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

FIRST APPEAL NO.76/2007

1. Madhusudan Vasantaji Kariya, aged about 67 years, Agriculturist.

2. Arunkumar Vasantaji Kariya aged about 62 years, Agriculturist.

3. Waman Keshaorao Keote (Since dead) through L.R.'s

3a) Shakuntala wd/o Wamanrao Keote, Aged about 75 years,

3b) Anil Wamanrao Keote, Aged about 55 years,

3c) Vinod Wamanrao Keote (dead) through his L.R's

i) Smt. Sunita Vinod Keote, aged 48 years,

ii) Namrata Vinod Keote, aged: 20 years,

iii) Shrikant Vinod Keote, Aged: 18 years,

3d) Vandana Arunrao Tikhe, Aged: Major,

3e) Warsha Bhaskar Tikhe, Aged: Major,

3f) Sushma Shekhar Khasale, Aged: Major,

3g) Shyam Wamanrao Keote, Aged : Major,

All r/o. Kalamb, Tq. Kalamb, District Yavatmal.

4. Murlidhar Eknath Dehankar,
Aged about 56 years, Agriculturist.

5. Prabhakar Bhomaji Thakare
(Dead thr. LRs)

1) Smt. Lalita Prabhakarrao Thakre,
aged about 70 years,

2) Charudatta Prabhakarrao Thakre,
aged 55 years,

3) Vilas Prabhakarrao Thakre,
aged 53 years,

4) Subha Pradiprao Deshmukh,
aged 50 years,

5) Vibha Avinashrao More,
aged 45 years,

All R/o. Kalamb, Tah. Kalamb,
District Yavatmal.

6. Chintaman Jarbaji Shende,
aged about 55 years,
Agriculturist, r/o Tirzada
Tq. Kalamb, District Yavatmal.

7. Suresh Wamanrao Kadam
(Since dead) through L.R.'s

7a) Smt. Suchita Suresh Kadam,
Aged about 60 years,

7b) Archana Narendra Bhoyar,
Aged about 42 years,

7c) Ravindra Suresh Kadam,
Aged 39 years,

7d) Rajendra Suresh Kadam,
Aged 37 years,

All R/o Kotha, Tq. Kalamb,
District Yavatmal.

8. Narayan Wamanrao Bidkar,
aged about 65 years, Agriculturist,
r/o Takalgaon,Tq. Babhulgaon,
Distt. Yavatmal.

8a) Rajendra s/o Narayan Bidkar,
Aged about 56 years,
Occupation Agriculturist,
R/o Antargaon, Tah. Babhulgaon,
District Yavatmal.

9. Krushna Mahadeo Tone
(Dead), represented by L.R.s

i) Smt Kusumbai wd/o
Krushnarao Tone (Dead)

ii) Rajendra Krushnarao Tone,
aged about 46 years,
Agriculturist.

iii) Vijay Krushnarao Tone,
aged about 35 years,
Agriculturist

iv) Subhash Krushnarao Tone,
aged about 41 years,
Agriculturist.

All r/o Ashti, Tq. Kalamb,
District Yavatmal.

v) Sau. Nanda Babarao
Fulkar, aged major, R/o Mavlani,
Tq. Kalamb, Distt. Yavatmal.

vi) Sau. Chanda Sharadrao
Tikhe, aged 38 years, r/o Rani
Amravati, Tq. Babhulgaon,
Dist. Yavatmal. ... **APPELLANTS**

...VERSUS...

1. The State of Maharashtra,
through the Collector,
Yavatmal, Tq. & distt.
Yavatmal.

2. Sub Divisional Officer
and Land Acquisition
Officer, Yavatmal.

3. The Maharashtra Industrial
Development Corporation,
through its Chief Executive Officer,
having its Head Office at Mahakali Estate,
Andheri East, Mumbai, Regional Office
at Byepass Road, Amravati, Tq. &
Distt. Amravati. ...**RESPONDENTS**

Mr. R. K. Thakkar, Advocate for appellant.
Mrs. D. I. Charlewar, A.G.P. for respondent nos. 1 and 2.
Mr. M. M. Agnihotri, Advocate for respondent no.3.

CORAM:- ANIL L. PANSARE, J.
DATE OF RESERVING THE JUDGMENT : 06.03.2024
DATE OF PRONOUNCING THE JUDGMENT: 12.03.2024

JUDGMENT

1. Heard.

2. The appellants-original claimants are aggrieved by judgment and award dated 31.03.2006 passed by Civil Judge Senior Division, Yavatmal in Land Acquisition Case No.298/1997. The appellants were owners of land admeasuring 10.36 HR of Gat No. 760 of mouja Kalamb, District Yavatmal. The said land was acquired by the State Government for the purpose of development of small scale industries vide notification dated 22.03.1990, issued under Section 32(2) of the Maharashtra Industrial Development Act, 1961 (For short the, “Act”). The award was passed on

25.04.1995. The Land Acquisition Officer granted compensation at the rate of Rs.8,000/- per hectare. The claimants filed reference. The Reference Court enhanced the compensation to Rs.15,000/- per hectare. The claimants were not satisfied with the enhanced compensation, therefore, the present appeal.

3. Having heard both sides, the only point that arises for consideration is whether the appellants-claimants are entitled for further enhancement. The answer is in the negative, for the reasons to follow.

4. The Reference Court has considered the evidence and noted that the expert examined by the appellants will be of no assistance inasmuch as he visited the spot on 25.11.2005 i.e. after 15 years of acquisition proceedings. The expert opined that the land will fetch an amount of Rs.2000/- per square meter. To my mind, the developments noted by him in the inspection were insignificant.

5. It is important to note here that though the appellants have filed proceeding before the revenue authority for conversion of the land into non agricultural purpose, the land, however, was not converted as prayed. In fact, the application filed for such conversion came to be dismissed. Further, the evidence of

appellants indicate that the land was under cultivation and the appellants have taken crops of Udid and Moong. Thus, the expert's opinion, which is based on the development of area after 15 years of acquisition is not relevant and rightly ignored by the Reference Court.

6. So far as the assessment by sale comparison method is concerned, the Reference Court noted that most of sale instances relied upon by the appellants, were post the date of publication of notice under Section 32 (2) of the Act. The Reference Court found sale instances at Exh.-55 to be most relevant. The property sold was bearing field survey no. 779. It was sold for Rs.12,000/- per hectare. The sale instance is of the year 1991. The Reference Court noted that he did not find much price difference during the period of 1990-91 and the period when the award was passed. The Reference Court then noted that the land bearing survey No.779 is situated just behind the acquired property. The sale instance at Exh.-55 is land adjoining Rural Hospital, Kalamb. The court noted that the acquired land is situated in front of the sale instance quoted in Exh.-55 and accordingly assessed the value of the land at Rs.15,000/- per hectare.

7. Learned counsel for the appellants vehemently argued

that the acquired land had a potential of non agriculture use. He submits that though the application filed by the appellants for conversion of the land into non agriculture purpose has been dismissed, the fact remains that it had a potential to yield rates in square meters. He further submits that this fact is substantiated by the purpose of the acquisition. The land was acquired for development of small scale industries. According to him, this development will take place in area, pro the industrial development. Accordingly, he submitted that the acquired land ought to get Rs.7,50,000/- per hectare

8. As against, Mr. Agnihotri, learned counsel for respondent-MIDC, argued that the purpose of acquisition will not decide the potential use of the acquired land. He has invited my attention to the evidence of appellants-claimants, wherein the appellant admitted that he has purchased the suit land in the year 1984 for Rs.40,000/-. Thus, the land admeasuring about 11 hectare i.e. around 27 Acres was purchased for Rs.40,000/-. He submits that the meager consideration amount speaks volumes of potential use of the land. He submits that this being the best evidence for valuation of the land, should be taken into account. He has relied upon the judgment in the case of ***The Dollar Company, Madras vs. Collector of Madras, (1975) 2 SCC 730,***

wherein the Court held that one of the best evidences of the value of the property is the sale of the very property to which the claimant is a party. He then submits that the notification under Section 32 (2) of the Act was published on 22.03.1990. The appellant had purchased the land in 1984 i.e. six years prior to the date of notification. He has then referred to judgment in the case of ***General Manager, Oil and National Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and anr. (2008) 4 SCC 745***. The Supreme Court noted that in the case before it, the acquisition was in a rural area. There was no evidence of any out of ordinary development for increase in price in the area. The Supreme Court provided an escalation of 7.5% per annum of the year 1987 over the price of the property situated adjacent to the acquired land. This escalation was granted while answering the question whether in absence of any specific evidence regarding increase in price between 1987 and 1992, the only annual could not be assumed to be 10% p.a. Mr. Agnihotri, learned counsel contends that if 10% rise is to be assumed in the present case, even then the price of the land will not travel beyond what has been awarded by the Reference Court.

9. I do find substance in the contentions raised by Mr.Agnihotri. There is no evidence that during the period

between 1984 to 1990, there occurred out of ordinary development and/or significant increase in prices. In fact, the Reference Court noted that in the year 1991, the land bearing survey no.779, admeasuring 9.71 HR was sold for total consideration of Rs.1,20,000/- i.e. Rs.12,000/- per hectare (approximately) This sale instance was of 16.04.1991 i.e. subsequent to the notification issued under Section 32(2) of the Act. It is a common experience that next to the issuance of notification there is a boom in the market. There is thus every reason to believe that the sale instance at Exh.-55 is on the higher side. Despite such fact, the Reference Court has placed reliance upon this sale instance by noting the fact that there was no price difference in the market price at Kalamb during the relevant period. Thus, the Reference Court has awarded the best possible value to the acquired land.

10. The counsel for the appellants has relied upon judgment in the case of ***Mahesh Dattatray Thirthkar .Vs. State of Maharashtra, (2009) 11 SCC 141,*** wherein the Supreme Court noted the well settled proposition of law that the burden of proving the true market value of the acquired property is on the State that has acquired it for a particular purpose. In my view, this proposition of law has been consideration by the Reference Court

and, therefore, it has enhanced the rate from Rs.8,000/- to Rs.15,000/- because the State failed to award the fair market price to the appellants.

11. The counsel for the appellant has then relied upon the judgment in the case of ***Meharlal Khewaji Trust (Registered), Faridkot and Ors. Vs. State of Punjab and Ors.; (2012) 5 SCC 432,*** to contend that the sale transaction of the acquired property cannot be taken into consideration to decide the market value. He has invited my attention to paragraph 18, the careful reading of which indicates something which is contrary to the submissions made by the learned counsel for the appellants. Paragraph 18 reads thus:

> *"18. Based on the above principles, the market value as per Ext.A-61 dated 22.07.1977 was Rs. 1,39,130.43 per acre (approx. Rs.1.40 lakhs per acre). The said sale deed was two and a half years prior in time than Section 4(1) notification dated 22.12.1979. There is no reason to eschew the above sale transaction. It is also pointed out that the lands covered under Ext.A-61 are nearer to the lands of the appellants under acquisition."*

12. Thus, the Apex Court held that there is no reason to eschew the sale transaction that occurred 2 ½ years prior to Section 4(1) notification. Thus, what the Supreme Court has stated is that there is no reason to eschew the sale instance. The

Court has not proposed to ignore the sale instance. In fact, the judgment does not deal with the issue of consideration of sale price of acquired land. It has only reiterated the settled proposition of law that the sale instance in close proximity, just prior to the publication of notification under Section 4(1) of the Land Acquisition Act, 1894 is one of the recognized methods of calculating the market price of the land. It appears that the period of 2 ½ years was found to be in close proximity in the peculiar facts of the said case.

13. Thus, for the reasons stated hereinabove, I do not find any error committed by the Reference Court in awarding Rs.15,000/- per hectare as fair compensation of the acquired land. There is no merit in the appeal. The same is dismissed. No order as to costs.

(Anil L. Pansare, J.)

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