

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

FIRST APPEAL NO.910 OF 2006

Mirza Mukramali S/o Mirza Ekramali Beg,
Aged 51 yrs. Occ. Agri.
R/o Riyadh (Saudi Arab)
Now Residing at and Post Deoni,
Taluka Deoni, Dist. Latur **.. Appellant**
(Orig. Claimant)

VERSUS

1. The State of Maharashtra,
Through the Collector, Latur,
Latur
2. The Sub Divisional Officer,
Udgir, Taluka Udgir,
District Latur **.. Respondents**
(Orig. Respondents)

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Mr. A. V. Sakolkar h/f. Mr. V. G. Sakolkar
a/w. Mr. H. B. Nandagawale, Advocate for Appellant
Mr. S. N. Morampalle, AGP for Respondent No.1

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CORAM:	SHRIKANT D. KULKARNI, J.
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Closed for Judgment on:	27.04.2022
Judgment pronounced on:	06.05.2022

Judgment:

1. This appeal takes an exception to the impugned judgment and award passed in LAR No.3247 of 2001 by the Ad-hoc Additional District Judge, Udgir, District - Latur / Reference Court.

2. The agricultural land bearing Survey No. 238/1 admeasuring 2 Hectors owned and possessed by the appellant situated at Village—Deoni, Taluka—Deoni, District—Latur came to be acquired by the Respondents / State for extension of Gaothan. The Special Land Acquisition Officer was pleased to award the compensation to the appellant / claimant at the rate of Rs.5 per sq.ft. The appellant / claimant has demanded Rs.50 per sq.ft. which was prevailing market price at the time of Notification under Section 4 of the Land Acquisition Act, 1894 (*hereafter referred to as "the Act" for the sake of convenience*). Feeling aggrieved by the amount of compensation determined by the SLAO, the appellant / claimant had filed Reference under Section 18 of the Act vide LAR No.3247 of 2001 before the Reference Court. 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 enhance the compensation at the rate of Rs.20 per sq.ft.

3. Feeling aggrieved by the rate of compensation determined by the Reference Court the claimant has preferred this appeal by taking aid of Section 54 of the Act.

4. Heard Mr. A. V. Sakolkar holding for Mr. V. G. Sakolkar, learned Counsel for the appellant / claimant and Mr. S. N. Morampalle, learned AGP for the State / Respondent No.1. None present for Respondent No.2 at the time of argument.

5. Mr. Sakolkar, learned Counsel for the appellant invited my attention to the impugned judgment Paragraph No.14. He pointed out that several sale instances were placed on record by the appellant to determine the market value of the acquired land at the relevant point of time. He submitted that the land belonging to the appellant / claimant came to be acquired for extension of Gaothan of Deoni (Bk.), District-Latur. He submitted that with the passage of time Deoni is now Taluka Headquarter which has all the basic

facilities and amenities. The acquired land had NA potentiality and it was close to the old Gaothan. It was suitable for extension of Gaothan and that is why it came to be acquired by the State.

6. Mr. Sakolkar, learned Counsel for the appellant pointed out that the appellant / claimant has placed on record in all 3 sale instances and also produced oral evidence of claimant and 2 witnesses. The Sale Deed vide Exhibit-19 is of highest consideration. The Reference Court has discarded the same on flimsy grounds. He submitted that it is well settled position of law that when there are several exemplars with reference to similar land, it is general rule that highest of exemplar, if it is bonafide transaction, needs to be considered and accepted for determination of market value of the land. Mr. Sakolkar, learned Counsel for the appellant has placed reliance in case of Mehrawal Khewaji Trust, Faridkot and others Vs. State of Punjab and others reported in (2012) 5 SCC 432. He, therefore, submitted that market value of the

acquired land need to be reassessed on the basis of Sale Deed at Exhibit-19 at the rate of Rs.47.61 per sq.ft. He, therefore, urged to allow the appeal by enhancing the compensation with statutory benefits available under the Act.

7. Per contra, Mr. S. N. Morampalle, learned AGP for the State supported the findings recorded by the Reference Court. He submitted that the Reference Court has rightly considered the sale instances on record and the evidence produced on behalf of appellant. The Reference Court has rightly turned down the sale instance vide Exhibit-19 by recording sound reasons. The market value determined by the Reference Court at Rs.20 per sq.ft. is adequate having regard to the facts of the case, it's location coupled with attending circumstances. He, therefore, urged to dismiss the appeal. Mr. S. N. Morampalle, learned AGP for the State also placed reliance on the decision rendered by this Court in case of State of Maharashtra and others Vs. Bhimdeo Rattu Rathod and others with connected matter (First Appeal

No.3420 of 2018 and First Appeal No. 3421 of 2018)
dated 09.03.2022.

8. I have considered the submissions of both the sides. I have perused the impugned judgment delivered by the Reference Court, so also, I have gone through the oral evidence produced on behalf of appellant coupled with the sale instances.

9. There is no dispute that land admeasuring 2 Hectors from Survey No.238/1 owned and possessed by the appellant came to be acquired for extension of Gaothan at Deoni (Bk.), District-Latur. Acquired land is closed to the old Gaothan of Deoni (Bk.). It was suitable for extension of Gaothan and that is why it came to be acquired by the State.

10. The real dispute between the parties is centered around with the market price of the acquired land. On the date of Notification under Section 4 of the Act. According to the appellant, the market price determined by the Reference Court

at the rate of Rs.20 per Are is inadequate, whereas, it is the stand of the State that market price determined by the Reference Court is adequate and reasonable. There is no need to enhance the compensation.

11. In case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer reported in AIR 1988 SC 1652, the Hon'ble Supreme Court has laid down the parameters for determination of the market value of the land in view of the provisions of Section 23 of the Act. The Reference Court has also referred the above said citation and has considered the parameters laid down by the Hon'ble Supreme Court while determining the market value of the acquired land. It is also well settled position of law that when there are several exemplars / sale instances with reference to similar lands, it is general rule that highest exemplar / sale instance needs to be accepted and considered, if, it is bonafide transaction. Mr. Sakolkar, learned Counsel for the appellant has also placed reliance in this context in case

of *Mehrawal Khewaji Trust, Faridkot and others Vs. State of Punjab and others* (supra) wherein the Hon'ble Supreme Court has held in Paragraph No.15 as under-

"It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation."

12. Having regard to the legal position laid down by Hon'ble Supreme Court in above 2 landmark decisions; I have gone through the impugned judgment, more particularly, relevant paragraphs, thereby determining the market value of the acquired land.

13. Following are the sale instances / exemplars produced on record by the appellant / claimant in support of his claim of Rs.50 per sq.ft.

Exhibit-19 Sale deed dt.28/12/1990
admeasuring 840 sq.ft. from sold for
consideration of Rs.40,000/- i.e. Rs.47.61
per sq.ft.

Exhibit-16 Sale deed dt. 08/05/1992
admeasuring 542.6 sq.ft. sold for
consideration of Rs.17,000/- i.e. Rs.31.33
per sq.ft.

Exhibit-20 Sale deed dt. 19/03/1990
admeasuring 1800 sq.ft. sold for
consideration of Rs.30,000/- i.e. Rs.16.66
per sq.ft.

14. Apart from above said documentary stock of evidence, appellant / claimant has examined himself vide Exhibit-12 and two witnesses Viz. PW No.2 - Dhondiram vide Exhibit-19 and PW No.3 - Balaji vide Exhibit-20.

15. On going through the exemplar at Exhibit-19 dated 28.12.1990 it is revealed that 840 sq.ft. Area of land came to be sold for consideration of Rs.40,000/- which come to Rs.47.61 per sq.ft. It is the highest exemplar on record. The Reference Court has discarded the exemplar vide Exhibit-19 by giving reasons that plot under the exemplar is situated in thick locality of Deoni (Bk.) and to the eastern side of the said plot there is house of one Umersaheb and western side there is house of Mehtabsab. On reamining two sides there are also houses. The Reference Court has discarded the same by assigning reasons that the plot under the above said sale instance is abutting to the house properties which are already in existence and as such the purchaser would pay higher price and said sale instance does not reflect true market value

of the acquired land. The reasons given by the Reference Court are illogical. Even though acquired land was open at the relevant point of time it was close to the old Gaothan. It was suitable for the extension of Gaothan that is why found suitable and came to be acquired by the State. This aspect has been completely overlooked by the Reference Court.

16. Moreover, the Reference court has also overlooked the fact that the acquired land is also at a distance of 700 ft. away from the property under exemplar vide Exhibit-19. The acquired land is situated on the highway. In view of the factual scenario appearing from the evidence of claimant and his witnesses the reasons given by the Reference court while discarding the highest exemplar vide Exhibit-19 cannot be accepted. The reasons are fragile. In view of ratio laid down in case of *Mehrawal Khewaji Trust, Faridkot and others Vs. State of Punjab and others* (supra) the exemplar vide Exhibit-19 is found to be bonafide transaction in absence of any contrary evidence

produced by the State. As such, there was no difficulty before the Reference Court to rely upon the sale instance while determining the market value of the acquired land. The sale instance vide Exhibit-19 was before the date of Notification under Section 4 of the Act. In view of the parameters laid down by the Hon'ble Supreme Court in case of *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer* (supra), the Reference Court should have relied upon the highest sale instance and could have determined the deductions up to 50% towards development cost and development charges and accordingly could have determined the compensation.

17. Having regard to the above reasons and discussion, I am of the considered view that Reference Court has committed an error in discarding highest sale instance vide Exhibit-19, which is on record and found to be genuine and bonafide sale transaction.

18. On the basis of the highest sale instance vide Exhibit-19, the market value of the acquired land needs to be determined. Having regard to the large chunk of the land which is acquired for extension of Gaothan the deduction of 50% needs to be considered towards development cost and development charges in view of well settled principles of law. Accordingly compensation is worked out as under-

Area of acquired land	1,45,200/- sq.ft. As calculated by Reference Court & considered for compensation
Per sq.ft.	Rs.47/-
Total (1,45,200 X 47)	Rs.68,24,400/-
50% deduction towards development cost	Rs.34,12,200/-
Total	Rs.34,12,200/-
Determined in Reference Court	Rs.29,04,000/-
Difference	Rs.15,08,200/-

19. Thus, the appellant / claimant is entitled to get enhanced compensation of Rs.15,08,200/-. However the appellant / claimant has restricted his claim in the appeal to the

extent of Rs.10,00,000/-. In appeal the appellant / claimant in unambiguous words in Foot Note 2 made it clear that, he is restricting the claim of enhancement to Rs.10,00,000/- on which Court fees of Rs.23,950/- has been paid. According to Order VII Rule 7 of the Code of Civil Procedure, 1908 grant of larger relief than relief claimed is generally not permissible. It is general rule that relief to be granted by the Court must be based on pleadings. The reliance can be placed in case of Gulabrao Balwantrao Shinde and others Vs. Chhabubai Balwantrao Shinde and others reported in A.I.R. 2003 SC 160. The Hon'ble Supreme Court has held that the Court cannot grant larger relief than sought in the claim. In the present appeal the appellant / claimant since restricted his claim for enhancement at Rs.10,00,000/-, this Court cannot grant more than Rs.10,00,000/- though, entitlement comes to more than Rs.10,00,000/- as determined above. Certainly, it would be just and proper to allow the claim of enhancement of Rs.10,00,000/-

according to the prayer of the appellant / claimant, in view of Order VII Rule 7 of Code of Civil Procedure, 1908.

20. In the result, appeal succeeds partly as under-

ORDER

(I) The First Appeal stands partly allowed as under-

(A) The Respondents / State shall pay enhanced compensation of Rs.10,00,000/- alongwith statutory benefits available under the Land Acquisition Act, 1894 to the appellant / claimant.

(B) The award passed in LAR No.3247 of 2001 by the Reference Court / Ad-hod Additional District Judge, Udgir stands modified to the above extent.

(C) Rest of the award passed by the Reference Court stands confirmed.

(D) No order as to costs.

(E) Record and Proceedings be sent back to the Reference Court.

(F) The amount, if any, deposited by the Respondents / State and lying with Registry, it be paid to the appellant / claimant as per procedure.

(G) The Bank guarantee furnished by the appellant / claimant stands revoked. The Bank guarantee stands released and it be returned to the appellant / claimant.

(II) The First Appeal is accordingly disposed of.

(III) Civil Application, if any, stands disposed of.

[SHRIKANT D. KULKARNI, J.]

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