2025:BHC-AUG:37192

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2506 OF 2023

MHATARJI EKNATH NAVPUTE (DIED) THR LRS. NAMDEV MHATARJI NAVPUTE AND ANR
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR, AURANGABAD AND ORS

WITH

FIRST APPEAL NO. 2507 OF 2023

JAGANNATH ASARAJI NAVPUTE
VERSUS
THE STATE OF MAHARASHTRA, THROUGH COLLECTOR, AURANGABAD AND ORS

WITH

FIRST APPEAL NO. 2508 OF 2023

GANGUBAI MURLIDHAR KHRISAGAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR, AURANGABAD AND ORS

WITH

FIRST APPEAL NO. 2509 OF 2023

GOVIND BAJIRAO NAVPUTE AND ANR
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE COLLECTOR AURANGABAD AND ORS

WITH

FIRST APPEAL NO. 2510 OF 2023

SAKHARAM ASARAJI NAVPUTE
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE COLLECTOR AURANGABAD AND ORS

WITH

FIRST APPEAL NO. 2511 OF 2023

KADUBA DHONDIBA GAJRE
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE COLLECTOR AURANGABAD AND ORS

...
Advocate for Appellants in all : Mr. S. G. Bhalerao.
AGPs for Respondent/s-State : Mrs. M. N. Ghanekar, Mr. S. V. Hange, respectively.
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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 19.12.2025
PRONOUNCED ON : 23.12.2025

FINAL ORDER :-

1. Heard both sides finally with their consent.

2. The appellants/original claimants have preferred these appeals for the enhancement of the compensation, being aggrieved by judgment and award passed by Reference Court.

3. The acquisition in question is for widening of Chikhalthana-Savangi diversion road. The notification under Section 4 was issued on 08.09.1998. Award was passed on 05.02.2002. S.L.A.O. fixed the rate of Rs.4,000/- per R. The demand of the appellants was for Rs.25,000/- per R. Hence, they preferred the references. By the impugned judgment,

Reference Court fixed the rate of Rs.14,400/- per R.

4. Learned counsel for the appellants Mr. Bhalerao submits that from the same village, land of Raisuddin S/o Kazi Kayamuddin was acquired for self-same purpose. He had preferred LAR.No.461 of 2007 which was decided on 02.05.2019 awarding rate of Rs.21,600/- per R., considering it to be a dry land. The acquiring body did not prefer appeal hence, on the ground of parity rate of Rs.21,600/- per R. is claimed by the appellants. The Reference Court committed perversity in giving differential treatment to the appellants treating the land as non agricultural and deducting 1/3rd for development charges. It is further submitted that while awarding interest under Section 28 and 34 of the Act there is absurdity. It is submitted that the respondents are guilty of pick and choose method. Appellants are entitled to the enhancement to the tune of Rs.21,600/- per R.

5. Per contra learned AGPs would submit that the classification of the land Gut No.370 and 315 is different. The rate of ready reckoner for Gut No.370 in the matter of Raisuddin is higher than the present matter. In case of

Raisuddin in LAR.No.461 of 2007 the claimant/s had claimed it to be irrigated land but it was treated to be dry land. The facts situation is different in the present matter. It is further submitted that appellants have come up with a specific plea that land under acquisition has N.A. potential and therefore, Reference Court is justified in deducting 1/3rd development charges. It is submitted that appellants did not produce map on record showing typography of land under acquisition and other lands. It is submitted that in view of the policy of the Government and as the enhancement by the Reference Court was within four times there felt no necessity to prefer appeal.

6. Appellants have placed on record letter dated 20.12.2023 and a judgment dated 02.05.2019 passed in LAR.No.461 of 2007 in the matter of Raisuddin S/o Kazi Kayamuddin Vs. State of Maharashtra and another by the Reference Court.

7. Having heard both sides at length what needs to be decided is as to whether any development charges need to be deducted from the valuation of the land in question.

8. Learned counsel for the appellant has strongly relied

upon the judgment dated 02.05.2019 passed in LAR No.461 of 2007. A copy of the judgment produced on record shows that 51 R. of land Gut No.370 was acquired for the self-same purpose. The SLAO granted awarded rate of Rs.5,950/- per R. which was enhanced by the reference Court to Rs.21,600/- per R. Relying on sale instance dated 05.09.1996 the rate of Rs.18,000/- per R. was fixed. In the present matter also, identical sale instance at Exh.43 has been relied upon by the appellants. The grievance of the appellants is that 1/3rd amount was deducted towards development charges, thereby reducing the rate to Rs.12,000/- per R. Then after addition of escalation of 20% rate is fixed at Rs.14,400/- per R.

9. In the present case, the reference Court has recorded that land in sale exemplar, Exh.43, was N.A., which is factually incorrect. The appellants' 48 R of Gut No.315 has been acquired. The land acquired in LAR No.461 of 2007 as well as sale deed Exh.43 show that those are agricultural land and then the rate was fixed.

10. I have gone through the pleadings in a reference petition, affidavit in lieu of examination-in-chief and the

material produced on record. It has been unequivocal case of the appellant that the land under acquisition is within the limits of municipal corporation. It is surrounded by developed industrial area. All the urban area facilities are available for the village Chikhalthana where the land is situated. It is a specific case of the appellants before the reference Court that in the village there are government offices, market place, educational institution as well as industrial area of MIDC comprising of the industrial setup in the village. The lands in the villages are stated to have converted into non agricultural purposes and sold by laying down the plots. It is specifically pleaded that the development plan is made applicable to the area in question.

11. The certificate issued by Talathi which is at Exh.42 shows that various lands of Chikhalthana village have been acquired for the diversion road of Harsul-Savangi including Gut No.315 of the appellant. It is the specific case of the appellant that despite having N.A. potential the land in question has been treated to be a dry land. If this is the situation then the reference court is justifying in treating the land acquired as having N.A. potential.

12. The appellants did not produce any material on record to show the location of land Gut No.315 and Gut No.370 which is subject matter of LAR.No.461 of 2007 wherein the rate of Rs.21,600/- per R. was fixed by the Reference Court. It was the duty of the appellant to produce map indicating locations of the land. The ready reckoner which is referred in the award discloses rate of Rs.5,950/- for land Gut No.370 whereas the rate of Gut No.315 is Rs.3990/-. There is every reason to believe that though lands Gut No.315 as well as 370 are located from the same village there is difference in the potential, nature of the land and the locations. I find that learned AGPs have rightly pointed out that the rate of Rs.21,600/- awarded to land in LAR.No.461 of 2007 cannot be made applicable to the present case.

13. Considering the nature of the land and its N.A. potential, it is necessary to deduct $1/3^{rd}$ charges. Unless and until the land is developed, the appellant would not have fetch proper market value. I do not find that there is any perversity or illegality in deducting $1/3^{rd}$ development charges by the Reference Court.

14. The appellants have relied on the judgment of ***Dyaneshwar Atmaram Babare Vs. The State of Maharashtra and others in FA.No.437 of 2025 and other connected matters, Kantabai Nandlal Ladda and others Vs. The State of Maharashtra and others in FA.No.1643 of 2022, Bhagaji Dagadu Bhangare Vs. The State of Maharashtra and others in FA.No.1472 of 2024 with connected matters, Union of India Vs. Bal Ram and another [(2010) 5 SCC 747], Vinisha Jitesh Tolani Vs. Jitesh Kishore Tolani [(2010) 5 SCC 748], Anil Kumar Soti and others Vs. State of Uttar Pradesh Through Collector, Bijnore [(2022) 2 SCC 268], Ali Mohammad Beigh and others Vs. State of Jammu and Kashmir [(2017) 4 SCC 717]*** and ***Union of India Vs. Harinder Pal Singh and others [AIR 2006 Supreme Court 447]***. I have gone through the ratio laid down in above judgments which cannot be disputed. In the present cases it has been disclosed that the land under acquisition is within corporation limits and the development plan is made applicable and therefore, the development charges are necessary to be deducted. There is similarity in lands in question. The judgments would not enure to the benefits of the petitioners.

15. Learned AGPs adverted my attention to the findings recorded in paragraph No.16 of LAR No.461 of 2007 wherein rate of Rs.21,600/- has been fixed. In that case the land was claimed to be Bagayat land by the claimant and it was held to be dry land because claimant was unable to prove it. In the case at hand the appellant is not claiming it to be a irrigated land however, claim is that it has N.A. potential and it is located in a developed area. The industrial and commercial activities are existing in the surrounding vicinity. If this is the situation then development charges are bound to be deducted.

16. Learned counsel for the appellants has relied on the letter dated 20.12.2023 by which the acquiring authority acquiesced with the rate fixed in LAR.No.461 of 2007 and did not prefer appeal. It is contended that the respondent is estopped from disputing the entitlement of the present appellants to the rate of Rs.21,600/- per R.

17. Learned AGPs have adverted my attention to law laid down by Supreme Court in the matter of ***Union of India Vs. Pramod Gupta (Dead) by L.Rs. and others ; (2005) 12 Supreme Court Cases 1***. The following are the relevant

paragraphs :

> *"26. Therefore, the contention that as the Union of India was a party to the said awards would not by itself be a ground to invoke the principles of res judicata and/ or estoppel. Despite such awards it may be open to the Union of India to question the entitlement of the claimants # Respondents to the amount of compensation and/ or the statutory limitations in respect thereof. It would also be open to it to raise other contentions relying on or on the basis of other materials brought on the records. It was also open to the Appellant to contend that the lands under acquisition are not similar to the lands in respect whereof judgments have been delivered. The area of the land, the nature thereof, advantages and disadvantages occurring therein amongst others would be relevant factors for determining the actual market value of the property although such judgments/ awards, if duly brought on records, as stated hereinbefore, would be admissible in evidence.*
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> *27. Even if the Union of India had not preferred any appeal against the said judgment and award; it would not be estopped and precluded from raising the said question in a different proceeding as in a given case it is permissible in law to do the same keeping in view larger public interest."*

18. In view of the principles laid down herein above, learned AGPs are right in contending that principles of estoppel cannot be made applicable because the land under acquisition is not similar to the land in LAR.No.461 of 2007. I am of the

considered view that considering advantages and disadvantages the reference court has rightly fixed the rate of Rs.14,400/- per R.

19. Learned AGPs have pointed out that the State did not prefer appeal against the judgment in LAR.No.461 of 2007. The rate of Rs.5,950/- was awarded by SLAO. The enhancement by the Reference Court in that matter was within four times and considering the policy the acquiring body did not prefer the appeal. There is no reason to discard the justification tendered by the respondents. I am of the considered view that there is no discrimination as the lands are not similar and the deduction of the development charges is justified in the present matters.

20. I do not find any illegality or perversity in the impugned judgment and award. The interest under Section 28 and 34 of the Act shall be payable as per law laid down in the judgment of Full Bench. All the appeals san merit. Therefore, I pass the following order :

ORDER

(i) All First appeals are dismissed.

(ii) It is clarified that interest under Section 28 and 34 of the Act shall be payable as per the judgment of Full Bench in case of ***State of Maharashtra Vs. Kailash Shiva Rangari [2016 AIR (Bom.) 141]***.

(SHAILESH P. BRAHME, J.)

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vmk/-