IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.415 OF 2006

Nitin s/o Vijay Shere (dead),
Aged about 11 years (Minor) through
Guardian mother Smt.Shobhabai w/o
Vijay Shere, aged about 27 years (dead)
Occupation household service and
Cultivator, resident of Umari Pathar,
Post, Mahalungi, taluka Arni
District Yavatmal.

1-a) Vijay s/o Domaji Shere,
Aged about 55 years, occupation
Cultivator, r/o Umari Pathar,
Post Mahalungi, tahsil Arni,
District Yavatmal. ….. **Appellant**.

:: V E R S U S ::

1. The State of Maharashtra,
Through the Secretary,
Revenue Department Mantralaya,
Mumbai-32.

2. The Collector Yavatmal,
District Yavatmal.

3. Sub Divisional Officer and
Land Acquisition Officer Yavatmal
District Yavatmal. ….. **Respondents**.

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Shri Irfan M.Ghongade, Counsel for the Appellant.
Ms T.H.Udeshi, Assistant Government Pleader for Respondents/State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 09/01/2023
PRONOUNCED ON : 03/02/2023

JUDGMENT

1. This appeal filed under Section 54 of the Land Acquisition Act, 1894 (for short, "the said Act") takes exception to

judgment and award dated 22.8.2005 passed by learned Civil Judge Senior Division, Darwha in Land Acquisition Case No.1743/2004.

2. The appellant/claimant is the owner of land survey/gat No.1 admeasuring 1H62R of mouza Umari (Pathar), taluka Arni district Yavatmal which was acquired for the purposes of village Gaothan. The Notification under Section 4 of the said Act was published in the Government Gazette on 5.9.1995. The Notice under Section 6 of the said Act was published in the Government Gazette on 16.1.1997. As the appellant/claimant was minor at the relevant time, he had filed statement under Section 9 through his guardian mother Smt.Shobhabai w/o Vijay Shere on 12.3.1997 and claimed compensation @ Rs.30/- per square feet and also claimed Rs.10,000/- towards damage of bandh. The Land Acquisition Officer has passed the award on 20.2.1998 and notice under Section 12(2) was issued on 15.11.1989. As per the contention of the appellant/claimant, the Land Acquisition Officer has determined the compensation @ Rs.19,800/- per hectare. The appellant/claimant has accepted the compensation under protest.

3. The appellant/claimant, being aggrieved by the amount of compensation granted by the Land Acquisition Officer, filed a reference under Section 18 of the said Act. The Reference Court has

awarded enhancement of compensation @ Rs.25000/- per hectare including the amount paid by the Land Acquisition Officer.

4. Learned counsel Shri Irfan M.Ghongade for the appellant/claimant submitted that the Land Acquisition Officer as well as the Reference Court had not considered the sale instance filed on record. The sale instance filed on record dated 9.3.1995, which is of small piece of land of the same village Umari Pathar, prior to the Notification issued under Section 4 in the year 1995, was executed by Anandrao Wankhede of his 2640 square feet land of the same village for consideration of Rs.6000/-. There is no sale deed except the above sale deed to show the comparability regarding the market rate of the similar land of the same village for the acquired land. He further submitted that it is an admitted fact that the subject land acquired for extension of Gaothan of village Umari Pathar itself reflects the residential and commercial potential of the acquired land. As the Gaothan was already established, naturally there would have been all necessary amenities and facilities through the acquired land and the land in the vicinity of the acquired land remained the agricultural land. The sale deed Exhibit-X was executed prior to the Notification dated 5.9.1995. The genuineness of the transaction is not disputed by the respondents and it can be inferred that the transaction is *bona fide*.

He further submitted that the Land Acquisition Officer as well as the Reference Court had not considered quality potential and fertility of the land and granted inadequate compensation and, therefore, he approached to this Court by filing this appeal. He also preferred Civil Application No.395/2022 seeking direction to the Reference Court to record additional evidence of the appellant/claimant. This Court has allowed the appellant/claimant to adduce additional evidence. In view of that, he filed a affidavit and sale instance on record. Thus, he has established that he is entitled for compensation @ Rs.10/- per square feet and entitled for enhanced compensation.

5. In support of contentions made, learned counsel Shri Irfan M.Ghongade for the appellant/claimant placed reliance on the decision of the Honourable Apex Court in the case of <u>**Chaturbhuja Modi and others vs. State of Orissa and another**</u>, reported in <u>**(2010)12 SCC 234**</u> wherein the Honourable Apex Court in paragraph No.12 held that the only evidence that could be considered and relied upon is Exhibit 1. The following criteria provide a good indication of whether a sale deed may be comparable to the one in question: (1) it must be within a reasonable time of date of notification under Section 4(1) of the Act; (2) it should be a bona fide transaction; (3) it should be a sale of the land acquired or of

the land adjacent to the one acquired; and (4) it should possess similar advantage. He submitted that in view of the above observation of the Honourable Apex Court, the case of the appellant/claimant is squarely covered under the said decision as the sale deed on which he relied upon is prior to six months of issuance of Section 4 Notification. The sale deed is from the same village and the land is of the same quality. He further placed reliance on the decision of the Honourable Apex Court in the case of <u>Special Tehsildar Land Acquisition, Vishakapatnam vs. A.Mangala Gowri</u>, reported at <u>(1991)4 SCC 218</u> and submitted that that if the market value of the sale deed is considered, market value of the land would be Rs.2.54/- per square meter. The appellant/claimant is required for extension of Gaothan and the Honourable Supreme Court, after deducting 1/4 in rural areas housing scheme relating to weaker section, granted compensation. So after deduction of 1/4, the amount of compensation comes to Rs.2.45 paise per square feet and the appellant/claimant is entitled to receive compensation @ Rs.2.45 paise per square feet. Hence, he prays that the appeal be allowed.

6. On the other hand, learned Assistant Government Pleader Ms T.H.Udeshi for respondents/State submitted that the appellant/claimant had not proved documents by examining

signatory before the Court. The contents are required to be proved by examining the executant and excutee and mere production of documents is not sufficient.

7. Here, the appellant/claimant has not converted his land into non-agricultural and, therefore, the appellant/claimant is not entitled for the similar consideration. Hence, the appeal deserves to be dismissed.

8. After hearing both sides, point arises for my determination is as under:

> Whether the appellant/claimant has made out a case to enhance the compensation by interfering in the judgment and award in the appeal.

9. With the assistance of learned counsel appearing for parties, I have perused record of the case and also considered their respective submissions. The Land Acquisition Officer awarded compensation @ Rs.19800/- per hectare. Whereas, learned Judge of the Reference Court has not considered the evidence adduced before it. Before the Reference Court, PW1 Vijay Shere has deposed on behalf of the appellant/claimant who is minor. As per his evidence, land gat No.1 from village Umari Pathar total admeasuring 7 acres 34 gunthas was acquired for extension of

Gaothan. The Notification was published under Section 4 on 5.9.1995. The Notice under Section 9 was received and replied by him and has claimed compensation for acquired land @ Rs.30/- per square feet. The award was declared 20.2.1991. As per evidence of PW1 Vijay Shere, the acquired land is adjoining to the village Gaothan towards western side of the village. Digras-Yavatmal Road is passing through the acquired land. Aarambhi Bus Stand of village is adjoining to the acquired land. In the year 1995, the acquired land was having market price @ Rs.10/- to Rs.12/- per square feet. He further deposed that the facilities like Primary School of Zilla Parishad, High School of Private Institute, and Gram Panchayat Office are near to the acquired land. But, the Land Acquisition Officer has not considered the same. He placed reliance on sale instance dated 29.1.2001 and transaction was between Namdeo Sawant and Tukaram Mirzapure. Namdeo has purchased the open space of Tukaram admeasuring 1932 square feet for Rs.18000/-. The land purchased by Namdeo is at the distance of 200 feet from the acquired land. During his cross-examination, he admitted that he has not applied for converting remaining 3 acres of land from agricultural to non-agricultural purposes. He denied that as he has not converted his land, there was no demand to his land.

10. PW1 Vijay Shere also examined Namdeo who has purchased the land. His evidence is to the extent that he has purchased the land which is mentioned in the sale instance. He further deposed that the acquired land of the claimant is convenient for construction. On the basis of this evidence, the claimant has claimed compensation @ Rs.10/- per square feet. Admittedly, no evidence is adduced on behalf of the respondents.

11. After appreciating the evidence, learned Judge of the Reference Court observed that Notification under Section 4 was published on 5.1.1995 and the claimant has relied upon the sale deed 29.1.2001. The acquired land is an agricultural land and sale deed of an open space having Gram Panchayat House Number. So, it is not comparable sale instance and the claimant cannot have benefit of the sale deed filed at Exhibit-22 for determination of the market price of the acquired land as on the date of the Notification under Section 4 the Reference Court came to conclusion that considering the land was near to village Gaothan and it was acquired for the purposes of extension of Gaothan, determined compensation @ Rs.25000/- per hectare.

12. Being aggrieved with the same, the appellant/claimant claimed the enhancement of compensation.

13. In view of the order passed by this Court, the appellant/claimant has adduced additional evidence by filing additional affidavit before the Reference Court. Along with the affidavit, he placed reliance on the sale deed at Exhibit-X on 9.3.1995 that is prior to six months of issuance of Notification under Section 4. Admittedly, the genuineness of the sale deed was not questioned by the respondents. The appellant/claimant was cross-examined by the respondents and cross-examination is to the extent that the appellant/claimant has no personal knowledge regarding the actual transaction. Admittedly, the sale instance on which subsequently the appellant/claimant placed reliance was prior to the issuance of Notification. As per the said sale deed Exhibit-X, one Shri Shankar Motiram Belkhede purchased open plot of 2640 for consideration of Rs.6000/-. As per the description mentioned in the sale deed, the said plot was situated at Umari Pathar which is the open space. Whereas, the land acquired for the Gaothan is the agricultural land. The evidence of the appellant/claimant shows that till acquisition of the land he was cultivating the said land and was getting crops like Toor and Cotton. The 7/12 Extract shows that till 1996-97 and thereafter in remaining land the appellant/claimant has taken the crops like Toor and Cotton. This fact itself is sufficient to show that the land of the appellant/claimant was agricultural land.

.....10/-

14. As observed by the Honourable Apex Court in the case of Chaturbhuja Modi and others vs. State of Orissa and another cited *supra,* that the sale instance must be within reasonable time. Admittedly, it is prior to six months of issuance of Notification and, therefore, it is within the reasonable time. No question is raised about its genuineness. So, the said sale deed can be taken into consideration.

15. The Honourable Apex Court in the case of Administrator General of West Bengal vs. Collector, Varanasi, reported at 1988 SCC (2) 150 has held that where large tracts of lands are required to be valued, valuation in transaction with regard to small plots is not to be taken as real basis for determining the compensation of large tracts of lands. It follows that where market value of large block of land is determined on the basis of sale transaction for smaller property, appropriate deduction has not made for the loss of the acquired land required to be used for internal development such as construction of road, drains open space and the expenditure is involved in providing other amenities like water and electricity.

16. The Honourable Apex Court in the case of Special Tehsildar Land Acquisition, Vishakapatnam vs. Mangala Gowri (Smt), reported at (1991) 4 SCC 218, by referring the judgment in the case of Special Land Acquisition Officer, Bangalore vs.

T.Adinarayan Setty, reported at AIR 1959 SC 429, deduction of 20% was held to be reasonable. It is to be noted that in building regulations, setting apart the lands for development of roads, drainage and other amenities like electricity etc. are condition precedent to approve lay out for building colonies. Therefore, based upon the situation of the land and the need for development, the deduction shall be made. Where acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc. then deduction of 1/3 would not be justified. In the rural areas housing schemes relating to weaker sections, deduction of 1/4 may be justified.

17. This Court also in the case of Sharadchandra s/o Narayanrao Padgilwar vs. State of Maharashtra and others, reported at 2008(1) ALL MR 194 held that when sale instance relating to small pieces of land, some discount is to be made on account of sale instances relating to small pieces of land in the cases of acquisition of large chunk of land. In the said cited case, the area of acquired land was 114345 square feet. The Reference Court took into consideration four sale deeds dated 27.5.80, 10.7.81, 5.6.82 and 13.5.82 vide Exh.50, 51, 52 and 53 respectively in which plots were sold @ Rs.6.76, 9.18, 12.50 and 11.50 respectively and

thereafter deducted 25% of the area and fixed compensation @ Rs.6/- per square feet.

18. Here, in the present case, in both the sale instances the open plots are involved. Whereas, the acquired land is the agricultural land. After acquisition of the land, the Government has not incurred the expenses towards the development of land such as construction of roads, drains, open plots as well as amenities like water and electricity etc..

19. In this view of the matter, considering the sale instances, which are in respect of of non-agricultural open land, and the acquired land, which is in respect of agricultural land, 50% deduction would be just and proper. After relying upon the sale instance i.e. of 9.3.1995 executed prior to issuance of the Notification under Section 4 of the said Act, the area 2640 square feet was sold out for consideration of Rs.6000/- i.e. Rs.2.27/- per square feet. The area acquired is not a developed area. The area of deduction would depend upon situation of the land and needs for development. Admittedly, the appellant's land is an agricultural land and acquired for Gaonthan for residential houses for villagers and, therefore, the said land requires to be developed including the development of roads, drainage, and other amenities like electricity etc. which are condition precedent. As such, based upon the

situation of the land and the need for development as well as the land is to be converted into non-agricultural land, 50% deduction towards development of the land would be appropriate. After deduction of 50%, market value should be deducted for development of the land. The sale instance on which the appellant relied upon shows rate Rs.2.27 per square feet. After applying 50% of deduction, the said rate comes to Rs.1.13 per square feet. By applying this rate i.e. Rs.1.13. per square feet, the amount of compensation to the area 1H 62R would be in following manner:

1H of land	=	1,07,639 square feet
62R of land	=	66,736 square feet
total area in square feet	=	**1,74,375**

20. Thus, 1H 62R of land comes 1,74,375 square feet. After applying 50% of deduction, relying upon the said sale instance, considering potential of agricultural land, 1,74,375 square feet of land x Rs.1.13 per square feet = Rs.1,97,043/- would be the appropriate market price for the acquired land. The appellant/claimant is entitled to receive compensation Rs.1,97,043/- towards the acquired land.

21. In view of the aforesaid, the judgment and award impugned passed by the Reference Court needs interference by

allowing the appeal. The point as framed has answered by holding that the award of the Reference Court is required to be interfered with. Hence, I proceed to pass following order:

ORDER

(1) The first appeal is **partly allowed.**

(2) The appellant/claimant is entitled to receive compensation Rs.1,97,043/- towards the acquired land. The respondents shall deposit the amount of enhanced compensation after deducting compensation amount already paid.

(3) The appellant/claimant is also entitled for interest @ 12% per annum on enhanced amount from the date of publication of Section 4 Notification, till the date of award or till the date of actual possession whichever falls first on the aforesaid amount of compensation @ Rs.1.00 lac per hectare.

(4) The appellant/entitled is also entitled to receive solatium @ 30% in accordance with provisions of Section 23(2) of the said Act on the compensation amount @ Rs.1.00/- per hectare.

(5) The appellant/claimant is entitled to receive interest @ 9% per annum on the enhanced amount for the first year and @ 15% per

annum thereafter in accordance with the provisions of Section 28 of the said Act from the date of taking possession till the realization of the amount.

(6) The parties shall their own costs.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!