2025:BHC-NAG:2579

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

FIRST APPEAL NO.914 OF 2017

Darshanrai Kapoorchandji Dafatari
aged about 71 years, Occp:Business,
R/o Nagpur Road, Nalwadi, Wardha,
Tah. And Dist. Wardha. .... **APPELLANT**

...V E R S U S...

1) State of Maharashtra
Mantralaya, Mumbai, through its
Collector, Wardha, Tah. and
Dist.Wardha.

2) Executive Engineer,
Public Works Department, Wardha,
Tah. and Dist. Wardha.

3) Special Land Acquisition Officer
(General), Wardha, Dist. Wardha.

4) Smt. Hirabai Fulchandji Daftari,
aged about 80 years, Occp: Homemaker,

5) Ravindrakumar Fulchandji Dafatari,
aged about 65 years, Occp : Business,

6) Jainendrakumar Fulchandji Dafatari,
aged about 58 years, Occ : Business,

7) Shailendrakumar Fulchandji Dafatari,
aged about 56 years, Occ : Business,

Respondent No.4 to 7, R/o Seloo
(Ghorad), Tah. Seloo, Dist. Wardha.

8) Smt. Kiran Chaitanyakumar Kochar
Aged about 54 years, Occ : Homemaker,
R/o C/o Shailendrakumar Fulchandji Dafatari,

Bazar Road, Tah. Seloo (Ghorad),
Dist. Wardha.

9. Akhilvijay Manekchandji Dafatari
aged about 71 years, Occ : Business,
R/o Seloo(Ghorad), Tq. Seloo,
Dist. Wardha. .... **RESPONDENTS**

Mr. Pushkar Ghare, Advocate for Appellant.
Ms. M. R. Kavimandan, AGP for Respondent/State.

CORAM: ROHIT W. JOSHI, J.
RESERVED ON : 21.02.2025
PRONOUNCED ON : 13.03.2025
(THROUGH V.C.)

JUDGMENT:

1. The present appeal is filed under Section 54 of the Land Acquisition Act, 1894 by the original applicant in Land Acquisition Case No.317/2007. The land of the appellant being a part of survey no.26 of village Masala, Tq. & Dist. Wardha, admeasuring 0.46 HR, came to be acquired for construction of Wardha Bypass Road under the provisions of the Land Acquisition Act, 1894 (Hereinafter referred to as “L.A. Act” for brevity). The Section 4 Notification was published in the official gazette on 19.08.1999. It was published in the news papers on 23.08.1999 and on the notice board of Gram Panchayat on 13.01.2000. Therefore, 13.01.2000 is the date of issuance of notification under Section 4(1) of L.A. Act. The Land Acquisition Officer passed

award under Section 11 of the L.A. Act on 17.05.2003 awarding compensation for the acquired land at the rate of Rs.3,48,600/- per hector.

2. Dissatisfied with the amount of compensation awarded, the appellant made an application before the Land Acquisition Officer seeking reference under Section 18 of the L.A. Act. The Land Acquisition Officer forwarded the application for reference to the learned Civil Judge, Senior Division, Wardha, pursuant to which Land Acquisition Case No.317/2007 came to be registered. The applicant claimed compensation at the rate of Rs.150/- per sq. ft. for the acquired land making reference to several circumstances indicating non-agricultural potential of the acquired land. The acquiring body and Land Acquisition Officer filed written statement opposing the claim. Based on the rival pleadings, the issues came to be framed by the learned Reference Court. The original applicant examined his son as a sole witness, who filed evidence in examination-in-chief, vide Exhibit-19 followed by a supplementary affidavit of evidence, vide Exhibit-54. Amongst other documents three sale deeds at Exhibit-34, 35 and 36 were relied upon during the course of evidence, particulars whereof as under :-

	Exh.34	Exh.35	Exh.36
Date	28/06/1995	29/10/1994	14/05/1992
Area	7200 sq. ft.	1000 sq. ft.	7200 sq. ft.
Consideration	Rs.7,41,000/-	Rs.75,000/-	Rs.7,12,800/-
Rate	Rs.102.91/- per sq.ft.	Rs.75/- per sq.ft.	Rs.99/- per sq.ft.

3. Apart from this, reliance was also placed on judgment in Land Acquisition Case No.518/2007 (Exhibit-37) in which compensation for land acquired for the same purpose in the same village was determined at Rs.1200/- per sq. meter. It will be pertinent to mention here that the award in both the cases is dated 17.05.2003. The Section 4 notification in both cases is also the same.

4. After recording the evidence, learned Reference Court proceeded to hear arguments of respective parties and has decided the reference, vide judgment and award dated 28.02.2017. The learned Reference Court has determined market value of the acquired land at Rs.13,37,000/- per hector. It has relied upon the market value considered by the Land Acquisition Officer at the rate of Rs.19,10,000/- per hector and made deduction of 30% on the said value to fix the market value at Rs.13,37,000/- per hector.

5. The learned advocate for the appellant submits that he does not have any objection with respect to 30% deduction made by the learned Reference Court for determining market value of the acquired land on the ground that it is an agricultural land having non-agricultural potential. He, however, contends that learned Reference Court ought to have relied upon three sale transactions relied upon by him to determine the market value. He raises a contention that the learned Reference Court has erred in not considering the market value of non-agricultural plots although it has recorded a categorical finding that the acquired land has non-agricultural potential. According to him, right course to be adopted was to consider market value of the land as per sale exemplars relied upon by him and then to make deduction of 30% on the market value so determined.

6. He states that the market value of the land as per highest sale exemplar at Exhibit-34 was Rs.102.91 per sq. ft. as on 28.06.1995 i.e. the date of sale exemplar and by granting 12% appreciation till date of Section 4 notification, the market value of the acquired land comes to Rs.152.31 per sq. ft. and on making 30% deduction, the market value would be at Rs.106.61 per sq.ft. He further contends that compensation at least should have been

awarded at the rate of Rs.1200/- per sq. mtrs as was awarded in another reference case pertaining to acquisition of land for the same project in the same village.

7. Per-contra, learned A.G.P. appearing for Respondent Nos.1 to 3 strenuously opposes the appeal. She contends that the learned Reference Court has rightly taken into consideration non-agricultural potential of the land and has awarded compensation accordingly. She contends that sale exemplars relied upon by the appellant are pertaining to small plots which are not relevant for determination of market value of the acquired land.

8. On hearing the rival submissions, the following points are arise for my consideration :-

[i] Is the appellant entitled for enhancement of compensation awarded towards acquisition of suit property ?

[ii] If yes, at what rate ?

9. **Point Nos.(i) and (ii) :-**

The sale exemplars at Exhibit-34 and Exhibit-36 are pertaining to village Chinchala. As against this sale exemplar at Exhibit-35 is pertaining to village Masala, in which the suit land is situated. Since sale instance from same village is available, sale instances of other village need not be considered. As per sale instance at Exhibit-35, the market value of the acquired land was at Rs.75/- per sq. ft. (Rs.807.30 per sq. meter) as on 29.10.1994.

10. Mr. Ghare, learned advocate for the appellant contends that enhancement of 12% per year should be granted over and above this rate for period of four years since the section 4 notification is of the year 1999. Normally, escalation of 10% is considered over the rate of sale exemplars of past years. However, with respect to rural areas in the absence of any evidence regarding enhancement of rates, it is not safe to grant enhancement at the rate of 10% per annum. There is no cogent evidence on record to suggest enhancement of rate. On the contrary, it is found that in adjoining village Chinchala, there was practically no enhancement of rate for a period of around three years, as can be seen from the sale deeds at Exhibit-36 and 34. Sale Deed at Exhibit-36 is dated 14.05.1992 under which the land sold at Rs.99/- per sq. ft. and sale deed at Exhibit-34 is dated 28.06.1995 under which land is sold at Rs.102.91 per sq. ft. The

rates were thus stagnant for almost three years.

11. The sale exemplar at Exhibit-35 pertains to a small piece of land admeasuring 1000 Sq. Ft. i.e. 92.9 Sq. Mtrs. As against this, the acquired land is a large track of land admeasuring 0.46 HR i.e. 4600 Sq. mtrs. As has been held in the matter of ***Himmat Singh and others Vs. State of Madhya Pradesh and another*** reported in **(*2013)16 SCC 392,*** deduction of 50% should normally be made when the market value of large track of land is determined on the basis of sale transactions of smaller plots. Applying the said principle in the present case, the market value of the acquired land would come to Rs.403.15 per Sq. Mtrs. Further deductions may not be made since the land is acquired for construction of Highway which will not involve expenditure towards development of the acquired land as in the case of acquisition for layout etc.

12. As noted above, the appellant had relied upon judgment in Land Acquisition Case No.518/2007, wherein the rate of Rs.1200/- per sq. meter was granted for the land acquired from the same village for the same project. The learned Reference Court had refused to rely upon the judgment in the said reference case

since the appeal against same was pending. Appeal arising out of judgment in Land Acquisition Case No.518/2007, being First Appeal No.1007/2014 is decided vide judgment dated 31.08.2021 in which a compensation is awarded at the rate of Rs.470/- per sq. mtr. Since the compensation awarded by this Court for land acquired for the same project in the same village is at Rs.470/- per sq. mtr, I am inclined to accept the said rate and partly allow the appeal as under :-

ORDER

[i] The appeal is allowed partly.

[ii] The respondent nos.1 to 3 are jointly and severally directed to pay compensation for the acquired land admeasuring 0.46 HR i.e. 4600 Sq. Meters at the rate of Rs.470/- per Sq. Mtrs along with all the statutory benefits and interest.

[iii] Parties to bear their own costs.

(ROHIT W. JOSHI, J.)

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