

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

FIRST APPEAL NO.548 OF 2017



Municipal Corporation, Aurangabad
Through its Authorized Officer,
Aurangabad

... Appellant
(Original Respondent No.1)

Versus

1. Padmaraj s/o. Dulichand Surana
Died Through LRs

1/1. Kushal s/o. Padmaraj Surana,
Age : 44 years, Occu : Business,

1/2. Ajeet s/o. Padmaraj Surana,
Age : 42 Years, occu : Business,

1/3. Kaushik s/o. Padmaraj Surana
Age : 39 years, Occu : Business,

1/4. Shobha wd/o. Padmaraj Surana,
Age : 63 Years, Occu : Household,

Above all R/o. Rangal Galli,
Kushal Niwas, Aurangabad.

2. The State of Maharashtra
Through Special Land Acquisition Officer,
(Special Unit) Aurangabad

... Respondents

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Shri. Anand P. Bhandari, Advocate for the Appellant

Shri. Shaikh Kayyum Najir, Advocate for the Respondents No.1/1 to 1/4.

Shri. D. J. Patil, AGP for the Respondent No.2 / Sate.

.....

AND

FIRST APPEAL NO.1333 OF 2017

Padmaraj s/o. Dulichand Surana (Died)
Through LRs :-

A. Kushal s/o. Padmaraj Surana,

Age : 44 years, Occu : Business,

B. Ajeet s/o. Padmaraj Surana,
Age : 42 Years, Occu : Business,

C. Kaushik s/o. Padmaraj Surana
Age : 39 years, Occu : Business,

D. Shobha wd/o. Padmaraj Surana,
Age : 63 Years, Occu : Household,

All above R/o. Rangar Galli,
Kushal Niwas, Aurangabad.

... Appellants
(Orig. Claimants)

Versus

1. State of Maharashtra,
Through Special Land Acquisition Officer,
(Special Unit), Aurangabad.

2. The Commissioner, ... Respondents
Municipal Corporation, Aurangabad. (Orig. Respondents)

....

Shri. Shaikh Kayyum Najir, Advocate for the Appellants

Shri. D. J. Patil, AGP for the Respondent No.1 / State.

Shri. Anand P. Bhandari, Advocate for the Respondent No.2

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CORAM : NEERAJ P. DHOTE, J.

RESERVED ON : 18.03.2025

PRONOUNCED ON : 02.04.2025

COMMON JUDGMENT :-

1. Both the Appeals filed under Section 54 of the Land Acquisition Act (hereinafter referred to as the 'LA Act') are directed against the Judgment and Order / Award passed by the learned Civil Judge, Senior Division (Corporation Court), Aurangabad in Land Acquisition Reference (hereinafter for short, 'LAR') No.88/2010

(Old LAR No.152/06). The said Reference was filed by the Original Claimant, namely, Padmaraj s/o. Dulichand Surana (Appellant in First Appeal No. 1333 of 2017) wherein State of Maharashtra was Respondent No.1 and Municipal Corporation, Aurangabad (Acquiring Body) was Respondent No.2.

2. The facts, giving rise to the present Appeals, are as under :

2A. The Land Acquisition Proceedings were initiated for the purpose of broadening the road connecting City Police Station and Kumbharwad corner (Rangar Galli), Aurangabad pursuant to the Development Plan. The Special Land Acquisition Officer (in short, 'Spl. LAO') issued Notification under Section 6 of the LA Act by publication on 08.10.1998. The land of the Claimant admeasuring 15.10 Sq. Meters out of total area admeasuring 106.3 Sq. Meters from C.T.S. No.4096 came to be acquired for the said purpose. The Spl. LAO declared the Award under Section 11 of the LA Act on 07.03.2006 and granted compensation @ Rs.7000/- (Rs. Seven Thousand) per Sq. Meter to the Claimant.

2B. The Claimant, being not satisfied with the compensation granted by the Spl. LAO, preferred the Reference under Section 18 of the LA Act for enhanced compensation. According to the Claimant, the Award passed by the Spl. LAO was passed without following principles of law

and undervalued the acquired land and granted inadequate compensation. The acquired land was situated in the heart of the city. The Claimant was running the shop of selling Tobacco and *Jarda* under the name and style as 'A-1 ZARDA STORE'. The sale transaction, which took place in respect of the land situated in the vicinity of the acquired land, was not considered and the Claimant was liable for enhanced compensation @ Rs.25,000/- (Rs. Twenty Five Thousand) per Sq. Meter and consequently was entitled to receive Rs.3,00,000/- (Rs. Three Lakh) as the compensation towards the acquired land. In support of the reference, the Claimant relied on the sale instance in respect of the house property situated at City Chowk, Aurangabad.

2C. The reference was resisted by the Acquiring Body / State by filing Written-statement at Exh.5. The claim for enhanced compensation was denied. It was contended that the Spl. LAO followed all the procedure laid down in the LA Act while acquiring the land of the Claimant. The Award was passed by the Spl. LAO after taking into consideration the sale instances of the locality and after considering topography of the acquired land and appropriate compensation was granted to the Claimant.

2D. On the basis of the pleadings, the learned Reference Court framed the Issues at Exh.9, which reads as under :

“ISSUES

- 1] *Whether claimant prove that market value of the land acquired by the SLAO is incorrect and improper ?*
- 2] *Whether claimant entitled for enhanced compensation as prayed along with solatium and interest as prayed ?*
- 3] *Whether reference is within limitation ?*
- 4] *What order ?”*

2E. The Claimant examined himself by filing evidence Affidavit at Exh.13. The copy of Sale-deed, the copy of notice issued under Section 12 (2) of the LA Act and the copy of the Objection Receipt by the Claimant during the acquisition proceedings were brought on record *vide* Exhs.21, 22 and 23, respectively. The Claimant was cross-examined on behalf of the Respondents. The final Award passed by the Spl. LAO was brought on record at Exh.29. The learned Reference Court on considering the evidence available on record passed the impugned Judgment and Award. The Claimant challenged the same for enhanced compensation and the Acquiring Body challenged the same for enhancing the compensation by the learned Reference Court.

3. Heard the learned Advocate for the Claimants, the learned Advocate for the Acquiring Body and the learned AGP for the State. Scrutinized the evidence available on record.

4. It is submitted by the learned Advocate for the Claimants that Section 6 Notification was issued on 08.10.1998 and the possession of the land was taken on 06.05.2006. The sale instance, which was of pre-notification date in respect of the land situated within the vicinity of the acquired land, was brought on record and therefore, the Claimant was entitled for the enhanced compensation to the tune of Rs.15,000/- (Rs. Fifteen Thousand) and more per Square Meter. The learned Reference Court did not consider the evidence available on record and granted the compensation to the tune of Rs.10,000/- (Rs. Ten Thousand) per Sq. Meter which was inadequate in the light of the Judgments in the case of **Major General Kapil Mehra and Others vs. Union of India and another**, [2015 (4) Mh.L.J.] and in the case of **Administrator, City and Industrial Development Corporation (CIDCO), Aurangabad vs. Padmakar s/o. Haribhau Muley and Others**, [2020 (3) Mh.L.J.]. The Claimant's Appeal be allowed and the Appeal filed by the Acquiring Body be dismissed.

5. It is submitted by the learned Advocate for the Acquiring Body that, though the Claimants claimed enhanced compensation due to loss of business, no independent evidence was placed before the learned Reference Court in support of the claim for enhanced compensation. The sale instance, which was relied by the Claimants before the learned Reference Court was in respect of constructed house and the property

acquired in the case at hand was the open land. The Spl. LAO has granted appropriate compensation which was increased by the learned Reference Court. The Appeal of the acquiring body be allowed and the compensation awarded towards loss of business be set aside. In support of his contention, he cited the Judgment in **Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and Anr**, AIR 1988 SC 1652.

6. In **Chimanlal Hargovinddas** (*supra*) which were the Appeals pertaining to the land acquisition proceedings and the controversy was in respect of the valuation of the lands under acquisition. Certain factors are enumerated to be kept on the mental screen while dealing with the matters in respect of the valuation and compensation in the land acquisition proceedings. To refer the same, in short, they are, *Reference under Section 18 of the LA Act is not an Appeal against the Award, the Award of the Land Acquisition Officer is merely an offer, the Reference is to be treated as the original proceedings and the market value has to be determined afresh on the basis of material available on record, the Claimant was in the position of the plaintiff who has to show that the price offered for his land in the Award was inadequate on the basis of materials available before the Court, the market value of land under Acquisition has to be determined as on the date of publication of the Notification under Section 4 of the LA Act, the determination of valuation is to be worked out as if the valuer is hypothetical purchaser*

willing to purchase the land from the open market and prepared to pay a reasonable price as on that day and it has to be assumed that the vendor is willing to sell the land at a reasonable price, the Court has to correlate the market value reflected in the most comparable instance which provides index of market value, only genuine instances have to be taken into account, even post notification instances can be taken into account, if they are very proximate, genuine and the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects, the most comparable instances are to be identified on two aspects: (i) Proximity from time angle, (ii) Proximity from situation angle, the balance sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do, the market value of the land under acquisition has thereafter to be deducted by loading the price reflected in the instance taken as the norm for plus factors and unloading it for minus factors, the exercise has to be undertaken in a common sense manner as a prudent man of the world of business would do, there cannot be any hard and fast or rigid rule and the evaluation of such factors depends on the facts of each case, every case must be dealt with on its facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

7. In **Major General Kapil Mehra** (*supra*), the factors to be kept in mind while fixing the market value of the acquired land are stated to be (a) *existing geographical situation of the land*; (b) *existing use of the land*; (c) *available advantages, like proximity to National or State Highway or road and/or developed area*, and (d) *market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land*. It is further observed that, *while checking comparable sales method of valuation of land for fixing the market value of the acquired land, the factors which are to be borne in mind were (1) when sale is within a reasonable time of the date of notification under Section 4(1), (2) It should be a bona fide transaction, (3) It should be of the land acquired or of the land adjacent to the land acquired; and it should possess similar advantages.*

8. In **Administrator, City and Industrial Development Corporation (CIDCO), Aurangabad** (*supra*), the aforesaid principles are reiterated.

9. Coming to the case on hand, there is no controversy in respect of the acquisition proceedings under which the extent of Claimant's land acquired and the acquired land was situated within the city having commercial value.

10. The Claimant, who was granted compensation @ Rs.7000/- (Rs. Seven Thousand) per Sq. Meter by the Spl. L.A.O, claimed enhanced compensation on the basis of the sale instance brought on record at Exh.21. The said sale instance was executed between the respective parties on 29.06.1998 in respect of CTS No.4025 admeasuring 21.9 Sq. Meters having dwelling house, situated at City Chowk, Aurangabad. The total sale consideration in the sale deed is shown as Rs.3,50,000/- (Rs. Three Lakh Fifty Thousand) which shows that the rate was Rs.15,982/- (Rs. Fifteen Thousand Nine Hundred Eighty Two) per Sq. Meter. Undoubtedly, the said sale instance was also considered by the Spl. LAO as seen from the observations made in the impugned Judgment and the contents in paragraph no.5 of the Award. The said sale instance was in respect of the land having dwelling house. It is nobodies case that the said sale instance was from the same land which was the subject matter at hand or of the adjacent land. From the evidence on record, it is seen that the said land which was the subject matter of Sale-deed at Exh.21 was around 1000 (one thousand) feet away from the land which is the subject matter of the present case and it was situated at City Chowk. So, it cannot be said that the said sale instance at Exh.21 was of comparable land. Therefore, not enhancing the compensation @ Rs.15,982/- (Rs. Fifteen Thousand Nine Hundred Eighty Two) per Sq. Meter by the learned Reference Court cannot be faulted. Considering all the relevant factors, enhanced compensation @

Rs.10,000/- (Rs. Ten Thousand) per Sq. Meter granted by the learned Reference Court appears just and proper.

11. As regards the compensation awarded by the learned Reference Court towards loss of business to the tune of Rs.28,200/- (Rs. Twenty Eight Thousand Two Hundred), the same also does not call for any interference for more than one reasons. Admittedly, as seen from the evidence of the Claimant, no documentary evidence was brought on record in respect of his business of *Jarda* on the land, the part of which was acquired. Undoubtedly, in the reference submitted by the Claimant he made necessary averments in that regard i.e. running of the Tobacco and *Jarda* shop on the land, he claimed Rs.20,200/- towards loss of business. Though the Written-statement was submitted by the State at Exh.5, the same was to the extent that the Spl. L.A.O. has followed the necessary procedure and law laid down under the LA Act and considered all the aspects and awarded appropriate compensation to the Claimant, the said Written-statement nowhere denied the contentions raised by the Claimant in the Reference. By virtue of provisions of Section 53 of the Land Acquisition Act, the provisions of the Code of Civil Procedure, 1908 are made applicable to all the proceedings before the Court under the LA Act. The learned Reference Court has rightly observed that the oral as well as documentary evidence of the Claimant remained unchallenged. There is no controversy between both sides

that commercial activity was being carried by the Claimant on the part of the CTS No.4096 of the Claimant. Under such circumstances, grant of compensation towards business loss by the learned Reference Court cannot be faulted.

12. On evaluation of the evidence and material available on record, it is clear that the impugned Judgment and Award is passed on the basis of the evidence available on record. In the backdrop of the above observations, no interference is warranted in the impugned Judgment and Award passed by the learned Reference Court on any count. Thus, both Appeals deserve dismissal and hence the following order :-

ORDER

- (i) First Appeal No.548 of 2017 is dismissed.
- (ii) First Appeal No.1333 of 2017 is dismissed.
- (iii) Record and Proceedings be sent back.
- (iv) The amount deposited by the Acquiring Body be disbursed to the Claimant with interest accrued thereon, if not withdrawn by the Claimant earlier.

(NEERAJ P. DHOTE, J.)

GGP