

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.602 OF 2021**

Nashik Municipal Corporation & Anr Appellants

V/s.

Pradyumna Mukund Kokil & Ors. Respondents

....

Mr. Murlidhar Patil for Appellants.

Mr. Rahul Narichania Senior Advocate a/w. Mr. Abhishek Adke for Respondent No.1.

Mr. A. R. Patil AGP for Respondent - state.

....

**CORAM : K. R. SHRIRAM & RAJESH S. PATIL, JJ.
RESERVED ON : 30th MARCH 2023
PRONOUNCED ON : 4th MAY 2023**

P.C. :

1 We had concluded the hearing and reserved the matter for judgment on 12th January 2023. It came to light later that many documents, orders and pleadings of earlier rounds of litigation were not available. So we listed the matter again on 6th March 2023 for directions and called upon the advocates to provide the same. The matter was stood over to 27th March 2023. On that day further time was sought and finally most of the missing documents, orders and pleadings were provided on 30th March 2023.

2 This First Appeal is filed under Section 74 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (*the Acquisition Act*) by Nashik Municipal

Corporation/Requiring Body being aggrieved by Judgment & Award dated 18th March 2021 passed by the Land Acquisition Authority also referred to as Reference Court, under Section 69 of *the Acquisition Act*. The First Appeal was admitted on 7th June 2022.

3 Respondent No.1, who was claimant before the Land Acquisition Authority, is a lawyer by profession. He asserts to have purchased by Sale Deed dated 29th July 2011, land admeasuring 37 R, i.e., 3700 sq.mtrs. being part of Survey No.8/1 [hereinafter referred as "*the suit land*"], at a consideration of Rs.1,17,00,000/- (Rupees One Crore Seventeen Lakhs Only). Pursuant to the Award dated 29th April 2017 Appellant Corporation had deposited the entire Award amount of Rs.8,69,46,650/- (Rupees Eight Crores Sixty Nine Lakhs Forty Six Thousand Six Hundred and Fifty Only). Respondent No.1 has withdrawn the entire amount on 8th May 2017 and handed over possession of "*the suit land*" on the same day, i.e., 8th May 2017.

FACTS :

4 In the year 1972, the development plan of Nashik city was sanctioned. Lands bearing S. No.8/1, 8/2, 7/13 & 7/14 situated at Deolali, Nashik, was reserved for public purpose of construction of High school, Playground and 40 feet wide north-south and east-west road. The

Dhopavkar family were the owners of the said lands bearing S. No.8/1, 8/2, 7/13 and 7/14.

5 On 2nd March 1978, a declaration under Section 126 of Maharashtra Regional Town Planning Act, 1966 (MRTP Act) read with Section 6 of Land Acquisition act 1894 (Old Act) was published for the acquisition of lands bearing S. No.8/1, 8/2, 7/13 and 7/14 which were meant for the purpose of High school, Playground and Road.

6 Land acquisition proceedings were initiated and Special Land Acquisition Officer (SLAO) passed an Award on 31st July 1979. Amongst other lands acquired, an area of 6,074 sq. mtrs. was acquired from S. No.8/1. The Survey No.8/1, consisted of 1 Hectare 38 R, i.e., 13,800 sq. mtrs. The Award mentioned an area of 4026 sq. mtrs of S. No.8/1, as surplus.

7 As no further steps were taken by Acquiring Body, the original owners of the lands, namely the Dhopavkars issued Purchase Notice dated 24th October 1983 under Section 127 of MRTP Act, thereby claiming lapsing of reservation of the lands which were not acquired from land bearing Survey No.8/1, 8/2, 7/13 and 7/14.

8 Subsequently, the SLAO passed a supplementary Award on 20th May 1986, thereby acquiring amongst other lands, an area of 4026 sq. mtrs. from S. No.8/1. Therefore, land admeasuring 3700 sq. mtrs from S. No.8/1 was left over.

9 Since no steps were taken by Government/Acquiring Body, even after one year of issuance of Purchase Notice dated 24th October 1983, the Dhopavkars submitted "Building Plans" for development of the lands, to the Nashik Municipal Corporation. However, the Nashik Municipal Corporation did not take any decision on the said "Building Plans".

10 Therefore, in the year 1995 a Writ Petition was filed being Writ Petition No.4184 of 1995 by one New Pancharatna Co-operative Housing Society (Proposed). The Housing Society claimed that by Agreement of Sale, land bearing S. No.7/13 and 8/1, were purchased by them from the Dhopavkars and that the land bearing S. No.7/13, was reserved for Quarters of employees. The Housing Society in Writ Petition No.4184 of 1995, sought direction to the Nashik Corporation to consider the application for sanction of "Building Plans" for development of land by treating the reservation of S. No.7/13 and Survey No.8/1 as lapsed. On 12th November 1998, when the Writ Petition No.4184 of 1995 was taken up for hearing, no one appeared for the Nashik Corporation. The Division Bench, on 12th November 1998

disposed the Writ Petition No.4184 of 1995 with a direction that Petitioner is permitted to make fresh application for sanction of their "Building Plans" and the Competent Authority will hear and decide Petitioner's Application. Thereafter a Review Petition was filed on behalf of the Nashik Corporation, to review the Order dated 12th November 1998. The said Review Petition was disposed by an order dated 23rd March 1999. It was recorded in the said order dated 23rd March 1999, that the identity of the land was being disputed.

11 The erstwhile owners, the Dhopavkars, submitted fresh application for sanction of their "Building Plans" in respect of land bearing Survey No.8/1 to the Nashik Corporation. The Nashik Corporation on 27th December 1999 rejected the "Building Plans" submitted by the Dhopavkars. An Appeal was filed before the State Government by the Dhopavkars. On 5th March 2007, the Government of Maharashtra dismissed the Appeal on the ground that 1 Hectare 1 R land, out of the total land of 1 Hectare 38 R from S. No.8/1, was already acquired and out of the remaining land of 37 R (3700 sq. mtrs) 22 R was under Canal and 15 R land was under Road. It was further stated that, therefore, the Purchase notice dated 24th October 1983 was of no consequence.

12 Subsequently Writ Petition No.3560 of 2009 was filed by the Dhopavkars. The relief sought was setting aside the order dated 27th December 1999 passed by the Corporation rejecting the "Building Plans". In the said Writ Petition, it was stated that *the suit land* was mortgaged with Bank, and Receiver was appointed by order of DRT. Paragraph Nos.2.10 and 2.16 of said Writ Petition No.3560 of 2009 reads as under :

"2.10..... as far as petitioners' land bearing Survey No. H/1 was concerned, it was indicated that 3,700 sq. mtrs. of land was not acquired and, therefore, the question of taking possession of the land did not arise.

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2.16. The petitioners state that they had borrowed the loan from Janlaxmi Cooperative Bank Ltd. Nashik and had mortgaged with them 3700 sq. meters of their unacquired property. The bank had issued notice under section 13 (2) of the Securitisation Act and, therefore, they filed the proceedings before the Debt Recovery Tribunal (III), Mumbai. The Debt Recovery Tribunal vide its order dated 10th September 2008 had appointed the Receiver in respect of 3700 sq. meters of property belonging to the petitioners."

13 The said Writ Petition No.3560 of 2009, by an order dated 18th November 2009 was disposed by remanding the matter to the State Government for *de novo* hearing. The Government of Maharashtra filed Special Leave Petition challenging the order of High Court. By an order dated 20th September 2010, the Hon'ble Supreme Court, refused to interfere with the order of High Court and disposed the Special Leave Petition filed by

the Government of Maharashtra.

14 The State Government thereafter called upon the erstwhile owners *of suit land*, the Dhopavkars, for hearing. While the matter was pending for adjudication, the Dhopavkars gave up their claim and instead claimed monetary compensation for acquisition of *the suit land*.

15 Immediately thereafter Pradyumna Mukund Kokil, Respondent No.1 in this First Appeal, by Sale Deed dated 29th July 2011 purchased *the suit land* (3700 sq. mtrs.) for a consideration of Rs.1,17,00,000/- (One Crore Seventeen Lakhs only) from the Dhopavkars.

16 Thereafter Writ Petition No.11709 of 2012 was preferred by the Dhopavkars. It was filed through their Constituted Attorney, Pradyumna Kokil (Respondent No.1 in this Appeal). It was prayed in the said Writ Petition, that the process of acquisition be started and be completed within four months. The said Writ Petition No.11709 of 2021 was disposed with a direction to the Nashik Corporation to initiate land acquisition proceedings in respect of land admeasuring 3700 sq. mtrs. (*the suit land*).

17 On 9th January 2017 notification under Section 11(1) of *the Acquisition Act* was published in the Government Gazette with regard to *the suit land* (3700 sq.mtrs). The Special Land Acquisition Officer, on 29th April

2017, passed an Award in Land Acquisition Case No.994 of 2015 under Section 23 of *the Acquisition Act*, awarding Rs.8,69,46,650/- (Rupees Eight Crore Sixty Nine Lakhs Forty Six Thousand Six Hundred and Fifty Only), thereby granting compensation for the acquired land at Rs.11,539/- per sq. mtr.

18 As stated earlier, pursuant to the passing of the Award, the compensation amount was deposited by the Nashik Corporation-Appellant. On 8th May 2017, Claimant/Respondent No.1, received the entire compensation of Rs.8,69,46,650/- and on the same day, i.e., 8th May 2017, simultaneously handed over the possession of *the suit land* to Land Acquisition Officer/Deputy Collector, Nashik.

19 Respondent No.1 thereafter, on or about 2018, filed reference under Section 64 of *the Acquisition Act*, with the Land Acquisition Authority seeking enhancement in compensation at the rate of Rs.40,000/- per sq. mtr. Much after filing of the Reference in the year 2018, a Supplementary Sale Deed dated 17th December 2019 was executed by Respondent No.1, with the Dhopavkars. The Supplementary Sale Deed added paragraph No.2A, to the Original Sale Deed dated 29th July 2011 thereby mentioning that Respondent No.1, is also granted rights to claim “Rental Compensation” for *the suit land*.

20 On 24th August 2020, amendment was sought to the Reference thereby claiming “Rental Compensation” from the year 1972 till the issuance of notification in the year 2017 and interest on the said amount. The amendment to Reference was allowed on the same day, i.e., 24th August 2020 and on the same day, Pradyumna Kokil Respondent No.1/Claimant, filed his Affidavit of Evidence in Chief as P.W. No.1.

21 Respondent No.1 led evidence of three witnesses, and Appellant Corporation led evidence of one witness. The entire evidence was recorded during the pandemic period, i.e., between 22nd September 2020 to 12th March 2021, by Commissioner appointed by the Authority. Appellant had also desired to examine a Government Valuer, however, the application for examining Valuer was rejected.

22 The Land Acquisition Authority passed an order on 18th March 2021 (which is impugned in this First Appeal) under Section 69 of *the Acquisition Act*, awarding a total sum of Rs.263,47,68,070/- (Rupees Two Hundred Sixty Three Crores Forty Seven Lakhs Sixty Eight Thousand Seventy only) as on 9th January 2017 for *the suit land* that is admeasuring only 3700 sq.mtr. situated in Deolali, Nashik plus costs. The impugned order also directs further interest, which according to Appellant would make the Corporation pay approximately Rs.300 Crores. Operative part of the

impugned order reads as under :

ORDER

1) The applicant is entitled for enhanced compensation of Rs.11,50,64,883/- (In words :- Eleven crores fifty lakhs sixty four thousand eight hundred eighty three only) Total compensation being Rs.20,20,11,533/- (In words :- Twenty crores twenty lakhs eleven thousand five hundred thirty three only).

2) The Non-applicant shall pay Rental Compensation 6% P.A. from 22.6.1972 till 22.4.1979 and 8% P.A. thereafter on the above amount of Rs.20,20,11,533/- till the date of notification i.e. 9.1.2017. They also pay interest for delayed payment of Rental Compensation at rate 6% P.A. from 1st January, 1973 till 9.1.2017.

3) All the above components 1 & 2 shall be the awarded amount. Interest on this awarded amount at rate 9% P.A. from the date of notification i.e. 9.1.2017 for one year and thereafter at rate 15% P.A. till realization of the full amount be charged on the awarded amount deducting compensation granted by LAO Rs.8,69,46,650/-.

4) Non-applicants shall pay the cost of this proceeding to the applicant.

SUBMISSIONS :

23 Mr. Murlidhar Patil for Appellant/Municipal Corporation submitted as under :

23.1 The best evidence to arrive at the market value of the land was the transaction of sale of the very land acquired. There was neither the need nor necessity to consider the other transactions of sales which any event was irrelevant. Respondent No.1/Claimant himself purchased the acquired land on 29th July 2011 by paying consideration of only Rs.1,17,00,000/-. Hence

he could have been, at the most, awarded the compensation with yearly increase of not more than 12% per annum till the date of declaration u/s 19 of the Acquisition Act, i.e., 5th January 2017.

23.2 The three Sale Deeds relied upon are not transactions of comparable land/near vicinity. The three sale deeds are not for similar type land situated in the vicinity. Two properties about Nashik-Pune National Highway. The acquired land is about 800 to 1000 meters (one km.) away from National Highway. The third property is in commercial zone and also just near the Nashik-Pune National Highway and, therefore, could not have been relied at all.

The Sale Deeds of transactions of nearby lands / near vicinity / comparable lands are not produced. The Authority has not recorded a finding that the transactions of sale produced by the Claimant relied upon by the Authority were relating to the lands in the nearest vicinity area / comparable lands. The Authority merely states that the Claimants produced the said transactions and proceeded to rely upon the same without giving any reasons. Assuming and without admitting that the Sale Deeds of the first two land could be considered to arrive at the market value of the acquired land then Belting method should have been applied. And, necessary deduction upto 50% or more ought to have been made instead of

increasing the values thereof.

23.3 The real nature of the transaction styled as Sale Deed dated 29th July 2011 is the transfer of a mere right to sue. Alternatively, the transaction amounts to transfer of an actionable claim. Respondent No.1/Claimant is an Advocate. Respondent No.1/Claimant did not buy the land for enjoyment of possession. It was an investment for business purpose with possibility of very high returns on investment and it proved right. At any rate it is the transfer of an actionable claim in favour of Respondent No.1/Claimant who is an Advocate and such transfer is contrary to Bar Council of India Rules as well as Section 136 of Transfer of Property Act as advocate is prohibited to “buy or traffic in or stipulate for or agree to receive any share or interest in any actionable claim” (Rule 21 in Section II of Chapter II of Bar Council of India Rules).

23.4 The transaction undoubtedly has tendency to injure public interest or public welfare and is against public policy. This more so when upon an investment of Rs.1,17,00,000/- on 29th July 2011 Respondent No.1/Claimant is seeking to receive a total amount of Rs.263,47,68,070/- as on 9th January 2017, the date of declaration under Section 19 of the Acquisition Act, i.e., within a period of 5 years and 5 months. Respondent No.1/Claimant, therefore, is not entitled to such unconscionable amount.

23.5 The Award was passed by SLAO on 29th April 2017. Respondent No.1/Claimant received the compensation. Simultaneously, the possession was handed over to the Corporation on 8th May 2017 and the possession receipts as per the Acquisition Act was issued on 8th May 2017.

The alleged supplementary Sale Deed dated 17th December 2019 by the vendor in favour of Respondent No.1/Claimant, transferring the claims for Rent Compensation as well as interest thereon is *void-ab initio*, even though by clever method, the Paragraph No. 2A has been added in the earlier Sale Deed dated 29th July 2011. The transfer of claim to rent/compensation and right to recovery of all the amount is void-ab-initio and not binding on the Corporation and the Government. In any event no rental compensation was payable.

24 Appellant was not granted reasonable opportunity to appoint a Valuer to establish by evidence the market value and transaction of sale of lands in the vicinity of area being lower than the transactions produced by Claimant/Respondent No.1.

25 Mr. Patil to buttress his submissions relied upon the ratio laid down in the following judgments :

(1) *The Dollar Company V/s. Collector of Madras*¹ to submit

1. 1975 (2) SCC 730

that the best evidence of the value of property is the sale of the very property to which Respondent No.1/Claimant was a party. An actual transaction with respect to the specific land of a recent date is a guide-book that Courts may not neglect when called upon to pin the precise compensation.

(2) *Special Deputy Collector & Anr. V/s. Kurra Sambasiva Rai & Ors.*² - The judge should sit in the armchair of the said willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the Court proposes to fix for the acquired land in the available market conditions. Here also the Court held the best evidence of the value of property are the sale transaction in respect of the acquired land to which the Claimant himself is a party.

(3) *V. Subrahmanya Rao V/s. Land Acquisition Zone Officer*³ - Best evidence would be the transaction on which Claimant himself was a party.

(4) *Manmohan Lal Gupta V/s. Market Committee Bhikhi & Ors.*⁴ - An Appreciation of 12% per year from 2011 to 2017 is a correct approach. And that is what should have been awarded. 12% increase from 2011 to 2017 on Rs.1,17,00,000/-.

2. 1997 (6) SCC 41

3. 2004 (10) SCC 640

4. 2021 (10) SCC 395

(5) *State of Maharashtra V/s. Maimuma Banu & Ors.*⁵ where the Apex Court held no “Rental Compensation” was payable.

(6) *BSNL V/s. Purushottam*⁶ - Such rental compensation cannot be awarded in land acquisition proceeding, but for recovery of rental compensation the Claimant has to approach the appropriate authorities under law.

(7) *Shiv Kumar & Anr. V/s. Union of India & Ors.*⁷ - A purchaser of acquired land after notification, does not acquire any right in the land concerned as such sale is ab initio void and has no right to claim that land under the policy of law.

(8) *Adjudicating Officer, SEBI V/s. Bhavesh Pabari*⁸ - Conditions stipulated are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated, which can be taken note of by the adjudicating officer while determining the quantum of compensation payable. Therefore, provision of the Section 26 of *the Acquisition Act* are illustrative in nature.

26 Mr. Patil, submitted that the Appeal, therefore, be allowed and the impugned Judgment and Award dated 18th March 2021, be quashed and set aside.

5. 2003 (7) SCC 448

6. 2019 (6) MhLJ 230

7. (2019) 10 SCC 229

8. (2019) 5 SCC 90

27 Mr. Rahul Narichania, Senior Advocate, for Respondent No.1 submitted :

27.1 Section 26 of *the Acquisition Act* provides what are the criteria to be adopted in assessing and determining the market value and does not include the Sale Deed of the owner. If the intention of the legislature was to add the Sale Deed of the owner as a benchmark for determination of market value, it would have said so, in terms.

The Presiding Officer rightly considered the average of the three sale transactions having the higher price under Explanation 2 of Section 26 (1) of *the Acquisition Act* because 6 instances were cited and assigned a 10% increase on the sale price mentioned in the Sale Deeds as on 9th January 2017 being valuation date. Applying the mean method, the average came to Rs.26,814/- per sq. mtr.

The judgments relied upon by Mr. Patil were all under the old Act and are not applicable to this case.

The market value is determined and offered for the first time on publication of Notification on 4th February 2017. Thus, as the area admeasuring 3700 sq. mtrs. was not covered in the earlier acquisition Notification dated 2nd March 1978, Acquiring Body has rightly offered the compensation by fixing the date of valuation as 4th February 2017.

27.2 The fact that the transaction was entered into with an Advocate is irrelevant or immaterial. The price that Respondent No.1 has paid to purchase the land from the original vendor the Dhopavkars is completely irrelevant and cannot be used as a yardstick to determine the compensation payable under *the Acquisition Act*.

27.3 Appellant cannot take refuge of S. 55 of the Transfer of Property, 1882 to absolve itself from paying compensation for unlawful possession of the land from 1972 to 2017.

27.4 Section 28 of *the Acquisition Act* contains 7 factors to be taken into consideration. The Seventh factor reads thus :

"Section 28. Parameters to be considered by Collector for determination of award - In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration- firstly,....

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Seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families."

This seventh parameter is very wide and can sweep under it rental compensation. If a property has been acquired, the owner should be paid for the loss of earning, which will be rent in the present case. Rent was payable as it is in the interest of equity, justice and beneficial to the affected families.

27.5 Rental Compensation is paid on the awarded amount from the date of taking possession till the date on which the full amount in the Final Award is paid.

27.6 The Presiding Officer was empowered to award “Rental Compensation”. The said legal issue has been decided in numerous decisions, which are as under :

(i) *R.L. Jain vs. DDA*⁹ - Where possession is taken prior to the issuance of notification, the person is entitled to rent or damages for use of the property to which the land owner is entitled to while determining the compensation.

(ii) *Ichalkaranji Co-Operative Spinning Mills Ltd. V/s. State of Maharashtra*¹⁰ - There was even a GR issued by Government of Maharashtra that rental compensation was payable.

(iii) *Ashok Chandrabhan Aagle V/s. State of Maharashtra*¹¹ - Rental compensation as per GRs is payable from the date of taking possession till date on which the full amount of final Award is paid. Landowner can seek interest on unpaid amount of rental compensation in case of delay in making payment.

9. (2004) 4 SCC 79

10. 2019 (3) MhLJ 472

11. W.P. No.3498 of 2012 and other matters Aurangabad Bench – 18.4.2012 (unreported)

(iv) ***Balwan Singh V/s. Land Acquisition Officer***¹² - Rent or damages are payable for use and occupation for the period the government retained possession of the property.

(v) ***Tahera Khatoon V/s. Revenue Divisional Officer***¹³ - Rent or damages can be paid at the rate of 15% on the compensation awarded.

(vi) ***Dinkar Gholve V/s. State of Maharashtra***¹⁴ - Land owner would be entitled to rent or damages for use and occupation for the period government retains the possession.

(vii) ***Shankarrao Bhagwantrao Patil etc. V/s. State of Maharashtra***¹⁵ - Where the land owner is deprived of the right to use of the land he will be entitled to interest and other benefits.

27.7 In accordance with Section 97 of *the Acquisition Act*, all that the Appellant had to do was to produce certified copies of Agreements of Sale / Sale Deeds registered under the Registration Act, 1908 to establish its case. It was totally unnecessary to lead the evidence of a Valuer as complained of by Mr. Patil.

27.8 The calculations of Appellant are false and misleading. The amount involved is only Rs.273 Crores approximately. The Presiding Officer has considered the evidence, both oral and documentary, and has arrived at

12. (2016) 13 SCC 412

13. 2014 (13) SCC 613

14. (2008) SCC Online Bom. 696

15. 2021 SCC Online SC 763

just and fair compensation in accordance with law.

27.9 By Supplementary Sale Deed dated 17th December 2019 after the award was made Respondent No.1/Claimant got transferred to him the right to receive compensation under the Award without any further consideration. This is not a right to sue or opposed to public policy or amounts to unjust enrichment or contrary to public interest as alleged by Mr. Patil.

The Corporation's Appeal has no merits, and the same should be dismissed.

ANALYSIS & CONCLUSION :

28 We have exhaustively heard both the sides and have also considered the documents on record. Three issues come up for our consideration.

(a) Whether Respondent No.1/Claimant is entitled for "Rental Compensation"? If so, for what period?

(b) Whether Interest on "Rental Compensation" is payable? If so for what period?

(c) Whether Respondent No.1/Claimant is entitled for enhancement of compensation as awarded in the impugned order?

29 Our answers are as under :

Issue (a) :

29.1 Respondent No.1/Claimant has taken a plea that the Corporation is in possession of *the suit land* from the year 1972. Therefore, it is essential to consider the stand taken by the Claimant and erstwhile owners the Dhopavkars in earlier round of litigation. The Dhopavkars in fact had filed “Building Plans” before the Nashik Municipal Corporation, for development of *the suit land* in the year 1999. The said Plans were rejected by the Municipal Corporation. Hence, the Dhopavkars through Power of Attorney holder, father of Respondent No.1 approached this Hon’ble Court by way of Writ Petition No.3560 of 2009, claiming that he is in possession of *the suit land* and the “Building Plans” put up by him should be sanctioned by the Nashik Municipal Corporation.

29.2 Paragraph 2.10 and 2.16 in Writ Petition No.3560 of 2009 read as under :

“2.10..... as far as petitioners’ land bearing Survey No. H/1 was concerned, it was indicated that 3,700 sq. mtrs. of land was not acquired and, therefore, the question of taking possession of the land did not arise.

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2.16. The petitioners state that they had borrowed the loan from Janlaxmi Cooperative Bank Ltd. Nashik and had mortgaged with them 3700 sq. meters of their unacquired property. The bank had issued notice under section 13 (2) of the Securitisation Act and, therefore, they filed the proceedings before the Debt Recovery Tribunal (III), Mumbai. The Debt Recovery Tribunal vide its order dated 10th September 2008 had appointed the Receiver in respect of 3700 sq. meters of property belonging to the petitioners.”

This indicates that on 5th March 2009, the date when the Writ Petition No.3560 of 2019 was declared, *the suit land* had not been acquired.

29.3 Respondent No.1/Claimant, a lawyer by profession, who on 29th July 2011, had purchased *the suit land* by Sale Deed wherein it is expressly stated “on as is where is” basis. Further the agreement itself provided that the Dhopavkars were in possession and that Respondent No.1/Claimant got possession of *the suit land* from the Dhopavkars. Therefore, in the year 2011 itself Respondent No.1/Claimant was aware of the status of *the suit land*. In fact, the father of Respondent No.1/Claimant had filed Writ Petition No.3560 of 2009 as power of attorney holder of erstwhile owners the Dhopavkars even before 2011.

29.4 It was also the Dhopavkars’ own case was that *the suit land* was unacquired and mortgaged with Janlaxmi Co-operative Bank and DRT, by its order dated 10th September 2008, had appointed Receiver of *the suit land*. There is no clarification as to the status of DRT matter after 10th September 2008.

When land has not been acquired even as late as 2009/2011, the question of getting any rental compensation from 1972 does not and cannot arise.

Further, Respondent No.1, thereafter as power of attorney holder of the Dhopavkars also filed Writ Petition No.11709 of 2012, and sought relief that acquisition be completed within four months?

It is a false and dishonest claim that is lodged for “Rental Compensation”. This is an example of - there is never an end to a man’s greed, that he will go to any extent to even lie to courts of law.

29.5 Even in Writ Petition No.11709 of 2012 filed by Respondent No.1/Claimant and the Dhopavkars on 6th November 2012, their case is land was still with them and Appellant should immediately start the process of acquisition of *the suit land*.

29.6 Only by way of Supplementary Sale Deed dated 17th December 2019 Respondent No.1/Claimant has claimed to have derived the right to claim “Rental Compensation” during the pendency of Reference before the Land Acquisition Authority. Therefore, Respondent No.1/Claimant cannot claim any right whatsoever of “Rental Compensation” before 17th December 2019.

29.7 After passing of the Award dated 29th April 2017 of by SLAO in the sum of Rs.8,69,46,650/- Appellant deposited the amount. Respondent No.1/Claimant withdrew the entire amount on 8th May 2017 and simultaneously handed over possession of *the suit land* to the acquiring

body and specifically signed the "Possession Receipt". The Land Acquisition Authority has completely ignored the Possession Receipt dated 8th May 2017, which shows, the date of handing over the possession of *the suit land*.

29.8 Possession Receipt dated 8th May 2017 of the *suit premises* is, for ease of reference, scanned and reproduced herein below :

58

उपजिल्हाधिकारी (भुसंपादन) क्रमांक 2 नाशिक यांचे कार्यालय

कब्जे पावती

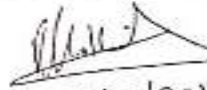
केस नं. 994/15

नाशिक दिनांक- 08 /05/ 2017

भुसंपादन प्रकरण क्रमांक 994/15 मोजे देवळाली ता. जि. नाशिक

प्रयोजन - 12 मिटर विकास योजना रस्ता.

मी. आम्ही सही / अंगठ करणार प्रद्युम्न मुकुंद कोकीळ देवळाली. ता. जि. नाशिक कब्जे पावती लिहून देतो की, माझी खालील निर्देशीत केलेली जमिन शासनाने सार्वजनिक कामाकरीता संपादित करून आम्हास निवाड्याप्रमाणे नुकसान भरपाई रक्कम रुपये-8,69,15,650/- अक्षरी रक्कम रुपये- आठ कोटी एक्कोणसत्तर लाख सोहचाळीस हजार सहासो पन्नास नाच माझ्या देवा खात्यात आरटीजीएस चदरे प्राप्त झालेली आहे. निवाड्यातील संपादित क्षेत्राचा ताबा आणि मालकी हक्क हस्तांतरणाच्या पृष्ठार्थ कब्जा/ ताबा पावती लिहून दिलेली आहे.

अ.क्र.	स.नं.	संपादित क्षेत्र	कब्जेदाराचे नाव	कब्जा पावती लिहून देणाऱ्या इसमाची सही/ अंगठ
1	8/3 पे	3700 चौमी	प्रद्युम्न मुकुंद कोकीळ	 08/5/2017. (PRADYUMNA Kulkarni)

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उपजिल्हाधिकारी (भुसंपादन)
क्रमांक 2 नाशिक


District Collector, Nashik
(Signature of the District Collector)

29.9 This fact itself shows that Respondent No.1/Claimant claimed to be in possession of the land until 8th May 2017. In the two Writ Petitions being Writ Petition No.3560 of 2009 and Writ Petition No.11709 of 2012, the contents are solemnly verified and affirmed on oath by Respondent No.1's father and Respondent No.1/Claimant, who is an Advocate by profession, respectively.

29.10 Further the erstwhile owners, the Dhopavkars, themselves had never claimed any "Rental Compensation".

29.11 Respondent No.1/Claimant, had harped on the plea of adverse possession taken by Appellant/Municipal Corporation in the earlier round of litigation. The stand taken by Appellant, would not help Respondent No.1/Claimant who has on solemn affirmation in Writ Petition bearing No.11709 of 2012 stated that he is in possession of *the suit land* and father of Respondent No.1, has verified Writ Petition No.3560 of 2009 where it is stated the "Building Plans" submitted by him be sanctioned. Further the Possession Receipt dated 8th May 2017 signed by Respondent No.1/Claimant, in clear terms mentioned that *the suit land's* possession was handed over only on 8th May 2017.

29.12 Respondent No.1/Claimant, himself has stated in Writ Petition No. 3560 of 2009 that *the suit land* was mortgaged with Janlaxmi

Co-operative Bank Limited, Nashik by him and DRT proceedings were on going.

29. 13 Only by way of amendment to Reference in the year 2020, the plea of “Rental Compensation” is claimed for the first time.

29. 14 The Judgments of *R. L. Jain (supra)*, *Balwan Singh (supra)*, *Ichalkaranji (supra)*, *Dinkar Gholve (supra)*, *Ashok Aagle (supra)*, and *Tahera Khatoon (supra)* relied upon by Mr. Narichania deal with issue of Rental Compensation to be granted from the date of possession being taken over by the government. The facts and circumstances in those cases were different, not even remotely similar to what is stated earlier by us.

Here Respondent No.1/Claimant is not entitled to any rental compensation as payment and handing over of possession happened simultaneously. Further by the impugned order, Respondent No.1/Claimant is being awarded a ridiculous amount of “Rental Compensation” of 6% p.a. from 22nd June 1972 to 22nd April 1979 and 8% p.a. thereafter till 9th January 2017 on the value of *the suit land* prevailing on the date of notification, i.e., 9th January 2017. The market rate granted is Rs.20,20,11,533/- as on the date of the impugned order. From 22nd June 1972 to 22nd April 1979 at 6% of Rs.20,20,11,533/- is Rs.1,21,20,692/- p.a. which is Rs.10,10,058/- per month. Thereafter it is 8% p.a. of

Rs.20,20,11,533/- which is Rs.1,61,60,923/- p.a. and that works out to Rs.13,46,743.55 per month. This is absurd. It defies sense. By applying that absurd method, the Reference Authority has awarded almost Rs.300 Crores as “Rental Compensation” on a piece of land worth only Rs.1,17,00,000/- in the year 2011. For that amount of “Rental Compensation” awarded perhaps many villages in and around Deolali, Nashik could be purchased. Public money cannot be frittered away. It is the duty of the state in the conduct of inquest by which compensation is ascertained, to see that it is just, not merely to the individual whose property is taken but to the public which is to pay for it.

29.15 We do not agree with the submissions of Mr. Narichania that rental compensation would be covered under Section 28 of *the Acquisition Act* - “*seventhly any other ground which may be in the interest of equity, justice and beneficial to the affected families.*” Section 28 provides for the parameters to be considered by Collector in determination of Award. If rental compensation was payable, it would have been specifically stated so in Section 28 or elsewhere in the Acquisition Act. We say this because in the old act also there was no provision for Rental Compensation, so Government had issued GRs. Even the judgments relied upon by Mr. Narichania state “to be paid as per GRs”. Now there is no GR in force, nor was that the case of

Respondent No.1/Claimant. Therefore, if state wanted to pay rental compensation that would have been expressly provided for in the Acquisition Act.”

According to us, the Rental Compensation and interest thereon granted by Reference Court in the present case could not have been granted.

29.16 Taking into consideration all above facts we conclude that “Rental Compensation” as claimed by Respondent No.1/Claimant from the year 1972 till 2017 should not have been granted by the Land Acquisition Authority but should have been rejected. All things considered, Respondent No.1/Claimant stands self condemned by his own deed of purchase and litigious nature.

Issue (b) :

30 In view of rejection of claim of “Rental Compensation”, there is no question of granting any interest on “Rental Compensation” and the same also stand rejected. As the claim of “Rental Compensation” is rejected we are not discussing the Judgments referred by Claimant on the issue of interest on “Rental Compensation”.

Issue (c) :

31.1 Respondent No.1/ Claimant had purchased *the suit land* by Sale

Deed dated 29th July 2011 for a sum of Rs.1,17,00,000/- (Rupees One Crore Seventeen Lakhs only) on “as is where is” basis. And within a span of 5 years 5 months has sought enhanced compensation of about Rs.300,00,00,000/- (Rupees Three Hundred Crores only), which is granted by Land Acquisition Authority.

31.2 The reference under Section 64 through Collector was made on 26th May 2017 in which *the suit land* was valued at Rs.21,06,11,400/- and Supplementary Sale Deed was executed on 17th December 2019 by Respondent No.1/Claimant with the erstwhile owner the Dhopavkars. By the said Supplementary Sale Deed dated 17th December 2019, it was recorded that Respondent No.1/Claimant has also got right to receive the rental compensation.

31.3 Subsequently, an application to amend the reference application was made on 24th August 2020. The amendment to reference was allowed on same day, i.e., 24th August 2020. By the said amendment claim of rental compensation from the year 1972 was sought by Respondent No.1/Claimant. Only thereafter, Respondent No.1/Claimant examined himself as P.W. No.1 and thereafter examined Trimbak Gaikwad as P.W. No.2 and one Jayshree Garud as P.W. No.3. The entire cross-examination and evidence were recorded through video conference during the Covid pandemic.

Thereafter, the Nashik Corporation, examined its witness, Mr. Sanjay Patil, who was also cross-examined. The Corporation thereafter made an application to examine one more witness who would be a Government Valuer. For the said purpose the Corporation made an application for appointment of a Government Valuer, to Revenue Commissioner. According to Appellant, unfortunately as the subordinate officer of Revenue Commissioner was affected by Covid, a Valuer could not be appointed immediately. The Nashik Corporation, therefore, made an application for granting some time to them to examine a Valuer. The application of the Corporation was rejected. Hence the Corporation preferred an application for Review of the said order dated 25th February 2021. The authority did not grant more time to the Corporation for examining the Valuer and insisted that the Corporation should go on with the hearing of the matter. As per Roznama on 16th March 2021, Respondent No.1/Claimant submitted written arguments. Immediately thereafter, on 18th March 2021 the reference of Respondent No.1/Claimant was allowed granting approximately a sum of about Rs.20,20,11,533/- (Rupees Twenty Crores Twenty Lakh Eleven Thousand Five Hundred Thirty Three only) as value for *the suit land* to Respondent No.1/Claimant which works out to about Rs.26,814/- per sq. mtr.

31.4 Respondent No.1/Claimant had submitted 6 sale transactions to the Reference Court. The Reference Court proceeded on the basis that under Section 26 of *the Acquisition Act*, 50% of these transactions having higher value are to be considered and average of the same is to be applied for the market value of the acquired land. Further as the said transaction were prior two or three years earlier, the Reference Court says to arrive at the market price of *the suit land* 10% increase is to be given on the sale price mentioned in those sale deeds. The Reference Court thereafter proceeded to rely upon three sale transactions, viz., (i) Survey No.19/A/1/2, transaction date 26th August 2014, (ii) Survey No.114/A/1, transaction date 7th July 2015 and (iii) Survey No.235/A/1C/2, transaction date 10th February 2016 as per the provisions of Explanation 2 of Section 26 (1) of *the Acquisition Act*. By referring to these three sale transactions, the Reference Court arrived at market value of acquired *the suit land* at the rate of Rs.26,814/- per sq. mtr. In our view, this approach of the Reference Court is fallacious.

Section 26 (1) of *the Acquisition Act* reads as under :

“S. 26- (1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely :

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

*(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher :
 Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.....”*

It says ‘whichever is higher’. This means all details under the criteria provided in Section 26 (1)(a), (b) and (c) should be placed before the Reference Court and the Reference Court after considering all three, has to decide the higher value. That has not been done. It cannot be any one of the three as submitted by Mr. Narichania because ‘or’ is used between clause (a), (b) and (c) in sub-section (1). It says (a) or (b) or (c) whichever is higher. To decide whichever is higher all three will have to be considered and that is not done in this case. As noted earlier documents have been submitted only under Section 26 1(b) and the Reference Court has simply applied the formula under Explanation 2. That approach is incorrect. In any event, even if we feel that could have been done, still, that is fraught with errors

The first transaction referred by the Reference Court, is land situated in Survey No.19/A/1/2, which abuts the Nashik Pune National Highway. Land was converted to NA use on 10th July 1961. Second transaction referred by the Reference Court, is land situated in Survey No.114, which also abuts the Nashik Pune National Highway. Both are about

one km away from *the suit land* and cannot be stated to be in the vicinity. A constructed building is in part of the land. Third transaction is of land situated in Survey No.235, which is in commercial zone and just near the Nashik Pune National Highway. There is no finding also as to why similar type of land situated in the vicinity was not considered.

In the words of V.R. Krishna Iyer, J (as he then was) in *Dollar Co.* (supra), propinquity to highway and many industrial and social imponderables enter the verdict the evaluation. So much so we cannot automatically assert with reference to pieces of land a mile away, that it serves as a guide for fixing the price of *the suit land*.

31.5 According to us, these three sale transactions cannot be called of land nearest to vicinity area. Respondent No.1/Claimant did not produce in evidence any transaction of sale of comparable land in near Vicinity. Respondent No.1/Claimant had purchased the same *suit land* in 2011 just 5 years 5 months earlier @ Rs.3,162/- per sq. mtr. The Land Acquisition Authority, himself has opined that the evidence of PW. No.3, Jayshree Garud witness of Claimant, cannot be used in present case to determine the market price of acquired land. As the Reference Court did not follow the provisions of Section 26 of *the Acquisition Act*, we have to fall back on the time tested method, i.e., the price that was paid by the owner represents an expression of market value, as bonafide evidence of value as held in *Dollar Company (supra)*, *V*

Subrahmanya Rao (supra) and Kurra Sambasiva Rai (supra). Mr. Narichania had submitted that market value has to be determined strictly as per Section 26 of *the Acquisition Act*, and that does not provide for price paid by the owner. We disagree with him. Section 26 (1)(b) is an indicator that price paid by the owner was a determining factor. Section 26 (1)(b) says the “*The average sale price for similar type of land situated in the nearest village or nearest vicinity area*”, which would include the sale price paid by the owner for *the suit land*. Therefore, it is an indicator. Of course Explanation (1) in Section 26 (1) says transaction taken place during immediately preceding three years. But that is only to derive at value under Section 26 (1)(b) of *the Acquisition Act*, one of the criteria to be considered, not the sole criteria. Therefore, we should proceed on the basis that no evidence has been made available strictly as per the provisions of Section 26 of the Acquisition Act. Hence, in our view, enhanced compensation granted by the Reference Court without there being any cogent evidence for the sum of Rs.20,20,11,533/- (Rupees Twenty Crores Twenty Lakh Eleven Thousand Five Hundred Thirty Three only), cannot be sustained. The SLAO had correctly valued *the suit land* as per ready reckoner at the rate of Rs.13,300 per sq. mtr. *Manmohan Lal Gupta (supra)* provides an increase of 12% p.a. can be applied to arrive at the market value. That value will be Rs.2,17,51,599/-, i.e., 5878.81per sq. mtr. Since the SLAO has awarded Rs.8,69,46,650/- we will accept that as the correctly determined market value. As stated by V. R. Krishna Iyer, J (as he then was) in *Dollar Company (supra)* “viewed

from slightly different aspect, it is but fair that compulsory land-acquisition while assuring a just equivalent should not be converted into an avaricious windfall.”

32 Hence, for above reasons the impugned order dated 18th March 2021 is set aside and the order of SLAO is restored.

33 First Appeal is allowed and accordingly disposed with costs in the sum of Rs.10 Lakhs to be paid by Respondent No.1/Claimant to Appellant within four weeks from the date this judgment is uploaded, failing which appellant may recover the same from Respondent No.1 as arrears of land revenue. All interim applications consequently also stand disposed.

34 In view of the above, any amount that appellant has deposited, in addition to the compensation that has been paid and withdrawn on 8th May 2017, shall be returned to appellant together with accumulated interest, if any.

35 Mr. Patil states that appellant will make an application within two weeks from today. Within two weeks thereafter, the application should be processed and the amount together with accumulated interest, if any, shall be returned to appellant.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)