IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH NAGPUR

FIRST APPEAL NO.681 OF 2009

Nagar Parishad, Chandrapur
Through its Chief Officer, Tah.
And Dist. Chandrapur ...Appellant

-VERSUS-

1. The State of Maharashtra,
Through Collector, Chandrapur on Tah.
And Distt. Chandrapur

2. Chandrakant s/o. Kashinath
Bhagatkar, aged about 41 years,
Occu. Business,

3. Roshan s/o. Kashinath Bhagatkar,
Aged about 46 years,

4. Smt. Shakuntala wd/o. Kashinath **(Dead)**
Bhagatkar, aged about 71 years,
Occu : Household

5. Ku Shobha d/o. Kashinath Bhagatkar
aged about 53 years, Occu: Service

6. Ku. Vidya d/o. Kashinath Bhagatkar,
aged about 51 years, Occu. : Teacher.

7. Ku. Sandhya d/o Kashinath Bhagatkar **(Dead)**
aged about 47 years, Occu.: Household,

[Respondent Nos.4 & 7 are deleted as per this Court's order dt. 06.01.2022]

Nos. 2 to 7 resident of Chandrapur,
Tahsil and District Chandrapur. ..Respondents

Mr. M. I. Dhatrak for Appellant.
Ms. Kriti Satpute for Respondent Nos.2 to 7.

...

CORAM : ROHIT W. JOSHI, J.

DATED : 07th FEBRUARY, 2025

JUDGMENT :

1. Being aggrieved by judgment and award dated 01.01.2009 passed by Learned Civil Judge, Senior Division, Chandrapur in Land Acquisition Reference No.60 of 1997, the appellant-acquiring body has filed the present appeal challenging the same.

2. Respondent Nos.1 to 3 were co-owners of land bearing Gat No.107/65-A admeasuring 3.07 Hectares situated at mouza-Devai Govindpur Raiyyatwari situated within the municipal limits of Chandrapur City. A Portion of land admeasuring 0.29 Hectares out of the said Gat No.107/65-A was reserved for shopping complex of Municipal Council Chandrapur, since the year 1976. Respondent Nos.1 to 3 are co-owners having 1/3rd share in the said land. At the behest of the appellant-Municipal Council, respondent No.1 issued a notification under Section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 read with Section 6 of the Land Acquisition Act, 1894 for acquisition of the said land for the purpose of development of shopping complex on 16.05.1994. Accordingly, the said land came to be acquired

for the purpose of shopping complex of Municipal Council. The Land Acquisition Officer passed award dated 15.05.1996 awarding compensation of Rs.3,62,863/- for the acquired land. The market value was fixed at Rs.2,35,625/- and total compensation is computed by including solatium 12% and additional component. The Land Acquisition Officer has computed the compensation on the basis of rates fixed for agricultural lands on the ground that the said land was not converted for non agricultural use.

3. Dissatisfied with the amount of compensation awarded respondent Nos.1 to 3 and other co-owners moved an application seeking reference for enhancement of compensation as per Section 18 of the Land Acquisition Act. The Land Acquisition Officer made a reference to the learned Civil Court as provided under Section 18 of the Land Acquisition Act pursuant to which Land Acquisition Reference No.60 of 1997 came to be registered. The applicants contended that the said land was reserved for shopping complex of Municipal Council. Although it was not converted for non-agricultural use, it was located within a fully developed area. It was contended that the land was a part of Gat No.107/65-A which was abutting Chandrapur-Mul Highway. The acquired land was surrounded by various commercial and industrial establishments. A petrol pump was located exactly opposite to the

acquired land and residential colonies of Shastri Nagar, Vivek Nagar, Patrakar Nagar etc. existed in the vicinity prior to acquisition of land.

4. In view of the aforesaid, the land owners claimed that the land ought to have been valued as a non agricultural land for which compensation should have been awarded on ‘per square meter’ or ‘per square feet’ basis as is done for urban properties rather than granting compensation treating the acquired land as agricultural land. Respondent Nos.1 to 3 examined respondent No.2 Chandrakant Bhagatkar, and one Pradip Mogre as their witnesses. They have proved sale transaction at Exhibit-52 and relevant extract of ready recknor at Exhibit-91 for the areas of the acquired land. The exemplar at Exhibit-52 is dated 26.08.1994 under which a plot of land admeasuring 139 sq. mtr was sold for a consideration of Rs.1,00,000/- i.e. at the rate of Rs.719/- per sq. mtr. The ready reckoner at Exhibit-91, dated 07.10.1994, shows the rate of plots in Shastri Nagar on Chandrapur-Moon road as 754/- per sq. mtr.

5. The Land Acquisition Officer has filed his affidavit in the matter, however, he did not enter the witness box to record his further examination in chief and also did not face the cross examination as a consequence of which his affidavit came to be discarded. Apart from the said sale exemplar and ready reckoner the land owners have also

relied upon the map at Exhibit-49 to show the location of the acquired land.

6. Based on the above evidence, the learned reference court has awarded compensation for the acquired land at the rate of Rs.720/- per sq. mtr. Having regard to the evidence on record including the Map at Exhibit-49, the learned Reference Court has arrived at positive finding that the acquired land was surrounded by a fully developed area. It has made reference to residential colonies, hospitals, government offices, petrol pump etc. that were surrounding the acquired land prior to the date of acquisition. Based on such findings, the learned Reference Court has held that it will be unjust to determine the market value treating the acquired land to be an agricultural land although the same was not converted for non-agricultural use. Accordingly, the learned Reference Court has granted enhancement of compensation for the acquired land at the rate of Rs.720/- per sq. mtrs.

7. Mr. Dhatrak, learned Advocate appearing for the appellant has canvassed two grounds in order to challenge the compensation awarded. Firstly, that the land was an agricultural land and therefore the reference court should not have granted compensation based on sale exemplar of non-agricultural plot and ready recknor rates prescribed for non-agricultural plot and secondly, that appropriate

reduction in area should have been made since the sale exemplar was pertaining to a small plot and the acquired land is a large stretch of land which was not developed.

8. Per contra Ms.Kirti Satpute, the learned Advocate for respondent Nos.2 to 4 / land owners contends that the land was earmarked for shopping complex since the year 1976 and it is acquired for development of shopping complex. Therefore, the learned Reference Court was right in relying upon sale exemplar of a residential plot as also taking into consideration ready reckoner rate for non-agricultural lands. She further contends that admittedly, the acquired land is located in a developed area and entire land is acquired for development of shopping complex and therefore question of making any deduction does not arise.

9. Having heard the rival submissions following points arise for my consideration:-

i. Has the learned Reference Court determined the rate for the acquired land correctly ?

ii. Should any deduction be made from the compensation for acquired land on the ground that it was not converted for non-agricultural purpose and was a large track of land ?

10. The evidence on record indicates that the acquired land is located within a developed area. Perusal of the map at Exhibit-49 demonstrates that Chandrapur-Mul Highway is passing along side of the boundary of Gat No.107/65-A in which the acquired land is located. Another road is also abutting the acquired land. The map shows that the acquired land is surrounded by lands which are marked in Orange and Yellow colour. The Orange colour portion indicates the lands which are being used for residential purpose and yellow colour indicates the lands which are earmarked for residential use. The land acquired is shown in blue colour which indicates commercial purpose. It is undisputed that the land is reserved for shopping complex, since the year 1976 and it is acquired in the year 1994. The land is located within a fully developed area and the entire land is utilized for shopping complex.

11. It is true that when market value of a large track of land is required to be determined on the basis of sale exemplar pertaining to smaller plots, some deduction is required to be made towards development of land i.e. for the purpose of laying roads, leaving open spaces and cost of development. However, in the present case, the entire portion of acquired land is to be utilized for construction of a shopping complex. Since the entire land is acquired for a commercial

complex and not for laying down any residential or commercial lay out, the question of making any deduction towards development such as laying of roads, open spaces etc. does not arise. The learned Reference Court is justified in not making any deduction on this count.

12. As regards the development charges, although, the land was not converted for non-agricultural use, it is undisputed that it is surrounded by land which are completely developed. The evidence of the land owners in this regard has gone completely unchallenged. Rather, the purpose for which the land is acquired demonstrates that it is located within a developed area. The map at Exhibit-49 shows that the land is abutting a public road and further that it is a part of gat number which is abutting a main road, i.e., Chandrapur-Mul Highway. Several residential lay outs have come up in the vicinity. The respondent has not led any evidence in order to demonstrate the expenses that were to be incurred towards alleged development. In that view of the matter the learned Reference Court is right in not making any deduction towards the development charges.

13. It also needs to be mentioned that it is undisputed that a plot admeasuring 139 sq. mtrs. was sold in the year 1994 itself in the vicinity at the rate of Rs.719/- per sq. mtrs. It is also not in dispute that the ready reckoner rate for non-agricultural plots in the area was

Rs.754/- per sq. mtrs. at the relevant time. Although, ready reckoner rate may not indicate exact market value, it is indicative of the market prices and can serve as a guideline for guess work to determine market value. It also needs to be mentioned that the land is acquired for a commercial purpose and judicial notice can be taken of the fact that lands having commercial potential will fetch a higher rate than residential plots. The learned Reference Court has not granted any further appreciation for the commercial potential of the acquired land. Even if the contention of the appellant with respect to deduction towards development charges and further deduction having regard to the size of sale exemplar and size of acquired land is to be considered favorably, in my considered opinion the same will be balanced since further appreciation is not granted for commercial potential of the acquired land and market value is determined on the basis of sale exemplar of a residential plot being guided by ready recknor of non agricultural plots in the area.

14. In view, of above, in my considered opinion the appeal lacks merit and is liable to be dismissed.

15. The appeal is therefore dismissed with no order as to costs.

[ROHIT W. JOSHI J.]

Narwade