

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

FIRST APPEAL NO. 1225 OF 2010

The Chief Engineer
Construction Division,
Central Railway,
District Latur

... **Appellant**
[Orig. Res.No.2]

Versus

1. Bhagirath Sahakari Grahnirman Sanstha
Harangul (BK),
Through it's Chairman Shayam s/o Bajirao Kulkarni,
R/o. Latur

2. State of Maharashtra
Through Collector, Latur
(formal but necessary party)

... **Respondents**
[Res.No.1 – Orig. Claimant]

....

Mr. A. D. Soman, Advocate h/for Shri D. V. Soman, Advocate for
appellant

Mr. G. N. Kulkarni, Advocate for respondent No.1

Mr. A. B. Chate, AGP for respondent No.2

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 06th SEPTEMBER, 2021

PRONOUNCED ON : 16th FEBRUARY, 2022

J U D G M E N T :-

. This is an appeal under Section 54 of the Land
Acquisition Act, 1894 (for short, 'the Act of 1894'). The challenge in

this appeal is to the judgment and award dated 12.02.2009, passed by the learned 4th Joint Civil Judge, Senior Division, Latur in Land Acquisition Reference (L.A.R.) No. 551 of 2000. The award impugned in this appeal, reads as under:

- “1. *The reference is partly allowed with proportionate costs.*
2. *The claimant is entitled for enhancement in compensation at the rate of Rs.40/- per sq. feet for the area 26900 sq. feet along with statutory benefit 30% solatium u/sec. 23(2) and 12% additional component u/sec. 23 (1) (A) of the Land Acquisition Act from the date of notification till the date of award i.e., 23.1.1996 till 31.1.1999.*
3. *The amount withdrawn by the claimant is to be deducted from the amount payable and the remaining net amount is payable along with interest there on at the rate of 9% p.a. For the first year and thereafter 15% p.a. From the date of notification 23.1.1996 till realisation of the entire amount in favour of the claimant.*
4.
5.
6.”

2. Finding the amount of compensation enhanced by the Reference Court to be very much on higher side, the acquiring body – Central Railway has filed the present appeal.

3. The facts giving rise to the present appeal are as under:

The respondent No.1 is the housing society. It had purchased agricultural land admeasuring 1 H 21 R comprised in Gut No. 82 for construction of houses for its members. 37R land therefrom was acquired for railway track. Notification under Section 4 of the Act of 1894 was published on 23.01.1996. The award was passed on 23.11.1999. The Land Acquisition Officer (L.A.O.) offered compensation at the rate Rs.650/- per R. The respondent society accepted the amount of compensation under protest and filed L.A.R., claiming enhancement at the rate of Rs.150/- per sq. feet. The Reference Court after having considered the evidence before it, granted compensation at the rate of Rs.40/- per sq. feet (total Rs.10,76,000/-) with all consequential benefits.

4. Learned Advocate for the appellant – Acquiring Body would submit that on the date of publication of the notification under Section 4 of the Act of 1984, It was an agricultural land. The respondent society had relied on sale exemplars pertaining to very small piece(s) of land. The Reference Court, therefore, ought to have considered appropriate deductions towards development charges for

grant of enhancement in compensation. The learned Advocate has relied on the following authorities to ultimately urge for substantial reduction in the amount of compensation granted under the impugned award.

- (i) Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and another – (1988) 3 SCC 751;
- (ii) Lucknow Development Authority Vs. Krishna Gopal Lahoti and others – (2008) 1 SCC 554;
- (iii) Udyami Evam Khadi Gramodyog Welfare Sanstha and another Vs. State of Uttar Pradesh and others – (2008) 1 SCC 560;
- (iv) Sangita w/o Sopanrao Solankar Vs. The State of Maharashtra and another (First Appeal No.1433 of 2012 – High Court of Bombay, Aurangabad Bench).

5. The learned Advocate for the respondent would, on the other hand, submit that the land was purchased for construction of houses. The same indicates that the land had non agricultural potential. The village map on record would indicate that the distance between the acquired land and the land comprised in the sale exemplars was not more than 2 kms. Latur, the district place is at 4 kms from the acquired land. The development of the town was towards the land acquired. The Reference Court, in fact, granted meager enhancement. The respondent society, has not preferred any

appeal for enhancement therein. The learned Advocate, ultimately urged for maintaining the impugned award.

6. Considered the submissions advanced. Perused the evidence relied on. Gone through the citations relied on. The factors enumerated in para 4 of the judgment in ***Chimanlal's case*** (supra), are on the mind of this Court. In clause (16) thereof, it has been specifically stated that every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the judge must place himself. The Apex Court, in para 8 of the said judgment has observed thus:

“When a large block of land is required to be valued, appropriate deduction has to be made for setting aside land for carving out roads, leaving open spaces, and plotting out smaller plots suitable for construction of buildings. The extent of the area required to be set apart in this connection has to be assessed by the court having regard to the shape, size and situation of the concerned block of land etc. There cannot be any hard and fast rule as to how much deduction should be made to account for this factor. It is essentially a question of fact depending on the facts and circumstances of each case. It does not involve drawing upon any principle of law.”

7. The Division Bench of this Court in the case of Sangita Solankar, granted compensation at the rate Rs.27/- per sq. feet in respect of the land acquired for the very purpose. The land was, however, situated in some other village.

8. Let us turn to appreciate the evidence in the case. 37 R land belonging to the respondent housing society was acquired for railway track. The notification under Section 4 of the Act of 1894 was published on 23.01.1996. Admittedly, the respondent – housing society had purchased the land admeasuring 1 H 21 R for construction of houses for its members. The same suggest that the land had non agricultural potential. The distance between the district place Latur and the land acquired, is of little over 4 kms. The sale exemplars relied on, pertain to the lands situated at different village. The sale exemplars Exh.19 to 21 pertain to very small pieces of land, say not more than 1 R land. Under those sale exemplars, houses site/plots converted into non agricultural assessment, were sold in the month of July and August 1995. The Reference Court found the land comprised in sale exemplars had N.A. and commercial potential as well. The plots were abutting a State

highway. The land acquired was at 2 – 3 kms therefrom. It therefore found to be reasonable to grant Rs.40/- per R after deducting 1/3rd area of the land acquired, towards development charges. The witness examined on behalf of the respondent society had unequivocally admitted that the society had not taken steps for converting the remaining land from agriculture to non agriculture use.

9. It is only a matter of guess work. In case of ***Kanta Devi and others Vs. State of Haryana and another – AIR 2008 SC 3107***, the Court considered 60% deduction for development charges. In the case in hand, the Reference Court considered it at 1/3rd. In view of this Court, there should have been some more deduction towards development charges and even in amount of compensation granted, since the land was agricultural land on the date of publication of the notification. When the evidence was recorded by the Reference Court, even no steps were initiated by the respondent housing society for getting the remaining land converted into non agricultural assessment. The distance between the lands comprised in the sale instances relied on and the land acquired was of 3 – 4 kms. The lands comprised in the sale instances were abutting State

highway. The lands thereat had commercial potential as well. On considering all these facts, in view of this Court the deduction towards development charges should have been 50%.

10. The Reference Court has awarded interest from the date of notification. The same is in dictum of in Full Bench judgment of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari – 2016 (3) Mh.L.J. 457***. It should have been from the date of award. The appeal is therefore allowed in terms of following order.

ORDER

(i) The impugned award dated 18.02.2009, passed by the learned 4th Joint Civil Judge, Senior Division, Latur, in L.A.R. No. 551 of 2000, is hereby modified as under:

(a) The claimant is entitled for enhancement in compensation at the rate of Rs.40/- per sq. feet for the area 20146.5 sq. feet along with statutory benefit, such as 30% solatium u/sec. 23(2) and 12% additional component u/sec. 23 (1) (A) of the Land Acquisition Act from the date of notification under Section 4 of the Act to the date of award (23.1.1996 to 31.1.1999).

- (b) The amount withdrawn by the claimant is to be deducted from the amount payable and the remaining net amount is payable along with interest thereon at the rate of 9% p.a. for the first year from the date of award and at the rate of 15% p.a. for further period until the entire amount is paid to the claimant.
- (ii) The amount withdrawn by the respondent society, be given set off.
- (iii) Pending civil application No.9785 of 2009 is disposed of.

[R. G. AVACHAT, J.]

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