

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1111 OF 2016

Smt. Bhikubai Suvalal Tapade
Since deceased through legal heirs
Gokul Suwalal Tapadia ..Appellant

Versus

The Special Land Acquisition Officer,
State of Maharashtra, Nashik ..Respondents

WITH

FIRST APPEAL NO.1273 OF 2016

Smt. Shivpyaribai Mishrilal Tapade ..Appellant

Versus

The Special Land Acquisition Officer,
State of Maharashtra, Nashik ..Respondents

WITH

FIRST APPEAL NO.1274 OF 2016

Smt. Kamaladevi Badrinarayan Tapade ..Appellant

Versus

The Special Land Acquisition Officer,
State of Maharashtra, Nashik ..Respondents

WITH

FIRST APPEAL NO.1275 OF 2016

Smt. Premalata Shriniwas Tapade ..Appellant

Versus

The Special Land Acquisition Officer,
State of Maharashtra, Nashik ..Respondents

Ms. Rukmini Khairnar i/by P. N. Joshi, for the Appellant in All Appeals.

Mr. A. R. Patil, AGP for the Respondent/State.

CORAM : KISHORE C. SANT, J.

**RESERVED ON :- 16th APRIL, 2024
PRONOUNCED ON :- 9th MAY, 2024**

JUDGMENT

1. All these Appeals are arising out of a common judgment and order dated 14.10.1997 passed by learned Joint District Judge, Nashik, rejecting land acquisition references preferred by these Appellants under Section 18 of the Land Acquisition Act, which are as under :-

First Appeal No.1111 of 2016 arising out of LAR No.411 of 1990.

First Appeal No.1273 of 2016 arising out of LAR No.405 of 1990.

First Appeal No.1274 of 2016 arising out of LAR No.410 of 1990.

First Appeal No.1275 of 2016 arising out of LAR No.409 of 1990.

2. The facts in short giving rise to the present Appeals are as under :-

The Respondent/State passed an award in LAQ Case No.4/87 dated 20.02.1989, pursuant to which the plots of the present claimants bearing Nos.12 to 18 out of Survey No.6/1A i.e. CTS No.731/A situated at Malegaon Camp, District Nashik came to be acquired for the purpose of construction of office building of the Divisional Forest Officer. A Notification under Section 6 of the

Maharashtra Regional Town Planning Act r/w Section 6 of the Land Acquisition Act came to be published in Gazette on 26.09.1987. After calling for the objections and considering the objections, the award was declared on 22.09.1989. The SLAO awarded the compensation at the rate of Rs.120/- per sq.mtrs. The claimants accepted the amount of compensation under protest on 05.10.1989 and preferred references. Learned District Judge considered total seven references together, out of which, four claimants in four references have approached this Court.

3. All these Appellants have approached this Court mainly on the ground that the learned Reference Court has failed to consider the evidence on record. The rate in the vicinity of the acquired land was around Rs.700/- per sq.mtrs. The plots were from layout plan sanctioned by the Planning Department of the Municipal Authority. In support of their claim, they examined one of the claimants in LAR No.407 of 1990, namely Shrikisan Suvalal Tapade, who deposed on behalf of all the claimants. He gave an admission that the market rate was Rs.70 - 75/- per sq.mtrs. at the time of acquisition and that there was no NA permission to the acquired land till the date of possession. The next witness Harilal Bhilasheth Asmar was examined at Exh.13. This witness had purchased plot No.43 admeasuring 464.5 sq.mtrs. from one Mrs. Mandabai Chinda Patil for Rs.3,00,000/- by way of sale-deed dated 12.06.1986. The plot is from the same survey number i.e. Survey No.6/1A. He has

admitted that he had purchased the plot with the amenities like road. He further had admitted that he purchased the said land by paying more consideration as he wanted to put the said plot for commercial use. Considering the consideration for the plot, the rate is around Rs.464.5/- per sq.mtrs. The claimants also relied upon the certified copy of the judgment and award passed by the Reference Court in LR No.126 of 1986. That award was in respect of the land from CTS No.1499 that was acquired for road widening. The said land was admeasuring 120 sq.mtrs. in thickly commercial area. The said land was NA land. The claimants have also relied upon an award passed in LR No.188 of 1988. In the said Land Reference, a sale instance that was executed was of plot No.60 from Survey No.13 on 22.07.1982 for Rs.20,000/- where the rate was granted of Rs.85/- per sq.mtrs.

4. Learned District Judge considered this evidence and appreciated as above. In respect of the evidence of the claimant, namely Shrikishan Suvalal Tapade is concerned, the Court has observed that the admission of the witness for the market rate was Rs.70 - 75/- sq.mtrs. was fatal. The sale instance dated 12.06.1986 though is from the same survey number, however, the location of that plot is abutting the road and there are eight plots in between the plots of the claimants and the plot of Harilal. It was thus held that the said sale instance is of no use to the present claimants.

5. The judgment in Land Reference No.126 of 1986 was accepted as in that judgment the sale instance was plot admeasuring 120 sq.mtrs. from CTS No.1499 and the same was acquired for widening of the road in thickly commercial area, which was converted into NA, whereas the land in the present references had no NA potentiality and land was converted into one agricultural land. It was observed that the distance is 1000 meters.

6. Learned Reference Court thus did not accept the said evidence for the reasons stated above and rejected the references.

7. Learned advocate for the Appellants vehemently argued the Appeals stating that the learned Court has failed to appreciate the evidence placed before it. Claimants have clearly led the evidence of Shrikisan Suvalal Tapade. The Court has accepted solitary admission and has taken it to be a fatal and discarded his evidence. The sale instance dated 12.06.1986 ought to have been accepted, as the sale instance was from the same survey number from the Appellants lands were acquired. The location of the plots were in the same layout, therefore, no different rate can be given. The Court has committed error in treating both the plots to be different. For the purpose of acquisition, the SLAO has to grant same rate for the entire layout. There cannot be any discrimination. So far as the award in LAR No.126 of 1986 is concerned, it is submitted that the Court could not have granted rate as per the said award,

however, that certain issue could have been considered while coming to conclusion about fair and reasonable compensation in the present claims. Learned Court has committed error in totally disallowing the claim on the ground that the land in LAR No.126 of 1986 was converted into NA, however, at the same time, though the Court has accepted that the land of the claimants was also having NA potential, rate could have been enhanced with some reasonable deductions.

8. Learned AGP opposed the Appeals stating that the Reference Court has rightly come to a conclusion that there is no sufficient evidence on record to allow the claims. The Court has rightly distinguished the facts in other claims and the present claimants. The Court has rightly held that the sale instance dated 12.06.1986 is not applicable in the present case.

9. Before considering submission, this Court has to keep in mind two judgments i.e. i) ***Mohammad Yusuf Vs. State of Haryana (2018) 16 SCC 105*** & ii) ***Ebrahim Akbaralli Vs. The District Collector, Pandharpur Division (1969) 3 SCC 735***.

10. After hearing the parties, this Court has to consider as to whether the Court has rightly discarded the evidence of the claims in this case. While discarding the evidence of Shrikisan Suvalal Tapade is concerned, only admission is considered by the Court.

This Court finds that it is hyper technical approach. The Court has to consider that while considering the aspect of grant of compensation, it is the duty of the Court to consider just and fair compensation. The Court certainly cannot grant minimum rate that was on record. This was specially in view of the fact that the sale instance dated 12.06.1986 is in respect of the plot in the same survey number, where the rate is shown to be around Rs.464/- sq.mtrs. In the present case, rate granted is only Rs.120/- per sq.mtrs., which is lesser by about five times. Certainly this much difference cannot be there when both the lands are from the same survey number. The Court could have deducted some amount from the said sale instance towards development charges, NA charges etc. So far as the judgment in LR No.126 of 1986 is concerned, the Court has totally ignored that evidence. The Court has accepted that the lands of the claimants were having NA potentiality and were not converted into NA. It was for the Court to consider that the lands of the claimants are the plots in a sanctioned layout and therefore would fetch the amount on square meter basis in view of judgment in the case of *Ebrahim Akbaralli*. The said plots cannot be taken to be agricultural land, if at all the Court could have granted so lesser rate while considering the amount of compensation in respect of present land. The judgment and award in LR No.188 of 1988 may not have been considered by the Court, as there the sale instance was of 1982. However, the fact remains that in the present case, the award was published in 1989. Certainly, there would be increase in

the value of the land from 1982 till 1989. This aspect is not also considered. This Court while determining value of land relies upon the judgment in the case of *Mohammad Yusuf*.

11. After considering all these factors, the Court feels that in any case, the Reference Court ought to have accepted the sale instance of plot in the same survey number, wherein the rate was shown to be around Rs.464/- per sq.mtrs. Taking that the said sale instance was in respect of the land in the same area and there was gap of eight plots in between, it would be proper to deduct 25% of the value. Considering overall aspect, the rate should have been Rs.464/- per sq.mtrs. This Court thus holds that the learned SLAO ought to have granted the compensation at the rate of Rs.364/- per sq.mtrs.

12. In view of the discussion, all the Appeals stand allowed.

13. The SLAO to pass fresh award by granting compensation at the rate of Rs.364/- per sq.mtrs.

14. Needless to say that all the benefits shall be calculated from the date of actual award i.e. 1989.

[KISHORE C. SANT, J.]