

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

FIRST APPEAL NO.549 OF 2017



Municipal Corporation, Aurangabad
Through its Authorized Officer,
Aurangabad

... Appellant

Versus

1. Chandrakant Devidasrao Lakhase (Died)
Kamalbai w/o. Chandrakant Lakhase
Died Through LRs

1/1. Ashok s/o. Chandrakant Lakhase
Age : 52 years, Occu : Business,

1/2. Nitin s/o. Chandrakant Lakhase
Age : 48 years, Occu : Busienss,

1/3. Sachin s/o. Chandrakant Lakhase
Age : 44 years, occu : Business,

Above all R/o. Rangar Galli, Aurangabad

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

... Respondents

.....

Shri. Anand P. Bhandari, Advocate for the Appellant

Shri. Shaikh Kayyum Najir, Advocate for Respondent Nos.1-1 to 1-3

Shri. D. J. Patil, AGP for Respondent No.2

.....

AND

FIRST APPEAL NO.1334 OF 2017

Chandrakant s/o. Devidasrao Lakhase (Died),
Kamalbai w/o. Chandrakant Lakhase (Died)
Through LRs :-

1-A. Ashok s/o. Chandrakant Lakhase,
Age : 52 years, Occu : Business,

1-B. Nitin s/o. Chandrakant Lakhase,
Age : 48 years, Occu : Business,

1-C. Sachin s/o. Chandrakant Lakhase,
Age : 44 years, Occu : Business,
R/o. Rangar Galli, 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 Respondent No.1

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

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CORAM : NEERAJ P. DHOTE, J.

RESERVED ON : 18.03.2025

PRONOUNCED ON : 02.04.2025

COMMON JUDGMENT :-

. 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 Award dated 31.08.2016 passed by the learned Civil Judge, Senior Division (Corporation Court), Aurangabad (hereinafter referred to as the 'Reference Court') in Land Acquisition Reference (hereinafter for short, 'LAR') No.89/2010 (Old LAR No.153/06). The said Reference was filed by the Original Claimant, namely, Chandrakant Devidasrao Lakhase (Appellant in First Appeal No. 1334 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 35.70 Sq. Meters from C.T.S. No.4095 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 awarded 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 sarees under the name and style as 'New Apana Saree'. The sale transaction, which took place

in respect of the land situated within the vicinity of the acquired land, was not considered and the Claimant was entitled for enhanced compensation @ Rs.25,000/- (Rs. Twenty Five Thousand) per Sq. Meter, and @ Rs.6,000/- (Rs. Six Thousand) per Sq. Meter towards built up area and loss of business amounting to Rs.52,549/- (Rs.Fifty Two Thousand Five Hundred Forty Nine) and consequently was entitled to receive Rs.11,59,249/- (Rs.Eleven Lakh Fifty Nine Thousand Two Hundred Forty Nine) as the compensation towards the acquisition. 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.7. 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 from the locality and after considering the 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 claimants prove that market value of the land acquired by the SLAO is incorrect and improper ?*
- 2] *Whether claimants 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.18. The copy of notice issued under Section 12 (2) of the LA Act, copy of C.C. and copy of sale-deed dated 29.06.1998 were brought on record *vide* Exhs.23, 24 and 25, 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.31. 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 Claimant, 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 Claimant that Section 6 Notification was issued on 08.10.1998 and final Award

was passed on 07.03.2006. 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 and the Claimant's Appeal be allowed and the Appeal filed by the Acquiring Body be dismissed. In support of the contention, reliance is placed on the Judgments in **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.].

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 Claimant 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 and the Appeal filed by the Claimant be dismissed. In support of his contention, reliance is placed on the Judgment in **Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and Anr**, AIR 1988 SC 1652.

6. The Judgments referred by both sides are considered before advertng to the facts and evidence in the case on hand. In **Chimanlal Hargovinddas** (*supra*) which were the Appeals pertaining to the land acquisition proceedings, the controversy was in respect of 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 some part of Claimant's land came to be 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.25. 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 transaction took place @ 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. Undisputedly, 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.25 was 1000 (one thousand) feet away from the Claimant's land and it was situated at the City Chowk. From the cross-examination of the Claimant, it is seen that, the acquired land was in Rangar Galli on Hingoli Mata Road. It has come in his cross-examination that during the acquisition proceedings, one sale-deed was executed in respect of the land next to the acquired land. However, copy of the said sale-deed was

not brought on record by the Claimant for the reasons best known to him. Therefore, adverse inference can be drawn that it was not favourable to the Claimant for enhanced compensation. Suggestion was given in the cross-examination that the compensation was granted by considering the sale-deeds of the nearby lands and taking into consideration the market rate. It is further admitted in the cross-examination that no documents were submitted to show the income of Rs.35,000/- (Rs.Thirty Five Thousand) per month towards rent of the shops of the acquired land. So, it cannot be said that the said sale instance at Exh.25 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 awarded by the learned Reference Court appears just and proper.

11. The another aspect is in respect of the construction cost of the built up area on the part of the acquired land. There is no dispute that the Spl. LAO has awarded Rs.1,09,349/- (Rs. One Lakh Nine Thousand Three Hundred Forty Nine) towards the construction of built up area. In his cross-examination the Claimant admitted that he had not filed the documents to show that there was built up area / construction on the entire acquired land. Suggestion is given that since no

construction was existing on the entire acquired land, the documents are not filed. Under such circumstances, not enhancing the compensation towards built up area, by the learned Reference Court, cannot be faulted.

12. As regards the compensation awarded by the learned Reference Court towards loss of business to the tune of Rs.52,549/- (Rs. Fifty Two Thousand Five Hundred Forty Nine), 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 Saree on the acquired land. Undoubtedly, in the Reference submitted by the Claimant he made necessary averments in that regard i.e. running of the Saree Shop on the land and claimed Rs.52,549/- towards loss of business. Though the Written-statement was submitted by the State at Exh.7, 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. Needless to state that 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.4095 of the Claimant. Under such circumstances, awarding compensation towards business loss by the learned Reference Court cannot be faulted.

13. 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 pleadings and 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.549 of 2017 is dismissed.
- (ii) First Appeal No.1334 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.)