Officer has awarded the compensation without considering the sale instances of relevant period. The market value determined by the Special Land Acquisition Officer as well as the reference Court is unreasonable, improper and inadequate. The appellants / claimants are entitled to receive compensation at Rs. 15 per sq. ft. According to Mr. Bhandari, learned counsel for the appellants / claimants, the sale instances at Exhibits 35 and 36 from village Shirur Tajband are relevant and helpful to determine the market value of the acquired land since those plots are situated at a distance of 100 ft. away from the acquired land.

6. Mr. Bhandari, learned counsel for the appellants further invited my attention to the fact that the Special land Acquisition Officer has deducted 20% amount as well as reference Court has also deducted 20% amount for development charges, development costs, architect's fees etc., which is improper and incorrect. The acquired land was already converted into non agricultural land from taking prior permission of the State Government. The layout was sanctioned by the competent authority. The roads were already available there. As such, deduction at 40% is improper and incorrect.

7. In order to substantiate the contention, Mr. Bhandari has relied upon the citation in case of **Meharwal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others**, reported in ***AIR 2012 SC 2721***. He submitted that at the most 20% deduction would be appropriate having regard to the factual scenario. He has also relied upon the citation in case of ***Trishala Jain and another Vs. State of Uttranchal and anothers*** reported in ***AIR 2011 SCC 2458***. Mr. Bhandari submitted that the reference Court has committed an error in deducting 20% on account of development charges when the acquired land was already converted for N.A. use and having sanctioned layout. As such, basic infrastructure like

roads and other facilities were available. Mr. Bhandari further placed his reliance in case of ***Chakas Vs. State of Punjab and others*** reported in ***(2011) 12 SCC 128***.

8. Mr. Bhandari, learned counsel for the appellants has further placed his reliance in case of ***Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) By L.Rs. And others Vs. Special land Acquisition Officer and others*** reported in ***AIR 2012 SC 2709*** on the point of fixing market value of the acquired land, particularly advantages like proximity of National or State Highway or road or developed area. By taking help of these citations, Mr. Bhandari submitted that the acquired land was already developed. As such, there was no reason to make any deductions towards development costs or development charges. He has also relied upon the citation in case of ***Kasturi and others Vs. State of Haryana*** reported in ***AIR 2003 SC 202*** on the point of deduction of 20%. He submitted that the land was fully developed and no further development was required. Mr. Bhandari placed his reliance in case of ***Mohinder Singh and others Vs. State of Haryana*** reported in ***(2014) 8 SCC 897***. He also relied upon the citation in case of ***Pt. Chet Ram Vashist (Dead) by L.Rs. Vs. Municipal Corporation of Delhi*** reported in ***AIR 1995 SC 430***.

9. Mr. Bhandari, learned counsel for the appellants by placing reliance on above citations, urged to enhance the compensation at Rs. 15 per sq. ft. in respect of the acquired land. He urged to allow the appeal.

10. Mr. A.M. Phule, learned AGP for the State / respondent no.1 supported the findings recorded by the reference Court. He submitted that the reference Court has considered the comparative sale instances, location of the land, adjacent roads and other advantages. The reference Court has enhanced the compensation at Rs. 1.50 paise per sq. ft. on the basis of relevant sale instances. It was a true market value determined by the reference Court. The reference Court has rightly deducted 20% towards development charges. He submitted that there is no manifest error on the part of the reference Court while determining the market value of the acquired land. Mr. Phule, therefore, urged to dismiss the appeal.

11. Mrs. R.D. Reddy, learned counsel for respondent no.4 / M.S.R.T.C. also supported the findings recorded by the reference Court. She submitted that the compensation awarded by the reference Court in respect of acquired land at Rs. 1.50 paise per sq.

ft. is adequate having regard to the location, N.A. Use and other advantages. She submitted that the reference Court has rightly deducted 20% towards development charges. She submitted that there was no error on the part of the reference Court while deducting 20% towards development costs. She has placed her reliance in case of ***Chandrashekar Vs. Land Acquisition Officer*** (Civil Appeal No. 1743 of 2006 decided on 22.11.2011 by the Hon'ble Supreme Court) to support her submission that deductions between 20% to 75% is permissible. She submitted that there is no merit in the appeal. It is liable to be dismissed.

12. I have considered the submissions advanced by Mr. Bhandari, learned counsel for the appellant, Mrs. Phule, learned AGP for respondent no.1 / State and Mrs. R.D. Reddy, learned counsel for respondent no.4 / M.S.R.T.C. I have also studied the impugned judgment and award passed by the reference Court, which is a common judgment delivered in L.A.R. No.9 of 2001 with connected L.A.R. proceedings, Record and Proceedings and relevant part of evidence and the sale instances.

ADMITTED FACTS

13. Land admeasuring 3 and Acres 12 Gunthas out of land Survey no. 267 situated at village Shirur Tajband came to be acquired by the State for construction of S.T. Bus stand at village Shirur Tajband, Taluka Ahmedpur, District Latur. The total area of land Survey no. 267 was admeasuring 11 Acres and 30 Gunthas. The acquired land was converted for N.A. use much prior to the notification under Section 4 of the Land Acquisition Act. The original claimant has also sold some plots to others.

14. The appellants / claimants have relied upon two sale instances / examplars, which are produced vide Exhibits 35 and 36. By placing reliance on those examplars, the claimants are seeking enhancement at the rate of Rs. 15 per sq. ft. Those two sale deeds are at a short distance from the acquired land. The land under examplar vide exhibit 35 is at a distance of 100 feet away from the acquired land. Mr. Bhandari, learned counsel for the appellants / claimants vehemently argued to award the compensation in respect of acquired land at the rate of Rs. 15 per sq. ft. by placing reliance on above said two examplars. I am not convinced by the submissions of Mr. Bhandari, learned counsel for the appellants. Why examplars vide exhibits 35 and 36 should be

taken into consideration, when examplars / sale deeds in respect of plots from the acquired land Survey No. 267 are available. The original claimant Bhagwanrao Patil while facing the cross-examination, admitted that he has sold two plots bearing nos. 8 and 9 on 13.06.1975 to Balaji (claimant in L.A.R. No. 8/2001) and total area of plots is about 3,000 sq. ft. Balaji had purchased the said plots for consideration of Rs.2,000/-. The claimant Madhusudan Reddy (claimant in L.A.R. No. 6/2001) has also admitted the fact that he has purchased eight plots from the claimant Bhagwanrao Patil in the year 1972 and the total area of said plots is 12,000/- sq. ft. and he has purchased eight plots for consideration of Rs.6,400/-. The copy of sale deed is also placed on record vide exhibit 39.

15. Having regard to the above factual scenario, it is clear that the original claimant Bhagwanrao Patil has sold certain plots from the acquired land to Madhusudan and Balaji in the year 1972 and 1975. After having necessary calculations, it is revealed that at the relevant time, the market price of the acquired land was at Rs.0.52 paise and 0.66 paise per sq. ft.. When sale instances in respect of N.A. plots from the acquired land are available for comparative assessment to determine the market value of the acquired land, no

need to rely upon other sale instances vide exhibit nos. 35 and 36 though Mr. Bhandari has vehemently argued. No prudent man would accept the sale instances /examplars of other plots, when sale instances / examplars from the acquired land are available for comparative assessment for determination of market value. The reference Court has rightly considered this aspect and relied upon the sale instances/ examplars, which were between the original claimant Bhgwantrao, Madhusudan and Balaji. The reference Court has also rightly added 10% by way of increase in market price and accordingly fixed the market price of the acquired land. The reference Court has determined the market value of the acquired land on 04.08.1977 at Rs. 1.50 paise per sq. ft. on the basis of sale instances executed by the original claimant Bhagwanrao in favour of Madhusudan and Balaji, which are the claimants in other two L.A.R. proceedings. I do not see any error on the part of the learned reference Court while determining the market price of the acquired land on the basis of sale instances executed by the original claimant Bhagwanrao Patil.

16. On going through the impugned judgment, it is noticed that the reference Court has also considered the principles laid down by the Hon'ble Supreme Court in case of ***Chimanlal***

Hargovinddas vs Special Land Acquisition Officer reported in ***AIR 1988 SC 1652***. I do not see any manifest error on the part of the learned reference Court while determining the market value of the acquired land. The reference Court has taken into consideration the comparative sale instances / examplars and accordingly determined the market value of the acquired land considering its location, proximity of State highways, basic amenities etc.

17. Now, coming to another aspect regarding deduction under the head of development charges and development costs. On perusing the copy of award passed by the S.L.A.O. vide exhibit 37, it is noticed that the S.L.A.O. has deducted 20% amount under the head of development charges. It is rightly pointed out by Mr. Bhandari, learned counsel for the appellants / claimants that the reference Court has also deducted 20% from the compensation amount under the head of development charges / development costs, which is improper and incorrect. It is important to note that the acquired land was converted into N.A. in view of order passed by the Deputy Collector, Udgir vide no. 72-NAP-CR-6 dated 26.06.1972. The location of the acquired land is very important. The acquired land is situated on the center place and three roads / highways are adjacent to the acquired land vis. Bidar-Nanded,

Latur-Nanded State highways and Shirur-Mukhed Zilla Parishad road. The acquired land is situated in cross section of Latur-Nanded and Bidar-Nanded road. Shirur-Mukhed road also starts from this point. The acquired land was converted into N.A. use in view of the Government permission referred above and layout was sanctioned accordingly. Meaning thereby, the area for roads and necessary open space was kept open. The plots were developed and some of the plots were also sold by the original claimant as discussed herein before. In this background, the deduction of 20% from the enhanced amount of compensation by the reference Court appears to be incorrect having regard to the facts and circumstances of the case and the location of acquired land referred herein before.

18. There cannot be debate that deductions between 20% to 70% is permissible in view of decision of the Hon'ble Supreme Court in case of ***Chandrashekar Vs. Land Acquisition Officer*** (supra).

19. Mr. Bhandari, learned counsel for the appellants / claimants referred number of citations on the point of deductions referred above. However, the facts of each cited case are

distinguishable. In the present case, I have to consider whether 20% deduction from the market value determined by the reference Court towards development charges was justified or not in the background of 20% deduction already made by the S.L.A.O.

20. It is material to note that the acquired land falls in the amidst of an already developed land with basic amenities of roads, electricity etc. having regard to the location of the acquired land in addition of having three roads passing abutting the acquired land. According to me deduction of 20% towards development charges from market value of the acquired land again would be inappropriate. It may result in awarding inadequate compensation to the claimants. Having considered the citations of the Apex Court in case of ***Meharwal Khewaji Trust (Regd.), Faridkot and others Vs. State of Punjab and others*** (supra), ***Trishala Jain and another Vs. State of Uttranchan and another*** (supra), ***Chakas Vs. State of Punjab and others*** (supra) and ***Sabhisa Mohammed Yusuf Abdul Hamid Mulla (D) By L.Rs. And others Vs. Special Land Acquisition Officer and others*** (supra), I am of the considered view that 20% deduction would be inappropriate having regard to the facts and circumstances and the location of the acquired land, which is already converted into N.A. and having basic amenities.

21. The law with regard to applying the principles of deduction to the determined market value of the acquired land is quite consistent, though, of course, the extent of deduction has varied very widely depending on the facts and circumstances of a given case. It is held by the Apex Curt in catena of decisions that it is not possible to state precisely the exact deduction which could be made uniformly applicable to all the cases. Normally the rule stated by the Apex Court is consistent regarding deduction to be applied on account of carrying out development activities like providing roads or civic amenities such as electricity, water etc. when the land has been acquired for construction of residential, commercial or institutional projects.

22. The cases where the acquired land itself is fully developed and has all essential amenities, before acquisition, for the purpose for which it is acquired requiring no additional expenditure for its development, falls under the purview of cases of 'no deduction' There may be the cases where least or no deduction could be made.

23. The S.L.A.O has already deducted 20% out of compensation towards development costs. Certainly, there is no

need to deduct 20% again from enhanced compensation under the head of development costs by taking into consideration the location of the acquired land, existing use as N.A. land, already available advantages like proximity to State highways, Zilla Parishad road and semi developed area.

24. Having regard to the above reasons and discussion, the appeal needs to be partly allowed and the impugned judgment and award passed in L.A.R. No. 9 of 2001 by the reference Court needs to be modified. In the result, following order is passed.

O R D E R

(i) The first appeal stands partly allowed.

(ii) The impugned judgment and award passed in L.A.R. No. 09 of 2001 by the Civil Judge, Senior Division, Ahmedpur / reference Court dated 10.02.2006 is modified to the extent of deduction.

(iii) The rest of judgment and award passed by the reference Court is hereby confirmed.

(iv) The appellants / claimants are entitled to get compensation in respect of their acquired land at the rate of Rs.1.50 paise per sq. ft. along with statutory benefits and interest available under the Land Acquisition Act. However, without making any deduction under the head of development cost.

(v) Award be modified accordingly

(vi) No order as to the costs.

(viii) R & P be sent back to the reference Court.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane