IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2140 OF 2008

1. Vikram B. Mehta (Deceased).

1A. Mr. Ghanshyam Bhagwandas Mehta,
Age 71 Years,
R/at : 2/63, Ryan's Road, St. Lucia 4067,
Brisbane, Australia, presently R/at : 6/64,
Macquarie Street, St. Lucia 4067,
Brisbane, Australia.

1B. Mr. Nakul Pralhad Mehta,
Age : 56 Years,
R/at : 19/c, IL, Palazzo, B. G. Kher Marg,
Bombay 400 006.

…. Appellant No.1 (Org. Claimant No.6)

1C. Mr. Aditya Harshawardhan Mangaldas,
Age 51 Years,
R/at : 12, Ocean View Annexe, 100,
Bhulabhai Desai Road, Mumbai 400 026.

1D. Ms. Indra Munshi ("the widow")
Age 64 Years,
R/at : A, 56, Cozihome, 251, Pali Hill
Road, Bandra West, Mumbai 400 050.

2. Ghanshyam Bhagwandas Mehta
Age : 48 Years,
R/at : 2/63, Ryan's Road, St. Lucia 4067,

…. Appellant No.2 (Org. Claimant No.5)

Brisban, Australia, by his Constituted Power of Attorney – Vikram B. Mehta.

Versus

The Special Land Acquisition Officer, No. 14, Pune, 903, Phadke Wada, Near Nagnath Park, Sadashiv Peth, Pune 411 030. …. Respondent (Org. Opponent)

AND

1. Smt. Gopa Pralhad Mehta, Adult, R/at : 19/C, IL, Palazzo, B. G. Kher Marg, Bombay – 400 006. (Deleted vide order passed on Exh-15 dated 11/05/1995) (Org. Claimant No.2)

2. Nakul Pralhad Mehta. Adult, R/at : 19/C, IL, Palazzo, B. G. Kher Marg, Bombay – 400 006. (Deleted vide order passed on Exh-15 dated 11/05/1995) (Org. Claimant No.3)

3. Miss. Sita Pralhad Mehata, Adult, R/at : 19/C, IL, Palazzo, B. G. Kher Marg, Bombay – 400 006. (Executor of the last will and testament of late Shri. Pralhad C. Mehta) (Deleted vide order passed on Exh-15 dated 11/05/1995) (Org. Claimant No.4)

4. Vikram B. Mehata, Adult, R/at : Panorama, 203, Walkeshwar (Org. Claimant No.1)

Road, Bombay – 400 006.
(Executor of the last will and testament of late Shri. Bhagwandas Chunilal Mehta)
(Deleted vide order passed on Exh-15 dated 11/05/1995)

5. Nakul Pralhad Mehta,
Age : 32 Years,
R/at : 19/C, IL, Palazzo, B. G. Kher Marg, Bombay – 400 006. (Org. Claimant No.7)

6. Kumari. Avanti Pralhad Mehta,
Age : 30 Years,
R/at : 19/C, IL, Palazzo, B. G. Kher Marg, Bombay – 400 006. (Org. Claimant No.8)

7. Miss. Sita Pralhad Mehta,
Age : 29 years,
R/at : 19/C, IL, Palazzo, B. G. Kher Marg, Bombay – 400 006. (Org. Claimant No.9)
…. Respondents.

WITH
FIRST APPEAL NO. 2141 OF 2008

1. The State of Maharashtra
(Through the Special Land Acquisition Officer, No. 14, Pune 903, Phadake Wada Near Nagnath Park, Sadashiv Peth, Pune 411 030) …. Appellant No.1 (Org. Opponents)

Versus

1. Vikram B. Mehta (Deceased).

1A. Mr. Ghanshyam Bhagwandas Mehta,
Age 71 Years,
R/at : 2/63, Ryan's Road, St. Lucia 4067,
Brisbane, Australia, presently R/at : 6/64,
Macquarie Street, St. Lucia 4067,
Brisbane, Australia.

1B. Mr. Nakul Pralhad Mehta,
Age : 56 Years,
R/at : 19/c, IL, Palazzo, B. G. Kher Marg,
Bombay 400 006.

1C. Mr. Aditya Harshawardhan Mangaldas,
Age : 51 Years,
R/at : 12, Ocean View Annexe, 100,
Bhulabhai Desai Road, Mumbai 400 026.

1D. Ms. Indra Munshi ("the widow")
Age 64 Years,
R/at : A, 56, Cozihome, 251, Pali Hill
Road, Bandra West, Mumbai 400 050.

2. Smt. Gopa Pralhad Mehta,
Adult, R/at : 19/C, IL, Palazzo, B. G. Kher
Marg, Bombay – 400 006.
(Deleted vide order passed on Exh-15
dated 11/05/1995)

3. Nakul Pralhad Mehta.
Adult, R/at : 18/C, IL, Palazzo, B. G. Kher

Marg, Bombay – 400 006.
(Deleted vide order passed on Exh-15 dated 11/05/1995)

4. Miss. Sita Nakul Pralhad Mehta,
Adult, R/at : 19/C, IL, Palazzo, B. G. Kher Marg, Bombay – 400 006.
(Executor of the last will and testament of late Shri. Pralhad C. Mehta)
(Deleted vide order passed on Exh-15 dated 11/05/1995)

5. Ghanshyam Bhagwandas Mehta,
Age : 48 Years, R/at : 2/63 Ryan's Road, St. Lucia 4067 Brisbane, Australia, by his constituted Power of Attorney Vikram B. Mehta.

6. Vikram B. Mehata,
Age : 44 Years, R/at : Panorama, 203, Walkeshwar Road, Bombay – 400 006.

7. Nakul Pralhad Mehta,
Age : 32 Years,
R/at : 19/C, IL, Palazzo, B. G. Kher Marg, Bombay – 400 006.

8. Kumari. Avanti Pralhad Mehta,
Age : 30 Years,
R/at : 19/C, IL, Palazzo, B. G. Kher Marg, Bombay – 400 006.
(by her constituted Power of Attorney Mrs. Gopa P. Mehta)

9. Miss. Sita Pralhad Mehta,
Age : 29 years,
R/at : 19/C, IL, Palazzo, B. G. Kher Marg,
Bombay – 400 006. …. Respondents

Ms. Snehal Paranjape a/w Mr. Bharat Damodar, Ms. Nikita Vardhan, Ms. Nidhi Pathak, Mr. Vignesh Narayan i/b Kanga & Company, for the Appellants in FA/2140/2008 and for the Respondent Nos.5 and 6 in FA/2141/2008.

Mr. Gautam Ankhad a/w Ms. Samridhi Lodha, Mr. Sarthak Shukla, Mr. Sunny Shah i/b Mr. Ashwin Ankhad, for Respondent Nos. 5 to 7 in FA/2140/2008 and for Respondent Nos. 7 to 9 in FA/2141/2008.

Mr.A.R. Patil, Addl. G.P., for the State–Respondent No.1 in FA/2140/2008 and for Appellant in FA/2141/2008.

CORAM : NITIN JAMDAR & MANJUSHA DESHPANDE, JJ.

RESERVED ON : 3rd NOVEMBER, 2023.
PRONOUNCED ON : 7th FEBRUARY, 2024.

JUDGMENT

PER MANJUSHA DESHPANDE, J., :

1. Both these Appeals are arising out of one and the same Land Acquisition Reference No.102 of 1992, decided by the Ad-hoc District

Judge – 11, Pune, by its Judgment and Order dated 7th August, 2007. First Appeal No. 2140 of 2008 is filed by the Claimants, seeking enhancement of the compensation. Whereas First Appeal No. 2141 of 2008 is filed by the State of Maharashtra, challenging the enhancement of compensation, granted to the Claimants in LAR No. 102 of 1992.

2. Since both the Appeals are arising out of one and the same Land Reference, both the Appeals are heard together and are being decided by way of this common Judgment. Since First Appeal No. 2140 of 2008 filed by the Claimants is filed prior in point of time, therefore for the sake of convenience, the parties are referred according to their status in the First Appeal No. 2140 of 2008.

3. Facts leading to the filing of present Appeal are that :

The Divisional Commissioner, Revenue Division Pune, under Section 126(4) of the Maharashtra Regional and Town Planning Act read with Section 6 of the Land Acquisition Act, issued notification on 3rd September, 1988, thereby making its intention clear to acquire the property, Plot No. 465 of CTS No. 1085, admeasuring 12153.54 Sq. Mtr., situated at Ganesh Khind Road, Shivajinagar, Pune, for All India Radio and Doordarshan department. The Special Land Acquisition Officer (for short "S.LA.O.") made his Award on 7th March 1991, and granted compensation to the tune of Rs.1,34,87,778/-. The said amount was arrived at by the S.L.A.O. by hypothetical plotting method, since it was large tract of the land.

4. The Claimants received notice of Award under Section 12(2) of the Land Acquisition Act, on 22nd March, 1991. Being aggrieved by the said award and compensation awarded which according to the Claimants was insufficient, they preferred Reference for enhancement of compensation.

5. According to the Claimants, the amount quantified in the Award was very meager, not fair and justifiable. It is the contention of the Claimants that the S.L.A.O. has ignored the potentiality of the said land. The Claimants further pointed out that, the Ganesh Khind Road in Pune is a Major road. There are various Government Establishments, Institutions and Residences of VIPs, in the said area, adjacent to the acquired land. The acquired land, according to the Claimants, had commercial potential and had frontage of about 124 Sq. Mtr. on the Ganesh Khind Road. The deductions made by the S.L.A.O. were excessive and the plotting of the said large tract of land was not proper. As a result, while determining the compensation of the acquired land, the market value has not been granted adequately. It is the contention of the Claimants that, they had placed on record the expert's report based on proper hypothetical plotting method, by excluding the area required

for development. The report of their valuer was fair and proper and reflecting that the land could easily fetch and amount of Rs.2,500/- per Sq. Mtr. on the date of notification.

6. The Respondents i.e. the Appellants in First Appeal No. 2141 of 2008, who are the Opponent in the reference, have resisted the reference by filing counter/written statement. It is the contention of the State that, the rate awarded is just, reasonable, fair and has been arrived at by adopting a scientific method. The hypothetical plotting method adopted by the S.L.A.O., for determination of the rate of acquired land has been justified by the Opponent. The hypothetical plotting prepared by the valuer of the Claimants was not proper and against the established norms. The hypothetical lay out prepared by the Opponent was in fact the scientific method, which is fair enough. It is claimed by the Respondents that, the rate of Rs.770/- per Sq. Mtr. awarded by the S.L.A.O., was in fact the appropriate rate, therefore the claim of rate of Rs.2,500/- per Sq. Mtr. was opposed by the Respondents. The learned Judge has taken into consideration the rival claims and has observed that, both the parties i.e. the Claimants as well as the Opponent has taken recourse to hypothetical plotting for determination of market rate of acquired land. The S.L.A.O., while applying the hypothetical plotting method has taken into consideration land admeasuring 8344 Sq. Mtr. out of total holdings of 10830.34 Sq. Mtr. of land. An area of about

2486 Sq. Mtr. has been deducted for development i.e. road etc. for the development of the said hypothetical lay out. The S.L.A.O. has further sub divided the remaining land according to the frontage available to Ganesh Khind Road. An area admeasuring 4340 Sq. Mtr. has been awarded rate of Rs.1,800/- per Sq. Mtr. The further area of 1012 Sq. Mtr. having frontage on Rangnath Dhotre Road, has been awarded rate of Rs.1,700/- per Sq. Mtr. and rest of the area of 2292 Sq. Mtr. which was at the interior side, has been awarded Rs. 1,450/- per Sq. Mtr. The total compensation of Rs.1,38,78,800/-, has been awarded after making necessary calculations, at Rs.770/- per square meters for acquired land. The method adopted by them being scientific and appropriate has been defended by the Respondents.

7. On the other hand, the Claimants have relied on the report of the valuer, who has divided the acquired land into six plots, out of which three plots admeasuring more than 2000 Sq. Mtr. are shown to be situated on Ganesh Khind Road. Thereafter making proportionate deductions, the valuer has valued the rate of the plot at Rs.2,422/- per Sq. Mtr. The said report of the valuer is at **Exh-48** and the said valuer's report is supported by the deposition of witness namely Prabhakar Shiraskar, which is at **Exh-40**.

8. The claim of the Claimants is also supported by the affidavit

of one Shri.Vikram Mehta at **Exh-31**. The Respondents have also examined witness, namely, Shri.Dilip Sawant at **Exh-57**, who has supported the case of the Respondents by stating that the hypothetical plotting made by the Respondents and the rate fixed and awarded by them, is perfect and arrived at by adopting hypothetical plotting method.

9. The learned Judge while considering the rival contentions has observed that both the parties are relying on the hypothetical plotting method adopted for determination of market value of the acquired land. So also, both the parties are relying on the sale instance of 'Akar Society'. Therefore, there is no dispute about the sale instance and method adopted for determination of the market value for the acquired land. Considering that the sale instance of 'Akar Society', which was the land in vicinity which was available for consideration, the reliance was rightly placed on the said sale instance. However, the said piece of land of 'Akar Society' was small in size, therefore, the hypothetical plotting method was required to be adopted, for determination of market value of the land, under the acquisition admeasuring 10,830.34 Sq. Mtr. Once having relied on the hypothetical plotting method, what remained to be considered was deductions which are made for the large tract of land as compared to the small plot of land. The learned Judge placing reliance on the Judgment of State of ***Goa and Anr. V/s. Radhabai Vaikunth***

Ghole [1]**,** has made deduction to the extent of 40% for the development of the land under acquisition, and has arrived at a value of Rs. 1,200/- per Sq. Mtr. as the market value, on the date of notification under Section 4 of the Land Acquisition Act.

10. The Appellants have challenged the said rate awarded by the Reference Court on the ground that the Reference Court should have accepted the valuer's report produced by the Appellants, which was based on the sale instance of 'Akar Society'. Since there was no infirmity in the said valuation report.

11. The learned Advocate for the Appellants has made following submissions :-

The Claimants' valuer had calculated fair market value of the said land to be approximately Rs.2,422/- per Sq. Mtr. According to the Appellants the rate determined by the valuer had gone unchallenged and there was no inconsistency which could be gathered from the cross-examination of the SLAO. Therefore, the Appellants' valuer's report at **Exh-48**, should have been relied by the learned Judge of the Reference Court, while determining the market value.

12. It is further submitted by the learned Advocate for the

1 2004(3) ALL MR 234

Appellants that, the report of hypothetical plotting submitted by the Appellants, should have been accepted by the Reference Court, since it was prepared on the basis of existing development control rules, and it projected the most reasonable use, which a willing purchaser could have put the subject land to. It was prepared in such a manner that even after making the necessary deductions on account of internal road and laying of electricity and water pipelines, etc., the land would have been put to its optimum use and made appropriate use of frontage of the two roads available to the said land.

13. It is contended by the learned Advocate for Appellants that in any event taking the rate of a smaller piece of land to determine the fair market value of larger land in the vicinity is accepted in many situations by the Hon'ble Apex Court. It is submitted that, the Reference Court has erred in not considering situational and developmental advantage of the land under acquisition. The Reference Court has ignored the escalation of property prices and has therefore erred in granting enhancement only of the Rs.440/- over the rate granted by the SLAO of Rs.770/- per Sq. Mtr. The escalation rate either 18% or 12% in the price ought to have been added and there should not have been any deduction made from the said rate. The rate of Rs.2,140/- per Sq. Mtr., which was admissible for the 'Akar Society', which was within the vicinity of 100 Mtrs., was genuine and therefore, reliable exemplar to

determine the fair market value of the subject land. The deduction of 40% applied by the Reference Court is erroneous for the reason that, according to the Appellants, the land acquired by the Respondent did not require the development works as the said area already developed the land in question did not required any improvements. There was existing water, electricity and sewerage connection on the subject land. The said land did not have any negative factors. In fact it was very much suitable for residential as well as commercial use, having wide frontage. Hence, considering the same, the rate of Rs.2,500/- per Sq. Mtr. ought to have been allowed by the Reference Court, without any deductions.

14. According to the learned Advocate for the Appellants, the Reference Court has failed to appreciate the subtle difference between developed area and an area having potential, i.e. the area which is yet to be developed. It is further contended that, the Reference Court has completely ignored the settled criteria that only when the land acquired requires improvement by levelling and providing for drainage, sewerage, electricity, water supply etc., the development charges can be deducted from the market value, awarded to the land to be acquired. The Hon'ble Apex Court has held that percentage of deductions should be made keeping in mind the nature of land, area under acquisition and whether it requires to be developed, and if so, to what extent, in order to fix the fair and just market value, in terms of the parameters laid down in

Section 23 of the Land Acquisition Act. Therefore, ignoring the said well settled principles, the learned Judge of the Reference Court has deducted 40% towards the development charges. Inspite of the fact that the said area was already a developed area. The Appellants have relied on following case laws, to demonstrate that the small piece of land can also form basis for determining the market value of lands acquired under the Land Acquisition Act, if the said piece of land is adjoining the acquired land :

(i) ***P.Ram Reddy and Ors. Vs. Land Acquisition Officer, Hydrabad[2];***

(ii) ***State of Maharashtra Vs. Abdul Sattar and Ors.[3];*** *and*

(iii) ***Bhagwathula Samanna and Ors. Vs. Special Tehsildar and Land Acquisition Officer, Vishakhapatanam Municipal Corporation[4].***

15. On the other hand, learned A.G.P. appearing for the Respondent-State and also for Appellants in First Appeal No. 2141 of 2008, has resisted on the ground that the Reference Court has erred in granting enhanced compensation to the Claimants. The compensation arrived at by the S.L.A.O., was appropriate and not at all inadequate. It is also urged that, the learned Judge has completely ignored the provisions

2 (1995) 2 SCC 305
3 AIR 1995 Bom. 85
4 AIR 1992 SC 2298

of Section 24 of the Land Acquisition Act and has determined the market price of the land on the basis of the factors which are not to be taken into consideration while granting compensation. The learned Judge has enhanced the compensation without there being reliable and cogent evidence produced by the Claimants for reaching such conclusion. The Respondents have further contented that the Claimants have not produced a single reliable sale instance, in support of their claim, for enhancement of compensation. The Reference Court should have taken into consideration the evidence lead by their witness, namely, Shri.Dilip Sawant at **Exh-57**, while fixing the market value of the land. It is further argued that in fact the Reference Court ought to have deducted 50% of the amount towards the development charges, while quantifying the compensation. It is also contended that considering that it is a large area of about 10,830 Sq. Mtr. The hypothetical plotting method was appropriate for computing the compensation, on the basis of the market value, the plots from the said lay out would fetch. The other contention raised by the State is that the Claimants' right in the said land are lease hold rights. The original land owners had leased out entire C.T.S. No. 1085 to Shri. R. D. Tata. Thereafter, Shri. Jahangir Tata sold the lease hold rights to Mr. Chunnilal B. Mehta and Mr. Bhagwandas Chunnilal Mehta and thereafter, it came in possession of the descendants of Mehta family. The said history of the passing over of the lease hold right from the original land owners is the part of record and referred in the Award.

Hence, Claimants are having perpetual lease hold rights, in respect of the land in question and it is undisputed that the ownership of the Claimants is not free hold right. Therefore, the price which the said land would fetch cannot be compared to that of free hold rights.

16. We have heard the Appellant/Claimant as well as the Respondent-State at length, we have also gone through the Judgments relied upon by both the parties. It is well settled position of law that, the Award of the S.L.A.O. is a mere offer to the Claimants. If the said offer is not agreeable to the Claimants, they have every right to file reference proceedings before the appropriate authority. However, while claiming such enhanced market value, the Claimants have to prove their case by leading independent evidence in support of their case. They cannot rely on material produced before Land Acquisition Officer, unless it is produced before Reference Court and proved. So far as present case is concerned, the Claimant, namely. Shri.Vikram Mehta has examined himself at **Exh-31** and has produced on record valuation report at **Exh-48**, which is supported by the valuer, namely, Shri.Prabhakar Shirsakar, who has testified that he has submitted valuation report at **Exh-48**. According to him, the just, proper and fair market price of acquired land should be Rs.2,400/- per Sq. Mtr..

17. As against that, the Respondents have examined one

Shri.Dilip Sawant at **Exh-57**. According to him, the hypothetical plotting method is adopted, and the rate awarded by the S.L.A.O. are perfectly legal and scientific. Both the parties have placed reliance on the hypothetical plotting method, for determination of the market value. However, the market value arrived at by both parties is different, for the reason that the percentage of deduction made by both the parties is different. The Claimants have also relied on the compensation granted to the area of about 1,323 Sq. Mtr. from the same C.T.S. number by the S.L.A.O., which was awarded rate of Rs.1,200/- per Sq. Mtr.. On the basis of the said market value available, the learned Judge of the Referene Court has been pleased to hold that, it is not desirable to give findings on the basis of hypothetical plotting method when the said sale instance regarding adjacent land is available for consideration. The learned Judge of the Reference Court has observed that the sale instance of 'Akar Society' which both the sides have relied fetched value of Rs.2,140/- per Sq. Mtr. and after deducting 40% of the above rate, the said land would fetch about Rs. 1,200/- per Sq. Mtr. on the date of notification under Section 4 of the Land Acquisition Act. Reliance is placed on the case of ***Bhagwathula Samanna And Ors. V/s. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality***[5]**,** which lays down that, if land acquired, is surrounded by fully developed land, then it is necessary to keep in mind the potentiality attached to the acquired land.

5 AIR 1992 SCC 2298

Applying the said case law to the matter in hand, Judge of the Reference Court has been pleased to declare that the acquired land would fetch Rs.1,200/- per Sq. Mtr., thereby partly allowing the reference.

18. The method of calculating the compensation has been laid down by the Hon'ble Apex Court in the celebrated Judgment of ***Chimanlal Hargovinddas V/s. Special Land Acquisition Officer Poona And Anr.***[6] According to the guidelines for determination of valuation, it has been categorically observed that the claimant is required to produce cogent and sufficient material evidence disclosing the correct market value, if he is claiming enhanced compensation. In the present case, the claimant has filed his own affidavit and the affidavit of the valuer. The said valuation report has adopted the hypothetical plotting method. In order to claim higher compensation, the Claimants have to prove the exact market value, which they are claiming. The learned Judge has not at all taken into consideration the evidence lead by either parties and has compared the market value of the plot, which was in the same survey number admeasuring 1323 Sq.Mtr. The learned Judge has also relied on the market value of Rs. 2,140/- per Sq. Mtr. relied on by both the sides i.e. the sale instance of Akar Society and has deducted 40% from the said market value, for fixing the rate @ Rs.1,200/- per Sq. Mtr..

6 AIR 1988 SC 1652

19. The learned Judge of the Reference Court has relied the market value of the land awarded by the S.L.A.O., for a smaller piece of land out of the same survey number, admeasuring 1,323 Sq. Mtr., which was awarded rate of Rs. 1,200/- per Sq. Mtr. The learned Judge has further observed that, when sale instance regarding adjacent land is available, in this matter for consideration, then according to him, it would not be desirable to give finding on the basis of hypothetical plotting method. He has further discussed the method adopted by the S.L.A.O., to observe that the S.L.A.O., could have granted the rate mentioned in the sale instance of plot in 'Akar Society' and should not have resorted to hypothetical plotting method.

The rate awarded to the plot in the Akar Society was Rs.2,140/- per Sq. Mtr. After making the said observations regarding the two plot of lands, available for deciding the market value, the learned Judge has again proceeded to deduct the development charges and other charges from the market value of the plot in 'Akar Society' and after deducting 40% from the above, he has arrived at rate of Rs.1,200/- per Sq. Mtr.. The Judge of Reference Court has on one hand has observed that hypothetical plotting method would not be desirable, however, while arriving at a particular value based on the market value of the plot in 'Akar society', the learned Judge has made necessary deductions towards the development charges, since it was a large tract of land.

20. The Appellants have relied on the Affidavit of the Claimant and Affidavit of the valuer so also the valuer's report. In the said valuation report, the valuer has adopted the hypothetical lay out method. While doing so, sale instance of 'Akar Society' has been relied upon. The valuer has used the said hypothetical method for the reason that it is a large tract of land and therefore unless the said hypothetical lay out is prepared, appropriate value could not be arrived at. So far as deductions part is concerned, it has been argued by the learned Advocate for the Appellants that the surrounding area being a developed area there was no necessity of making any deductions from the rates, which was made applicable to plot in 'Akar Society'. In support of the same, the learned Advocate for the Appellants has placed reliance on Judgments which are as under :

(i) ***General Manger, ONGC Limited V/s. Rameshbhai Jivanbhai Patel Anr Anr., reported in (2008) 14 SCC 745;***

(ii) ***Ashrafi And Ors. V/s. State of Haryana And Ors., reported in (2013) 5 SCC 527;***

(iii) ***Mehrawal Khewaji Trust (Registered) Faridkot And Ors. V/s. State of Punjab And Ors., reported in (2012) 5 SCC 432,*** and other similar Judgments.

21. As against that the learned A.G.P. has also placed reliance on

Judgments wherein the Hon'ble Apex Court has been pleased to observe that where sale instance pertains to small developed plot of land, which is to be the basis for determining market value of large undeveloped areas, appropriate deductions towards the development cost would have to be made which may vary from 20% to 75% of the price of developed plot. The percentage of deduction depending on situation of land, nature of development etc. In support of the said stand taken by the learned A.G.P., the learned A.G.P. has placed reliance on the following Judgments :

(i) ***Administrator General of West Bengal V/s. Collector, Varanasi, reported in (1988) 2 SCC 150;***

(ii) ***State of Madhya Pradesh and Ors. V/s. Kashiram (Dead) by LRs. And Ors., reported in (2010) 14 SCC 506;***

(iii) ***Chadrashekar (Dead) by LRs And Ors. V/s. Land Acquisition Officer And Anr, reported in (2012) 1 SCC 390.***

22. The other aspect which needs to be considered is that the land in question is a lease hold land, therefore obviously it would not fetch the same price in the market as that of free hold land. The free hold lands are not subject to any restrictions with regard to the use of the adjoining land. Therefore, the said lease hold land can not be compared with a free hold land. In the present case also, as seen from the record,

the rights of the Claimants are lease hold rights therefore, it would not fetch the same market value, that a free hold adjoining lands would fetch.

23. For arriving at the percentage of deduction, the Judgment in ***Lal Chand Vs. Union of India And Anr.,***[7] would be useful to rely upon for quantifying the deductions. In the said Judgment, it has been observed that the percentage of deduction for development to be made to arrive at a market value of large tracts of undeveloped land with reference to sale price of small developed plots varies 20% to 70% of the price. Such deduction for development consists of two components.

24. While making the necessary deductions, the land which is required for formation of roads and other civil amenities, expenses for development of site while laying out roads, trains, sewers, water and electricity lines etc., are required to be taken into consideration. So also, if there is already a structure or the land is uneven, the cost required for removal of that structure, levelling of that land is also to be taken into account, while making deductions from the market value. Therefore, the contention of the Appellants that, there should have been no deductions made from the market value of the land, does not hold good. The learned Judge has discarded the hypothetical lay out method, adopted by

7 (2009) 15 SCC 769

both the sides for computing the compensation and has relied on the market value of the land, which was near to the land acquired. The observation of the learned Judge, in so far as the hypothetical lay out is concerned, is not at all sustainable. According to him, when the adjacent land is available for consideration, it is not desirable to give otherwise finding on the basis of hypothetical lay out method.

This finding is totally misplaced for the reason that the said hypothetical lay out method is adopted for the reason that, there is a sale instance of a small piece of land, the price of such land is within the reach of many and the large block of land will have to be developed by preparing lay out, carving out roads, levelling upon spaces, plotting out smaller plots, waiting for purchasers, etc. Therefore, even assuming that the sale instance of adjacent land is available for determining the market value, but while applying the said market value to a large tract of land, there has to be deductions made, which are between 20% to 70% depending upon the circumstances and situation of the land. Though in the present case, the said land is situated in the developed area and had development potential, however, fact remains that, it is a large land and purchaser would be required to make certain changes in order to make this land viable for their use. They would also to be required to make changes in water, electricity, sewage lines, etc. according to their usage.

Even in the hypothetical lay out method, the sale instance have to be taken into account while determining the market value, therefore, the reasoning given by the learned Reference Court that, it would not be appropriate to rely on the hypothetical lay out method, when the sale instance of adjacent land is available, is not proper.

In the Judgment of ***Chimanlal Hargovinddas V/s. Special Land Acquisition Officer, Poona And Anr.,***[8] the detail procedure has been discussed by the Hon'ble Apex Court, as to what are the parameters, while determining the market value, giving the plus and minus factors. In para No.15, it has been categorically mentioned that a smaller plot can not be compared with that of a larger plot and if at all it is to be compared, the said is to be done by the adopting hypothetical lay out method.

In the present case, while relying on the hypothetical lay out method, both the parties have used belting method for assessing the market value of the plots in the said hypothetical lay out. However, considering that the said land had a potential. Considering it is surrounded by a developed area, it would not be appropriate to grant different rates to the hypothetical plots according to the frontage. In the present case, the acquired land has already frontage to the said land, from

8 (1988) 3 SCC 751

two sides. Therefore, instead of belting method, in our opinion it would be appropriate to apply the same rate to the whole land.

25. However, for applying the same market value, as in the sale instance, it has to be comparable with the land to be acquired. In the present case, since the land is of a lease hold right, the market price of a free hold land, is not capable of being made applicable to the said land. The Claimants are perpetual lease holders which is admitted by the Claimants in the cross-examination. Therefore the said land will not fetch the same price as that of free hold land in ordinary course of nature. The learned A.G.P. for the Respondents places reliance upon the Judgment of ***Ratan Kumar Tandon And Ors. V/s. State of U. P.,***[9] in order to demonstrate that the lease hold land and free hold land are the not comparable.

26. As discussed earlier, the learned Judge of the Reference Court has relied on the market value of plot in Akar Society and has held that the acquired plot would fetch a compensation at the rate of Rs.2,140/- per Sq. Mtr., subject to certain deductions towards the development and other charges. The learned Judge has deducted 40% from the above rate and fixed the rate of Rs.1,200/- per Sq. Mtr.

9 (1997) 2 SCC 161

27. The sale deed of 'Akar Society' has been stated to have been placed on record at **Exh.52.** Both the Appellants as well as the Respondents have relied on the said sale instance of plot No.467 of the 'Akar Society'. It is contended that, the open land in the said society would fetch rate of Rs.2,140/- per Sq. Mtr. as on 17th October, 1986. In which the Claimants have added rate of 18% per annum towards the escalation to claim Rs.2,500/- per Sq. Mtr. According to us, considering that the said land was a free hold land and the present land is a perpetual lease land, it would not be appropriate to add the escalation at the rate of 18%. The market value of the land that would be applicable on the date of Section 4 notification to the acquired land, would be that of 'Akar Society', which is rate of Rs.2,140/-. It would be appropriate to make 1/3 or 33.3% deduction, towards the development of the said land, for the reason that, though the said land is situated in developed area, having development potential. Fact remains that the said land is not developed and would require the purchaser to carry out development works on the said land.

The Hon'ble Apex Court in the Judgment of ***Kasturi And Ors. V/s. State of Haryana,***[10] has observed that, "There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental

10 AIR 2003 SC 202

charges, may be in some cases it is more than 1/3 and in some cases less than 1/3. 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."

In ***U. P. Avas Evam Vikas Parishad V/s. Jainul Islam & Anr.,***[11] wherein three Judges benches has been pleased to hold that deduction of 1/3 value of land towards the cost of development is justified. The similar view has been followed in various Judgments wherein the deduction of 1/3 value of the land for development has been considered to be proper and appropriate and standard deduction, when there is a small plot of land as a comparable sale instance.

In another Judgment of the Hon'ble Supreme Court, reported in ***(1988) 2 SCC 150 in Administrator General of West Bengal V/s. Collector, Varanasi,*** the observations in para No.12 of the said Judgment as follows :

> *"12. It is trite proposition that prices fetched for small plots cannot form safe basis for valuation of large tracts of land as the two are not comparable properties. (See Collector of*

11 1998 (2) SCC 467

Lakhimpur v. B. C. Dutta, AIR 1971 SC 2015 : (1972) 4 SCC 236; Mirza Nausherwan Khan v. The Collector (Land Acquisition), Hyderabad, (1975) 2 SCR 184 : (1975) 1 SCC 238 : AIR 1974 SC 2247; Padma Uppal v. State of Punjab, (1977) 1 SCR 329 : (1977) 1 SCC 330 : AIR 1977 SC 580; Smt. Kaushalya Devi Bogra & Ors. v. The Land Acquisition Officer, Aurangabad, (1984) 2 SCR 900 : (1984) 2 SCC 324 : AIR 1984 SC 892. The principle that evidence of market- value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical lay out could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture etc. are to be made. In Sahib Singh Kalha & Ors. v. Amritsar Improvement Trust (1982) 1 SCC 419, this court indicated that deductions for land required for roads and other developmental expenses can, together, come-up to as

> *much as 53 per cent. But the prices fetched for small plots cannot directly be applied in the case of large areas, for the reason that the former reflects the 'retail' price of land and the latter the 'wholesale' price.”*

So also in ***Trishala Jain And Anr. V/s. State of Uttaranchal And Anr.,***[12] the Hon'ble Apex Court has observed that, it is not possible to fix the compensation with exactitude or arithmetic accuracy. Depending on the facts and circumstances of the case, the Court may have to take recourse to some guesswork while determining the fair market value of the land and the consequential amount of compensation that is required to be paid to the person interested in the acquired land. It is further observed in the said Judgment that, the acquired land has to be more or less developed land as its developed surrounding areas, with all amenities and facilities and is fit to be used for the purpose for which it is acquired without any further expenditure, before such land could be considered for “No deductions”. Similarly the sale instances even of smaller plots could be considered for determining the market value of a larger chunk of land with some deduction unless, there was comparability in potential, utilisation, amenities and infrastructure with hardly any distinction. Only in such cases it would be a case of “No deductions”.

Therefore, considering the said observations it is not the case

12 2011 (6) SCC 47

of the Claimants/present Appellants that, there is no necessity of making any improvement in the said land before putting the said land to use. Though they are claiming that no deductions ought to have been made as the said land is developed and surrounded by a developed area. Even if it is claimed by the Appellants that no deductions ought to have been made, however, facts remains that the said land is not capable of being put to use without making any improvement on the said land.

28. In the present case, admittedly, the acquired land is a large tract of land with an old bungalow standing on the said land, which would not doubt to be required razed down, before making the use of the said land, for which it is acquired. While putting the said land to use, for the purpose for which it is acquired, the acquiring body will have to prepare lay out, according to the Development Control Regulations, as well as the development plan, for the city of Pune. In the said lay out, 10% area will have to be left for the open space, 13% area for roads and considering that the old structure will have to be razed down and new building have to be constructed and in accordance with Rules, the electricity connection, water lines as well as sewage lines, will have to be constructed, for which atleast 10% of the cost would be required. Therefore, taking into consideration the calculation as made, in our opinion 33% i.e. 1/3 of the total cost of the land, will have to be deducted from the market value of the comparable sale instance.

29. Therefore, it would be appropriate to make 1/3 deduction for development purpose from the market price, applicable to the acquired land. So far as the observations of the Reference Court with regard to not making applicable different rates to the plots in hypothetical lay out is concerned, we are in the agreement with the view considering the potentiality of the land, it would not be appropriate to adopt the belting method and a uniform rate is required to be applied to the whole piece of land. Therefore, we are of the opinion that after taking into consideration the order passed by the learned Reference Court, so also the material placed on record by either of the parties, as well as their submissions, it would be appropriate to grant rate of Rs.1,427/- per Sq. Mtr. to the acquired land uniformly after making 1/3 deductions to the market rate of Rs.2,140/- Sq. Mtr. So far as the rest of the part is concerned, wherein the Reference Court has maintained the order of the S.L.A.O., we do not find any reason to interfere in that part of the Order.

30. So far as First Appeal of the State is concerned, wherein challenge is to the enhancement granted by the Reference Court, the Respondents before the Reference Court have merely placed on record the Affidavit of one Shri.Dilip Sawant at Exh-57, they have not seriously challenged proceedings before the Reference Court, by leading any

evidence to maintain the rates granted by the S.L.A.O.. Though admittedly it is the burden on the Claimants to prove their case while seeking enhancement, however it is also the responsibility of the Respondents to defend their case, in order to convince the Court to maintain the Order of the S.L.A.O. and not grant any enhancement. Hence, we do not find any case for reducing the enhancement granted by the Reference Court. The Appeal filed by the State call for no interference and is dismissed.

31. In view of the above, we pass the following Order :

ORDER

(i) The reference of the Appellants in First Appeal No. 2140 of 2008 is partly allowed.

(ii) First Appeal No. 2141 of 2008 filed by the State is dismissed.

(iii) It is hereby declared that rate of the acquired land is Rs.1,427/- per Sq. Mtr. on the date of notification under Section 4 of the Land Acquisition Act and Claimants are entitled to get the enhanced compensation at the rate of Rs. 657/- per Sq. Mtr., towards the acquisition of their plot No.465 out of C.T.S. No. 1985, admeasuring 10830.54 Sq. Mtr. at Shivajinagar Pune.

(iv) The Claimants are further entitled to get all the statutory benefits such as component, solatium and interest as laid down in section 28 of the Land Acquisition Act, on the difference of amount of Rs.657/- per Sq. Mtr. from the respective dates mentioned in the section.

(v) As per the enhancement declared in this Judgment, the appellants/claimants are permitted to withdraw the amount deposited by the State in this Court.

(vi) No order as to costs.

MANJUSHA DESHPANDE, J. **NITIN JAMDAR, J.**

CHAITANYA ASHOK JADHAV

Digitally signed by CHAITANYA ASHOK JADHAV
Date: 2024.02.09 18:27:04 +0530