

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

FIRST APPEAL NO.82 OF 2023

Ashok Madhukar Duddulwar (Dead)
through his legal heir.
Sarang s/o Ashok Duddulwar
Aged 35 years, Occ. Cultivator and
Business, R/o Digras, Tq. Digras,
Dist. Yavatmal.

APPELLANT

// VERSUS //

1. The State of Maharashtra through
the Collector Yavatmal, Dist. Yavatmal.
2. The Land Acquisition Officer and
Sub-Divisional Officer, Darwha,
Tq. Darwha, Dist. Yavatmal.

RESPONDENTS

Mr. G. R. Kothari, Advocate for the appellant.
Ms. T. Udeshi, AGP for respondents.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 15/02/2023

ORAL JUDGMENT

1. Admit.
2. The present appeal is finally heard with the consent of the
learned counsel for the parties.
3. The appellant has challenged the common Judgment and
Award passed by the Civil Judge Senior Division, Pusad in Land

Acquisition Case Nos.100/1997, 102/1997, 99/1997 and 101/1997 dated 2nd January, 2004.

4. The appellant in Land Acquisition No.99/1997 had preferred this appeal on the ground that the learned reference Court had not considered the evidence and awarded the compensation at a lesser rate. The issue involved in the appeal is covered by the judgment of this Court in First Appeal No.304 of 2017.

5. The facts giving rise to the present appeal can be summarized as under.

The land of the appellant bearing Land Survey No. No.269 admeasuring 1 hectare situated at village Dehni was acquired for Gavthan (extension of village). Notification under Section 4 of the Land Acquisition Act (for short “the Act”) was issued on 28.09.1995. The Land Acquisition Officer passed award on 14.07.1997 and granted compensation at the rate of Rs.33,000/- per hectare.

6. Being aggrieved and dissatisfied of the award passed by the Land Acquisition Officer, the appellant preferred reference before the reference Court. The reference Court partly allowed the reference and granted compensation at the rate of Rs.2,50,000/- per hectare. The

appellant was not satisfied with the award passed by the reference Court and preferred this appeal.

7. Heard learned Advocate Mr. Kothari, for the appellant. He submitted that Land Acquisition Officer as well as the reference Court had not considered the potentiality, fertility of the land and awarded inadequate compensation. It is further the ground of the appellant that the trial Court had not considered the legal aspects and inadequate compensation was awarded. It is further contended that the appellant had produced the evidence on record and relied upon sale instances wherein the market value of the land was proved by the appellant at the rate of Rs.38/- per sq. ft. It is further submitted that the land reference arising out of the same notification and the award granted by the land reference Court was challenged before this Court in First Appeal No.304/2017 and 550/2022, wherein this Court has granted the compensation at the rate of Rs.38/- per sq. ft. Thus, the issue is covered by the earlier Judgment of this Court and hence appellant is entitled to claim compensation by the same rate.

8. Learned AGP Ms. Udeshi, accepted the contentions that the issue is covered by the earlier judgment of this Court and submitted that the compensation to the appellant can be granted by the same rate.

9. From the perusal of the evidence, it is evident that the testimony of all the petitioners in all the petitions that after receipt of notice under Section 9 of the Act, they had submitted their written claim statements before the Land Acquisition Officer demanding the compensation at the rate of Rs.50/- per sq. ft. The award was declared by the Land Acquisition Officer and the notice under Section 12(2) of the Land Acquisition Act was received by them on 30.08.1997. The certified copy of the award and notices of the Act was produced on record vide Exhs.18 and 19 in Land Acquisition Case No.100/1997. The contention of the appellant was that Land Acquisition Officer had granted very less and inadequate amount of compensation at the rate of Rs.33,000/- per hectare without considering their claims, while declaring the award. It is further submitted that the petitioners in these petitions were holding the land at village Dehni which was situated at a distance of 12 Km from Digras – Mahur Tar Road and their lands were touching to the village on southern side. There was a bus stand at a distance of at about 100 to 150 ft. from their lands. The location map issued by Talathi had been produced on record. It is further deposed by them that just after their lands at a distance of about 100 to 200 ft. there was a market place of village, wherein the market for surrounding 15 to 20 villages was held.

10. In respect of the facilities available at the time of notification, they have deposed that at the time of notification under Section 4 of the Act, there was Public Health Centre, High School in Urdu and Marathi Medium, Grampanchayat office, telephone facility, Post Office, Veterinary Hospital etc. The certificate issued by the Secretary of Village Panchayat in respect of the existence of all the facilities was also produced on record by all the petitioners vide Exhs.19 and 20 in their respective petitions. The village maps are also corroborated the testimonies of the petitioners. So also, the location of the acquired lands is concerned of the certificate issued by the Secretary of Grampanchayat, Dehni has also corroborated the testimonies of the petitioners. Petitioners also relied upon the sale instances of year 1995 wherein one Haribhau had purchased a plot admeasuring 680 sq. ft. for valuable consideration of Rs.26,400/- from one Sonba Gurukunde. The certified copy of that sale deed is produced on record at Exhs.23, 20, 21 and 22. The plot was just at a distance with the 300 to 500 ft. from the acquired lands.

11. Another sale instance on which the appellant was relied upon was Bhaurao Natkar and Sonba Gurukunde wherein Bhaurao had sold his plot admeasuring 1296 sq. ft. to Sonba Gurukunde for valuable

consideration of Rs.49,240/-. The said sale instance was also produced on record. Thus, the sale instances show that at the time of issuance of notification under Section 4 of the Act, the market value of their lands was Rs.15/- per sq. ft. whereas the petitioners have deposed that the market value of their lands at the time of notification under Section 4 was Rs.50/- per sq. ft. This Court has considered this issue in First Appeal 304/2017, wherein the sale instance between the Sonba Sambhaji Burkhade was considered who had purchased the plot for consideration of Rs.49,248 i.e. Rs.38/- per sq. ft. Said plot was situated at village Dehni. Agricultural land of the appellant was also situated at village Dehni. Said land was acquired for the purpose of construction of the houses of villagers (Gavthan).

12. Documents i.e. sale instances shows that at the time of notification the market value of land which was sold at the rate of Rs.38/- per sq. ft. The sale instances which were produced before the Court were before the date of publication of notification under 4 of the Act. Therefore, it is clear that the land of the appellant was also having non-agriculture potentiality. Hence, the appellant is also entitled for the compensation for non-agricultural land.

“7. This Court in the case of The State of Maharashtra and Ors. Vs. Kisan Lahuji Gajbhare in First Appeal Nos. 438 and 459 of 2003 decided on 07.12.2016 in paragraph no. 9 has observed as under:

“9. Once it is found that the acquired land was having residential potential, the sale instances of prenotification period in respect of adjoining lands would become relevant for the purpose of determining the market value of the acquired land. In this case, the evidence adduced by the claimant shows that sale instance vide exhibit 20 would be one such sale instance which should be considered for appropriate determination of the agricultural land. This sale deed has been rightly considered by the Reference Court as providing sufficient light to the Court to arrive at proper market value of the acquired land. This sale deed (exhibit 20) is dated 16.2.1985 which is much prior to Section 4 Notification published on 28.10.1993. Shri Agnihotri, learned counsel for the claimant has produced before the Court a chart giving detailed calculations. From this chart it could be seen that the sale deed (exhibit 20) was executed about 8 years 8 months prior in point of time of publication of Section 4 Notification. Learned Civil Judge, Senior Division, as seen from the impugned judgment and order, has not given details of the calculations in arriving at market rate of the acquired land to be at Rs. 1,30,000/- per acre i.e. Rs. 3,25,000/- per hectare. It appears that learned Civil Judge, SD has not taken into consideration the usual increase in price of the land that would take place over a period of time. According to learned counsel for the claimant, such usual rise in price of the land would be generally @ 12-10% per annum. He places reliance on the judgment of Hon'ble Apex Court in Om Prakash and ors v. Union of India and anr

reported in MANU/SC/0589/2004 : (2004) 10 SCC 627; LAO and Revenue Division v. Ramanjulu and ors reported in (2005) 9 SCC 594 and Sharda Rani v. SLAO and anr reported in (2010) 15 SCC 524. These judgments of the Hon'ble Apex Court have settled the law on this point. While the first judgment in the case of Om Prakash and ors (supra) which is of the year 2004, lays down that such escalation of price should be @ 12% per annum, the later two judgments which are of the subsequent years lay down that it should be @ 10% per annum. In fact, in case of Sharda Rani (supra), Honourable Apex Court now has approved the rise to be @ 10% per annum and so, this Court will have to consider the rise in the price of the acquired land over a period of time @ 10% per annum which, as stated above, has not been taken into account by the Reference Court. The Reference Court, I must say, has made some deductions on account of the developmental requirements. But, again no details of the calculations in that regard are made. Therefore, this Court is now required to give these basic details which would lead the Court in arriving at proper market rate of the acquired land. They are as under :

Sale instance dated 20.2.1985 (exhibit 20).

Date of Section 4 Notification – 28.10.1993.

Price rise is to be considered for a period of eight years, eight months.

Base price disclosed by sale instance (exhibit 20) - Rs. 3.52 per square foot.

per cent increase for a period of eight years eight months in the base price of Rs. 3.52/square foot = $8.80 \times 0.352 =$

3.00 inflated.

One acre is = 43,560 square feet

*Deduct development cost of 30% of 43560 (-) 13068 =
30,492 (area to be calculated for compensation.*

Base price + escalated price = 6.52

*Market price of the land would be 30,492 x 6.52 =
1,98,198/- per acre i.e. Rs. 4,89,549 per hectare.*

*Document showing calculations is marked "X" for
identification."*

13. In the present case also the value of the land of the appellant is to be taken into consideration as per the sale instances on which the appellant was relied upon i.e. between the Sonba Sambhaji Gurukunde and Bhaurao Bajirao Natkar wherein said Sonba had purchased the plot at the rate of Rs.38/- per sq. ft. Acquired land of the appellant is 1 hectare = 1,07,639 sq.ft. 33% area deduction for development i.e. comes to 72118.13 sq. ft. The appellant is entitled for the enhance compensation to the extent of 72118.13 Sq. ft. X Rs.38/- per sq. ft. = Rs.27,40,488.94/-. In view of that I proceed to pass following order.

ORDER

- (i) The appeal is allowed.
- (ii) The appellant is entitled for total compensation for the area 72118.13 sq. ft. X Rs.38/- per sq. ft. = Rs.27,40,488.94/-

(iii) The appellant is entitled for all the benefits under the Land Acquisition Act except interest for the delayed period from 6037 as per order dated 17.1.2023.

(iv) No order as to costs.

(URMILA JOSHI-PHALKE, J.)

Sarkate.