IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST.) NO. 20338 OF 2021
WITH
INTERIM APPLICATION NO. 159 OF 2022
IN
FIRST APPEAL (ST.) NO. 20338 OF 2021

Vice Chancellor, Solapur University,
Solapur .... Appellant
v/s.
Nuruddin Karmali Mulani and ors. .... Respondents

WITH
FIRST APPEAL (ST.) NO. 20341 OF 2021
WITH
INTERIM APPLICATION NO. 3307 OF 2021
IN
FIRST APPEAL (ST.) NO. 20341 OF 2021

Vice Chancellor, Solapur University,
Solapur .... Appellant
v/s.
Shirish Ramchandra Godbole and ors. .... Respondents

WITH
FIRST APPEAL NO.417 OF 2022

Pradeep Narsinha Pimparkar and ors. .... Appellants
v/s.
The State of Maharashtra and anr. .... Respondents

WITH
FIRST APPEAL NO.418 OF 2022

Nuruddin Karmali Mulani and anr. .... Appellants
v/s.
The State of Maharashtra and anr. .... Respondents

Mr P N Joshi a/w Ms Rukmini Khairnar and I. M. Khairadi
for the Appellants
Mr. Drupad Patil with Mr. Kaustubh Thipsay i/b. Mr. Aditya Shirke
for the Appellants in FA/417/2022 & 418/2022 and for Respondent Nos.1 and 2 in FAST/20338/2021 and for Respondent Nos.1 to 3 in FAST/20341/2021.
Ms Tanaya Goswami, AGP for State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 1st NOVEMBER, 2023.

P.C. :-

. The Appellant-Acquiring Body has by the First Appeal (St.) Nos.20338/2021 and 20341/2021 under Section 54 of the Land Acquisition Act, 1894 challenged the common judgment and award dated 21/05/2021 passed by the Reference Court in Land Reference No.36/2010 and 78/2011 under Section 18 of the Land Acquisition Act enhancing the compensation from Rs.240/- per sq.mt. to Rs.380/- per sq.mt. The Respondents in the said appeals, who shall be hereinafter referred to as 'the Claimants' who have filed cross appeals being First Appeal Nos.417/2022 and 418/2022 challenging the quantum of compensation awarded by the Land Acquisition Officer.

2. The brief facts necessary to decide these appeals are as under:-

The Government of Maharashtra had acquired the land admeasuring 4H 94R under Survey No.37/A of Village-Kegaon for the purpose of establishing a new university viz. Solapur University. The notification under Section 4 of the Land Acquisition Act dated 31/05/2007 was published in the Official Gazette on 06/06/2007. The Land Acquisition Officer declared the award on 30/07/2009 and awarded compensation @ Rs.240 per sq.mt.

3. The Claimants in L.R. No.78 of 2011 had 3/4th share whereas the Claimant in L.R. No.36 of 2010 had 1/4th share in the acquired land. They accepted the compensation under protest and filed individual references under Section 18 of the Land Acquisition Act claiming enhanced compensation at the rate of Rs.1076 per sq.mt. The Claimants alleged that the acquired land was included in the residential zone in the revised sanctioned development plan of Solapur City. The case of the Claimants is that all the civic amenities and facilities were available in the close proximity of the acquired land and that the land has commercial as well as residential potential.

4. The Claimants relied upon the following sale instances to prove the market value of the acquired land:-

Sale No.	**Date**	**Rate per sq. Mtr.(Rs.)**	**Rate per upon addition of 12% (Rs.)**	**Place**
1	17/02/2006	805/-	925/-	Bale
2	28/02/2006	807/-	928/-	Bale
3	09/03/2006	805/-	917/-	Bale
4	20/04/2006	597/-	674/-	Bale
5	06/01/2007	454/-	472/-	Bale
6	15/05/2007	926/-	926/-	Bale
7	16/09/2007	423/-	423/-	Bale
8	08/05/2007	560/-	560/-	Kegaon
9	25/10/2007	452/-	452/-	Kegaon
10	23/11/2007	283/-	283/-	Kegaon
11	28/02/2005	549/-	697/-	Kondi
12	29/06/2005	526/-	646/-	Kondi
13	25/07/2005	522/-	631/-	Kondi
14	05/01/2006	569/-	660/-	Kondi
15	16/02/2006	560/-	640/-	Kondi
16	20/02/2006	718/-	825/-	Kondi
17	03/02/2006	699/-	803/-	Kondi
18	12/07/2006	658/-	730/-	Kondi
19	21/05/2007	388/-	388/-	Kondi
20	26/06/2007	1184/-	1184/-	Kondi

5. The Reference Court, upon analyzing and appreciating the evidence adduced by the Claimants observed that the acquired land under Survey No.37/A has a 300 meter wide frontage and that as per the sanctioned development plan of the year 2004 the road is proposed to be widened upto 60 mtrs. There is large scale development of the land in the vicinity of the acquired land wherein industrial units,

colleges, training centers, hotels, petrol pumps, residential societies, etc, were already set up prior to Section 4 Notification.

6. The Reference Court observed that the acquired land has enormous commercial and residential potentiality. The Reference Court relied upon the sale deed dated 08/05/2007, whereunder plot No.33 from survey No.55, admeasuring 92.90 sq.mts. was sold at the rate of Rs.560 per sq.mt. The Reference Court held that though the Claimants had submitted a proposed layout plan, they had not carried out any development work as per the sanctioned layout. Considering the fact that the acquired land is a large tract of land admeasuring 4 H 94 R, the Reference Court deducted 1/3rd of the sale price towards developmental purpose. On this basis, the Reference Court awarded compensation of Rs.380 per sq.mt.

7. Mr. Joshi, learned counsel for the Acquiring Body submits that the sale deed dated 08/05/2007, which is in respect of a very small plot of land admeasuring 92 sq.mts., is not a comparable instance and could not have been relied upon to determine the market rate of a large tract of land. He has relied upon the decision in ***Union of India vs. Premlata and Ors., (2022) 7 SCC 745.*** Learned counsel for the

Acquiring Body submits that the Reference Court has enhanced the compensation without assigning any reasons. The compensation determined by the Reference Court is arbitrary and without any basis and hence, the order cannot be sustained. Mr. Joshi, learned counsel for the Acquiring Body submits that the other sale instances are of the land at Bale and Kondi and in the absence of similarity of the nature and potentiality of the acquired land, vis-a-vis the sale deed land, the sale instances cannot be relied upon to determine the market rate of the acquired land.

8. Per contra, Mr. Drupad Patil, learned counsel for the Claimants submits that the acquired land is within municipal limits and that the said land was included in residential zone in the modified development plan of Solapur City. He submits that the acquired land is situated close to Solapur city and developed area of village-Bali and had enormous residential and commercial potential value. The acquired land is at a distance of about 700 meters from the national highway and that educational institutions and other amenities are available in the close vicinity. The acquired land had a wide frontage of 300 meters on existing 40 ft. wide public road, which is proposed to be widened to 60 meters in sanctioned development plan. He therefore

contends that the acquired land could have been utilized for commercial or residential purpose without incurring any further expenditure. He further submits that the Claimants are themselves in the business of real estate development and that they are competent to develop the land without availing the services of developer or contractor. In such circumstances, the Reference Court was not justified in applying the principles of deduction. He has relied upon the decision of the Apex Court in ***Trishala Jain and Anr. Vs. State of Uttaranchal, (2011) 6 SCC 47 .***

9. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. The only question for my consideration is whether the Reference Court was justified in determining the market rate of the acquired land at the rate of Rs.380 per sq.mt.

10. Before adverting to the facts of the case it would be relevant to refer to the decision in ***Vitthal Rao and Anr. Vs. the Spl. Land Acquisition Officer (2017) 8 SCC 558***, wherein the Apex Court has referred to the decision in ***Chimanlal Har Govind vs. Spl. Land Acquisition Officer, Pune,*** and has held as under:

"26. In ***Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona and Anr. (1988) 3 SCC 751,*** *this Court dealt with the question as to how the Court should determine the valuation of the lands under acquisition and what broad principle of law relating to acquisition of land under the Act should be kept in consideration to determine the proper market value of the acquired land.*

27) In Para 4 of the judgment, this Court laid down as many as 17 principles, which are reproduced below for perusal:

"(1) to (4)…………………………………

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of notifications under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land.)

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-à-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus factors		*Minus factors*	
1.	*Smallness of size*	*1*	*Largeness of area*
2.	*Proximity to a road*	*2*	*Situation in the interior at a distance from the road*
3.	*Frontage on a road*	*3*	*Narrow strip of land with very small frontage compared to depth*
4	*Nearness to developed area*	*4*	*Lower level requiring the depressed portion to be filled up*
5	*Regular shape*	*5*	*Remoteness from developed locality*
6.	*Level vis-a-vis land under acquisition*	*6.*	*Some special disadvantageous factor which would deter a purchaser*
7.	*Special value for an owner of an adjoining property to whom it may have some very special advantage*		

(15) *The evaluation of these factors of course depends on the facts of each case. There cannot be any hard-and-fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a large tract or block of land of say 10,000 sq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately*

between 20 per cent to 50 per cent to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) 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.

(17) These are general guidelines to be applied with understanding informed with common sense."

These principles are invariably kept in mind by the Courts while determining the market value of the acquired lands (see also Union of India vs. Raj Kumar Baghal Singh (Dead) Through Legal Representatives & Ors. (2014) 10 SCC 422).

28) In addition to these principles, this Court in several cases has also laid down that while determining the true market value of the acquired land and 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 piece of land can be taken into consideration after making proper deduction in the value of lands and 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 recognized 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 & Anr. Vs. State of Uttaranchal & Anr., (2011) 6 SCC 47)"

11. As regards the nature and potentiality of the land, it is not in dispute that the acquired land, which is within the limits of Solapur

Municipal Corporation, is classified as residential zone. The acquired land is at a distance of about 1 km from Pune Solapur National Highway No.9 and is abutting a public road leading to the National Highway. The basic amenities such as water supply, electricity, etc. are available in and around the acquired land. All other facilities such as colleges, hospitals, etc. are also available in close vicinity of the acquired land. That the acquired land has commercial as well as residential potentiality is not in dispute.

12. The Claimants had relied upon total 20 sale instances referred to above to prove the market value of the acquired land. The Reference Court has determined the market value of the acquired land on the basis of the sale deed dated 08/05/2007 at Serial No.8 which relates to a small plot admeasuring 92.90 sq. mts. situated at Kegaon. The Reference Court upon deducting 1/3rd from the sale price of Rs.560/- per sq.mt. towards development charges and fixed the market value of the acquired land at Rs.380/- per sq. mtr. In ***Premlata (supra)*** the Apex Court has observed that as per the settled position of law, small plots/parcel 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. It is held that 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. Considering the difference in area between the acquired land and sale deed land, in my considered view the said sale instance at Serial No.8 cannot be considered to be a comparable instance.

13. The sale instances at Serial nos.1 to 7 are in respect of the properties situated at Bale, which are not in the close vicinity of the acquired land. Similarly, the sale instances at Serial Nos.9, 10, 19 and 20 are post notification transactions. Hence the said sale instances cannot be relied upon to determine the market rate of the acquired land. The sale deeds at Serial Nos.11 to 20 are pertained to the land situated in adjoining village-Kondi. The evidence on record indicates that the sale deed dated 20/02/2006 which is at Serial No.16 pertains to a plot situated in the close vicinity of the acquired land. The said sale deed plot is very proximate to the location and the date of notification, hence can be relied upon for determining the market rate after applying the principle of deduction. The said sale deed indicates the price of the land in the vicinity in and around the year 2006 was Rs.718/- per sq. mtr. The acquired land is in municipal area and is more advantageously located as compared to the said sale deed land,

which falls within the panchayat area. It is well-known that there is steep rise in the price of land. Considering the increase in the price of land at the rate of 10% per annum, the sale price works out to Rs.811/- per sq. mtr as on the date of the notification. In view of the fact that the acquired land was a large tract of land as compared to the sale deed land and deducting 33% towards difference in area, the market value of the acquired land can be fixed at Rs.545/- per sq. mtr.

14. Under the circumstances, the Reference filed by the Claimants is partly allowed. The Claimants are entitled for compensation in respect of the acquired land at the rate of Rs.545/- per sq.mtr. with all other statutory benefits. The Award stands modified accordingly. The Appeals filed by the Acquiring Body are dismissed. The Appeals filed by the Claimants viz. First Appeal Nos.417/2022 and 418/2022 are partly allowed. The compensation deposited before this Court with interest accrued thereon be transferred to the Reference Court with direction to disburse the compensation to the Claimants as per the modified Award.

15. Pending Interim/Civil Applications, if any, stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)