IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1668 OF 2014

1. The State of Maharashtra
Through the Collector, Latur

2. The Principal,
Police Training School,
Babhalgaon, Tq. & Dist. Latur ... Appellants
[Orig. Respondents]

Versus

Digambar Manik Kalyankar,
Age: 48 years, Occu. Service,
R/o. Vivekanand Chowk, Latur,
Tq. & Dist. Latur ... Respondent
[Orig. Claimant]

.....

AND

FIRST APPEAL NO.1669 OF 2014

1. The State of Maharashtra
Through the Collector, Latur

2. The Principal,
Police Training School,
Babhalgaon, Tq. & Dist. Latur ... Appellants
[Orig. Respondents]

Versus

1. Bashir Kondaji Bagwan
Age: 52 years

2. Chandpasha Kondaji Bagwan
Age: 55 years

Both Occu: Business
R/o. Latur, Tq. & Dist. Latur ... Respondents
[Orig. Claimants]

.....

AND

FIRST APPEAL NO.1670 OF 2014

1. The State of Maharashtra
Through the Collector, Latur

2. The Principal,
Police Training School,

Babhalgaon, Tq. & Dist. Latur ... Appellants
[Orig. Respondents]

Versus

Goaus Mahtab Bagwan
Age: 57 years, Occu; Business
R/o. Latur, Tq. & Dist. Latur ... Respondent
[Orig. Claimant]

.....

AND

FIRST APPEAL NO.1671 OF 2014

1. The State of Maharashtra
Through the Collector, Latur

2. The Principal,
Police Training School,
Babhalgaon, Tq. & Dist. Latur ... Appellants
[Orig. Respondents]

Versus

Narsingrao s/o. Rangnathrao Deshmukh,
Age: 43 years, Occu: Agri.,
R/o: Babhalgaon, Tq. & Dist. Latur ... Respondent
[Orig. Claimant]

.....

AND

FIRST APPEAL NO.742 OF 2019

Digambar s/o Manikrao Kalyankar
Age: 52 years, Occu: Service,
R/o: Vivekanand Chowk, Latur,
Tq. & Dist. Latur ... Appellant
[Orig. Claimant]

Versus

The State of Maharashtra and Anr. ... Respondents

.....

AND

FIRST APPEAL NO.743 OF 2019

Goaus Mahtab Bagwan
Age: 60 years, Occu: Business,
R/o Latur, Tq. & Dist. Latur ...Appellant
[Orig. Claimant]

Versus

The State of Maharashtra and Anr. ... Respondents

.....

AND

FIRST APPEAL NO.744 OF 2019

Narsing s/o Rangnathrao Deshmukh
Age: 47 years, Occu: Agril.,
R/o: Babhalgaon, Tq. & Dist. Latur ... Appellant
[Orig. Claimant]

Versus

The State of Maharashtra & Anr. ... Respondents

.....

AND

FIRST APPEAL NO.745 OF 2019

1. Bashir Kondaji Bagwan
Age: 56 years, Occu: Business

2. Chandpasha Kondaji Bagwan
Age: 55 years, Occu: Business,
Both R/o Latur, Tq. & Dist. Latur .... Appellants
[Orig. Claimants]

Versus

The State of Maharashtra & Anr. ... Respondents

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Appearance :-

Mr. Amit S. Deshpande, Advocate for the Appellants in First Appeal Nos.742/2019, 743/2019, 744/2019 and 745/2019

Mr. B. B. Bhise, AGP for Appellants / State in First Appeal Nos.1668/2014, 1669/2014, 1670/2014 and 1671/2014 and AGP for Respondents / State in First Appeal Nos.742/2019, 743/2019, 744/2019 and 745/2019

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CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.

Reserved on : 17th April, 2024
Pronounced On : 1st July, 2024

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. These are the Appeals under Section 54 of the Land Acquisition Act, 1894 [hereinafter referred to as 'the said Act'] against the Judgment and Decree / Award dated 08/04/2013, passed by the learned Civil Judge, Senior Division, Latur [hereinafter referred to as 'the Reference Court'] in group of references arising out of the Land Acquisition Proceedings under the said Act initiated by the Land Acquisition Officer [hereinafter referred to as 'the LAO'] for the purpose of Police Training School at Babhalgaon, Taluka and District Latur vide No.2006/LNQ/CR-1.

2. The Claimants preferred the Appeal Nos.742/2019, 743/2019, 744/2019 and 745/2019 and the State also preferred the Appeal Nos.1668/2014, 1669/2014, 1670/2014 and 1671/2014 against the impugned Judgment and Award passed by the learned Reference Court. Since all the Appeals arise out of the one and the same Judgment and Decree/Award of the Reference Court, they are being disposed of by this common Judgment.

3. The factual aspects of the subject matter, as seen from the papers on record, are as follows :

(a) For the aforementioned purpose, the LAO issued the preliminary notification under Section 4(1) of the said Act on 17/05/2006. Thereafter, he issued the notification under Section 6 of the said Act on 12/09/2006. The following lands of the Claimants, who were the owners and possessors of the lands, were the subject matter of acquisition for the aforesaid purpose and following rates were offered by the LAO :-

Sr. No.	LAR No.	Block No.	Acquired area.	Rate per sq. meter given by LAO
1	664/2009	34	11,100 sq. mtrs.	88/- sq. mtr.
2	663/2009	28	8,300 sq. mtrs.	88/- sq. mtr.
3	665/2009	29	6,700 sq. mtrs.	88/- sq. mtr.
4	666/2009	29	7,400 sq. mtrs.	88/- sq. mtr.

(b) The LAO passed the Award on 06/08/2007 in the said acquisition proceedings by virtue of Section 12 of the said Act. Being not satisfied with the compensation awarded by the LAO, the Claimants preferred References under Section 18 of the said Act and claimed the rate of Rs.300/- per sq. ft. without any deduction. The Claimants led their evidence before the Reference Court. The learned Reference Court, vide common Judgment and Decree/Award dated 08/04/2013, partly allowed the references and enhanced the compensation to Rs.220/- per sq. ft. with statutory benefit of 30% solatium under Section 23 (2) of the said Act, 12% third component from the date of notification under Section 4 of the said Act till the date of Award, along with interest @ 9% p.a. for the first year and the interest @ 15% p.a. for the subsequent years till realization of the entire amount.

4. Heard the learned Advocate Mr. Deshpande for the Claimants and the learned AGP for the State.

5. It is submitted by the learned Advocate for the Claimants that the Claimants relied on four (4) sale instances in support of their claim for enhanced compensation. However, the learned Reference Court ignored the highest sale instance without assigning any reason. He submits that it is settled position under the law that the highest sale instance is required to be

considered. He submitted that the sale deeds, which were relied upon by the Claimants, were of three (3) years and seven (7) months prior to the Notification under Section 4 of the said Act. The learned Reference Court without there being any positive evidence and without considering the purpose of the acquisition, deducted 25% towards development charges, which is contrary to law. He submitted that only 10% ought to have been deducted towards development charges by considering the purpose for which the lands were acquired. Therefore, the Appeals be allowed and the amount claimed by the Claimants be awarded.

6. In support of his submission, he relied on the following Judgments:

(i) **M Vijayalakshmamma Rao Bahadur Vs. Collector; MANU/SC/0309/1963: (1969) 1 MLJ 45 (SC)**

(ii) **Anjani Molu Desai Vs. State of Goa & Ors.; (2010) 13 SCC 710**

(iii) **Mehrawal Khewaji Trust Vs. State of Panjab; (2012) 5 SCC 432**

(iv) **General Manager Oil and Natural Gas Corp. Ltd. Vs. Rameshbhai Jivanbhai Pate; (2008) 14 SCC 745**

(v) **Atma Singh Vs. State of Haryana and Ors.; (2008) 2 SCC 568**

7. It is submitted by the learned AGP that the LAO, considering all the aspects such as quality, fertility, utility, amenities available, development, location etc. awarded appropriate compensation for the acquired lands. He submitted that the learned Reference Court enhanced the amount of

compensation on higher side though the witness in cross-examination admitted that the land was of medium quality and rock land. The learned Reference Court did not consider the sale instances of village Sarola. The statutory benefits are also not granted as per law and ought to have dismissed the claim. It is submitted that the Appeals filed by the State be allowed.

8. In support of his contention, he relied on the following Judgments;

(i) **State of Maharashtra Vs. Kailash Shiva Rangari; 2016 AIR (Bom.) 141**

(ii) **State of Maharashtra and Ors. Vs. Digamber Bhimashankar Tandale and Ors.; (1996) 2 SCC 583 – MANU/SC/1090/1996**

(iii) **Ranvir Singh and Ors. Vs. Union of India (UOI); AIR 2005 SC 3467 - MANU/SC/0554/2005**

9. Having heard both the sides and perusing the evidence on record, we proceed to examine the contentions on merit. Admittedly, the Claimants' lands are acquired for the Police Training School. The Claimants led the evidence of one witness and brought on record the documentary evidence in the nature of sale instances below Exhibits - 21 to 24. The State / LAO did not lead any evidence though they placed on record the certified copies of sale instances of village Sarola below Exhibits – 33 to 38. The non-agricultural potentiality of the acquired land is not in dispute. The sale instance relied upon by the State / LAO is of different village which, as seen from the impugned Judgment and Award, was situated in an interior area. There cannot be any dispute that the sale instances have to be comparable with the acquired lands. There is no reason,

as seen from the relevant papers, by the LAO to consider the sale instances of different village and not of the village where the acquired lands were situated. This aspect is considered by the learned Reference Court.

10. The observations made by the learned Reference Court in the impugned Judgment and Decree / Award that the LAO has further observed in his Award that the land under acquisition and the land under sale instances at village Babhalgaon were identical and the transactions of the sale instances from Gat No.28 of the Babhalgaon were worth consideration, is based on the observations in the Award. The Award show that the LAO has referred to in all nine (9) sale instances from village Babhalgaon and Sarola in the tabular chart. No fault can be found that the observations made by the learned Reference Court that as per law, the LAO ought to have considered the sale instances, firstly from village Babhalgaon [where the acquired lands are situated] and if the sale instances from the same village were not available, the sale instances from adjoining village could have been considered.

11. The Claimants relied on the sale instances, as referred above in support of their claim for enhancement of compensation. The area and the rates mentioned in the sale instances are referred below :

Sr. No.	Dates of sale instances	Plot area	Gat No.	Village	Consideration in Rupees
1	30/12/2002	1400 sq. ft.	28	Babhalgaon	300,000/-
2	07/10/2002	1619.50 sq. ft.	28	Babhalgaon	3,68,000/-
3	01/11/2002	1400 sq. ft.	28	Babhalgaon	3,33,000/-
4	29/10/2002	1400 sq. ft.	28	Babhalgaon	4,00,000/-

12. The learned Reference Court arrived at the conclusion that the above referred sale instances relied upon by the Claimants were identical and similar to that of the acquired lands and concluded that the sale instances can be considered for determining the exact market price of the acquired lands. Considering the date of notification under Section 4 of the said Act and the date of sale instances relied upon by the Claimants, the learned Reference Court observed that it was highly impossible that the sale instances were *mala fied*. The learned Trial Court concluded that the above sale instances were *bona fied* without any *mala fied* intention. It is nobodies case that the said observations made by the learned Reference Court were incorrect or perverse.

13. Though the learned Reference Court arrived at the above referred conclusions and findings and was of the view as seen from the observations made in Paragraph No.29 of the impugned Judgment and Decree / Award that the sale instances below Exhibits 21 to 24 took place in the year 2002 and notification under Section 4 of the said Act has been published on 17/05/2006 and considered 10% increase per year for three years, then the said price comes to Rs.278/-, Rs.295/-, Rs.309/- and Rs.371/- per sq. ft. respectively as per the the sale instances [referred by the Claimants] and though the sale instances referred by the LAO in the Award at Sr. Nos.1 and 2, then also by considering 10% increase per annum, the sale price comes to Rs.230/- and Rs.270/- per sq. ft., held that it would consider the average of the sale instances placed before it and considered the sale instance below Exhibit – 22 [Rs.295/-] for determining the market price by considering it as more reasonable and comparable sale instance. Ratio of the above

referred Judgments relied upon by the learned Advocate for the Claimants cited [*Supra*] show that, in the event of several exemplar, usually the highest exemplar is to be considered.

14. According to the learned Reference Court as seen from the observations made in Paragraph No.30 of the impugned Judgment and Decree / Award that the highest comparable sale instance comes to Rs.371/- per sq. ft. and lowest price comes to Rs.278/- per sq. ft., it considered the comparable sale instance below Exhibit – 22 and held that it would be just and proper to award the compensation at rate of Rs.295/- per sq. ft. to the Claimants. Once the learned Reference Court held that the sale instances relied upon by the Claimants were identical and similar to that of acquired lands and can be considered to determine the exact market price, the highest sale instance amongst the sale instances relied upon by the Claimants ought to have been considered, in the light of the above referred position under the law. In the light of the above discussion, we hold that the compensation awarded by the learned Reference Court to the Claimants is required to be modified to that of the sale instances at Exhibit – 24 relied upon by the Claimants and held to be identical with the acquired land by the learned Reference Court.

15. Though one of the contention of the Claimants is to grant 10% escalation in the rates per year, the rate Rs. 371/- per sq. ft. calculated by the learned Reference Court for sale instances at Exhibit – 24, is inclusive of 10% increase per year for three years. Therefore, there is no question of recalculating the amount per sq. ft. by adding 10% hike per year.

16. As regards the deduction towards development charges is concerned, it is observed in Paragraph No.34 of the impugned Judgment and Decree / Award that admittedly, in the present reference the acquired lands of the Claimants in all the reference petitions were large, therefore, 25% deduction is made towards development charges from the compensation amount. On the point of deduction towards development charges, reliance is placed by the learned Advocate for the Claimants on the Judgment in the case of Atma Singh Vs. State of Haryana and Ors. [*Supra*] in support of the contention that deduction towards development charges be only 10%. On this very point, the learned AGP placed reliance on the Judgments cited [*Supra*]. On the point of deduction towards development charges, useful reference can be made to the Judgment / Order dated 21/09/2017 in **Jag Mahender and Another Vs. State of Haryana and Ors.; 2017 SCC Online SC 2160**, wherein, following is observed :

> *"5. We have heard learned counsel for the parties. In our opinion, the High Court has erred in law in not applying the cut for the development, and in giving the 15% appreciation and that too on a cumulative basis. The area has to be deducted for the purpose of development, as has been laid down by this court, while considering a plethora of decisions, in Major General Kapil Mehra & Ors. vs. Union of India & Anr. [(2015) 2 SC 262] in which this court has considered this question thus:*
>
> *"33. In Haryana State Agricultural Market Board vs. Krishan Kumar, (2011) 15 SCC 297, it was held as under:*
>
>> *"10. It is now well settled that if the value of small developed plots should be the basis, appropriate deductions will have to be made therefrom towards the area to be used for roads, drains, and common facilities like park, open space, etc. Thereafter, further deduction will have to be made towards the cost of development, that is, the cost of leveling the land, cost of laying roads and drains, and the cost of drawing electrical, water and sewer lines."*

35. Reiterating the rule of one-third deduction towards development, in Sabhia Mohammed Yusuf Abdul Hamid Mulla vs. Special Land Acquisition Officer, (2012) 7 SCC 595, this Court in paragraph 19 held as under:-

> *"19. In fixing the market value of the acquired land, which is undeveloped or underdeveloped, the courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land in acquired. In Kasturi vs. State of Haryana (2003) 1 SCC 354) the Court held: (SCC pp. 359-60, para 7)*
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>> *"7... It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for road and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough, particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character or a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that*

> *account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose."*

The rule of 1/3rd deduction was reiterated in Tejumal Bhojwani v. State of U.P. ((2003)10 SCC 525, V. Hanumantha Reddy v. Land Acquisition Officer, (2003) 12 SCC 642, H.P. Housing Board v. Bharat S. Negi (2004) 2 SCC 184 and Kiran Tandon v. Allahabad Development Authority (2004)10 SCC 745"

36. While determining the market value of the acquired land, normally one-third deduction i.e. 33 1/3% towards development charges is allowed. One-third deduction towards development was Land in Tehsildar(L.A.) vs. A. Mangala Gowri, (1991) 4 SCC 218; Gulzara Singh vs. State of Punjab, (1993) 4 SCC 245; Santosh Kumari vs. State of Haryana, (1996) 10 SCC 631; Revenue Divisional Officer & L.A.O. vs. Sk. Azam Saheb, (2009) 4 SCC 395; A.P. Housing Board vs. K. Manohar Reddy, (2010)12 SCC 707; Ashrafi vs. State of Haryana, (2013) 5 SCC 527 and Kashmir Singh vs. State of Haryana, (2014) 2 SCC 165.

37. Depending on nature and location of the acquired land, extent of land required to be set apart and expenses involved for development, 30% to 50% deduction towards development was allowed in Haryana State Agricultural Market Board vs. Krishan Kumar (2011) 15 SCC 297; Director, Land Acquisition vs. Malla Atchinaidua 2006 (12) SCC 87; Mummidi Apparao vs. Nagarjuna Fertilizers & Chemicals Ltd., AIR 2009 SC 1506; and Lal Chand vs. Union of India (2009) 15 SCC 769.

38. In few other cases, deduction of more than 50% was upheld. In the facts and circumstances of the case in Basavva v. Land Acquisition Officer, (1996) 9 SCC 640, this Court upheld the deduction of 65%. In Kanta Devi vs. State of Haryana (2008) 15 SCC 201, deduction of 60% towards development charges was held to be legal. This Court in Subh Ram vs. State of Haryana, (2010) 1 SCC 444, held that deduction of 67% amount was not improper. Similarly, in Chandrasekhar vs. Land Acquisition Officer, (2012) 1 SCC 390, deduction of 70% was upheld.

> *39. We have referred to various decisions of this Court on deduction towards development to stress upon the point that deduction towards development depends upon the nature and location of the acquired land. The deduction includes components of land required to be set apart under the building rules for roads, sewage, electricity, parks and other common facilities and also deduction towards development charges like laying of roads, construction of sewerage."*

17. The acquisition, in the present matter, is for Police Training School. As observed by the learned Reference Court, the lands are large in size. There is no evidence or it is nobody's case that the acquired lands are developed to suit the purpose of acquisition. It is needless to state that for Police Training School also, necessary development such as sewage, roads, electricity, etc. would be necessary. Thus, in view of these and admitted factual aspects as can be seen from the observations made in the impugned Judgment and Decree / Award of the Reference Court and principles as observed in the above case, the deductions towards development charges ought to have been one-third deduction i.e. 33 1/3 %. We, accordingly, modify the percentage [%] towards development charges considered by the learned Reference Court and the amount per sq. ft. will have to be accordingly modified.

18. In view of the above discussions, we proceed to pass the following order:

ORDER

(a) The Appeal Nos.742/2019, 743/2019, 744/2019 and 745/2019 filed by the Claimants are partly allowed.

(b) The Claimants would be entitled for compensation towards acquired lands @ Rs.371/- per sq. ft. (Inclusive of 10% hike per year for three years).

(c) The Appeal Nos.1668/2014, 1669/2014, 1670/2014 and 1671/2014 filed by the State are partly allowed.

(d) Deduction towards development charges be calculated at the rate of one-third i.e. 33 1/3 % from the amount of compensation.

(e) The impugned Judgment and Decree / Award stands modified to the above extent.

(f) Rest of the impugned Judgment and Decree / Award stands unaltered.

(g) Decree be drawn-up accordingly.

(NEERAJ P. DHOTE, J.) **(R.G. AVACHAT, J.)**

Sameer