IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1040 OF 2019

1. Baban s/o. Anna Namde
Age – 46 years, Occ. Agri.,
r/o. At Post : Ambad,
Tq. Ambad, Dist. Jalna

2. Madhav s/o. Anna Namde,
Age – 41 years, Occ. Agri.,
r/o. At Post : Ambad,
Tq. Ambad, Dist. Jalna

3. Ashok s/o. Anna Namde,
Age – 38 Years, Occ. Agri.,
r/o. At Post : Ambad,
Tq. Ambad, Dist. Jalna

Appellant No.3 died,
through L.Rs.

3-A. Ganga Ashok Namde,
Age – 39 years, Occ. Household,
r/o. At Post, Ambad, Dist. Jalna

3-B. Akash Ashok Namde
Age – 19 years, Occ. Student,
r/o. At Post : Ambad,
Tq. Ambad, Dist. Jalna

3-C. Tushar Ashok Namde (minor)
Age 14 years, Occ. Student,
r/o. At Post Ambad, Tq. Ambad,
Dist. Jalna
Through Legal Guardian,
Ganga Ashok Namde

4. Shivling s/o. Anna Namde,
Age : 35 years, Occ. Agri.,

r/o. At Post. Ambad, Tq. Ambad,
Dist. Jalna

5. Sidhu s/o. Anna Namde,
Age : 34 years, Occ. Agri.,
r/o. At Post : Ambad,
Tq. Ambad, Dist. Jalna ..Appellants

Vs.

1. The State of Maharashtra,
through its Secretary,
Town Planning Department,
Mantralaya, Mumbai

2. The Collector,
Jalna

3. The Sub-Divisional Officer,
Tq. Ambad, Dist. Jalna

4. The Municipal Council,
Through its Executive Officer,
Tq. Ambad, Dist. Jalna ..Respondents

Miss. Pradnya Talekar, Advocate i/b. M/s. Talekar and Associates for appellants

Mrs.SN.Deshmukh, AGP for respondent nos.1 to 3

Mr.S.S.Patunkar a/w. Mr.C.B.Chaudhari, Advocate i/b. M/s.J.P.Legal Associates for respondent no.4

AND
FIRST APPEAL NO.3171 OF 2023
WITH
CIVIL APPLICATION NO.6917 OF 2023

The Chief Officer,
Municipal Council, Ambad,
Taluka Ambad, Dist. Jalna,
Through Shri Vidyacharan s/o.
Jagannath Kadavkar,
Age : 45 years, Occ. Service,
r/o. Ambad, Taluka Ambad,
Dist. Jalna .. Appellant/Applicant

Vs.

1. Baban s/o. Anna Namde,
Age : 48 years, Occ. Agri.

2. Madhav s/o. Anna Namde,
Age : 43 years, Occ. Agri.

3. Ashok s/o. Anna Namde,
Age : 40 yeas, Occ. Agri.

3-A. Ganga Ashok Namde,
Age – 39 years, Occ. Agri,

3-B. Akash Ashok Namde
Age – 18 years, Occ. Education,

3-C. Tushar Ashok Namde (minor)
Since minor U/g. Ganga w/o. Ashok Namde,
Age 13 years, Occ. Education

3A to 3C. r/o. Near OmShanti College,
Shivaji Nagar, Ambad, Tq. Ambad,
Dist. Jalna

4. Shivling s/o. Anna Namde,
Age : 38 years, Occ. Agri.,

5. Siddhu s/o. Anna Namde,
Age : 36 years, Occ. Agri.,
All r/o. Om Shanti Nagar,
Ambad, Taluka Ambad,
Dist. Jalna

6. The State of Maharashtra,
Through Collector,
Jalna

7. The Sub-Divisional Officer,
Ambad, Near Old Tahsil Office,
Ambad, Tq. Ambad, Dist. Jalna ..Respondents

Mr.S.S.Patunkar a/w. Mr.C.B.Chaudhari, Advocate i/b. M/s.J.P.Legal Associates for appellant

Miss. Pradnya Talekar, Advocate i/b. M/s. Talekar and Associates for respondent nos.1 to 5

Mrs.S.N.Deshmukh, AGP for respondent nos.6 and 7

CORAM : R.G.AVACHAT AND NEERAJ P. DHOTE, JJ.
RESERVED ON : DECEMBER 12, 2024
PRONOUNCED ON : DECEMBER 20, 2024

JUDGMENT *(Per R.G.Avachat, J.)* :-

Both these appeals filed under Section 54 of the Land Acquisition Act, 1894 (for short "the Act"), are taken up together for decision, since the challenge therein is to one and the same judgment and award dated 25.10.2018, passed by learned 4th Civil

Judge, Senior Division, Jalna (Reference Court) in Land Acquisition Reference No.794 of 2013.

2. For the sake of convenience, the parties would be referred to, as per their status in First Appeal No.1040 of 2019. The appellants in this appeal owned agricultural land in Gut No.4, situated at Ambad, Dist. Jalna. 38R (38000 sq. ft.) land therein was acquired for D.P. road. Notification under section 4 of the Act was published on 20.08.2008; while the award/offer was made by the Land Acquisition Officer (LAO) on 20.04.2011. The LAO offered compensation for the acquired land at the rate of Rs.470 per sq. mtr. The appellants, therefore, preferred the Land Acquisition Reference. The Reference Court allowed the same, enhancing the compensation to Rs.1661.45 per sq. mtr. Still, being dissatisfied with the quantum of enhancement in the amount of compensation, the appellants have preferred this First Appeal (1040 of 2019).

3. The other appeal, being First Appeal No.3171 of 2023, has been preferred by the acquiring body, i.e. Municipal Council, Ambad, Dist. Jalna, challenging the impugned award, on the ground that the enhancement of compensation was exorbitant and therefore, urged for setting aside the award impugned herein.

4. Heard learned counsel for the parties. Learned counsel appearing for the appellants/land owners would submit that five exemplars (sale deeds) were relied on. The sale exemplar of the highest value has not been considered by the reference court. It relied on the sale deed, whereunder, the land was sold at Rs.3651.87 per sq. ft. and after deducting 65% therefrom towards the development cost/charges, enhanced the compensation offered by the L.A.O. The Reference Court erred in making deduction on the ground of developmental potential in future. According to learned counsel, the city/town of Ambad has been established in an radius not more than 2 kms. The acquired land was centrally located. It was in the close proximity to bus-stand, hospital, government offices, market, colleges, etc. She adverted our attention to the information supplied by the respondent – Municipal Council under the Right to Information Act. It was also brought to our notice that in some part of the land in gut no.4, there already exists Om Shanti D.Ed. College, B.Ed. College and high school as well. According to learned counsel, the information supplied under the R.T.I. Act would indicate the acquired land to have situated at a hub of Ambad town. She would further submit that there were already existing two roads on the side of the acquired land. Since the land was situated in an already developed area, it was required to be converted into non-agricultural

assessment. The acquired land was in Yellow Zone. Only after converting it into non-agricultural assessment, the same could have been utilised for commercial purpose. Street-lights, drainage, public rods, etc. have already been there. There was, therefore, no question for the Reference Court to make deduction on account of the development charges.

5. Learned counsel then took us through the valuation report to submit that the valuer had to visit to the land. He considered the various sale deeds of the lands at and around the acquired land and after having studied the matter, gave its valuation report (Exh.105), quantifying the value at Rs.3,09,55,000/-. Learned counsel urged for allowing the appeal either considering the valuation report or the highest sale exemplar, without there being any deduction. In support of her claim, she relied on the following judgments:-

(i)	Subh Ram and others Vs. State of Haryana and anr., (2010)1 SCC 444;
(ii)	Bhagwathula Samanna and ors. Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam, (1991) 4 SCC 506;
(iii)	Madhukar s/o. Govindrao Kamble and others Vs. Vidarbha Irrigation Development Corporation and others, (2022)13 SCC 344;

(iv)	Special Land Acquisition Officer and another Vs. Sidappa Omanna Tumari and others, 1995 Supp (2) Supreme Court Cases 168

6. Learned counsel for the acquiring body would, on the other hand, submit that there were no pleadings. No map has been placed on record to indicate the distance between the acquired land and the land under highest sale exemplar. Submissions made on the instructions of the client could not be accepted. According to him, it was agricultural land on the date of Section 4 notification. Section 24 of the Act bars to consider the future use for which the land could have been put to. According to him, there were no buildings at or around the acquired land. On the contrary, learned counsel referred to the cross-examination of the appellants' witness, to suggest, on one side of the acquired land, there was lake. In the nearby thereof, there was a graveyard. According to learned counsel, small-size plots could not be considered for fixing the price of large track of land. He would further submit that the Reference Court erred in taking into consideration the amount of little over Rs.10 Lakhs to have already been received by the appellants/land owners and thereby, erred in calculating the amount while passing the award. According to learned counsel, the entire amount granted under the

impugned award has been paid to the appellant/claimants. Learned counsel for the respondent/acquiring body relied on the following set of authorities:-

(i)	Chandrashekar (D) by LRs. and others Vs. Land Acquisition Officer and another, 2011 DGLS (SC) 929;
(ii)	State of Maharashtra Vs. Subhash Laxman Patwardhan and another, 2004(Supp.) Bom.C.R. 781;
(iii)	Sharad Shankarappa Halkude and others Vs. State of Maharashtra and others, (First Appeal No.444 of 2010) with connected matters decided on 20.06.2024;
(iv)	State of Maharashtra and others Vs. Digamber Bhimashankar Tandale and others, (1996)2 Supreme Court Cases 583;
(v)	Ranvir Singh and another Vs. Union of India, AIR 2005 SCC 3467;
(vi)	State of Haryana and another Vs. Rohtas and Etc., 2017 DGLS (SC) 1646;
(vii)	Pramina Devi (D) through Lrs. Vs. State of Jharkhand, 2022 DGLS (SC) 285

7. Considered the submissions advanced. Perused the award impugned in these appeals. Also perused the evidence adduced before the Reference Court.

8. The Reference Court, in last 4-5 lines of paragraph 51 of its judgment, has observed thus:-

> ***परंतु संपादित जमिनीतून गेलेल्या डी.पी. रोड मुळे अर्जदाराच्या उर्वरित जमिनीस भविष्यातील विकासात्मक लाभ उपलब्ध आहेत.*** *सादर गोष्टीचा विचार करता, खरेदीखतातील जमिनीस मिळणाऱ्या बाजार भावात सिद्धीत न्याय तत्वानुसार ६५ टक्के कपात करणे न्याय व योग्य ठरेल. त्यानुसार, अधिसूचनेच्या दिवशी संपादित जमिनीस खरेदी खताच्या आधारे रुपये १,६६१.४५/- प्रति चौरस मीटर दर देणे न्यायोचित ठरते.*

These observations of the Reference Court are contrary to clause Sixthly of Section 24 of the Act. Said Clause reads thus:-

> *"sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired, will be put;"*

9. Before the Reference Court, the appellants/land owners had urged to determine the compensation on the basis of the comparable sale instances and the situs of the land. It needs no mention that the factual observations made in the judgment are presumed to be correct unless contrary shown. It, therefore, appears that for the first time before the appellate court, the appellants proposed to rely on the Valuer's report. For this reason as well as the evidence adduced in the cross-examination of the Valuer lead us not

to work out the compensation amount on the basis of his report. The Valuer in his cross-examination admitted to have not been a Government approved Valuer. He further testified that the sale deed on the basis of which he made valuation, could not be stated to be at what distance from the acquired land survey no.4 was. We, therefore, do not refer to the judgment of the Apex Court in the case of **Sidappa Omanna Tumari** (Supra).

10. There can be no two views over that what has been observed by the Apex Court in **Subh Ram** (supra), i.e. under no circumstances does future use or purpose of acquisition play a role in determining percentage of deduction towards development cost. Nor can purpose of acquisition be used to increase compensation awardable with reference to expected profits from future user. In the very decision, it has been so observed in paragraphs 24 and 25 as below:-

> *24. Deduction of `development cost' is the concept used to derive the `wholesale price' of a large undeveloped land with reference to the `retail price' of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the `development cost'. Two*

> *factors have a bearing on the quantum (or percentage) of deduction in the `retail price' as development cost. Firstly, the percentage of deduction is decided with reference to the extent and nature of development of the area/layout in which the small developed plot is situated. Secondly, the condition of the acquired land as on the date of preliminary notification, whether it was undeveloped, or partly developed, is considered and appropriate adjustment is made in the percentage of deduction to take note of the developed status of the acquired land.*
>
> *25. The percentage of deduction (development cost factor) will be applied fully where the acquired land has no development. But where the acquired land can be considered to be partly developed (say for example, having good road access or having the amenity of electricity, water etc.), then the development cost (that is percentage of deduction) will be modulated with reference to the extent of development of the acquired land as on the date of acquisition. But under no circumstances, will the future use or purpose of acquisition will play a role in determining the percentage of deduction towards development cost.*

11. The Apex Court in the case of **Bhagwathula Samanna** (supra) has observed that "*it is not in every case that such deduction is to be allowed. Where the acquired land is in the midst of already developed area with amenities of roads, electricity etc., the deduction in the value of the comparable land is not warranted*".

12. On the other hand, learned counsel for the acquiring body relied on the host of authorities, to suggest that the deduction towards the development charges may even be to the extent of 75%. He took us through paragraph 18 of the judgment in the case of **Chandrashekar** (supra), wherein, following observations have been made :-

> 18. Having given our thoughtful consideration to the analysis of the legal position referred to in the foregoing two paragraphs, we are of the view that there is no discrepancy on the issue, in the recent judgments of this Court. In our view, for the "first component" under the head of "development", deduction of 33-1/3 percent can be made. Likewise, for the "second component" under the head of "development" a further deduction of 33-1/3 percent can additionally be made. The facts and circumstances of each case would determine the actual component of deduction, for each of the two components. Yet under the head of "development", the applied deduction should not exceed 67 percent. That should be treated as the upper benchmark. This would mean, that even if deduction under one or the other of the two components exceeds 33-1/3 percent, the two components under the head of "development" put together, should not exceed the upper benchmark.

13. According to learned counsel for the acquiring body, the land acquired was agricultural one on the date of publication of notification under Section 4 of the Act. It, therefore, could not be treated N.A. land.

14. In the case of **Subhash Laxman Patwardhan** (supra), there was additional factor of land N.A. potentiality and therefore, the Division Bench of this Court has observed accordingly. It needs no mention that the judicial observations are made in the set of peculiar facts and circumstances.

15. We have carefully perused the other authorities relied on on behalf of the acquiring body and the paragraphs 32 to 42 of the judgment in the case of **Ranvir Singh** (supra). We do not propose to reproduce the same in this judgment. True, the sale price in respect of a small piece of land cannot be the base for determination of the market value of a large stretch of land. We have also gone through paragraph 7 of the judgment in the case of **Rohtas** (supra). In the said judgment, the observations in the case of **Husuf Abdul Hamid Mulla (Dead) by L.Rs. and ors. Vs. Special Land Acquisition Officer and ors., (2012)7 SCC 595**, have been relied on and reproduced, wherein, it was observed that in fixing the

market value of the acquired land, which is undeveloped or underdeveloped, the courts have generally approved deduction **rd** of the market value towards development cost, except when no development is required to be made for implementation of the public purpose for which the land was acquired.

16. Keeping on mind all the authorities and the observations therein, we proceed to determine the amount of compensation.

17. Admittedly, 38 R land (38000) sq. ft. has been acquired for the purpose of D.P. road. The land is situated in survey no.4. Under the information supplied by the respondent – Municipal Council, Ambad, it is evident that on the other portion of the land survey no.4, there are D.Ed. and B.Ed. Colleges and higher secondary school as well. It is true that on one side of the land, there is lake and by the side of the lake, there is graveyard. The appellant in his oral evidence has categorically stated that the land acquired was abutting to public roads already existing in the town. Admittedly, Ambad is a Taluka place. The evidence on record, undoubtedly, indicates that the Ambad town has been established within the radius of not more than two kms.

18. The witness examined on behalf of the respondent/ acquiring body has categorically testified that survey nos.1, 4, 9, 10 and 11 and other lands situated towards north of Ambad town have also been developed. According to him, the office of Municipal Council (respondent) is about little over 1 km. away from the acquired land; while the office of the Deputy Collector (SDO) was at 0.25 kms. from the Municipal Council's Office. He admitted that in the town, there were three Muslim graveyards. The bigger one is located in survey no.412, another one is abutting survey no.4. The appellants testified on oath that on the four sides of his land, there are roads. It was suggested to him in his cross-examination that towards north of the acquired land, there is house property of Shri. Raut. He denied that there is scarcity of water at Ambad town.

19. On appreciation of the evidence on record, we find the acquired land to have been located at the hub of Ambad town. The surrounding area has already been developed. The land acquired admeasures 38 R, i.e. not a big chunk or stretch of land. The S.L.A.O., admittedly, prepared the draft award, offering compensation of Rs.1565/- per sq. metre. It is not known, as to why the Collector did not approve the same. Then, it was changed to. Rs.470/- per sq. metre.

20. Before the Reference Court, five sale instances were referred and relied on. The one which is of highest market price was sought to be relied on before this Court. However, learned counsel could not locate the said land on the city survey map to make her point that the said land was in the vicinity of the acquired land. The Reference Court has, therefore, rightly discarded the said sale instance. On the same ground, we too, do not propose to rely on the said sale instance.

21. The Reference Court has given cogent reasons for discarding other sale instances, except one, which has been relied on. It placed reliance on the sale deed dated 06.05.2005, pertaining to plot no.1 in survey no.83 (Exh.90). The land admeasuring 130.07 sq. metres was sold for Rs.4,75,000/-. Since the sale deed was of year 2005, the Reference Court assumed increase in the cost of said land at the rate of 10% per year for next three years. There is no dispute about such calculation. The Reference Court quantified the rate per sq. metre at the rate of Rs.4,747 as on 03.03.2008, i.e. few days before publication of notification under Section 4 of the Act. It has, however, as stated above, made deduction of 65% therefrom for the reasons referred to herein above. We are not in agreement with the Reference Court on the point of making deduction of 65%, that

too, for the reason given therefor. It is also not the case that the acquired land could have been put to N.A. use as it is. The appellants would have to prepare the layout plan of plots for residential purpose. It would, therefore, necessarily required to reserve certain portion of land for laying of road as access to the residential plots. Although it has been submitted that the surrounding area has been developed in all respects, there is no evidence in that regard. Since the acquired land was not more than an acre/40R, the land owners would have been required to reserve at least 25% thereof for internal roads in case of layout plots and further 10% towards drainage, electrification, etc. It being a small portion of land, it would not be required to reserve some portion for parks and/or other amenities. In paragraph 13 of **Subh Ram**'s (supra) judgment, it has been observed thus:-

> Therefore, in the hypothetical layout method of determination of market value, as a first step, the areas that will be used up for roads, drains, parks/playgrounds and community areas, will have to be excluded from the total extent of the acquired land. The standard deduction in this behalf is one- third (33%).

22. In our view, therefore, the Reference Court ought not to have made deduction of 65%. It should have restricted it to 35%,

i.e. towards development charges. We are, therefore, inclined to reduce the deduction from 65% to 35% and work out the compensation payable to the appellants/land owners. In view of the above, both the appeals stand disposed of in terms of the following order:-

(i) First Appeal No.3171 of 2023 stands dismissed. Civil Application No.6917 of 2023 stands disposed of.

(ii) First Appeal No.1040 of 2019 is partly allowed. The amount of compensation payable to the appellants/land owners is increased to Rs.1,17,26,800 (Rupees One Crore, Seventeen Lakhs, Twenty Six Thousand Eight Hundred), i.e. 3800 sq. metres. X Rs.3086 per square metre, meaning thereby, the enhancement is inclusive of the amount already awarded by the Reference Court, i.e. Rs.1,17,26,800 - Rs.63,13,510 = 54,13,290 (enhanced amount).

(iii) Since the entire amount of compensation awarded by the Special Land Acquisition Officer and the Reference Court, has admittedly been paid to the appellants/land owners, the balance amount be paid to them within six months from the date of this award.

(iv) The appellants be paid necessary additional amount of 30% and 12% on the amount of compensation increased vide this order with interest at the rate of 9% per annum on the enhanced amount, from the date of the award passed under Section 11 of the Act, to the expiry of the first year, and at the rate of 15% per annum thereon, until the date of payment.

(v) The amount payable to the legal representatives of appellant – Ashok s/o. Anna Namde (died), be paid on production of the succession certificate(s) by them.

(iv) Award be drawn accordingly.

[NEERAJ P. DHOTE, J.] **[R.G. AVACHAT, J.]**

After pronouncement of the judgment, learned counsel for the acquiring body prayed for stay to this order. The prayer stands rejected since six months' time has been granted to comply with this order.

[NEERAJ P. DHOTE, J.] **[R.G. AVACHAT, J.]**

KBP