

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO.274 OF 2021 WITH
CIVIL APPLICATION NO.7077 OF 2020**

City and Industrial Development
Corporation (CIDCO),
through its Administrator,
Aurangabad

... APPELLANT

VERSUS

1. Dr. Mohan s/o Fulchand Desarda
Age major, Occu. Medical Practitioner,
R/o 18, Vishwalaxmi Housing Society,
Kothrud, Pune – 411 029
2. The State of Maharashtra,
through Collector, Aurangabad **... RESPONDENTS**

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Shri A.S. Bajaj, Advocate for appellant
Shri A.H. Koralkar, Advocate for respondent no.1
Shri S.S. Dande, A.G.P. for respondent No.1.

.....

WITH

**FIRST APPEAL NO.275 OF 2021 WITH
CIVIL APPLICATION NO.13385 OF 2021 WITH
CIVIL APPLICATION NO.13969 OF 2021**

Mohan s/o Fulchand Desarda
Age 75 years, Occu. Medical Practitioner,
R/o 18, Vishwalaxmi Housing Society,
Kothrud, Taluka Haveli,
District Pune

... APPELLANT

VERSUS

1. The State of Maharashtra,
through Collector, Aurangabad
2. City and Industrial Development
Corporation New Aurangabad,
(through Chief Administrator) ... **RESPONDENTS**

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Shri A.H. Koralkar, Advocate for appellant
Shri S.S. Dande, A.G.P. for respondent No.1.
Shri A.S. Bajaj, Advocate for respondent No.2
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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 22nd December, 2021

Date of pronouncing judgment : 4th July, 2022

J U D G M E N T :

Civil Applications No.13385/2021 and 13969/2021 filed by CIDCO in First Appeal No.275/2021 are allowed. The respondent CIDCO is permitted to place on record the documents.

2. Both these appeals are being decided by this common judgment and order since they are inter-connected. Parties thereto are also same. The challenge herein is to one and the same judgment and award dated 11/4/2019, passed by the Court of 2nd Jt. Civil Judge, Senior Division, Aurangabad in Land Acquisition Reference (L.A.R.) No.177/2000.

For the sake of convenience, the parties are referred to as per their status in First Appeal No.275/2021 and the L.A.R. thereunder.

3. Facts giving rise to the present appeals are as follows :-

Land bearing Gut No.166, admeasuring 2 Hectors 83 R, situated at village Tisgaon belonged to the appellant – land owner. The land was said to have been purchased by him for development and residential purpose. It was in the nearby of Waluj Industrial area. Proceedings for acquisition of some part of the said land were initiated by CIDCO in terms of Section 126(4) of the Maharashtra Regional and Town Planning Act. Notification under Section 6 was published on 14/10/1993. The award was passed by Special Land Acquisition Officer (SLAO) on 18/2/1997, awarding compensation @ Rs.15/- per sq.mtr. For 45 R land shown to have been acquired.

4. The appellant – land owner, having been dissatisfied with the amount of compensation offered by the SLAO, preferred the L.A.R. No.177/2000. The learned Civil Judge, Senior Division partly allowed the same, enhancing the

compensation to Rs.70/- per sq.mtr. for 4500 sq.mtrs. of land. Both the land owner and the acquiring body, having been dissatisfied with the impugned judgment and award, have preferred these two appeals.

5. Learned Advocate for the appellant – land owner would submit that, much more land from the very vicinity has been acquired under one and the same land acquisition proceedings for the very purpose. The respondent acquiring body, therefore, cannot discriminate in the rate of compensation awarded/ to be awarded to the respective land owners. In support of his contentions, the learned Advocate has placed reliance on the following authorities :

- (1) Union of India Vs. Bal Ram & anr. [2004 AIR SCW 4355]
- (2) Ali Mohammad Beigh & ors. Vs. State of J.K.
AIR 2017 SC 1518
- (3) Hanmabai w/o Iranna Patil (Deceased through her L.Rs.) Vs. State of Maharashtra [2009(3) ALL MR 70]

6. On the question of the award having been passed in respect of some more land than one actually acquired and as regards the prayer of the respondent acquiring body that the excess amount paid to the land owner be directed to be

refunded with interest thereon or due set off be given is concerned, learned Advocate would submit that, the award has not been corrected by the LAO. The prayer of the respondent acquiring body is, therefore, not maintainable. In support of his contentions, the learned Advocate has relied on the judgment of this Court in case of Annapurna w/o Shamrao Thaokar Vs. State of Maharashtra & ors. [2009(3) ALL MR 70].

Learned Advocate for the appellant would submit that, the award in L.A.R. No.463/1998 has attained finality in view of the Special Leave Petition preferred against the judgment and award passed in First Appeal came to be dismissed. He, therefore, urged for grant of compensation at par therewith on the principle of parity.

7. Learned Advocate for the respondent acquiring body would, on the other hand, submit that, the appellant – land owner did not place on record any sale exemplar to show entitlement of the land owner for enhancement of compensation. According to him, the amount of compensation offered by the SLAO was adequate and just. The acquired land was unirrigated and fallow one. The acquired land admeasures 35 R. The appellant – land owner has, however,

been granted compensation in respect of 45 R land. Allowing him to retain the amount of compensation in respect of unacquired land, would be an unjust enrichment. He would further submit that, at the time of notification under Section 6 as per Section 126 of the MRTP Act, the surrounding area was not developed. According to him, each case has to be decided on its peculiar facts and circumstances. The learned Advocate relied on the following authoritative pronouncement :-

- (1) Vithal Rao & anr. Vs. Special Land Acquisition Officer (2017) 8 SCC 558,
- (2) Special Land Acquisition Officer (N) & anr. Vs. Krishnabai Abasaheb Rane, Deceased through L.Rs. Shivajirao Abasaheb Rane & ors. [2017(1) Mh.L.J. 278]
- (3) Charan Dass, Dead by L.Rs. Vs. Himachal Pradesh Housing and Urban Development Authority & ors. (2010) 13 SCC 398
- (4) The State of Maharashtra & anr. Vs. Unitech Ltd. & anr. [First Appeal No.1745/2014]

Relying on the above judgments, the learned Advocate would submit that, the principles laid down in Chimanlal Hargovinddas's case and Raj Kumar's case, have been reiterated by the Apex Court. Those need to be taken into consideration for deciding these appeals. According to

learned Advocate, the appellant – land owner has failed to show that his land had a quality and potential similar/ equal to the lands which are subject matter of other L.A.Rs. According to him, the judgment passed by a Court can also be basis for purpose of determining the compensation. Relying on the judgment of this Court in First Appeal No.1745/2014, the learned Advocate would submit that, if the land is considered to have N.A. potential, necessary deductions to the extent of little over 50% towards development of roads, drainage lines etc. need to be considered. According to him, the learned Reference Court did not discuss the point while granting enhancement to the extent of Rs.70/- per sq.mtr. The learned Advocate took me through the relevant paragraphs of the impugned judgment to submit the land owner to have not placed on record any sale instance. It was only the acquiring body which relied on some sale exemplars. Compensation on the ground of usual, therefore, not be allowed. He ultimately urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence and the authorities relied on. It is true that the appellant – land owner did not place on record any sale instance in support of his claim for enhancement of

compensation. His claim is based on principle of parity. Admittedly, the First Appeal No.1794/2013, decided by this Court on 28/11/2018 pertained to the land acquired by the respondent CIDCO for the very purpose. The judgment and award passed in L.A.R. No.463/1998 was under challenge in First Appeal No.1794/2013. Both the lands namely the land and the land under consideration in these First Appeals were situated in the same village. It is reiterated that, both the lands along with some other lands came to be acquired under one and the same acquisition proceedings and resultant award/s passed on 18/2/1997. The Apex Court, in case of Bal Ram (supra) (supra), observed :

“It would be unfair to discriminate between the land owners to pay more to some and less to other when the purpose of acquisition is same and lands are identical and similar, though lying in different villages.”

In case of Ali Mohammad Beigh (supra), the Apex Court observed :

“Compensation – Determination – Acquired lands and lands situated nearby, identical and similar – Land owners of acquired lands cannot be discriminated by awarding lesser compensation.”

9. True, the decision of this Court in First Appeal No.1794/2013 has attained finality in view of the Special Leave Petition preferred by the CIDCO thereagainst to the Supreme Court has been dismissed. This Court, vide its judgment and order in First Appeal No.1794/2013 (L.A.R. No.463/1998), has enhanced the compensation to the rate of Rs.10,875/- per R for unirrigated land and Rs.21,750/- for irrigated one.

10. Admittedly, the land in question was unirrigated one. It was even not under cultivation. The land was said to have been purchased for development and sale of plots/ house sites. Admittedly, the land had not been converted into N.A. assessment. On the given day, the land was agricultural one.

11. This Court was initially inclined to grant the land owner compensation equal to that of one granted by this Court in First Appeal No.1794/2013. This Court has, however, changed its view after having gone through the lay-out plan of the CIDCO. The land, subject matter of First Appeal No.1794/2013 is located somewhat closer to Aurangabad-Nagar Highway whereas the land Survey No.166, subject

matter of the present appeals, is away from the said land that too far away from Aurangabad-Nagar highway. The Division Bench of this Court, in First Appeals No.1745/2014 and 1750/2014, has granted market rate at Rs.10,250/- per R, minus 40% thereof towards development charges, which, on calculation, came to Rs.6150/- per R. This judgment has been relied on by the learned Advocate for the respondent CIDCO. The subject matter of First Appeals No.1745/2014 and 1750/2014 was the acquisition of land by CIDCO for the very purpose i.e. for development of Waluj Industrial Estate. The proceedings for acquisition of those lands and the one which is subject matter of the present appeal were one and the same i.e. notification under Section 126 of the Maharashtra Regional and Town Planning Act was published on one and the same day. Here the land owner claimed to have had purchased the land for development into plots and consequential sale thereof. He would, therefore, have necessarily required to spend a lot for development. True, the sale instances dated 25/6/1993 and 27/12/1993, relied on by the learned Advocate for the CIDCO suggest that the surrounding lands were sold for very meagre consideration at the relevant time. Those sale instances would lose their efficacy in view of the fact that the lands were acquired for

development of town by CIDCO. The purpose of acquisition has to be taken into consideration. It is reiterated that, the Division Bench of this Court in aforesaid two First Appeals has granted Rs.6150/-. The lands, subject matter of these two appeals are located closer to Aurangabad-Nagar Highway. This Court is inclined to rely on the judgment of the Division Bench of this Court in First Appeals, No.1745/2014 and 1750/2014, however, proposes to deduct 40% towards development charges considering the fact that the land Survey No.166, is situated far away from the lands covered by the judgment of the Division Bench in First Appeals, No.1745/2014 and 1750/2014 and even this Court proposes to give more concession to the acquiring body in determining the market value of the lands acquired for the very reason of long distance between the two lands. This Court, therefore, proposes to fix the rate of the acquired land at Rs.8000/- per R with 40% deduction therefrom towards development and incidental charges. The rate of compensation comes to Rs.4800/-.

12. The question is, to the extent of how much land the appellant – land owner would be entitled for compensation. According to learned Advocate for CIDCO, in

fact, only 35 R land has been acquired. Some mistake was crept in in the award which indicates that 45 R land was acquired. This Court, therefore, enquired with the learned Advocate for the appellant – land owner. According to him, the award and the revenue record would indicate that, 45 R land came to be acquired. He was, however, not categorical to submit how much land of him has been acquired. His reliance on the judgment of Division Bench of this Court in case of Annapurna (supra) and his equivocal submissions undoubtedly indicate that it was only 35 R land has been acquired and not 45 R. The subject matter of the Writ Petition in case of Annapurna (supra) was whether the State was entitled to recover the amount paid to the claimant in terms of the award. The facts thereof would indicate that there was no claim for enhancement of compensation pending before the very Court which decided Writ Petition No.434/2009 [Annapurna Thaokar (supra)], the decision of which has been relied on by the learned counsel for the land owner. The said authority is very much distinguishable on facts. Allowing the appellant – land owner herein to retain the amount of payment which he has received in excess would be nothing but an unjust enrichment. Moreover, when in fact only 35 R of land has been acquired, how this Court would be justified in

asking the respondent – acquiring body to pay enhanced amount in respect of land admeasuring 45 R. Necessary set-off would, therefore, be required to be given to the respondent – acquiring body

13. With all the aforesaid observations, both the appeals stand disposed of in terms of the following order :-

ORDER

- (i) Both the First Appeals are partly allowed.
- (ii) The amount of compensation granted by the Reference Court in L.A.R. No.177/2000 is enhanced to Rs.4800/- per R. The appellant – land owner be paid the compensation at an enhanced rate of Rs.4800/- per R (in respect of 35 R land).
- (iii) The appellant – land owner has been paid a sum of Rs.24,000/- (Rupees twenty four thousand) as excess payment in respect of 10 gunthas of land which has not been acquired. The appellant – land owner, therefore, shall be liable to pay back that much amount i.e. Rs.24,000/- (Rupees twenty four thousand) along with interest @ 9% p.a. thereon

from the date of receipt of amount to the date he repays it back or the respondent – acquiring body pays him the amount of compensation at the rate enhanced by this Court.

- (v) The revenue record be suitably corrected indicating the land to have been acquired only to the extent of 35 R. Meaning thereby, the revenue record be duly corrected if the same is shown to have in terms of the award, pertaining to 45 R land.
- (vi) Civil Application No.7077/2020 stands disposed of.

**(R. G. AVACHAT)
JUDGE**

fmp/-