IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 751 OF 2006
WITH
CIVIL APPLICATION NO.3732 OF 2019

1. Suwalal S/o Dagdulal Kotecha
   Age : 46 years, Occu.: Agri. & Business,
   R/o. Nandur Ghat, Tq. Kaij,
   District Beed.

2. Anilkumar Dagdulal Kotecha
   Age: 52 years, Occu.: Agri. & Business,
   R/o. Nandur Ghat, Tq. Kaij,
   District Beed.

3. Tarachand Dagdulal Kotecha
   (since deceased through L.Rs.)

3-A. Suyoug Tarachand Kotecha
Age: 24 years, Occu.: Business,
R/o. Gujrathi Colony, Beed,
District Beed.

3-B. Sidharth Tarachand Kotecha
Age: 24 years, Occu.: Business,
R/o. Gujrathi Colony, Beed,
District Beed. … Appellants

Versus

The State of Maharashtra
Through
The Special Land Acquisition Officer,
(Collector) Beed. … Respondents

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Mr. Anand P. Bhandari, Advocate for the Appellants / Claimants.
Mr. S.G. Sangle, AGP for Respondent / State/

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CORAM : SHRIKANT D. KULKARNI, J.

Reserved on : 22.02.2022
Pronounced on : 27.04.2022

JUDGMENT:

1. This appeal is directed against the impugned judgment and award passed in L.A.R. No. 68 of 1998 by the reference Court / 2nd Adhoc Additional District Judge, Ambejogai.

2. The facts giving rise to this the appeal in narrow compass are as under:

2(a) The land admeasuring 71 R from the land survey No.151 situated at village Nandur Ghat, Tq. Kaij, Dist. Beed owned and possessed by the claimants came to be acquired for the purpose of 33 K.V. Substation of M.S.E.B. at Nandur Ghat.

2(b) The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the L.A.Act”). was published in respect of acquired land on 04.12.1992.

2(c) The respondent / State took over possession of the acquired land on 21.11.1990.

2(d) The Special Land Acquisition Officer was pleased to award the compensation at the rate of Rs.65,780/- to the appellant / claimant. The notice of award under Section 12(2) of the L.A. Act came to be served on the appellant / claimant on 26.01.1997. The appellant /claimant received the compensation under protest and filed the reference before the Special Land Acquisition Officer praying that a reference be made over to the Civil Court for enhancement of compensation at the rate of Rs.16,145.85 ps. Per R (i.e. Rs. 15 per Sq. Ft. and Rs.15,000/- for the mango tree). The total compensation was claimed of Rs.11,77,244/- with statutory benefits. The reference was accordingly made over vide L.A.R. No.68/1998.

2(e) The reference Court after considering the rival pleadings of the parties, evidence on record and considering the argument advanced on behalf of both the sides, was pleased to dismiss the the reference.

3. Feeling aggrieved by the impugned judgment and award passed by the reference Court. The original claimants have preferred this appeal by taking aid of Section 54 of the Act.

4. Heard Mr. Anand P. Bhandari, learned counsel for the appellants / claimants and Mr. S.G. Sangle, learned A.G.P. for the respondent / State.

5. Mr. Bhandari, learned counsel for the appellant submitted that the possession of the acquired land was taken on 21.11.1990 by invoking the urgency clause by private negotiation. After lapse of two years, the Special Land Acquisition Officer was pleased to pass the award. He submitted that at the relevant point of time, it was mandatory on the S.L.A.O. to pass the award within two ye64ars from the date of notification under Section 4 of the L.A.Act. He submitted that the market value of the acquired land on the date of notification under Section 4 of the L.A. Act was Rs.15 per Sq. Ft. The appellants / claimants have also produced sufficient oral and documentary evidence in support of their claim for enhancement. No contra evidence is produced by the State. He submitted that by way of additional evidence, certain sale instances are placed on record. The certified copies of the sale instances are admissible in evidence under Section 51-A of the L.A. Act. He submitted that the appellants / claimants are

entitled to get compensation of the acquired land at the rate of Rs.15/- per Sq. Ft.

6. Mr. Bhandari, learned counsel for the appellants / claimants submitted that the reference Court has failed to appreciate the evidence placed on record by the appellants in a proper way and determined the market value of the acquired land at a lower side. He submitted that there was a mango tree in the acquired land and the appellant was getting Rs. 3,000/- per year. The reference Court ought to have awarded the compensation in respect of mango tree of Rs.20,000/-. He submitted that at the relevant point of time, the market value of the acquired land in the adjacent area was in the range of Rs. 15,000/- to Rs.20,000 per R as being used for residence purpose.

7. Mr. Bhandari learned counsel has placed reliance on the following stock of citations in support of his argument.

> (i) ***Mehrawal Khewaji Trust (Registered) Faridkot and others Vs. State of Punjab and others*** reported in ***AIR 2012 SC 2721***.

(ii) ***Trishala Jain and another Vs. State of Uttaranchal and another*** reported in ***AIR 2011 SC 2458***.

(iii) ***Chakas Vs. State of Punjab*** reported in ***(2011) 12 SCC 128***.

(iv) ***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***.

(v) ***Kasturi and others Vs. State of Haryana*** reported in ***AIR 2003 SC 202***.

8. He submitted that the reference Court was required to keep in mind the parameters laid down by the Hon'ble Supreme Court regarding deduction to be made depending upon the facts of the case. The reference Court has not considered this aspect. The reference Court has dismissed the reference by recording erroneous findings. He, therefore, urged to allow this appeal.

9. Mr. S.G. Sangale, learned A.G.P.. for the respondent / State supported the impugned delivered by the reference Court. He submitted that the S.L.A.O has considered the valuation of the acquired land in a proper way and accordingly determined the market value of the acquired land. The clause No.17 of the

award speaks to that effect. He submitted that the sale instances relied by the appellant / claimant are subsequent to the date of the notification under Section 4 of the Act. The site plan was not sanctioned by the competent authority. It was not approved layout. It was illegal layout. N.A. permission was not obtained. Mr. Sangle, learned A.G.P. submitted that the exemplars relied upon by the appellant / claimant vide exhibits 32, 33 and 34 cannot be considered in view of above important aspects.

10. Mr Sangle, learned A.G.P. submitted that the village map is not produced by the appellant / claimant to show proximity of the lands shown in the exemplars with the acquired land. He submitted that if the N.A. potentiality is taken into account, then deductions towards development and costs of development charges 33.5% + 33.5%, total 67% needs to be considered. He submitted that the possession of the acquired land was taken by way of private negotiation, which had taken time and it cannot be accepted that the S.L.A.O has caused delay in passing the award. He submitted that 71 R land is a big piece of land and as such, deductions are necessary, if it is considered that it has N.A. potentiality.

11. Mr. Sangle, learned A.G.P. submitted that the reference Court has taken into consideration all these aspects and rightly dismissed the reference. No case is made out to interfere with the impugned judgment and award passed by the reference Court.

12. Mr. Sangle, learned A.G.P. has placed reliance on the following stock of citations in support of his argument.

(i) ***M.V.K. Gundarao Vs. Revenue Divisional Officer (L.A.O), Narasaraopet*** reported in ***AIR 1996 SC 3241***.

(ii) ***Subh Ram and others Vs. Harayan State and another*** reported in ***(2010) 1 SCC 444***.

(iii) ***Special Land Acquisition Officer and Anr. Vs. M.K. Rafiq Saheb*** reported in ***2011 AIR SCW 4420***.

(iv) ***Vithal Rao and Anr. Vs. The Special Land Acquisition Officer*** reported in ***(2017) 8 SCC 558***.

(v) ***Bijender and Ors. Vs. State of Harayana and Anr.*** Reported in ***AIR 2017 SC 5811***.

(vi) ***Indian Council of Medical Research Vs. T.N. Sanikop and Ors.*** reported in ***(2014) 16 SCC 274***.

(vii) ***G.M.O.N.G.C. Ltd. Vs. Rameshbhai Jivanbhai Patel and Anr.*** reported in ***2018 (14) SCC 745.***

(viii) ***Trishala Jain Vs. State of Uttaranchal*** reported in ***AIR 20111 SC 2458***.

13. Mr. Sangle, learned A.G.P. urged to dismiss the appeal.

14. At the outset, let me place on record that there is no dispute between the parties regarding area of 71 R land came to be acquired for construction of 33 K.V. Substation of M.S.E.B. at Nandur Ghat.

15. On perusing the copy of the award passed by the S.L.A.O., more particularly, clause 22, it is noticed that the possession of the acquired land was obtained by the State on 21.11.1990 by way of private negotiation. The award came to be passed on 15.12.1996. The notification under Section 4 of the L.A. Act was published on 04.12.1992. In the above background, it is difficult to accept that the possession of the acquired land was taken by the acquiring body by invoking urgency clause. The possession seems to have been taken by the acquiring body by way of private negotiation on 21.11.1990. Certainly, the appellants / claimants may claim rent from the date of possession i.e. 21.11.1990 to the date of notification under Section 4 issued on

04.12.1992. The acquiring body may consider the rent for 71 R area, as per Government policy.

16. Following sale instances relied upon by the appellant / claimants before the reference Court.

CHART A

Sr. No.	Date, L.A.R. NO. and Exhibit No.	Particulars	Survey/ Gut No. and Area Sq. Mtr.	Amount Consideration (Rs.)	Rate per Sq. Feet. (Rs.)
1	23.11.1990 (176/1990) Exh. 34	Buyer: Hariba Ghanba Kantode Seller: Suvalal Dagdulal Kotecha	Survey No.151 Area 1500 Sq. Ft	20,000/-	13.33/-
2	23.11.1990 (178/1990) Exh. 32	Buyer: Anant Yedba Dawadkar Seller: Suvalal Dagdulal Kotecha	Survey No.151 Area 750 Sq. Ft	10,000/-	13.33/-
3	23.11.1990 (177/1990) Exh. 33	Buyer: Mahadeo Kashinath Kashid Seller: Suvalal Dagdulal Kotecha	Survey No.151 Area 750 Sq. Ft	10,000/-	13.33/-
4	23.11.1990 (2965/1993) Exh. 35	Buyer: Chandmal Kotech Seller: Shrihari Morale	Survey No.2 Area 148.88 Sq. Ft	40,000/-	24.4/-

17. Following are the sale instances produced on record before this Court in the present first appeal by way of additional evidence.

CHART B

Sr. No.	Date and L.A.R. NO.	Particulars	Survey/ Gut No. and Area Sq. Mtr.	Amount Consideration (Rs.)	Rate per Sq. Feet. (Rs.)
1	12.07.1990 1371/1990	Buyer: Sayyad Fakir Sd. Sajjan Seller: Vishwanath Jadhav	Plot No.1 Survey No.5/1 Area 1088 Sq. Ft	10,000/-	9.19/-
2	22.08.1990 3457/1990	Buyer: Pundlik Gaikwad Seller: Suvalal Kotecha	Plot No.3 Survey No.151 Area 750 Sq. Ft	4,000/-	5.33/-
3	22.08.1990 3453/1990	Buyer: Dhondiba Hadade Seller: Suvalal Kotecha	Plot No.1 and 2 Survey No.151 Area 1500 Sq. Ft	8,000/-	5.33/-
4	20.06.1990 2795/1990	Buyer: Uttam Tate Seller: Kundanmal Kotecha	Plot No.1 Gut No.5/1 Area 990 Sq. Ft	4,000/-	4.04/-

18. Apart from the above stock of documentary evidence, the claimant Suwalal Kotecha has examined himself vide Exhibit 36 and one witness PW-2 Shrihari Bhawan Morale vide Exhibit 37. On the other hand, the State has not produced any contra evidence.

19. So far as the sale instances relied upon by the appellant before the reference Court as shown in Chart 'A' are concerned, the sale instance at Sr. No.1 to 3 have been executed on 23.11.1990 after handing over the possession of the acquired land to the State. Above three sale instances have been executed by the claimant in favour of different vendees. As such, above referred three sale instances at Sr. Nos. 1 to 3 cannot be taken into consideration as they have been executed after the date of possession of the acquired land handed over to the State. Those sale instances cannot be said to be genuine.

20. In case of ***M.V.K. Gundarao Vs. Revenue Divisional Officer (L.A.O.) Narasaraopet*** (supra), it is held by the Hon'ble Supreme Court that the land holder is aware of the acquisition since he orally consented for the same and it is suspected that he might have got these sale registered for a higher value with the idea getting higher rate of compensation. Hence, these sale deeds are discarded. In the present case, claimant who is himself as a vendor sold his small area of land (750 Sq. Ft and 1500 Sq. Ft.) after having knowledge of acquisition of his land. Certainly, those sale instances referred above at Sr. Nos. 1 to 3 cannot be said to be genuine and must be kept out of consideration.

21. So far as the sale instances at Sr. No. 4 is concerned, the sale deed dated 29.11.1993, which is after notification under Section 4 of the L.A. Act i.e. 04.12.1992. Certainly, the sale deed after the date of notification under Section 4 of the L.A. Act cannot be relied upon. Evidence of P.W. No.2 Shrihari Morale on that sale deed is not anyway helpful to the claimants.

22. Now, coming to the sale instances produced by the appellants / claimants before this Court by way of additional evidence as shown in Char 'B'. Even though the above sale instances are produced by the appellants / claimants at appellate stage, those can be admitted in evidence in view of decision of the Hon'ble Supreme Court in case of ***Trishala Jain and another Vs. State of Uttaranchal*** (supra). It is held by the Hon'ble Supreme Curt that it is open to the Court to accept the certified copy as the reliable evidence and without examining parties to the documents. This does not however, preclude the Court from rejecting the transaction itself as being malafide or sham provided such a challenge is already before the Court.

23. In case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer*** reported in ***(1988) 3 SCC 751***., it is specifically held by the Hon'ble Supreme Court that, "only genuine instances have to be taken into consideration (sometimes instances are rigged up in anticipation of acquisition of land)". It is further held in the said citation that sale instances of small area also can be considered depending upon the facts of the case.

24. Having regard to the legal position made clear by the Hon'ble Supreme Court in case of ***Trishala Jain Vs. State of Uttaranchal*** (supra), the exemplars produced by the appellants / claimants before this Court by way of additional evidence can be considered for determining the market value of the acquired land.

25. On going through the sale instances as shown in Chart 'B'. The sale instances at Sr. Nos. 1 and 2 are of small area (1088 Sq. Ft. and 750 Sq. Ft. respectively). The sale instance at Sr. No.4 is also of small area of 990 Sq. Ft. Certainly, those sale instances cannot be accepted to determine the market value of

the acquired land though arising out of same land survey number, which is acquired.

26. However, the sale instance at Sr. No.3 is dated 22.08.1990 before the date of handing over the possession of the acquired land. The claimant Suwalal has sold his 1500 Sq. Ft. plot to Dhondiram Hadade on 22.08.1990 for a consideration of Rs.8,000/-. It is brought on record that the claimant has sold various plots out of his land survey No.151 without sanction layout and without N.A. permission. Be that as it may, it cannot be overlooked that the land survey No.151 has N.A. potentiality and that's why the claimant has sold small area of plots to various vendees. It is also evident from the testimony of the claimant that the acquired land is at a distance of less than half furlong from Dak Bungalow. While facing the cross-examination, he has stated that the acquired land is at a distance of half furlong from the Dak Bungalowand and the acquired land is situated to the southern side of the road, which runs as Chausala to Kaij. Thus the location of the acquired land is brought on record, which speaks that it is very close to village Nandur Ghat and adjacent to the Dak Bungalow even though the acquired land is not within the *Gaothan* area.

27. It is revealed from the oral evidence of the claimant that it is at a short distance from *Gaothan*. The acquired land has a N.A. potentiality and that's why the claimant has sold the small portion of the land to various persons by executing sale deeds before the proposal of land acquisition.

28. Having regard to the evidence produced by the appellants / claimants, it is very much clear that the acquired land is at a short distance from the village Nandur Ghat. It had N.A. potentiality and certain plots of small area have been sold by the claimant to various persons. No contra evidence is produced by the State to disbelieve the above picture placed on record on behalf of the claimants regarding its location, proximity and advantages available.

29. In case of ***Meharwal Khewarji Trust (Regd.), Faridkot and Ors. Vs. State of Punjab*** (supra), it is held by the Hon'ble Supereme Court that the highest exemplar is required to be considered.

30. In that background, and in view of the decision of the Hon'ble Supreme Court in case of ***Chimanlal Hargovinddas Vs.***

Special Land Acquisition Officer reported in ***(1988) 3 SCC 751*** (supra), the sale instance shown at Sr. No.3 in Chart 'B' dated 22.08.1990 is found bonafide and reliable, which is before the date of possession. The appellant / claimant has sold his 1500 Sq. Ft. plot to Dhondiram Hadade for consideration of Rs.8,000/-. The rate of per Sq. Ft. comes to Rs.5.33/- per Sq. Ft. In view of citation in case of ***Trishala Jain and another Vs. State of Uttaranchal***, ***Kasturi and Ors. Vs. Staqte of Haryana*** and ***Subh Ram and others Vs. Harayan State and another*** (supra) there is need to consider the deduction towards the development cost and development expenditure.

31. In case of ***Subh Ram and others Vs. Harayan State and another*** (supra), it is held by the Hon'ble Supreme Court that the deductions of 33.5% towards development and another 33.5% for expenditure of development (total 67%), necessary when exemplar is for small area. The same view has been taken by the Hon'ble Supreme Curt in case of ***Chimanlal Hargovinddas*** (supra).

32. Having regard to the above reasons and discussion and in view of the legal position made clear by the Hon'ble Supreme

Court, in above referred stock of citations, there is no difficulty to accept the sale instance shown in Chart 'B' at Sr. No.3 for determining the market value of the acquired land.

33. 71 R area of land out of survey No.151 belonging to the appellants / claimants came to be acquired. 71 R area with market rate shown in the above sale instance is considered as under:

Total area 71 R = 77319 Sq. Ft.	
71 R x 510 per R = Rs. 36210/- (Rs. 2.13 per Sq. Ft.)	
Compensation determined by the S.L.A.O.	71 R x Rs. 510 per R = Rs. 36,210/-
77319 Sq.Ft x Rs.5.33 Sq. Ft. = Rs. 4,12,110/-	
Price of the acquired land	Rs.4,12,110/-
(-) 67% Development Costs	Rs. 2,76,113/-
Net difference amount (33%)	Rs. 1,35,997/-
(-) Compensation paid by S.L.A.O.	Rs. 36,210/-
Net payable amount to the claimant with statutory benefits	**Rs. 99,987/-**

34. In view of the above referred decision in case of ***Subh Ram and others Vs. Harayan State and another*** (supra), 67% development costs needs to be deducted. Thus after deducting 67% costs, net difference amount comes to Rs.1,35,997/-. The Special Land Acquisition Officer has awarded compensation in

respect of the acquired land, at Rs.36,210/-. After deducting the same net enhanced payable compensation to the appellants / claimants comes to Rs.99,787/- for the 71 R area acquired. The claimants / appellants are entitled to get Rs.99,787/- in respect of 71 R area acquired by the respondent / State by way of enhanced compensation along with statutory benefits available under the L.A. Act. In the result, the appeal succeeds as under:

O R D E R

(I) The first appeal stands allowed as under;

(a) The impugned judgment and award passed in L.A.R. No.68/1998 by the reference Court / Adhoc Additional District Judge, Ambejogai dated 28.02.2006 is hereby quashed and set aside

(b) The reference filed by the appellant under Section 18 of the Land Acquisition Act, 1894 stands allowed as under:

(i) The appellant / claimant are entitled to get enhanced compensation of Rs. 99,787/- along with statutory benefits available under the Land Acquisition Act, 1894 in respect of 71 R area acquired by the State.

(ii) The respondent / State shall pay the above said enhanced amount of compensation within three (3) months from today.

(iii) Award be draw up accordingly.

(II) No order as to costs.

(III) The Record and Proceedings be sent to concerned reference Court.

(IV) The appeal is accordingly disposed of.

(V) Civil Application No. 3732 of 2019 stands allowed.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane