IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 369 OF 1993
WITH
CIVIL APPLICATION NO.104 OF 1994
IN
FIRST APPEAL NO. 369 OF 1993

The State Of Maharashtra,
Through The Special Land
Acquisition Officer, Nashik ...Appellant

Versus

Smt. Laxmibai Murlidhar Ghuge, ...Respondents
Since Deceased Through Her Lrs.
Shri Karbhari M. Ghuge

WITH
FIRST APPEAL NO. 629 OF 1998

The State Of Maharashtra,
Through The Special Land
Acquisition Officer, Nashik ...Appellant

Versus

Shankarlal C. Gupta And Ors. ...Respondents

WITH
FIRST APPEAL NO. 628 OF 1998
WITH
CIVIL APPLICATION NO.5796 OF 1998
IN
FIRST APPEAL NO. 628 OF 1998

The State Of Maharashtra,
Through The Special Land
Acquisition Officer, Nashik ...Appellant

Versus

Shri Dada Mahadu Mhaske And Ors. ...Respondents

WITH
FIRST APPEAL NO. 627 OF 1998
WITH

CIVIL APPLICATION NO.5794 OF 1998
WITH
CIVIL APPLICATION (STAMP) NO.7413 OF 1998
IN
FIRST APPEAL NO.627 OF 1998

The State Of Maharashtra,
Through The Special Land
Acquisition Officer, Nashik ...Appellant

Versus

Shri Dada Mahadu Mhaske And Ors. ...Respondents

WITH
FIRST APPEAL NO. 626 OF 1998
WITH
CROSS OBJECTION (STAMP) NO.34907 OF 1999
IN
FIRST APPEAL NO.626 OF 1998

The State Of Maharashtra,
Through The Special Land
Acquisition Officer, Nashik ...Appellant

Versus

Desoram S. Mhaske ...Respondents

WITH
FIRST APPEAL NO. 624 OF 1998

The State Of Maharashtra,
Through The Special Land
Acquisition Officer, Nashik ...Appellant

Versus

Shri Dhondu Chima Mhaske And Ors. ...Respondents

WITH
FIRST APPEAL NO. 623 OF 1998
WITH
CROSS OBJECTION (STAMP) NO.34908 OF 1999
IN
FIRST APPEAL NO.623 OF 1998

The State Of Maharashtra,
Through The Special Land
Acquisition Officer, Nashik ...Appellant

Versus

Kisan A. Gosavi ...Respondents

WITH
FIRST APPEAL NO. 622 OF 1998
WITH
CROSS OBJECTION (STAMP) NO.29278 OF 2000
IN
FIRST APPEAL NO.622 OF 1998

The State Of Maharashtra,
Through The Special Land
Acquisition Officer, Nashik ...Appellant

Versus

Shri Bhika Bhagwanpuri Gosavi And Ors. ...Respondents

WITH
FIRST APPEAL NO. 621 OF 1998
WITH
CROSS OBJECTION (STAMP) NO.34906 OF 1999
IN
FIRST APPEAL NO.621 OF 1998

The State Of Maharashtra,
Through The Special Land
Acquisition Officer, Nashik ...Appellant

Versus

Rangnath Kashinath Jadhav and Ors. ...Respondents

FIRST APPEAL NO. 620 OF 1998
WITH
CROSS OBJECTION (STAMP) NO.16863 OF 1999
IN
FIRST APPEAL NO.620 OF 1998

The State Of Maharashtra,
Through The Special Land
Acquisition Officer, Nashik ...Appellant

Versus

R.S. Rathi And Ors. ...Respondents

FIRST APPEAL NO.619 OF 1998
WITH
CROSS OBJECTION (STAMP) NO.34905 OF 1999
IN
FIRST APPEAL NO. 619 OF 1998

The State Of Maharashtra,
Through The Special Land
Acquisition Officer, Nashik ...Appellant

Versus

Chandrabhan M. Ghuge And Ors. ...Respondents

WITH
FIRST APPEAL NO. 618 OF 1998
WITH
CROSS OBJECTION (STAMP) NO.34904 OF 1999
IN
FIRST APPEAL NO.618 OF 1998

The State Of Maharashtra,
Through The Special Land
Acquisition Officer, Nashik ...Appellant

Versus

Smt. Laxmibai Govind Ghuge And
Ors ...Respondents

...

Ms Tanaya Goswami, AGP for the Appellant -State.
Mr. P.N. Joshi with Ms Rukmini Khairnar and Pritesh Bohade for othe Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 5th JULY, 2022.

P. C. :-

1. The Appellant-State has filed these appeals challenging

common judgment and Award dated 17/04/1997 passed by learned District Judge, Nashik, in Land Reference Nos.441 of 1991 to 454 of 1991.

2. The Government had acquired the land situated in village Katamgaon for the purpose of dumping ashes of Eklahera Thermal Power Station. Section 4 Notification was published on 17/05/1984 and Erratum dated 11/01/1986 to the said Section 4 Notification was published on 06/03/1986. The Land Acquisition Officer declared the Award on 01/03/1988. The Land Acquisition Officer classified the acquired land into two groups as per the assessment of revenue and awarded compensation in respect of Group one land @ Rs.16,000/- per hector and in respect of Group two @ Rs.18,000/- per hector. In addition, the LAO also awarded compensation in respect of the trees, in the said acquired land. Being dissatisfied with the quantum of compensation determined by the Land Acquisition Officer, the Respondents in these appeals, who shall be hereinafter referred to as ‘the Claimants’ filed Reference under Section 18 of the Land Acquisition Act, 1894.

3. The Claimants had claimed that the acquired land was

situated close to thermal power station and had NA potentiality. Relying upon sale deeds dated 27/11/1984, 3/12/1984 and 6/11/1984, the Claimants stated that the market value of the acquired land was Rs.1,00,000/- per hector and that the rate offered by the Land Acquisition Officer was below the prevailing market rate as on the date of Section 4 notification. The Claimants further stated that the land, which was subject matter of land Reference Nos.443 of 1991 and 445 of 1991 was Bagayat land and wrongly classified as Jirayat land.

4. The Reference Court, upon considering oral as well as documentary evidence produced by the Claimants, determined the compensation at the rate of Rs.90,000/- per hector in respect of Bagayat land and Rs.60,000/- per hector in respect of Jirayat land. The Reference Court also awarded compensation of Rs.2,000/- per hector in respect of Pot-Kharab land. Being aggrieved by this judgment, the Appellant-State has filed these appeals whereas the Claimants in Land Reference Nos.441 of 1991, 443 of 1991 to 447 of 1991 and 451/91 have filed cross objections for enhancement of the compensation awarded by the Reference Court.

5. Learned AGP submits that the Reference Court has erred in

enhancing the compensation on the basis of the sale instances relied upon by the Claimants. She has relied upon the decision in ***Union of India vs. Premlata and others***, ***reportable in Civil Appeal Nos.176-177 of 2022*** wherein the Hon'ble Supreme Court has held that when the acquired land is a large tract of land and exemplars are of small portion of land, there has to be a suitable deduction towards development cost. She further states that the Reference Court has not considered the nature of the acquired land vis-a-vis the sale deed land and has not deducted any amount towards adverse factors possessed by the acquired land. She therefore contends that the compensation determined by the Reference Court is not just and reasonable and was not the prevailing market rate as on the date of Section 4 Notification.

6. Per contra, Mr. Joshi, learned counsel for the Claimants submits that the acquired land was within the limits of Municipal Corporation and was close to the Railway station. Learned counsel for the Claimants contends that though the acquired land was a large tract of undeveloped land, it had potential value for being used for residential and commercial purpose. He submits that considering the location of the acquired land and its potential use the Reference Court was justified in not deducting any amount towards development

charges. In support of this contention he has relied upon the decisions of the Apex Court in ***Bhagwathula Samanna and Ors. vs. Special Tahasildar and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam (1991) 4 SCC 506*** and ***Sabhia Mohammed Yusuf Abdul Hamid Mulla (dead) by LRS. and Ors. vs. Special Land Acquisition Officer and Ors. (2012) 7 SCC 595.***

7. Learned counsel for the Claimants states that the land, which is the subject matter of the first appeal No.619 of 1998 and 621 of 1998 was Bagayat land. The sale instances relied upon by the Claimants were in respect of Jirayat land. He submits that the market rate of Bagayat land, which is of superior quality cannot be the same as Jirayat land. He has relied upon the decision of Division Bench of this Court in ***Special Land Acquisition Offcer, Jalgaon and Anr. Vs/. Bhagwat Vithal Sonwane 2009 (4) Mh.L.J., 308*** wherein it has been held that market value of Bagayat land can be double the value of Jirayat land and that the value of Pot-Kharab land should be 50% of the market value of Jirayat land.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. The records indicate that the land was acquired for dumping ashes of Eklahara Thermal Power Station, which is situated in the close vicinity of the acquired land. It is also not in dispute that as on the date of Section 4 Notification, the acquired land was within the limits of Municipal Corporation of Nashik. It is in the evidence that the said land is at a distance about 10 km. from Nashik Road Railway Station. As regards the nature of land, the Land Acquisition Officer has classified the entire land as Jirayat land. The evidence of PW6-Laxmi Govind Ghuge, Claimant in Land Reference No.441 of 1991, PW5-Chandrabhan Mahadu Ghuge, Claimant in Land Reference No.443 of 1991 and Chandrabhan Jadhav, Claimant in Land Reference No.445 of 1991 reveals that their land was Bagayat land. It is in the evidence of these witnesses that there was a well in their land and that the said land was irrigated. This statement has not been denied or disputed by the acquiring authority. Under the circumstances there is no reason to disbelieve the statement of these three claimants that the land in Land Reference Nos.441 of 1991, 443 of 1991 and 445 of 1991 was Bagayat land.

10. As regards the market value of the acquired land, the

Claimants have relied upon sale deeds dated 27/11/1984, 03/12/1984 and 06/11/1984 at Exhibits-17, 19 and 21 respectively. CW2 - Pandurang Bhagwat is a purchaser in sale deed dated 27/11/1984 (Exhibit-17). Both these sale deeds are in respect of Jirayat land situated in adjoining village -Hinganwadi, which is at a distance of 750 meters from the acquired land. By sale deed at Exhibit-17 CW2 had purchased land admeasuring 21 R for Rs.14,000/- i.e. @ 66,000/- per hector and by sale deed dated 03/12/1984 (Exhibit-19) he had purchased land admeasuring 11 R for Rs.8,000/- i.e. @72,000/- per hector.

11. CW3-Sampat Dattu Ghuge is a purchaser in sale deed 06/11/1984 at Exhibits-21. By this sale deed he had purchased Jirayat land admeasuring 37 R for Rs.25,000/- i.e. @ 67,500/- per hector. The said sale deed land is also situated in neighbouring village Hinganwedhe, at a distance of about half a kilo meter from the acquired land.

12. It may be mentioned that the sale deed at Exhibit-19 was in respect of a very small plot of land. Moreover, CW2 had purchased the said land at a higher price as compared to the land which was

purchased a month prior vide sale deed at Exhibit-17. It is thus, evident that sale deed at Exhibit-19 does not depict the correct market value of the land and as such the said sale deed cannot be relied upon for determining the market rate of the acquired land.

13. The sale instances at Exhibit-17 and 21 reveal that the market rate of Jirayat land in the vicinity was between Rs. 66,000/- to Rs.67,500/- per hector. Both these sale deeds are in respect of small plots of land whereas area of the acquired land varies between 54 Are to 1.42 Are. It is well known that smaller plots fetch higher price as compared to large tract of land unless such plots are situated in developed area and do not require further development. In ***Bhagwathula*** (supra) the Hon'ble Supreme Court has held that :-

> *"13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle*

of deduction of the value for purpose of comparison is not warranted...”

14. In ***Premlata (***supra) the Hon’ble Supreme Court has referred to the previous decision and has reiterated that :-

> *“5….As per the settled position of law, small plots/parcels of land cannot offer the same market value as when a large tract of land is purchased in an open market by a willing and prudent purchaser. As per the settled position of law, generally the sale instances with respect to small plots/parcels of land are not comparable to a large extent of land for the purpose of determining the compensation. In the case of Mahanti Devi v Jaiprakash Associates Ltd., reported in (2019) 5 SCC 163 after following the decision of this Court in the case of Viluben Jhalejar Contractor v. State of Gujarat, reported in (2005) 4 SCC 789, it is held that in case of acquisition of large tracts of land and the exemplars are of small portion of land, there shall be a suitable deduction towards development costs.*
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> *xxx*
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> *6.1 What should be reasonable deduction towards development charges has been considered by this Court in the cases of Lal Chand (supra) and Dyagala Devamma (supra).*
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> *As held by this Court in the case of Lal Chand (supra), the percentage of “deduction for*

development" to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated. The decision in the case of Lal Chand (supra) has been subsequently followed by this Court in the case of Maya Devi (Dead) through Lrs. V. State of Haryana, reported in (2018) 2 SCC 474 as well as in the case of Andhra Pradesh Housing Board v. K. Manohar Reddy, reported in (2010) 12 SCC 707.

6.2 In the case of Dyagala Devamma (supra), while quashing and setting aside the judgment and order of the High Court making deduction towards development charges at 25% in place of 50% as was deducted by the Reference Court, in paragraphs 19 & 20, it is observed and held as under:

> *"19. In addition to these principles, this Court in several cases have laid down that while determining the true market value of the acquired land especially when the acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land. It has also been consistently held*

that at what percentage the deduction should be made varies from 10% to 86% and, therefore, the deduction should be made keeping in mind the nature of the land, area under acquisition, whether the land is developed or not and, if so, to what extent, the purpose of acquisition, etc. It has also been held that while determining the market value of the large chunk of land, the value of smaller pieces of land can be taken into consideration after making proper deduction in the value of lands especially when sale deeds of larger parcel of land are not available. This Court has also laid down that the court should also take into consideration the potentiality of the acquired land apart from other relevant considerations. This Court has also recognised that the courts can always apply reasonable amount of guesswork to balance the equities in order to fix a just and fair market value in terms of parameters specified under Section 23 of the Act. (See Trishala Jain v. State of Uttaranchal [Trishala Jain v. State of Uttaranchal, (2011) 6 SCC 47 : (2011) 3 SCC (Civ) 178] and Vithal Rao v. LAO [Vithal Rao v. LAO, (2017) 8 SCC 558 : (2017) 4 SCC (Civ) 155] .)

> *20. Keeping in mind the aforementioned principles, when we take note of the facts of the case at hand, we find that firstly, the land acquired in question is a large chunk of land (101 ac. approx.); secondly, it is not fully developed; thirdly, the respondents (landowners) have not filed any exemplar sale deed relating to large pieces of land sold in acres to prove the market value of the acquired land; fourthly, exemplar relied on by the respondents, especially Ext. P-18 pertains to very small pieces of land (19 guntas); fifthly, the three distinguishing features noticed in the land in sale deed (Ext. P-18) are not present in the acquired land."*

15. In the said case considering that the acquired land was about 46 Hector 89 R and that the sale instances were in respect of small non-agricultural developed plots situated along the highway, 40% of the market value was deducted towards development charges. In the instant case, as noted above, it is not in dispute that area of the acquired land is much larger as compared to the sale deed land. Apart from the fact that the acquired land is situated at a distance of about 10 km from Nashik Railroad station, there is nothing on record to indicate that it was situated in a developed locality or that it was close

to the road or that it was situated in a residential locality. On the contrary, the evidence on record reveals that the land was situated close to the Thermal Plant and that the land was acquired mainly for the purpose of dumping ashes of Eklahera Thermal Power Station. Hence, the Reference Court was not justified in determining the market rate without making any deductions towards development charges. Considering the location as well as the nature of the land, it would be appropriate to deduct 33% of the market value towards development cost.

16. The sale instances at Exhibits-17 and 21 reveal that the market rate of small portion of Jirayat land was Rs.60,000/- per hector i.e. 6 per sq.meter. Deducting 33% towards development charges, market rate of Jirayat land is determined at Rs.4 per square meter.

17. As noted above, subject matter of First Appeal No.618 of 2021, 619 of 2021 and 621 of 2021 is Bagayat land. The Division Bench of this Court in ***Bhagwathula Samanna*** (supra) after considering the previous decisions has held that in the absence of any other evidence, for working out the market rate of the irrigated land should be double the market rate of Jirayat land. The Division Bench of this

Court has further held that the market rate of Pot Kharab land should be 50% of the market value of the Jirayat land. Considering the fact that market rate of Jirayat land is valued at Rs.4/- per square meter, the market rate of Bagayat land, in Land Reference Nos.441 of 1991, 443 of 1991 and 445 of 1991 is held to be Rs.8 per square meter. Similarly the market rate of Pot Kharab land is held at Rs.2 per sq. meter. The Claimants shall be entitled for all statutory benefits under Sections 23 (1A) and 23(2) of the Land Acquisition Act, 1894.

18. The appeals are allowed in above terms and cross objections stand dismissed.

19. Pending application (s), if any, stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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