

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 139 OF 2017

1. Pandurang Hariba Jadhav,
Age : 74 years, Occ. : Household,

2. Umesh Pandurang Jadhav,
Age : 45 years, Occ. : Agriculture,

Both R/o. : Samudral, Tq. Omerga,
Dist. Osmanabad

... Appellants
(Ori. Claimants)

VERSUS

1. The State of Maharashtra,
Through Collector, Osmanabad,
Dist. Osmanabad

2. The Special Land Acquisition Officer,
Manjara Project, Osmanabad,
Dist. Osmanabad

... Respondents

...

Ms. Priyanak N. Matlane – Advocate for Appellants
Mr. S.S. Dande – AGP for Respondent Nos.1 and 2, State

....

CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 2nd May, 2023
PRONOUNCED ON : 30th June, 2023

JUDGMENT :

1. The appellants who are original claimants, have preferred this appeal against the judgment and award dated 30th September,

2016 passed by the learned District Judge – 1, Omerga, Dist. Osmanabad (hereinafter referred to as “*the learned Reference Court*”) in Land Acquisition Reference No. 523 of 2004 (*Old No. 367 of 1996*) whereby the compensation in respect of acquired land was enhanced to certain extent. As such, the appellants have filed this appeal for enhancement of the compensation.

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

The appellants were the owner and possessor of the land bearing survey No. 62 area admeasuring 06H 20R situated at village Samundral, Tq. Omerga, Dist. Osmanabad. However, the respondent – State/acquiring body acquired the aforesaid land for the purpose of rehabilitation of earthquake affected persons for constructing the houses. The possession of the land was taken in the month of November – 1993 and notification to that effect under Section 4 of the Land Acquisition Act was issued on 12th January, 1994. Thereafter, notification under Section 6 of the Land Acquisition Act was published and notices under Section 9 (3)(4) of the Land Acquisition Act were served on the appellants. Accordingly, The Special Land Acquisition Officer passed the award in respect of land under acquisition and granted compensation at

the rate amount of Rs.17,000/- per Hectare on 30.03.1996. Though the appellants withdrew the amount under protest but they had filed the aforesaid L.A.R. No. 523 of 2004 for further enhancement before the learned Reference Court. The learned Reference Court considering the material on record, determined the rate of compensation in respect of the acquired land under impugned judgment to the tune of Rs.75,000/- per Hectare against the claim of appellants @ Rs.25/- per Sq. Ft. Hence, this appeal.

3. Learned Counsel for the appellants submits that, the learned Reference Court did not appreciate the material and evidence on record in proper perspective and it also did not consider that in the connected matters from same notification, the claimants therein were granted rate @ Rs.4/- per Sq. Ft. According to her, the learned Reference Court did not consider the non-agricultural potentiality of the land and also ignored the comparable sale instances produced on record. The learned Reference Court also failed to consider the report of Government valuer. Learned Counsel for the appellants in addition to her submissions at bar also filed written notes of arguments on record by relying on various judgments as follows :

- (a) *Judgment of Hon'ble Supreme Court in the case of Mahesh Dattatray Thirthkar Vs. The State of Maharashtra reported in 2009 ALL SCR 1335*
- (b) *Judgment of Hon'ble Supreme Court in the case of The Special Land Acquisition Officer, Davangere Vs. Veerabhadarappa reported in 1984 AIR 774*
- (c) *Judgment of Hon'ble Supreme Court in the case of Ali Mohammad Beigh and Ors. Vs. The State of J & K in Civil Appeal Nos. 4295 – 4297 of 2017 (arising out of S.L.P. © Nos.3726 – 3728 of 2016)*
- (d) *Judgment of Hon'ble Supreme Court in the case of Tribeni Devi and Ors. Vs. Collector of Ranchi reported in 1972 AIR 1417*
- (e) *Judgment of Orissa High Court in the case of Land Acquisition Officer Vs. A. Krishna Murty Patnaik reported in AIR 1984 Ori 6*
- (f) *Judgment of Allahabad High Court in the case of State of U.P. Vs. Babu Ram (Deceased By Lrs.) reported in AIR 1995 ALL 2*
- (g) *Judgment of Gauhati High Court in the case of Radha Mohan Goenka and Anr. Vs. Collector of Kamrup reported in 1985 (2) Gau.L.R. 53*
- (h) *Judgment of Himachal Pradesh High Court in the case of Collector Vs. Lachhman and Ors. reported in AIR 1965 HP 18*
- (i) *Judgment of Hon'ble Supreme Court in the case of Union of India Vs. Premlata and Ors. reported in 2022 (3) Bom.C.R. (1)*

- (j) *Judgment of this Court in the case of Ashok Sidramappa Yenegure Vs. The State of Maharashtra Thr District Collector and Anr., in First Appeal No.2944 of 2013 with First Appeal No. 3413 of 2015*
- (k) *Judgment of Hon'ble Supreme Court in the case of P. Ram Reddy Etc. Vs. Land Acquisition Officer, Hyderabad reported in 1995 SCC (2) 305, JT 1995 (1) 593*
- (l) *Judgment of Bombay High Court in the case of State of Maharashtra Vs. Trimbak Joma Thakur (deceased) reported in 2007 (6) Bom.C.R. 609, 2007 (5) MhLj 187*
- (m) *Judgment of Hon'ble Supreme Court in the case of Nelson Fernandes and Ors. Vs. Special Land Acquisition Officer in Appeal (Civil) No. 1136 of 2007*
- (n) *Judgment of Civil Judge Senior Division at Osmanabad in the case of Gunderao Vishwanathrao Nimbalkar and Anr. Vs. The State of Maharashtra thr The Collector, Osmanabad in L.A.R. No. 290 of 1999*

4. On the contrary, learned A.G.P. on behalf of respondents strongly opposed the submissions made by the appellants on the ground that, the comparable sale instances relied upon by the appellants were only in respect of small portion of land which

cannot be equated with the land under acquisition. He further pointed out that, there was no non-agricultural potentiality available since, the land under acquisition was purely agricultural land. He submitted that, the citations relied upon by the appellants are applicable to the facts of relevant cases and the same cannot be made helpful to the present case. He pointed out from the impugned judgment as to how the learned Reference Court dealt with each and every aspect and the contention raised by the appellants with proper reasoning. As such, he prayed for dismissal of the appeal since, the learned Reference Court determined proper compensation in respect of land under acquisition.

5. Heard rival submissions and also perused written notes of arguments along-with the citations relied upon by the appellants along-with the impugned judgment and entire evidence on record.

6. Admittedly, the Special Land Acquisition Officer had awarded compensation @ Rs. 170/- per Are, which has been enhanced by the learned Reference Court to the extent of Rs. 750/- per Are as against the demand of the appellants @ Rs. 25/- per Sq. Ft. The appellants have challenged the impugned judgment mainly on the

ground that, the learned Reference Court had ignored the comparable sale instances and also non-agricultural potentiality. Further, the learned Counsel for the appellants – claimants heavily relied upon the judgment cited (*supra*) wherein certain guidelines are given as to how the compensation or the market value of land under acquisition is to be determined.

7. In the case of **Tribeni Devi (Supra)** the question before the Hon'ble Apex Court was how to determine the market value of property. The Hon'ble Apex Court to that effect has made following observation :

“The general principles for determining compensation have, been set out in sections 23 & 24 of the Act. The compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may not be possible to ascertain with any amount of precision, the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. The land acquired has, therefore, to be valued not only with reference to its condition at the time of the declaration under section 4 of the Act but its potential value also must be taken into account. The sale-deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. This, however, is not the only method. The rent which an owner was actually receiving at the relevant point of time or the rent

*which the neighbouring lands of similar nature are fetching can be taken into account by capitalising the rent which according to the present prevailing rate of interest is 20 times the annual rent. But this also is not a conclusive method. This Court had in **Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty** (1), indicated at page 412 the methods of valuation to be adopted in ascertaining the market value of the land on the date of the notification under section 4(1) which are : (i) opinion of experts, (ii) the price paid within a reasonable time in bona fide transactions of purchase, of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the Court from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible an estimate of the market value. In arriving to a reasonably correct market value, it may be necessary to take even two or all of those methods into account inasmuch as the exact valuation is not always possible as no two lands may be the same either in respect of the situation or the extent or the potentially nor is it possible in all cases to have reliable material from which that valuation can be accurately determined."*

From the aforesaid observation it appears that, the opinion of experts such as valuer, certain Officers from Horticulture Department in case of determination of compensation regarding trees, etc. is material. Further, the comparable sale instances in respect of the lands adjacent to the lands acquired can also be

assessed for determination of its market value. However, the Hon'ble Apex Court has cautioned that, these methods do not preclude the Court from taking any other special circumstances into consideration. Therefore, it has been made clear that the other facts can also be taken into consideration to determine the market price or value of the land under acquisition. In the instant case, the appellants – claimants are claiming that, their land was having N.A. potentiality and it would have fetched similar price as stated in the comparable sale instances brought on record by them and the opinion of expert i.e. valuer which they had examined.

8. So far as N.A. potentiality of the land under acquisition is concerned it has come on record that, the Land Acquisition Officer had gone to the land of appellants along-with the panch witnesses and the appellants. It was noticed that, the said land was an agricultural land. Further, the valuation of crop was also made. It was noticed that, at the time of acquisition there were no houses or buildings in existence either in the land which is subject matter of this appeal or in other lands under acquisition. It was also evident that, there was boundary of village Limbala from West side of the land Gut No. 62 and the lands of said villages were

agricultural lands. Thus, it shows that the lands under acquisition at the time of acquisition was not surrounded by the lands which were converted for non agricultural purpose. Moreover, the certified copy of map of land Gut No. 62 produced by the appellant No.2 indicates that, it was of only land Gut No. 62 and the adjoining lands were not shown in the same. Though towards East side of the land one Gut No. 56 was mentioned by the office of Land Records, Omerga but the petitioner intentionally erased the said figure 56. As such, from such act the intention of the petitioner to mislead the Court is very much clear. Further, the common map on record has indicated that, the land under acquisition is situated far away from Gavthan of village Samudral. There is no other evidence on record to show that, the acquired land was having any non-agricultural potentiality at the time of actual acquisition. On the contrary, it was found that it was only an agricultural land and valuation of crop in it was also made by the concerned Land Acquisition Officer, which was received by the appellants without any protest. Further, the record shows that, the Omerga town was situated at a distance of 18 Kilometers from Samudral village.

9. Learned Counsel for the appellants relied upon certain observations of Hon'ble Apex Court and this Court as regards the building potentiality. In the case of **P. Ram Reddy (Supra)**, it has been observed that, the building potentiality of the acquired land and the market value of the acquired land under the Land Acquisition Act is the main component of the compensation awardable for such land. Further, this Court in the case of **State of Maharashtra Vs. Trimbak Joma Thakur (deceased) (supra)** has also observed as *"the potentiality is the true market value of land and the value of land in its actual condition at the time of expropriation with all its existing advantages and with all its future possibilities. The land in question has potential value as building sites. There is not the slightest reason for not giving to the owner the benefit of potential value"*. However, both these observations have come in the light of evidence and facts of those cases. In the instant case, as discussed above there is no material brought on record by the appellants as regards the building potential of the land under acquisition. Moreover, it was found that at the time of actual acquisition that land was an agricultural land and there was no such non-agricultural potentiality even in respect of surrounding lands. Therefore, considering all these aspects I do

not find any force in the submission of the learned Counsel for the appellants that, the land under acquisition was having non-agricultural potentiality.

10. The another aspect for determination of market value of the acquired land is the opinion of expert. In the case in hand, the appellants have examined one witness Ramchandra Shankarrao Bharaskar at Exh. 69 as P.W. – 6 and he has deposed that, he is Government approved valuer and consulting Engineer and immediately after acquisition of the land, he had visited the same as per request of the appellants on 15th January, 1994 as well as on 15th October, 1994 and thereafter prepared valuation report – Exh. 70 and determined the rate of acquired land is Rs. 225 /- per Sq. Meter aggregating Rs.97,84,000/-. However, the cross-examination of this witness itself indicates that, he had considered the sale instances of the lands which were not agricultural lands but those were small plots. Further, he could not produce any document to show that, he was a Government approved valuer in the year 1994. The report – Exh. 70 itself indicates that, he considered the comparable sale instances in respect of smaller plots which were having constructions. However, I have already

mentioned earlier in this judgment that, the land at the time of acquisition, was purely agricultural land and it was not having non-agricultural potentiality. Therefore, considering the wrong comparable sale instances for determination of market value of the acquired land, cannot be said a proper procedure adopted by this valuer – Mr. Ramchandra Shankarrao Bharaskar.

11. Learned Counsel for the appellants heavily relied on the judgment of Hon'ble Apex Court in the case of **Mahesh Dattatray Tirthkar (supra)**, wherein there are certain observations in respect of the report of the Engineer engaged by the appellant to prove the market value of the acquired property, being based on his personal visit on the site to the same. However, it does not mean that, each and every report of valuer needs to be believe blindly and by ignoring other attending facts. Further, in the case of **Nelson Fernandes (supra)**, the Hon'ble Apex Court has expressed the opinion that the Court ought to have considered the expert opinion and the purpose for which the land acquired must be taken into consideration. However, as stated earlier that such expert's opinion has to be tested in the light of facts revealed from the evidence. In the present case that, he did not use the comparable sale

instances in respect of agricultural lands similar to the land under acquisition but wrongly relied upon the sale instances of small plots. Considering all these aspects and the report of valuer i.e. P.W. – 6 Ramchandra Shankarrao Bharaskar does not appear reliable or useful for determination of true value of the acquired land.

12. Besides the aforesaid aspect of experts' opinion and non-agricultural potentiality of the acquired land, the appellants have produced oral and documentary evidence through themselves and other persons. The record shows that, certain agreements for sale executed by appellant No.1 with one Govind Tulsiram Balsure and Laxman Sakharam Kambale were relied upon which are at Exh. 20 and 21 respectively. Though the rate of certain portion of 01R land is shown in the range of Rs.20,000/- to Rs.22,000/- but those transactions could not be completed since, the land Gut No.62 was acquired by the Government. On perusal of those agreements it appears that, the stamp paper for agreement (Exh.20) was purchased on 14th May, 1991 in the name of appellant No.1 and agreement was executed on 3rd October, 1993. The appellant No.1 could not explain as to for what purpose he had purchased the

stamp papers and why it was used so late i.e. after about two years. Further, those two agreements are only in respect of 01R portion of land situated towards Northern side but the witness Laxman Sakharam Kamble who allegedly wanted to purchase the said area stated in the cross-examination that, he was intending to purchase the said area from Southern side. Moreover, only vague description i.e. 01R portion from Northern side is mentioned in the agreement. Therefore, the agreements appears to be prepared only to show the exaggerated market price of the lands under acquisition and therefore, it cannot be relied as comparable sale instances.

13. The other sale instances produce on record by the appellants are in respect of small plots, which cannot be compared with the larger land of the appellants and those smaller plots were also found to be situated at a distance of 1½ Kilometers to 3 Kilometers from the acquired land. The Hon'ble Apex Court in many judgments has observed that, the land in the village cannot be considered as one unit for determination of market price but the market price of the lands in one village differs from each other. Moreover, the sale instances relied upon by the appellants in this

matter, are of different villages and, therefore, not useful for the determination of actual market price of the acquired land.

14. The only sale instance which appears to be comparable one for determination of land under acquisition, is of land admeasuring 01H 62R out of Survey No. 1/2 owned by one Vachlabai Rangrao Patil. The certified copy of her sale-deed executed in the year 1994 is at Exh. 27. The land in this sale-deed is also situated at village Samudral which according to Vachlabai Patil is at a distance of 01 Kilometer from the acquired land. Moreover, it has also come on record in the cross-examination of said Vachlabai Patil that, she had purchased the said land being an irrigated land and was having good quality compared to the acquired land. It was having well also. The sale-deed at Exh. 27 of the said land indicates that, Vachlabai Patil had purchased land 01 H 62 R from the same village Samudral for the consideration of Rs.2,00,000/-. However, considering the evidence of Vachlabai Patil it seems that, the said land was Bagayat land having rate per Hectare of Rs.1,23,457/-. It is settled that, the Bagayat land would fetched price double than that of Jirayat land and therefore, if this sale instance is to be relied then the approximate value of acquired

land, which was Jirayat land as per the entry of crop mentioned in it 7/12 extract, comes around Rs.62,000/- per Hectare. Thus, relying upon the aforesaid sale instance the value of the acquired land needs to be determined by applying the rate of Rs.62,000/- per Hectare. However, it seems that the learned Reference Court has granted the rate of Rs.75,000/- per Hectare specially considering the fact that, substantial portion of the land of the appellants was under acquisition and only small portion of land remained with them. Thus, the rate more than Rs.62,000/- per Hectare i.e. Rs.72,000/- per Hectare granted by the learned Reference Court definitely appears reasonable and proper. Further, it appears that, the learned Reference Court has also awarded all the statutory benefits to the appellants.

15. Learned Counsel for the appellants also relied upon on other judgments in respect of applicability of previous judgment in similar matters seeking parity on this ground. However, it is already made clear by the Hon'ble Apex Court in the case of **Chandrashekhar and Ors. Vs. Additional Special Land Acquisition Officer** in Civil Appeal Nos.4163 – 4165 of 2009 (arising out of S.L.P. Nos. 4997 – 4999 of 2005) that, previous judgment cannot

be relied upon blindly in respect of the compensation but Court has to consider the other facts on record also. In the instance case, whatever the sale instances were brought on record where not found true comparable sale instances except the sale-deed at Exh.27. Moreover, the evidence of valuer and the evidence in respect of non-agricultural potentiality of the acquired land, is also not trustworthy and reliable. Therefore, I come to the conclusion that, the learned Reference Court after considering the entire oral and documentary evidence on record has properly granted compensation of the acquired land to the extent of Rs.75,000/- per Hectare and also awarded the statutory benefits to the appellants, I therefore, do not see any reason to interfere with the impugned judgment and award. As such, the appeal stands dismissed.

[SANDIPKUMAR C. MORE]
JUDGE