



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

FIRST APPEAL NO. 1466 OF 2022

Sudhakar S/o. Haribhau Muley,
Age : 80 Years, Occu. : Agril.,
R/o. "Purandar", Rajnagar,
Near Railway Station, Aurangabad.

..... Appellant

VERSUS

1. The Special Land Acquisition Officer,
Jayakwadi Project No.1, Aurangabad.
2. The Administrator,
City and Industrial Development
Corporation Ltd., Waluj Mahanagar
Scheme, Aurangabad,
Dist. Aurangabad.

..... Respondents

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Advocate for Appellant : Mr. G.K. Thigle (Naik) h/f Mr. Tejas C.
Sonawane

AGP for Respondent No.1-State : Mr. R.B. Dhaware

Advocate for Respondent No.2 : Mr. S.V. Deshmukh

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CORAM : SANJAY A. DESHMUKH, J.

RESERVED ON : 23rd January 2025

PRONOUNCED ON : 28th March 2025

JUDGMENT :

1. This appeal is preferred against the judgment and Award
passed by the learned 4th Joint Civil Judge (Senior Division),

Aurangabad in Land Acquisition Reference No.338 of 2006, Dated 19.05.2022, under Section 18 of the Land Acquisition Act, 1894 {hereinafter referred to as "The Act"}}, dismissing the claim of the appellant for enhancement of compensation awarded by respondent No.1.

2. Facts giving rise to the present appeal are as follows :-

The appellant is the owner of land bearing Block No.136, admeasuring 1 H. 23 R., situated at Mouje Waladgaon, Tq. & Dist. Aurangabad. The said land was acquired for the purpose of Development and Construction of Housing/Commercial Schemes under Waluj Mahangar Project, Waluj at Aurangabad. A notification under Section 6 of the Act read with the provisions of Section 126(4) of the Maharashtra Regional And Town Planning Act, 1966 was published on 29.01.2000 and notification under Section 4 of the Act was published on 13.05.2001. After completion of inquiry, on 26.06.2003, the respondents declared Award for compensation for the acquired land.

3. A notice was issued under Section 12(2) of the Act to the appellant. The appellant received the amount of compensation offered by the Special Land Acquisition Officer (for short "the SLAO")

under protest and filed land acquisition reference bearing No.338 of 2006, before 4th Joint Civil Judge (Senior Division), Aurangabad.

4. The respondents denied the material contentions raised in the Reference by the claimants. It is contended that the acquired land is not non-agricultural land. No such application was given for permission to the Revenue Authority. The compensation amount was properly carved out by considering all the factual aspects. It is lastly prayed to dismiss the claim for enhancement of compensation.

5. The learned Reference Court, by framing three issues, dismissed the claim application of the appellant. The appellant preferred this appeal for enhancement of compensation on the ground that the SLAO has not properly carved out the compensation amount. The learned Reference Court has not properly considered the market rate of the acquired land and other properties adjacent to the acquired land. The acquired land is adjacent to the Aurangabad-Pune State Highway and Bajaj Auto Limited Company. Moreover, there are number of housing projects, educational institutions, petrol pumps, etc., in the vicinity of the acquired land. The acquired land is having commercial and non agricultural potentiality.

6. During the course of arguments, learned Advocate for the appellant pointed out the grounds of objections of the appeal that the impugned judgment and Award is not legal and correct. It is against the principle of natural justice as the due process of law was not followed. The learned Reference Court failed to consider the non-agricultural potentiality of the suit land, which is adjacent to Aurangabad-Pune State Highway and Bajaj Auto Limited Co. as well as Garware Polyesters Co., etc.

7. Learned Advocate for the appellant further pointed out that the learned Reference Court also failed to consider the surrounding area of the acquired land which is industrial area and having commercial activities like production and manufacturing, etc. It failed to consider that there is a Municipal Corporation. Town Planning Authority has submitted valuation of the acquired land @ Rs.240/- per Sq. Mtr. The learned Reference Court failed to consider that the acquired land was only half kilometer away from the land acquired by the SLAO in L.A.R. No.290 of 2007, which was perennially irrigated land. It failed to apply the principle of parity. It is submitted to allow the appeal by setting aside impugned judgment and Award.

8. Learned Advocate for respondent Nos.1 and 2 submitted that while determining the amount of compensation, the SLAO has considered all the aspects relating to the assessment of the land, etc. and there is no illegality in fixing the amount of compensation. The SLAO has properly considered the market value of adjacent land and its sale instances and correctly fixed the market value and therefore, no interference is warranted in the impugned judgment. There is no such permission for using the acquired land for non-agricultural purpose. The possession of the said land was not taken by the CIDCO before the acquisition process. Therefore, the CIDCO is not liable to pay the compensation. There was huge development in the area to provide basic amenities like road, drainage line, electricity, etc. The CIDCO has acquired 25% land compulsory under the compulsory acquisition scheme. 75% of land is retained by the land owner. Aurangabad-Pune State Highway is five to six kilometer away from the acquired land. The evidence regarding sanction of layout of the adjacent land is produced by the claimant. The rates given by the Assistant Director of the Town Planning Authority are legal and correct, which are applicable to the said acquisition proceedings. It is lastly prayed to dismiss the appeal as there is no merit and no legal ground for interference.

9. Following points emerged for consideration.

- “1) Was the compensation properly and correctly awarded by the Special Land Acquisition Officer and the learned Reference Court ?*
- 2) Is the appellant entitled for enhanced amount of compensation ?*
- 3) Is the impugned judgment illegal, incorrect and require interference ?”*

10. The appellant has adduced the evidence by filing his affidavit of examination-in-chief at Exh.37 and reiterated the material contentions raised in the application. He is relying upon the following documentary evidence :

- i) Copy of power of attorney executed in favour of the applicant by one Sudhakar Rao Mule (Exh.51).
- ii) Copy of notice under Section 12(2) of the Act (Exh.52).
- iii) Copy of the sale deed bearing No.2856 of 2000 of the plot situated at Waladgaon, dated 06.11.2000 of Rs.1,50,000/-, admeasuring 14888.5 Sq. Mtr. out of Block No.152 (Exh.54).
- iv) Copy of sale-deed bearing No.2434 of 2000, dated 13.10.2000 of plot No.3, admeasuring 279.35 Sq. Mtr., out of Block No.152 of Village Waladgaon for Rs.75,000/- (Exh.55).

- v) Copy of judgment in LAR No.290 of 2007 delivered by 3rd Jt. CJSD, Aurangabad (Exh.56).
- vi) Map of Block No.136 of Mouje Waladgaon, Tq. & Dist. Aurangabad showing the Nagar-Paithan Road, Pune-Aurangabad Highway adjacent to Block No.136, layout plan of Nagar-II Waluj project (Exh.57).

11. To disprove the evidence of the appellant, on behalf of respondent No.2, Mrs. Pragati Chondekar, the Officer of CIDCO, Aurangabad adduced her evidence by filing her affidavit of examination-in-chief at Exh.46.

12. The admitted facts emerging from the record are that the disputed land has been acquired by the notification dated 04.12.1997. The compensation amount awarded by the respondents is withdrawn by the claimant/appellant.

13. The findings of issue Nos.2 and 3 regarding filing of the land reference within the limitation is not challenged by the respondents.

14. As far as amount of compensation is concerned, it is well settled that it has to be determined by considering the facts and

circumstances of the case, particularly sale instances, N.A. potentiality and facilities available to such property, etc.

15. The sale-deed at Exh.54 relied upon by the appellant shows that Block No.152, admeasuring 14888.5 Sq. Mtr., is N.A. plot and it was sold for Rs.1,50,000/- on 06.11.2000. The said sale-deed at Exh.55 is executed on 13.10.2000, out of Block No.152, admeasuring 279.35 Sq. Mtr. for consideration of Rs.75,000/-.

16. The appellant in his examination-in-chief has deposed that the acquired land is near to the Bus Stand, Pandharpur Road. There are government and private hospitals. There are commercial complexes. There are various schemes launched by the CIDCO authority and other builders. There are so many educational institutions surrounded to the acquired land. The acquired land is opposite to the Waluj MIDC Area. Adjacent lands are occupied for various housing societies. Industries, companies like Bajaj, Garware Polyesters are in existence since 30 to 40 years. Therefore, the said land is having commercial and residential value. He has deposed about two sale-deeds of Block No.152, in which, the land was sold @ Rs.560/- per Sq. Mtr. and Rs.268/- per Sq. Mtr., respectively which were considered by the learned Reference Court in LAC No.290 of 2007.

17. The evidence of Mrs. Pragati Chondekar (RW1) is in the form of denial of the appellant's case.

18. On perusal of the entire evidence and by applying the principle of parity, the reasons given by the learned Reference Court in land reference case No.290 of 2007 are legal and correct, which is in respect of the land adjacent to the land of the appellant. However, the learned Reference Court in para No.19 by giving improper reasons held that though the land in that reference case was acquired for one and same purpose, the notification and final Award was different and therefore, the rule of parity is not applicable. These reasons and findings are not legal and correct and not sustainable in the eyes of law.

19. Only formality of obtaining of N.A. order is not done by the claimant regarding the acquired land. Otherwise the evidence of the appellant is not disproved. This aspect was not considered by the learned Reference Court. Even the evidence of the appellant and respondents was not discussed by the learned Reference Court. The evidence is not properly appreciated. The reasons and findings are not proper and legal. The sale-deeds of Block No.152 were not relied upon which are adjacent to the land of the appellant. There was no

justification for not granting the compensation on the basis of parity as per the the judgment of the learned Reference Court delivered in land reference case No.290 of 2007.

20. Considering these two sale-deeds relied upon by the appellant, the judgment in land reference case No.290 of 2007 and fact that the acquired land Block No.136 is adjacent to the National Highway, there is Waluj M.I.D.C. and there are many factories. Moreover, there are commercial complexes which establishes that the land Block No.136 in question is having N.A. potential and commercial value. Therefore, considering the law laid down in the case of *State of Maharashtra Vs. Prakash Wasudeo Deodhar, 2008 (4) Mh.L.J. 897*, the aspect that whether the land is adjacent to the highway is to be considered. It was neither considered by the SLAO nor by the learned Reference Court. The market price of the acquired land was not properly carved out. But, for that technical reasons, injustice cannot be caused to the appellant by considering his case on different footing as held by the learned Reference Court. Therefore, the interference is warranted in the impugned judgment. Thus, this Court answers point Nos.1 to 3 that the compensation was not awarded properly by the SLAO. The SLAO and learned Reference Court erred in not awarding proper amount of compensation. The

appellant is entitled for enhanced amount of compensation. The Award of Special Land Acquisition Officer and impugned judgment and Award deserves to be set aside. The appeal deserves to be allowed. Hence, the following order.

ORDER

- I) The appeal stands allowed.
- II) The impugned judgment and Award in Land Reference Case No.338 of 2006, dated 19.05.2022 stands set-aside.
- III) Land Reference Case No.338 of 2006 is allowed as under :-
 - a) The respondents do jointly and severally pay the enhanced amount of compensation to the appellant @ Rs.555/- per Sq. Mtr., for the area of 1 H. 23 R., by deducting previously granted compensation amount by the Special Land Acquisition Officer i.e. Rs.68,26,500/- - Rs.4,05,900/- = Rs.64,20,600/- (Rupees Sixty Four Lakhs Twenty Thousand Six Hundred Only).
 - b) The respondents do jointly and severally pay the solatium @ 30% vide Section 23(2) of the Land Acquisition Act, 1894 and amount of additional component @ 12% per annum vide Section 23(1-A) of the Land Acquisition Act, 1894, to the appellant, from the date of Notification under Section 4 of the Act i.e. from 04.12.1997, till the date of Award or date of possession whichever is earlier.

- c) The Respondents do pay interest @ 9% p.a. for the first year on the enhanced compensation amount including solatium and additional component from the date of Award or from the date of possession whichever is earlier and thereafter @ 15% p.a. till realization of the amount under Section 28 of the Act to the appellant.
- d) Deficit Court fees, if any, be paid by the appellant.

[SANJAY A. DESHMUKH]
JUDGE

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