

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 953 OF 2004

1. Nujhatbegum Syed Wajir Ali,
Age : 47 years, Occ.: Household,
R/o. : C/o. Mukhtar Ahmed Kirana
Shop, Juna Bazar, Behind Dena Bank,
House No. 1-10-103, Aurangabad
2. Syed Azhar Ali Wajir Azhar Ali (died),
Through L.Rs.,
Jahanara Begum Syed Azhar Ali,
Age : 24 years, Occ.: Household,
R/o. Juna Bazar, Behind Dena Bank,
Aurangabad,
*(Name of Appellant No.2 deleted as per order
dated 06.01.2017 passed in C.A. No. 3808/2016)*
3. Syed Athar Ali Waji Ali,
Age : 26 years, Occ.: Education,
R/o. : as above,
4. Syed Asfaq Ali Wajir Ali,
Age : 23 eyars, Occ.: Education,
R/o. : as above

... Appellants
(Ori. Claimants)

VERSUS

1. The State of Maharashtra,
Through The District Collector,
Dist. Nanded,
2. The Deputy Collector &
Land Acquisition Officer, Degloor,
Dist. Nanded,
3. The Tahsildar,
Biloli, Dist. Nanded

... Respondents

...
Mr. M.D. Narwadkar – Advocate for Appellants
Mr. B.V. Virdhe – AGP for Respondents, State
....

CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 15th February, 2023
PRONOUNCED ON : 12th April, 2023

JUDGMENT :

1. The appellants who are original claimants in L.A.R. No. 68 of 2002 (Old No. 135 of 1998) have challenged the judgment and award dated 6th January, 2004 passed therein by the 1st Adhoc Additional District Judge, Biloli (hereinafter referred to as “*the learned Reference Court*”) for enhancement of compensation. Under the impugned judgment the learned Reference Court has enhanced the compensation at the rate of Rs.80,000/- per hectare from Rs.70,000/- per hectare in respect of lands of the appellants under acquisition.

2. The backgrounds facts of the case are as follows :

The lands of the appellants bearing survey Nos. 308 and 310 of village Kundalwadi, Tq. Biloli, Dist. Nanded admeasuring 04H 60R were acquired for the purpose of resettlement floor affected persons. Possession of those lands was taken on 16th November, 1990 whereas the notification under Section 4(1) of

the Land Acquisition Act, 1894 (for short, '*the Act*') was published on 10th December, 1992. Thereafter, the notification under Section 6 of the Act was published on 18th May, 1983, 24th May, 1993 and finally on 27th May, 1993. The Special Land Acquisition Officer (for short, "*the S.L.A.O.*") under award dated 21st May, 1996 granted compensation to the appellants/claimants at the rate of Rs.70,000/- per hectare by treating the lands under acquisition as agricultural lands. Being aggrieved with the said rate the appellants/claimants preferred the aforesaid L.A.R. on 25th June, 1996 by claiming rate of Rs.20/- per sq. feet in respect of their acquired lands. Alternatively, they claimed market rate at Rs.6,53,400/- per acre, however, the learned Reference Court after holding trial based impugned judgment and award and held the appellants entitled for the compensation in respect of their lands at the rate of Rs.80,000/- per hectare only. Hence, this appeal.

3. The learned Reference Court submits that, lands of the appellants were situated within Municipal Council limit of village Kundalwadi and the adjoining lands were converted for the use of non-agricultural purpose. He further submits that, village Kundalwadi is a big market place, which is connected to the major

cities. Further, according to him the lands under acquisition was adjacent to the A.P.M.C., Zilla Parishad Primary School, Government Hospital, P.H.C. from Northern side. Further, according to the learned counsel for the appellants, the appellants had produced Town Planning Map at Exh. 36 comparable sale instances namely, sale-deeds at exhibits 44, 46, 62 and 64, which clearly indicated that the market rate at the relevant time was much more higher than the rate granted by the learned Reference Court. Further, it was also revealed by the map at Exh.36 that the land under acquisition was residential land. He further submits that, land was surrounded by developed land which was being used for any purpose but the learned Reference Court did not consider all these aspects and granted very meagre amount of compensation. According to him, the learned Reference Court despite observing N.A. potentiality of the land, finally concluded that the land under acquisition was only used for agricultural purpose and therefore, refused to grant more compensation. Besides the submissions, the learned counsel for the appellants relied on following judgments :-

- i. Deep Chand and Anr. Vs. State of U.P. and Anr.,
reported in AIR 1980 SUPREME COURT 633**

- ii. **Bhagwathula Samanna Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam reported in 1991 DGLS (SC) 477**
- iii. **P. Ram Reddy Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad reported in 1995 DGLS(SC) 148**
- iv. **Atma Singh (died) through LRs and Ors. Vs. State of Haryana and Anr., reported in 2007 DGLS(SC) 1374**
- v. **State of Maharashtra Vs. Dnyaneshwar Disanrao Phadtare and Ors., reported in 2009 (3) Bom. C. R. 833**
- vi. **Udho Dass Vs. State of Haryana and Ors., reported in 2010 DGLS (SC) 278**
- vii. **Trishala Jain and Anr. Vs. State of Uttaranchal and Anr., reported in 2011 DGLS (SC) 410**

4. On the contrary, the learned A.G.P. strongly opposed the submissions made on behalf of the appellants and submits that, the learned Reference Court has determined the rate of compensation on the basis of material placed on record and by rightly considering that, the land under acquisition was an agricultural land at the time of notification and therefore, there was no N.A. potentiality. He submits that, the sale instances produced by the appellants on record cannot be considered, since they are in respect of lands having small area which cannot be compared with the appellants' lands having larger area. He further

submits that, there was no N.A. permission filed by the appellants on record, which is necessary for granting of more compensation. He also pointed out that, the learned Reference Court has already granted interest from the date of possession. As such, he prayed for dismissal of the appeal.

5. Heard rival submissions and also perused the impugned judgment and award along-with the citations filed by the rival parties and the original record and proceedings of the L.A.R. No. 68 of 2002.

6. From the perusal of the judgment it appears that, the learned Reference Court has enhanced the compensation amount by the rate of only Rs.10,000/- per hectare by observing that the lands under acquisition at the relevant time was agricultural land and nothing was brought on record to show that, it had non-agricultural potential. However, the Hon'ble Apex Court in the judgment reported in 1995 DGLS(SC) 148 in the case of P. Ram Reddy Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad has observed as follows :

“Building Potentiality – possibility of user of acquired land for building purposes in the immediate or near

future is regarded as building potentiality – however, acquisition of land for building purposes, is not a sufficient circumstances to regard it as a land with building potentialities – It has to be decided on the basis of the material on record – When a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged under Section 4(1) of Land Acquisition Act, must include that portion of the price of the land attributable to its building potentiality.

When the acquired land has the potentiality of being used for building purposes in the immediate or near future, it is such potentiality which is regarded as building potentiality of required land. Therefore, if the acquired land has the building potentiality, its value like the value of any other potentiality of the land should necessarily be taken into account for determining the market value of such land. Therefore, when a land with building potentiality is acquired, the price which its willing seller could expect from its willing purchaser ought to include that portion of the price of land attributable to its building potentiality. Such price of the acquired land then becomes its market value as envisaged under Section 23(1) of Land Acquisition Act, 1893.”

7. The Hon’ble Apex Court in the judgment reported in 2007 DGLS(SC) 1374 in the case of **Atma Singh (died) through LRs and Ors. Vs. State of Haryana and Anr.**, has made following observations :

“5. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility

for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about Town is developing or has prospect of development has to be taken into consideration. See Collector Raigarh v. Hari Singh Thakur, AIR 1979 SC 472, Raghubans Narain v. State of U.P., AIR 1969 SC 465 and Administrator General, W.B. v. Collector Varanasi, AIR 1988 SC 943. It has been held in Kaushalya Devi v. L.A.O. Aurangabad, AIR 1984 SC 892 and Suresh Kumar v. T.I. Trust, AIR 1980 SC 1222 that failing to consider potential value of the acquired land is an error of principle.”

8. The Hon'ble Apex Court in the judgment of **Udho Dass Vs. State of Haryana and Ors.**, reported in 2010 DGLS(SC) 278 has reproduced the aspects which needs to be kept in mind while dealing with the question of potentiality of the land under acquisition follows :-

“(i) the situation of the acquired land vis-a-vis the city or the town or village which had been growing in size because of its commercial, industrial, educational, religious or any other kind of important or because of its explosive population;

(ii) *the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;*

(iii) *possibility of obtaining water and electric supply for occupants of buildings to be put up on that land;*

(iv) *absence of statutory impediments or the like for using the acquired land for building purposes;*

(v) *existence of highways, public roads, layouts of building plots or developed residential extensions in the vicinity or close proximity of the acquired land;*

(vi) *benefits or advantages or educational institutions, health care centres, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land;*

(vii) *and lands around the acquired land or the acquired land itself being in demand for building purposes, to specify a few.”*

9. Thus, it appears in the light of above observations that, the learned Reference Court must decide the proper compensation amount on the basis of material produced before it. It is specifically observed by the Hon'ble Apex Court in the case of **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona** in paragraphs nos.4 (1 to 3), which reads as follows :

“(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and

the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it."

10. Therefore, I have to see whether the learned Reference Court has determined proper compensation amount in consonance with the material placed on record. It is significant to note that, though the learned Reference Court has come to the conclusion that the compensation awarded by the S.L.A.O. needs to be increased but the learned Reference Court after going through the documentary

evidence produced by the appellants being comparable sale instances, without any proper reasoning observed that, the rate granted by the learned S.L.A.O. at the rate of Rs.70,000- per hectare was inadequate enhancement of only Rs.10,000/- per hectare was required.

11. It is significant to note that, the appellants have produced on record Town Planning Map at Exh.36 along-with the sale-deeds at Exhibits 44, 42, 62 and 64. However, out of the aforesaid sale-deeds except sale-deed at Exh.44 are in respect of smaller land and therefore considering such rate of the land under acquisition those sale-deeds cannot be considered as comparable instances. On the contrary, the sale-deed dated 11th May, 1989 at Exh.44 having 22 R land out of survey No. 354 can be considered for determination of proper compensation. It is extremely important to note that, the appellants besides the Town Planning Map at Exh.36 have also produced other village map at Exh.37 wherein the land under acquisition is shown and the lands in respect of which the comparable instances are produced also shown. It is to be noted that, entire portion of land survey No. 308 under acquisition is within the Municipal limit of village Kundalwadi and the land

survey No.310 is just adjacent to that Municipal limit. Further, it is evident from the said map at Exh.37 that the land survey no.354/1 mentioned in the sale-deed at Ex.44 is also situated adjacent to the Municipal limit of village Kundalwadi like land survey No.310 of the appellants. It is evident that, from the rate given to the area of 22 R from survey No.354/1 the prevailing market rate in respect of the same was nearly Rs.1,000/- per R. The map shows that, survey No.310 of the appellants and survey No.354/1 are identically placed in respect of their potentiality. It is significant to note that, the learned Reference Court did not compare the aforesaid lands but from the map itself it can be seen that both the lands are near to the developed area of the village Kundalwadi. Moreover, the land survey No.308 of the appellants is within the Municipal limit and clearly appears to be adjacent to the total developed area of village Kundalwadi from Northern side. When the lands in survey No.354/1 can fetch the rate of Rs.1,000/- per R then the land in survey No.308 placed within the Municipal limit of village Kundalwadi can definitely fetch more rate than it.

12. The Town Planning Map at Exh.36 also indicates that, the

entire portion of land survey No.308 as well as certain portion of land survey No.310 had shown in the residential zone and the remaining portion of survey No.310 is shown in agricultural zone. Thus, it can be seen from the said map at Exh.36 that, atleast 40% area of the acquired land was under residential zone and the area around 01H of survey No.308 was within Municipal limits of village Kundalwadi. It appears that, merely because no N.A. permission was obtained and the acquired lands were being used for agricultural purpose, the learned Reference Court enhanced the compensation only by Rs.10,000/- per hectare. Thus, it appears that, atleast 40% of the acquired land was having N.A. potentiality though the specific permission to that effect was not obtained. Moreover, maps at Exhibits 36 and 37 also clearly indicate that, there is one road leading to Shelgaon village also passes through the land survey No.310. Therefore, considering the fact that survey No.308 of the acquired land is situated within the Municipal limits of village Kundalwadi, just adjacent to the developed area and the survey No.310 from the acquired land situated at just adjacent to it, the rate fetched by the area of 22R in sale-deed at Exh.44 can be considered as comparable sale instances by considering N.A. potentiality of the land under

acquisition. The finding of the learned Reference Court that, the acquired land being an agricultural land in absence of N.A. permission are not having N.A. potential is therefore, *prima-facie* erroneous. It appears that, the learned Reference Court without considering the maps at Exhibits 36 and 37 on record unnecessarily relied on the admissions given in the oral evidence led by the appellants and refused to rely on the comparable sale instances.

13. Therefore, considering all these aspects, I come to the conclusion that the enhancement granted by the learned Reference Court is not in consonance with the material placed on record and there is no proper reasoning for such meagre enhancement. The learned Reference Court has also set aside the proper comparable sale instance i.e. Exh. 44. In fact the land survey No.308 was having more N.A. potentiality than the land survey No.310, which was outside the Municipal limit of village Kundalwadi. However, since it was adjoining to the land survey No.308 and some of its part was declared as residential zone, the entire land under acquisition would have got the market price at the rate of Rs.1,000/- per R. As such, I find it proper to enhance the

compensation granted by the learned Reference Court by awarding additional amount at the rate of Rs.20,000/- per hectare in respect of acquired land. Hence, I pass the following order :

ORDER

- (i) The appeal is partly allowed.
- (ii) The appellants are entitled for enhanced compensation at the rate of Rs.20,000/- (rupees Twenty Thousands only) per hectare in respect of entire land under acquisition in survey Nos.308 and 310 admeasuring about 04H 60R of village Kundalwadi, Tq. Biloli, Dist. Nanded, in addition to the compensation granted by the learned Reference Court along-with all the benefits already granted by the learned Reference Court in the impugned judgment.
- (iii) The respondents shall deposit the aforesaid compensation amount within three months of this order and on such deposit the appellants are permitted to withdraw the same.
- (iv) Parties to bear their own costs.
- (v) Award be modified accordingly.

[SANDIPKUMAR C. MORE]
JUDGE