IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1428 OF 2020

Rajshekar Tamanappa Utge
Age: 57 years, Occu.: Agri.,
R/o Latur, Tq. & Dist. Latur ..APPELLANT

VERSUS

1. State of Maharashtra
   Through its Collector, Latur

2. Sub-Divisional Officer &
   Land Acquisition Officer, Latur

3. The Executive Officer,
   Public Works Department, Latur ..RESPONDENTS

AND

FIRST APPEAL NO. 1429 OF 2020

1. Shrikant Tamanappa Utge
   Age: 63 years, Occu.: Agri.,

2. Snehal Shrikant Utge
   Age: 36 years, Occu.: Agri.,

   Both R/o Central Hanuman Road,
   Latur, Tq. & Dist. Latur ..APPELLANTS

VERSUS

1. State of Maharashtra
   Through its Collector, Latur

2. Sub-Divisional Officer &
   Land Acquisition Officer, Latur

3. The Executive Officer,
   Public Works Department, Latur ..RESPONDENTS

AND

FIRST APPEAL NO. 2073 OF 2020

1. Bajrang Hiralal Joshi
   Age: 66 years, Occu.: Agri.,

2. Shrinivas Motilal Joshi
(Deceased) Through his L.Rs.

1. Gopal Shriniwas Joshi
Age: 57 years, Occu.: Agri.,

2. Giridhar Shriniwas Joshi
Age: 48 years, Occu.: Agri.,

All R/o Latur, Tq. & Dist. Latur ..APPELLANTS

VERSUS

1. State of Maharashtra
Through its Collector, Latur

2. Sub-Divisional Officer &
Land Acquisition Officer, Latur

3. The Executive Officer,
Public Works Department, Latur ..RESPONDENTS

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Mr. S.S. Halkude, Advocate for appellants
Mr. S.J. Salgare, A.G.P. for respondents

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CORAM : R.G. AVACHAT AND NEERAJ P. DHOTE, JJ.
RESERVED ON : 21st FEBRUARY, 2025
PRONOUNCED ON : 01st APRIL, 2025

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. This group of three appeals takes exception to the common judgment and award dated 27th April, 2017 passed by the Court of Civil Judge Senior Division, Latur ('reference Court') in Land Acquisition Reference Nos. ('L.A.R.') 124 of 2016, 125 of 2016 and 123 of 2016 respectively.

2. The appellants had preferred the said L.A.Rs. for determination of compensation since their lands were acquired for public purpose

(construction of ring road). The Land Acquisition Officer ('L.A.O.') had offered compensation @ Rs.70.62/- per sq.ft. as against claim of the appellants for Rs.1,000/- per sq.ft. The appellants, therefore, preferred the concerned L.A.Rs. The reference Court, after hearing the parties concerned, enhanced the compensation to Rs.400/- per sq.ft. It also granted solatium @ 30% as per Section 23(2) of the Land Acquisition Act, 1894 ('Act of 1894)' and additional benefit and interest in terms of provisions of 23(1-A) of the Act of 1894. It also directed the respondents to pay interest @ 9% per annum from the date of notification and for further period @ 15% till the amount of compensation is paid.

3. Having not been satisfied with the quantum of compensation awarded by the reference Court, the appellants preferred these appeals for grant of compensation at least @ Rs.1,000/- per sq.ft.

4. Learned counsel for the appellants would submit that the reference Court ought to have considered various aspects such as location of the lands acquired, nature of the lands, its user, potentiality for commercial or residential or industrial purpose, development that took place surrounding the lands acquired, rates of land located in the vicinity. He would further submit that admittedly the lands were situated within the limits of Municipal Corporation, Latur. Some portion of the acquired lands had already been converted into non-agricultural assessment. Latur-Kawa state highway runs by the side of the acquired lands. The purpose of acquisition has also not been considered. The owners of the lands abutting the lands acquired have

developed their lands with sanctioned lay-outs for residential and commercial purpose as well. The government offices and public amenities have already been available in the vicinity of the lands acquired. He would further submit that the appellants relied on the five sale exemplars. As per the settled legal proposition, the highest sale exemplar ought to have been considered. He would further submit that the government approved valuer had paid visit to the lands acquired. He valued the lands on the basis of their location, use and considering the various sale instances and submitted the report. The reference Court ought not to have discarded the said report.

In short, according to learned counsel, since the lands acquired were situated within the municipal limits and have potential for commercial and residential purpose besides the fact that some of the lands acquired were already converted into non-agricultural assessment, compensation @ Rs.1,000/- per sq.ft. be awarded. He relied on the following set of authorities to ultimately urge for allowing the appeals -

(i) ***Anjani Molu Dessai Vs. State of Goa & Anr., (2010) 13 SCC 710;***

(ii) ***Horrmal (Deceased) though his Lrs. & Ors. Vs. State of Haryana & Ors., 2024 SCC OnLine SC 2990;***

(iii) ***Nelson Fernandes & Ors. Vs. Special Land Acquisition Officer, South Goa & Ors., AIR 2007 SC 1414;***

(iv) ***Mehrawal Khewaji Trust, Faridkot & Ors. Vs. State of Punjab & Ors., AIR 2012 SC 2721;***

(v) ***State of Punjab & Anr. Vs. Hans Raj (Dead) by Lrs. Sohan Singh & Ors., (1994) 5 SCC 734;***

5. Learned A.G.P. would, on the other hand, submit that the L.A.O. had granted just and reasonable compensation. The reference Court

enhanced it. Although the State did not prefer appeals against the judgment and award impugned in these appeals, there is no reason for further enhancing the amount of compensation. According to learned A.G.P., the lands were assessed to agricultural purpose on the date of notification under Section 4 of the Act of 1894 due to which future proposed user of the land could not be considered. He would further submit that the sale exemplars, relied on by the appellants, pertain to small pieces of land. Those pertain to the land assessed to non-agricultural purpose. The sale exemplars (Exh.18 and 23) would, therefore, be irrelevant for deciding the present appeals. Learned A.G.P. relied on the Apex Court's judgment in case of ***Bijender and Ors. Vs. State of Haryana and Anr., (2018) 11 SCC 180*** to ultimately urge for dismissal of the appeals.

6. Considered the submissions advanced. Perused the evidence on record. Let us advert thereto and appreciate the same.

7. L.A.R. No. 123 of 2015 pertains to the land admeasuring 8300 sq.mt. forming part of Gut No. 60/3, while L.A.R. No. 124 of 2016 pertains to the land admeasuring 8000 sq.mts. and 5000 sq.mts. of lands from Gut Nos. 164 and 167 respectively. L.A.R. No. 125 of 2016 pertains to the land admeasuring 4040 sq. mts. of Gut No. 166. 1440 sq. mts. land thereof was converted into non-agricultural assessment.

8. Some of the acquired lands were situated at Vasangaon, close to Latur town. It is reiterated that the lands were acquired for construction of

ring road. Notifications under Section 4 of the Act of 1894 were published on 24th and 25th March, 2012, while the award/s was/were passed on 05th August, 2013.

9. Learned counsel for the appellants first urged for grant of compensation in accordance with the report submitted by the government approved valuer. Although the market price of the land acquired could be ascertained on the basis of the valuer's report, the method for determining the compensation on the basis of sale exemplars of the similarly situated lands on the date of notification under Section 4 of the Act of 1894 or immediately before there, is considered to be usual and better method. A private valuer, who has been paid fees by the owners of the land, is presumed to have given the report favourable to those persons who have engaged him, unless a fair play is shown in his exercise. The reference Court has discarded the valuer's report which determines the valuation of the land admeasuring 1400 sq.mtrs. @ Rs.11,524/- per sq.mtr. and of the land admeasuring 2520 sq.mtrs. @ Rs. 14,029/- per sq.mtr. for the reason that the valuer did not place on record the notes prepared by him while he paid visit to the lands and worked out the market rate. The valuer also did not place on record sale exemplars considered by him for determining the market value. The reference Court also found the sale exemplars relied on by the appellants to have pertained to large or small areas situated in the city (town) of Latur. The reference Court found the average market price of the acquired lands is Rs.400/- per sq.ft. Considering the sale instances referred

by the L.A.O., the reference Court, therefore, enhanced the compensation to that extent.

10. In case of Anjani Molu Dessai (supra), the Apex Court held as under :-

"Land Acquisition Act, 1894 – S.23 – Compensation – Comparable sales method – Several exemplars – Method of working out average price – Held, in case of several exemplars, usually highest exemplar is to be considered – In case of several sales of similar lands whose prices range in a narrow bandwidth, average thereof can be taken, as representing market price – Where values of two sales are markedly different, averaging cannot be resorted to"

In paragraph no.16 of the said judgment it has observed thus:-

"16. The Land Acquisition Collector however committed a serious error in deducting 45% from the sale price disclosed by the sale deed dated 30-8-1989 towards the cost of development. It is well settled that deduction for development cost has to be made only where the value of a small residential/ commercial/ industrial plot of land in a developed layout is made the basis for arriving at the market value of a nearly large tract of undeveloped agricultural land. Where the land sold under the relied upon sale deed and the acquired lands are both of similar nature (as in this case where both are bharad lands) the question of making any deduction towards development cost to arrive at the cost of "undeveloped land" would not arise. Such a deduction would have been necessary if the sale deed relied upon related to a developed residential or commercial plot. ...."

11. While in case of Horrmal (supra), it was observed thus :-

"27. In the instant case, there are multiple sale deeds of smaller plots, and these represent the best available evidence for estimating compensation. Since there is no legal impediment to considering such sale deeds, the logical progression in the

compensation estimation process would be to identify the most suitable sale deed(s) for determining the market value and subsequently, to apply adequate deductions on the same. The solution to this state of flux may thus be found in the case of Mehrawal Khewaji Trust Vs. State of Punjab, (2012) 5 SCC 432 where this Court laid down as follows :-

> *"... It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied that it is a bona fide transaction, has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition."*

12. The Apex Court in case of Mehrawal Khewaji Trust (supra) has observed that when many comparable sale transactions were relied on, highest comparable exemplar therefrom has to be accepted. The method of drawing average of various sale deeds not to be adopted.

13. While in case of Bijender (supra), relied on by learned A.G.P., the Apex Court held as under :-

- Held, when courts are called upon to fix market value in compulsory acquisition, one type of evidence of value of property is sale of acquired land to which claimant is a party and in its absence, sale of neighbouring lands – Transactions relating to acquired land of recent dates or in neighbourhood lands that possessed of similar potentiality or fertility or other advantageous features are considered to be relevant piece of evidence – In proof of sale transactions, relationship of parties to transactions, market conditions, terms of sale and date of sale are to be looked into – These features need to be established by examining either vendor or vendee and if they are not available, attesting witnesses who

have personal knowledge of transaction, etc. - Original or certified copies of sale deeds are required to be tendered in evidence to prove such facts – One of the underlying principles to fix a fair market value with reference to comparable sale is to reduce element of speculation

- Held, it is held that in comparable sale, features are : (1) it must be within a reasonable time of date of notification, (2) it should be a bona fide transaction, (3) it should be a sale of land acquired or land adjacent to land acquired, and (4) it should possess similar advantages; and these factors should be established by adducing material evidence by examining parties to sale or persons having personal knowledge of sale transactions – Proof thereof to focus on whether transactions relied on are genuine and bona fide transactions or not

- Value of the smaller plots, which is always on the higher side, is usually not taken into consideration for determining the large block of the land – one of the reasons being that the substantial area of the large block is used

14. Keeping in mind the aforesaid observations, we have to quantify the amount of compensation on the basis of the facts and circumstances obtainable in the case in hand. Admittedly, the land admeasuring 1440 sq. mts. was converted into non-agricultural assessment. Rest of the land acquired was assessed to agricultural purpose. It is true that the lands which were acquired for construction of ring road, were situated in Latur town and/or in the village adjacent thereto. Undisputedly, development of the lands in the vicinity in which the acquired lands were situated, did take place.

15. The sale exemplars (Exh.18 to 23) are as follows :-

Exhibit	Date of sale-deed	Price	Area sold
18	31.01.2011	Rs.8,50,000/-	1372 sq.ft.

19	21.08.2008	Rs.16,50,000/-	5871.71 sq.ft.
20	23.12.1994	Rs.1,57,500/-	300 sq.ft.
21	02.08.2008	Rs.13,21,000/-	2000 sq.ft.
22	16.05.2008	Rs.7,74,000/-	351.5 sq.ft.
23	16.05.2008	Rs.64,68,000/-	14000 sq.ft.

The reference Court simply observed that it is prudent and justifiable to grant the rate of Rs.400/- per sq.ft. It only considered the fact that some of the land was converted into non-agricultural assessment.

16. All the aforesaid sale exemplars are of the date before issuance of notification under Section 4 of the Act of 1894. First five sale exemplars pertain to very small pieces of land/s compared to sale exemplar Exhibit 23. We, therefore, rely on the sale exemplar (Exh.23). Rate thereof comes to Rs.619.53/- per sq.ft. It is true that it pertains to four years before publication of notification under Section 4 of the Act of 1894. We could have enhanced the price by addition of 10% thereof every year, but we consider the same as deduction for development of the land acquired and take the rate of the said sale exemplar as it is which comes to Rs.620/- per sq.ft. (round off).

17. The reference Court awarded interest from the date of publication of notification under Section 4 of the Act of 1894. It in fact ought to have awarded interest from the date of award since possession of the lands was said to have been taken over somewhat long before publication of notification. The fact that possession of the acquired lands was taken over before process of acquisition initiated, can be inferred to have the land

owners aware thereof. The record indicates that the land which was converted into non-agricultural assessment was converted within 3-4 months just before possession of the land was taken over.

18. The record indicates that the present appeals have been filed belatedly i.e. by 806 days, after the period of limitation for preferring the appeal was over. In our view, the appellants, therefore, are not entitled for component of interest for the period commencing from the date of award to the date of the order condoning the delay in preferring the present appeals.

19. In view of above, the appeals are partly allowed in terms of following order :-

> The award dated 27th April, 2017 impugned in these appeals is modified increasing the amount of compensation from Rs.400/- per sq.ft. to Rs.620/- per sq.ft.. Rest of the terms of the impugned award to stand unaltered. However, the appellants shall not be entitled for component of interest for the period of delay i.e. from 27th April, 2017 to 11th October, 2019, (806 days) in preferring the present appeals.

(NEERAJ P. DHOTE, J.) **(R.G. AVACHAT, J.)**

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