

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

FIRST APPEAL NO. 754 OF 2014

Sureshkumar S/o Deokaran Shah
Aged about 75 years,
Occupation - Business & Agriculturist,
R/o. Akola, Tq. and Dist. Akola.

.... **APPELLANT**

// VERSUS //

- 1) State of Maharashtra,
through The Collector, Akola,
Tq. and Dist. Akola.
- 2) Maharashtra Industrial Development
Corporation, through its
Administrator, Akola,
Tq. & Dist. Akola.

.... **RESPONDENTS**

WITH

FIRST APPEAL NO. 1403 OF 2019

Maharashtra Industrial Development
Corporation, through its
Administrator, Akola,
Tq. & Dist. Akola.

.... **APPELLANT**

// VERSUS //

- 1) Sureshkumar S/o Deokaran Shah
Aged about 71 years,
Occupation - Agriculture,
R/o. Akola, Tq. and Dist. Akola.
- 2) State of Maharashtra,
through The Collector, Akola,
Tq. and Dist. Akola.

.... **RESPONDENTS**

Mr. C.A. Joshi, Advocate for Appellant in F.A. No.754/2014 and Respondent No.1 in F.A. No.1403/2019.

Mr. M.A. Kadu, Assistant Government Pleader for Respondent No.1 in F.A. No.754/2014 and Respondent No.2 in F.A. No.1403/2019.

Mr. Parth Sagdeo, Advocate for Respondent No.2 in F.A. No.754/2014 and Appellant in F.A. No.1403/2019.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : APRIL 13, 2023

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. Both the appeals are filed against the judgment and award passed in L.A.C. No. 493/1997 passed by the Civil Judge, Senior Division, Akola dated 15.02.2014.
3. The appellant in appeal No. 754/2014 was the owner in respect of land bearing Survey No.33/2 admeasuring 1-H 72-R, Survey No. 33/4 admeasuring 1-H 21-R and Survey No. 33/3 admeasuring 0-.61-R, all situated at Shivni, Taluka and District Akola. The lands of the claimant has been acquired under the Maharashtra Industrial Development Act, 1961 (for short the "MIDC Act") for the establishment of the Industrial Area and Estates. The notice under Section 32(i) (ii) of the MIDC Act were issued to the respective owners

on 05.08.1992 and 13.08.1992. The award was passed on 20.03.1997 vide Land Acquisition Case No.LQ/47/Shivni-Shivapur, Yavta, Kumbhari/2/1991-1992. The Special Land Acquisition Officer, Akola passed the award and awarded the compensation @ Rs.80,000/- per hector.

4. Being aggrieved and dissatisfied with the award passed by the Special Land Acquisition Officer, the claimant challenged the award by preferring the reference under Section 34 of MIDC Act, read with Section 18 of the Land Acquisition Act, 1894 and claimed compensation at the enhanced rate i.e. @ Rs.10/- per Sq.ft. vide L.A.C. No. 493/1997. The respondent - M.I.D.C. raised the objection on the ground that the Special Land Acquisition Officer has considered all the aspects and awarded the compensation. The claim of the claimant is time barred. The land of the claimant is under Red Zone i.e. near explosive factory and therefore, the claimants are not entitled to receive any enhanced rate of compensation.

5. The reference Court has considered the evidence adduced by the claimants and awarded the compensation @ Rs.1,33,400/- per acre along with statutory benefits.

6. Being aggrieved and dissatisfied with the judgment and award passed by the reference Court, the claimant Sureshkumar Deokaran Shah preferred the appeal bearing No.754/2014 for the enhancement of the award and the M.I.D.C. preferred the appeal bearing No. 1403/2019 for setting aside the said award.

7. Heard learned Advocate Mr. C.A. Joshi for the appellant and learned Advocate Mr. Sagdeo holding for learned Advocate Mr. Agnihotri for the M.I.D.C. They both have submitted that the issue involved in this appeal is covered by the judgment of this Court in First Appeal No.38/2010 along with First Appeal No. 57/2010. Learned Advocate Mr. Sagdeo submitted that by the said judgment, this Court has awarded the compensation @ Rs.3,00,000/- per hector. The land involved in these appeals and the land involved in the First Appeal No. 38/2010 and 57/2010 along with connected appeals are also acquired by the same notification for same purpose and for same village. Thus, on the ground of parity also the appellant is only entitled to receive the compensation @ Rs.3,00,000/- per hector.

8. Briefly stated the claimant Sureshkumar Deokaran Shah was the owner of the land Survey No.33/2 admeasuring 1-H 72-R, Survey No. 33/4 admeasuring 1-H 21-R and Survey No. 33/3 admeasuring 0-61-R, situated at Shivni, Tq. and District Akola. There

is no dispute that the above said lands were acquired under the MIDC Act for the establishment of industrial area and its states. Notices under Section 32(i)(ii) of the MIDC Act were issued to the respective owners on 05.08.1992 and 13.08.1992. The award was passed on 20.03.1997 granting compensation @ Rs.80,000/- per hector. The reference Court has enhanced the compensation by awarding the compensation @ Rs.1,33,400/- per acer which comes to Rs.3,29,498 per hector. The claimant as well as the acquiring body both have assailed the judgment of the learned reference Court in these appeals.

9. I have heard learned Advocate Mr. C.A. Joshi for the claimant/appellant and learned Advocate Mr. Sagdeo holding for learned Advocate Mr. Agnihotri for the acquiring body M.I.D.C. and learned A.G.P Mr. M.A. Kadu for the State.

10. Learned Advocate Mr. Sagdeo submitted that the reference Court has failed to consider the evidence on record and wrongly come to the conclusion that appellants/claimants are entitled to receive compensation @ Rs. 3,29,498 per hector. In fact, in view of the judgment passed by this Court in First Appeal No. 38/2010 along with connected matters, this Court has considered the aspect of the sale instances which are in close proximity with regard to time and situation of the acquired land and the Court has taken into

consideration the entire evidence and awarded compensation @ Rs.3,00,000/- per hector. As the land of the claimants are acquired by the same Notification from same award and for same purpose, on the ground of parity the claimant is also entitled to receive the compensation by the same rate.

11. By considering the rate awarded by the reference Court, it comes to Rs.3,29,498 per hector which requires to be reduced to the extent of Rs.3,00,000/- per hector. Learned Advocate Mr. Joshi has also accepted the same contention and submitted that the claimants are entitled to receive the compensation @ Rs.3,00,000/- per hector and accordingly order is to be passed to that effect.

12. I have considered the submissions put forth on behalf of both the sides.

13. At the outset, it is not disputed that the sale instances which were considered by the reference Court and awarded the compensation at the excessive rates. The lands of the claimants are also situated at village Shivani, evidently the land is in the vicinity of the subject lands acquired non-agricultural status which is considered by this Court and this Court has awarded the compensation by taking into consideration the potential, fertility and considering the aspects

that the lands involved in the appeals can be converted into the non-agricultural lands. The Land Acquisition Officer has determined the compensation on the ground of revenue assessment of those lands, which is already set aside by the reference Court and granted enhanced amount of compensation. In compulsory acquisition proceeding, it is well settled that it is the duty of the reference Court to assess the just compensation. The reference Court has considered sale instances and awarded the compensation Rs.1,33,400/- per acre which ought to have been granted per hector.

14. In view of the judgment of this Court in First Appeal No. 38/2010, which is not challenged by the M.I.D.C., attained finality, and the present appellant/claimant in First Appeal No. 754 of 2014 is also entitled to receive the compensation @ Rs.3,00,000/- per hector.

15. For the aforesaid reasons, in my opinion, the claimant/appellant is entitled to receive the compensation @ Rs.3,00,000/- per hector. The reference Court has awarded the additional compensation of Rs.29,498/- which is required to be reduced by allowing the appeal No. 1403/2019. In view of the judgment of this Court, the appeal filed by the claimant for enhancement of the compensation deserves to be dismissed.

16. In the result, the First Appeal No. 1403/2019 filed by the M.I.D.C. is allowed and the compensation awarded by the reference Court @ Rs.3,29,498/- is reduced @ Rs.3,00,000/- per hector. The appeal filed by the claimant bearing No. 754/2014 for enhancement the compensation is dismissed.

17. The M.I.D.C. is directed to deposit the amount of compensation @ Rs.3,00,000/- per hector for the acquired lands, if amount is already deposited by the M.I.D.C., calculations be filed on record and additional amount, if any, deposited by the M.I.D.C. be refunded back to the M.I.D.C.

18. The claimants are entitled to withdraw the amount of compensation @ Rs.3,00,000/- per hector along with the accrued interest and with the statutory benefits.

19. In the light of the above discussion, the appeal bearing No. 1403/2019 is allowed and appeal bearing No.754/2014 is dismissed with no order as to costs.

(URMILA JOSHI-PHALKE, J.)