



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 157 OF 2024

ASHOK S/O GANGADHARRAO GODHAMGAONKAR

VERSUS

THE STATE OF MAHARASHTRA THR, COLLECTOR AND ORS

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Shri. Milind Patil h/f. Shri. P. G. Godhamgaonkar, Advocate for Appellant

Shri. S. V. Hange, AGP for Respondent Nos.1 and 2

Shri. M. D. Narwadkar, Advocate for Respondent No.3

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CORAM : SHAILESH P. BRAHME, J.

RESERVED DATE : 17.01.2026

PRONOUNCED DATE : 02.02.2026

ORDER :-

. Taken up for final disposal with the consent of the parties.

2. Appellant is taking exception to judgment and award dated 11.09.2023 passed in LAR No.13 of 1988 rejecting the reference. He is claiming enhancement of the compensation for constructed portion as well as compensation for the open space.

3. Appellant is the owner of land bearing no.2-10-232 (old), 2-12-64 (new) situated at Vazirabad Taluka and District Nanded which is comprising of constructed portion of 72.83 sq.m. (783.65 sq.ft) and open space of 237.25 sq.ft. It was situated at the heart of the city at Vazirabad Chowk. Respondent

no.2 – corporation acquired the same for expansion of the Chowk. The notification under Section 126 was issued on 18.07.1977 to the extent of 72.83 sq.m. (783.65 sq.ft). The notification under Section 6 was issued on 18.08.1977. The constructed portion was acquired by the respondent – corporation and the Special Land Acquisition Officer offered rate of Rs.60/- per sq.ft. when the appellant demanded Rs.350/- sq.ft. Appellant also demanded Rs. 300/- per sq.ft. for the open space which was acquired but no compensation was paid.

4. Being aggrieved, LAR No.13 of 1988 was submitted by the appellant. It was allowed and the compensation was enhanced to Rs.200/- per sq.ft. for the acquired area vide judgment dated 31.07.1989. Being aggrieved, the respondents preferred First Appeal No.201 of 1990 which was allowed by the Division Bench of the High Court on 4th February 2003 thereby remanding the matter to the Reference Court as the acquiring body was not impleaded.

5. After adding the respondent – corporation as a party respondent, reference was again decided vide order dated 11.09.2023 by which the rate was fixed at Rs.60/- per sq.ft. but reference was held to be beyond limitation and it was dismissed. Being aggrieved, appellant preferred First Appeal No.650 of 2004. The learned Single Judge allowed the First Appeal and

directed the Reference Court to reconsider the issue of limitation vide judgment dated 02.05.2014.

6. After remand on the second occasion, the Reference Court decided the matter on merits and held that it was within limitation. However, it refused to enhance the rate of Rs.60/- per sq.ft. and the reference was dismissed vide judgment and award dated 11.09.2023 which is impugned in the present first appeal.

7. Learned counsel Mr. Milind Patil submits that Reference Court committed patent illegality in dismissing the reference because voluminous documentary evidence and the oral evidence is placed on record to show that rate for the constructed portion would be Rs. 350/- sq.ft. It is further submitted that there was no reason for the Reference Court to fix the rate at Rs.60/- when on earlier occasion, vide judgment dated 31.07.1989, the Reference Court had arrived at rate of Rs.200/- per sq.ft. It is further submitted that the land acquired is situated at the heart of the city, having commercial potential, it would fetch huge price. It is a developed area and demanding location.

8. Learned counsel would submit that sale deed at exhibit – 33, 34, 71 and 72 are not properly appreciated. The agreement at exhibit 35 and 36

would indicate the commercial utility of the premises and the claim of Rs.350/- per sq.ft ought to have been accepted. It is submitted that evidence of PW no.2 is wrongly discarded by the Reference Court. It is further submitted that the approach of the respondents in not paying compensation for open space admeasuring 237.25 sq.ft is against Article 300-A of the Constitution of India. It is submitted that the sale deeds at exhibit 33 and 34 by which the appellant purchased the property are indicative of the fact that in between construction portion and the road, there is an open space belonging to the appellant which also subsumed in the acquisition for which the respondents are obliged to pay the compensation.

9. Per contra learned counsel Mr. M. D. Narwadkar appearing for respondent no.3 would submit that this Court cannot go beyond notification issued under Section 6 which is restricted up to acquisition of the constructed portion. No claim for any open space can be entertained. Existence of the open space is disputed. It is further submitted that the orders passed by the High Court in the present matter previously and judgment and order dated 22.09.2003 would indicate that rate of Rs.60/- per sq.ft is adequate and reasonable. It is further submitted that no evidence is produced on record to show the entitlement of enhancement of the rate.

10. I have considered rival submissions of the parties. The respondent – corporation acquired constructed portion of 72.83 sq.m. (783.65 sq.ft.) for which the appellant is claiming rate of Rs.350/- per sq.ft. The open space abutting the constructed portion measuring 237.25 sq.ft. has not been incorporated in the notification under Section 6 of the Act. It's compensation is denied. The Reference Court held that the appellant is not entitled to the enhancement claimed and the rate of Rs.60/- per sq.ft. is confirmed by the impugned judgment and award.

11. Undisputedly, the property or the land under acquisition is situated in a Vazirabad chowk. It has been acquired for expansion of the Chowk by invoking the provisions of Section 126 of Maharashtra Regional and Town Planning Act. The appellant adduced oral evidence of two witnesses and produced on record sale deeds and agreements to show that the property is situated at commercial place and would fetch good value. The lease agreement at exhibit 35 would show that it was let out for Rs.1000/- per month. The open space of 25x12 was let out to the pan stall for rent of Rs.15/- per day i.e. Rs. 450/-per month. The agreement to that effect was produced at exhibit 36. Considering the location of the land which is acquired, it can be safely concluded that it is a prime place located at the heart of the city. The appellant could have let out the open space. It is also possible for him to fetch

handsome amount from the hoardings or advertisements.

12. The Reference Court discarded the evidence on record arbitrarily. The reason given for discarding exhibit 35 cannot stand to the reason. The sale deeds exhibit 71 dated 21.01.1989 and exhibit 72 dated 24.01.1983 would definitely indicate that the property under acquisition is situated in a commercial place and it is salable. The material on record is indicative of the fact that the rate fixed by the Reference Court at Rs.60/- per sq.ft is extremely inadequate. The appellant is entitled to a higher rate.

13. Appellant has relied on the judgment of **State of Kerala vs. P. P. Hassan Koya** reported in **1968 AIR SC 1201**. This judgment will not help the appellant. Further reliance is placed on judgment of **Trishala Jain & another vs. State of Uttaranchal & another** reported in **2011 AIR SC 2458**. I have gone through para nos. 56 to 59. Various judgments are *inter alia* relied by the Supreme Court and arrived at following extracts :

“63. Under the Act, as settled by various judgments of this Court, there are different methods of computation of compensation payable to the claimants, for example it can be based upon comparable sale instances, awards and judgments relating to the similar or comparable lands, method of averages, yearly yields with reference to the revenue earned by the land, etc. Whatever method of determining the compensation it applied by the court, its result should always be reasonable, just and fair as that is the purpose sought to be achieved under the scheme of

the Act. For attaining that purpose, application of some guesswork may be necessary but this principle would have hardly any application in a case of no evidence. In other words, where the parties have not brought on record any evidence, then the court will not be in a position to award compensation merely on the basis of imagination, conjecture, etc.

64. These precedents clearly demonstrate that the court may apply some guesswork before it could arrive at a final determination, which is in consonance with the statutory law as well as the principles stated in the judicial pronouncements. As already noticed, the guesswork has to be used for determination of compensation with greater element of caution and the principles of guesstimation will have no application to the case of “no evidence”. This principle is only intended to bridge the gap between the calculated compensation and the actual compensation that the claimants may be entitled to receive as per the facts of a given case to meet the ends of justice.

65. It will be appropriate for us to state certain principles controlling the application of “guesstimate”:

(a) Wherever the evidence produced by the parties is not sufficient to determine the compensation with exactitude, this principle can be resorted to.

(b) Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should have a connection to the data on record produced by the parties by way of evidence. Further, this entire exercise has to be within the limitations specified under Sections 23 and 24 of the Act and cannot be made in detriment thereto.”

14. Further reliance is placed on the judgment of New Okhla Industrial Development Authority vs. Harnand Singh (Deceased) through Lrs reported in 2024 INSC 509. I have considered para nos. 31 to 34. Applying the

same principles, I have arrived at the price of Rs.200/- per sq.ft.

15. The appellant is unable to prove the rate of Rs.350/- per sq.ft. for the constructed portion. The rate of Rs.60/- per sq. fixed by the Reference Court is extremely on lower side which needs enhancement. Considering the material placed on record some guesswork in the present matter is inevitable. The judgments of the Supreme Court referred above permit this Court to apply the principles of guesstimate. I am of the considered view that the ends of justice would be met in fixing the rate of Rs.175/- sq.ft. for the constructed portion.

16. The minute perusal of the sale deed exhibits 33 and 34 by which the appellant purchased the land comprising of constructed portion with open space would indicate that open space was also purchased along with constructed portion. The maps are annexed to exhibits 33 and 34 which would show that in between road and constructed portion, the open space is seen. The sale deeds unequivocally disclose that northern side open space belonged to the appellant. It is merged in the acquisition because the widening of the road or the expansion of the square would not be possible unless the open space is acquired first. The respondent – authorities have denied the compensation for the open space which is utterly against constitutional right

of the appellant under Article 300-A of the Constitution of India.

17. Merely because open space of 237.25 sq.ft. is not shown in the notification under Section 126 or Section 6 of the Act does not mean that there is no utilisation of the open space. The Respondent – authorities are the record keepers and the acquisition process has been initiated at their behest. They are bound to explain as to why the compensation for open space has not been paid to the appellant. They cannot shirk the liability of paying compensation when it is evident that the constructed portion cannot be acquired unless open space is acquired. The appellant is entitled to the compensation for the open space.

18. Reliance is placed on the judgment of National Highways Authority of India vs. Sub-Divisional Officer cum Land Acquisition Officer, Yavatmal in Writ Petition No.2981 of 2021. In that case also, the claimant was not paid compensation of land of 0.62 HR in Gut No.4 and only compensation to the extent of 0.26 HR was paid. Ultimately, it was held that the appellant is entitled to receive compensation. Both the pieces of land were reflected in the joint measurement. It was held that the claimant was entitled to receive the compensation for both pieces. In the present case also, I have come to conclusion that the appellant is entitled to compensation for acquisition of the

constructed portion as well as open space.

19. The possession was taken on 08.01.1982. Already there are three rounds of litigation. The appellant suffered orders of remand. Under such circumstances, it would be time-consuming to direct the respondents to undertake the proceedings for acquisition of the open space and to pay the compensation. The said course is not practicable for the reason that even the respondents might not have the record after lapse of 45 years. The concrete evidence is lacking for fixing the rate. I again rely upon the principles laid down by the Supreme Court for applying the principles of guesstimate for fixing the rate for the open space. The open space might have been put to commercial utility by the appellant. The area is developed one. Considering overall situation, it would be appropriate to fix the rate at Rs.100/- per sq.ft. for the open space.

20. For the reasons stated above, I pass following order :

ORDER

- a. First Appeal is allowed partly.
- b. Appellant is entitled to receive rate of rs.175/- per sq.ft. For 72.83 sq.m. (783.65 sq.ft.) for constructed portion and Rs.100/- sq.ft. for the open space of 237.25 sq.ft.

- c. The appellant shall be entitled to receive solatium at the rate of 30% of the market value and additional component at the rate of 12% from the date of notification i.e. 18.07.1977 till the date of award i.e. 22.09.1986.
- d. The appellant shall be entitled to the interest under Section 28 and 34 of the Land Acquisition Act, 1894 as per full Bench judgment of State of Maharashtra Vs. Kailash Shiva Rangari [2016 AIR (Bom.)141].
- e. The appellant shall pay the deficit court fees.
- f. Record and Proceeding be sent back to the Reference Court.
- g. Award be drawn accordingly.

(SHAILESH P. BRAHME, J.)