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

FIRST APPEAL NO.1326 OF 2008

Premanand s/o Ramlalji Paliwal
Aged 55 Yrs., Occ. Agriculturist,
R/o Belora, Tq. Chandur Bazar,
Distt. : Amravati.

APPELLANT

// VERSUS //

The State of Maharashtra,
Through Collector, Amravati.

RESPONDENT

Mr. A. J. Gilda, Advocate for the appellant.
Mr. K. L. Dharmadhikari, AGP for respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/03/2023

ORAL JUDGMENT

1. The present appeal is preferred under Section 54 of the Land Acquisition Act against the Judgment and Award passed by the Civil Judge Senior Division Achalpur in Land Acquisition Case No.20/1994, by which the Civil Judge Senior Division dismissed the reference filed by the claimant by passing Judgment and Award on 22.12.2004.

2. The parties are hereinafter referred to as per their original nomenclature in reference petition.

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3. Brief facts which are necessary for the disposal of the appeal are as under.

The petitioner is owner of field Survey Nos.194/1, 151 and 152 of village situated Mouza Belora, Tahsil – Chandur Bazar, District Amravati. The respondent – State has acquired the land of the petitioner for the purpose of construction of road known as ‘Belora – Chincholi – Wathoda’ road. The said land was acquired on the basis of proposal of Executive Engineer Upper Warda Project. Accordingly, notification under Section 4 of the Land Acquisition Act was issued on 07.05.1989. Subsequently, notification under Section 6 of the Act was issued on 04.06.1990. Petitioner has received the notice under Section 12(2) of the Land Acquisition Act and Award was passed on 09.08.1990, in respect of 7 R land out of Survey No.194/1, 3 R. land out of Survey No. 151 and 38 R. land out of Survey number No.152 of mouza Belora. The Land Acquisition Officer has assessed the amount of compensation and awarded at the rate of Rs.14,850/- per hectare along with solatium at 30% and interest at the rate of 12% per annum. The amount of Rs.1487/-, Rs.637/- and Rs.8070/- were awarded to the petitioner for acquisition of the aforesaid three lands.

4. Being aggrieved and dissatisfied with the award passed by the Land Acquisition Officer, the petitioner has preferred the reference

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before the Civil Judge Senior Division, Achalpur. As per contention of the claimant the land in question was situated adjacent to the Gaothan of the village. The lands are having potential of non-agricultural land and thus the valuable potential for converting into the plots for building purposes was not considered by the Land Acquisition Officer. In fact, Survey No.151 was already converted for non-agricultural purpose and layout was sanctioned on 28.03.1990. Some plots out of sanctioned layout were sold at the rate of Rs.3/- per sq. ft. and some were at the rate of Rs.4/- pe sq. ft. The pieces out of the land Survey No.194/1 had been sold to the different persons who had already built houses on those lands. Thus, even without conversion of the land to non-agricultural use, the same has been sold at the price of Rs.3,000/- per guntha in the year 1989 and the remaining land of Survey No.194/1 was transferred to Zilla Parishad for construction of maternity home. As Zilla Parishad failed to construct the maternity home it was again re-transferred to the petitioner by virtue of the judgment of the Civil Court. Thus, at the time of issuance of notification, the said land was valuable and it would have fetch Rs.5,000/- per guntha. On the basis of sale instances the claimant claimed the compensation at the rate of Rs.1,50,000/- per hectare.

5. In response to the notice the respondent opposed the reference by filing written statement vide Exh.23. It is submitted by the

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respondent that the Land Acquisition Officer has correctly on the basis of the sale instances awarded the compensation amount and no interference is called for.

6. The Reference Court has recorded the evidence. Perused the sale instances and on the basis of material placed before him come to the conclusion and dismissed the claim of the claimant.

7. Being aggrieved and dissatisfied with the Judgment and Award passed by the Reference Court, the present appeal is preferred by the claimant on the ground that the learned Reference Court has acted like an Appellate Court which is not permissible. The reference Court has not at all considered sale instances produced by the claimant which are comparable sale instances and relied upon the material collected by the Land Acquisition Officer which was not at all produced before the Reference Court. The respondent has not adduced any evidence in support of the sale instances on which the Land Acquisition Officer has placed reliance on. Thus, the Judgment and Award passed by the Reference Court is arbitrary, erroneous and liable to be set aside by remanding back the matter to the trial Court for deciding afresh.

8. Heard learned Advocate Mr. Gilda for the

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claimant/appellant. He submitted that in fact the Reference Court has acted like Appellate Court which is not at all permissible. He invited the attention towards the para No.24 of the Judgment wherein the Reference Court has considered that the award of Land Acquisition Officer is produced before him which is at Exh.4, wherein it is clearly mentioned that in all 18 sale instances were examined before the awarding compensation to the petitioner. It is further observed by the Reference Court that as there was already acquisition proceeding pending at village Belora bearing No.51/47/87-88 and there was no rise in the price of the land in the area. The Land Acquisition Officer has taken the base of said acquisition proceeding and determined the price at the rate of Rs.14,850/- per hectare. It is further observed that from Exh.5 that the awarded solatium and interest is also awarded to the petitioner and the Reference Court on the basis of the award, rejected the reference of the petitioner. In support of the contention learned Advocate Mr. Gilda placed reliance on **Shekar S. Sheth, through Power of Attorney Rajesh Sheth and others Vs. Executive Engineer** reported in 2022 SCC OnLine Bom 1275 and **Digamber and others Vs. State of Maharashtra and others** reported in (2013) 14 SCC 406. He submitted that in the judgment of **Shekar S. Sheth** (supra) this Court has already held on the basis of earlier Judgment of the Hon'ble Apex Court in **Chimanlal Hargovinddas vs. Special Land Acquisition Officer Poona and**

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another reported in **(1988) 3 SCC 751** wherein Hon'ble Supreme Court has held that a reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court.

9. He further submitted that the claimant has placed reliance on the sale instances wherein some pieces of the lands were sold though it was not converted into the non-agricultural purpose. At the relevant time, the land had fetched the market value at the rate of Rs.3,000/- per guntha. So, claimant is entitled to receive the compensation on the basis of the sale instances which are relied upon by the claimant. However, the Reference Court has not considered the same and rejected the claim arbitrarily and erroneously which is liable to be set aside.

10. Per contra, learned AGP Mr. Dharmadhikari, for the respondent submitted that the Reference Court has rightly dismissed the claim on the basis of evidence adduced before it, and no interference is called for.

11. After hearing both the sides, following point arise for my consideration.

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- (i) Whether the Reference Court is justified in dismissing the Reference petition of the claimant?

12. There is no dispute that petitioner/appellant is the owner of field Survey No.194/1, 151 and 152. It is also not disputed that the respondent acquired the land of the petitioner for the purpose of construction of road known as 'Belora – Chincholi – Wathoda road. The said land was acquired on the basis of proposal of Executive Engineer Uppar Wardha Project. The Section 4 notification was issued on 07.05.1989 and award was passed on 09.08.1990. The claimant has claimed the compensation on the basis of sale instances filed on record. The claimant stepped into the witness box by adducing his evidence vide Exh.56. He has also adduced the evidence by examining five witnesses in support of his case. In his evidence, the claimant has testified that the land area adjacent to the village Belora, Survey No.151 is already converted into non-agricultural purpose and said land was divided into the plots by obtaining the permission from competent authority. Earlier the land bearing No.194/1 was acquired by Zilla Parishad for maternity home, however Zilla Parishad for some reasons could not construct the maternity home, and therefore the piece of the land was returned to the petitioner. The claimant further adduced the evidence that the population of the village is about 6000 and Taluka place Chandurbazar is

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only at a distance of 6 Km from village Belora. The village Belora is having facilities is like Bank and the land which was acquired had a potential of development of non-agriculture purpose. The petitioner has also placed on record the documentary evidence i.e. sale instances. The petitioner has examined one Narendra Deshmukh vide Exh.58 who had deposed that out of Survey No.151 which is converted in layout plots, he purchased one plot admeasuring about 3320 sq. ft. on 10.05.1990 for Rs.10,000/-, the sale deed is at Exh.60. Another witness Madhukar Mahadevrao Visurkar examined vide Exh.68 who testified that he purchased one plot, out of Survey No.151 in the year 1990 for Rs.11,000/-. The plot purchased by him admeasuring about 3800 sq. ft., the sale instance is at Exh.70. The petitioner further examined one Ramdas Kisanrao Kurwade vide Exh.72 he had also purchased two plots out of Survey No.151 for Rs.6000/- on 28.04.1990 vide sale deed at Exh.74 admeasuring 186.98 sq. meter. On the basis of above sale instances, it is submitted by the petitioner that plots were already sold by him to three persons prior to the passing of the award. But, this fact is not taken into consideration by the Land Acquisition Officer and awarded the inadequate compensation. As per the submission of the learned Advocate of the petitioner if these sale instances are taken into the consideration the plots are sold Rs.3/- per sq.ft. and much less amount was awarded to the petitioner. Learned Advocate Mr. Gilda, for

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the appellant further invited my attention towards the observations of the Reference Court wherein reference has considered the award passed by the Land Acquisition Officer. Admittedly, nothing is on record to show that the respondent has examined any of the witnesses to prove the said sale instances on which the Reference Court has placed reliance on. The Reference Court has only taken into consideration the material which is referred in the award. In fact, regarding the sale instances on which the Land Acquisition Officer placed reliance on are not proved before the Court. He submitted that learned Reference Court completely ignored the Judgment of the Hon'ble Apex Court wherein the Hon'ble Apex Court held that by reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the court. It is further held by the Hon'ble Apex Court that the award of Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the Land Acquisition Officer. The material he utilized for the valuation cannot be used by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by

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the Land Acquisition Officer, as if it were an appellate court. It is further held that court must treat the reference as an original proceeding before it and determine the market value afresh based on the material produced before it. In this case the Reference Court reasoning, is precisely contrary to what has been held by the Hon'ble Supreme Court in **Chimanlal Hargovinddas** (supra).

13. Learned Advocate Mr. Gilda for the appellant further reliance on **Digamber and another** (supra) wherein the Hon'ble Apex Court has considered the issue regarding potentiality and exemplars of small portion of land and held that reference court while enhancing the market value considering the potentiality and exemplars of neighbouring land prior to acquisition of notification, in para 10 the Hon'ble Apex has held that 'the claimants have rightly placed strong reliance upon the sale instances of small plots which are formed in the New Venkateshnagar Layout. The sale deed Exh.21 dated 17.03.1989 shows that 120 sq. ft. was sold for Rs.3,500/- and Exhs.20 and 22 dated 03.11.1989 which plots measuring 1200 sq. ft. were sold for Rs.9,000/-. The aforesaid sale deeds are no doubt prior to the issuance of preliminary notification under Section 4 of Land Acquisition Act. The other sale instance produced by the claimants, at Exh.23 from GRC 136 shows that Plot No.22, about 1500 sq ft has been sold for Rs.18,000/- at the rate of

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Rs.12/- per sq. ft. Thus, the Hon'ble Apex Court in the case before it observed that the learned Reference Court has rightly placed reliance upon the said sale instances for comparison and held that the acquired land is comparable to the plots covered in the sale deeds referred to supra or it has acquired non-agricultural potentiality and the acquired land is situated in the near proximity to the plots covered in the sale deeds. On the basis of this submissions, learned Advocate Mr. Gilda for the appellant submitted that as the Reference Court has not considered the material evidence which is on record and arbitrarily and erroneously dismissed the claim petition which is to be remanded back to the Reference Court for deciding it afresh.

14. On the other hand, though learned AGP Mr. Dharmadhikari for the respondent submitted that the Judgment and Award passed by the Reference Court is proper and legal one. He could not point out the material on which basis the Reference Court come to the conclusion that claimant failed to adduce the evidence and rejected the claim.

15. It is settled law that while fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors.:

(i) Existing geographical situation of the land. (ii) Existing use of the

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land. (iii) Already available advantages, like proximity to National or State Highway or road and/or developed area. (iv) Market value of the other land situated in the same locality/village/area or adjacent or very near the acquired land. Section 23 of the Land Acquisition Act, 1894 specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under Section 4(1). One of the principles for determination of the amount of compensation for acquisition of the land would be the willingness of an informed buyer to offer the price, therefore market value is ordinarily the price the property may fetch in the open market if sold by a willing seller to the willing buyer.

16. Here in the present case, the Judgment and Award passed by the Reference Court shows that not only the petitioner's evidence but evidence of the witness which are examined by the petitioner shows that the land acquired was already having non-agricultural potential. One of the Survey number was already converted into non-agricultural purpose. The claimant has adduced the oral as well as documentary evidence to that extent. The evidence of the claimant further shows that the land which was situated in the village Belolra which is a developed village having the facility like Bank and which is a market place also. The

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population of the village is around 6000 and at a distance of only 6 Km from the taluka place. The evidence adduced by the claimant further shows that the witnesses namely, Narendra Deshmukh, Madhukar Madhavrao and Ramdas Kisanrao have purchased the plots from Survey No.151 and if the sale transactions are taken into consideration of above three persons at the relevant time they purchased the plots at the rate of Rs.3/- per sq. ft. However, the Land Acquisition Officer has not considered the same. On perusal of the Judgment in para No.24 it is further apparent that the Reference Court has considered the award passed by the Land Acquisition Officer. It is observed by the Reference Court that the record of the Land Acquisition Officer is before him wherein it is apparent that in all 18 sale instances of mouza Belora were called and compared by the Land Acquisition Officer. The sale instances are between the years 1984 to 1988 the maximum price per hectare in those transactions are shown at the rate of Rs.14,925/- and Rs.14,851/- and the lowest price per hectare is shown at the rate of Rs.4,545/- per hectare and the Reference Court has come to the conclusion that, therefore the determination of price at the rate of Rs.14,850/- per hectare determined by the Land Acquisition Officer appears to be very reasonable and correct. The Reference Court has not consider the oral evidence as well as documentary evidence which was adduced by the petitioner. Besides this, two more witness are examined by the

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petitioner namely, Laxmanrao Sakharkar and Ajabrao Shingan vide Exh.61 and 78. They had also purchased 12 gunthas of land out of Survey No.194 for Rs.4,000/- from the petitioner in the year 1970 vide sale deed at Exh.63 and another witness Ajabrao has deposed that petitioner has purchased 37 gunthas plot in the year 1967 from Prabhakar and Krishna Sakharkar for Rs.35,000/-. Thus, these two sale instances adduced by the petitioner on record approximately 20 years old, which are also considered by the Reference Court. Reference Court has rejected the reference only on the basis of the observations of the Land Acquisition Officer in the award and the sale instances which are considered by the Land Acquisition Officer which are not proved by the respondent by adducing the evidence before the Court.

17. It is apparent that the Reference Court has completely ignored the observation of the Hon'ble Apex Court in the case of **Chimanlal Hargovinddas vs. Special Land Acquisition Officer Poona and another** reported in (1988) 3 SCC 751 wherein the Hon'ble Supreme Court has held that a reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court. So also, the award of the Land Acquisition Officer is not to be

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treated as a judgment of the trial Court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the Land Acquisition Officer. The material be utilized for valuation cannot be used by the Court unless produced and proved before it. It is not the function of the court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error, or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an Appellate Court. The Hon'ble Supreme Court further held that the Court must treat the reference as an original proceeding before it and determine the market value afresh based on the material produced before it. In this case the reference court reasoning is precisely contrary to what has been held by the Hon'ble Apex Court in **Chimanlal Hargovinddas** (supra). In the Judgment of **Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and another** reported in **AIR 1961 SC 1500**, wherein also it is held by the Hon'ble Apex Court that the award of the Land Acquisition Officer is an offer unless and until it is accepted by the other side and it is communicated then it will be considered as contract, it is not a judgment.

18. In another Judgment **Digamber and others** (supra) the Hon'ble Apex has considered that even if exemplars of small portion of land can be considered while assessing the compensation amount.

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19. After considering the law down by the Hon'ble Apex Court in respect of the award passed by the Land Acquisition Officer which is and the reference against the same is not an appeal. In the present case the reference Court has completely ignored the same. The Reference Court has considered the evidence which is not proved and produced before the Reference Court. Thus the award passed by the Reference Court appears to be erroneous and arbitrary which is liable to set aside. As the Reference Court has not considered the evidence adduced by the claimant it is necessary to remit back the reference to Reference Court for reappraisal and decide it afresh by taking into consideration the evidence adduced by the claimant. Both the parties are at liberty to adduce required evidence before the Reference Court.

20. In the result and in view of the above discussion, I proceed to pass the following order.

21. The appeal is allowed.

22. The Judgment and Award passed by the Reference Court is hereby quashed and set aside.

23. The reference is remitted back to the Reference Court i.e. Civil Judge Senior Division, Achalpur for deciding it afresh.

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24. The parties are at liberty to adduce the evidence.

25. The Reference Court shall give sufficient opportunity to both the parties to adduce the evidence before the reference Court.

26. The Reference is of year 1990, the Reference Court shall expedite the reference by giving sufficient opportunity and shall decide within one year.

(URMILA JOSHI-PHALKE, J.)

Sarkate./-