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AVINASH DHAVAJI NAIK

v.

STATE OF MAHARASHTRA

(Civil Appeal No. 4259 of 2002)

APRIL 15, 2009

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[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

LAND ACQUISITION ACT, 1894:

C *s.23 - Compensation for land acquired - computation of - Belting method – Large tract of grassy lands agriculture in nature and situate in 96 villages acquired in 1970 – Land Acquisition Collector awarded compensation at Rs. 0.35/- per sq m. – Findings recorded by reference court that no sale* D *instance was available, there was no industrial or commercial development, no railway station nearby, villages had no electricity connection – No evidence brought on record by State to indicate annual average yield - Adopting belting method, reference court enhanced the compensation to Rs.5,* E *Rs.6 and Rs.10/- per sq. m. – High Court reducing compensation from 10/ to Rs.7/- per sq.m. and upholding Rs.5/- per sq. me. for other lands – Held: In case of this nature some guess work is inevitable – However, keeping in view the principle of potentiality and positive and negative factors,* F *compensation at Rs. 10/- per sq. would be appropriate.*

The respondent State, in order to form a new city under `New Bombay Project' issued on 3.2.1970 a Notification u/s 4 of the Land Acquisition Act, 1894 acquiring a large tract of land situate in 96 villages. A G **declaration u/s 6 of the Act was published on 21-5-1971. The Land Acquisition Collector valued the lands at 35 paise per sq.m. The reference court adopting the belting method enhanced the compensation to Rs.5/- Rs.6/- and Rs.10/- per sq.m. for various lands. The High Court**

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reduced the compensation to Rs.7 for the lands for which the reference court had awarded compensation at the rate of Rs.10/- per sq. m. and for other lands held the compensation at the rate of Rs.5/- per sq. m. as justified.

In the appeals filed by the land owners, it was contended for the appellants that the reference court and the High Court erred in rejecting the evidence of expert witness (PW 2) who had estimated value of lands at Rs.15/- per sq.m.

Allowing the appeals in part, the Court

HELD:1. As regards the valuation of lands made by the expert witness (PW 2), the reference court rightly held that the same could not be fully relied upon because the valuer visited the land on or about 20-6-1987 whereas notification u/s 4 of the Land Acquisition Act, 1894 was issued on 3-2-1970 and declaration in terms of s.6 was made on 21-5-1971; and that the valuer did not consider the aspect of capitalization properly. [Paras 11 and 22] [228-F-G; 233-C-D]

2.1. Findings of fact were arrived at by the reference court that no sale instance was available for the lands situated in the village and there was no industrial or commercial development therein; that there was no railway station nearby the village; that the villagers did not obtain any electricity connection; and that the land was a grassy land. Enough material was not brought on record to establish the yield of the lands sought to be acquired, which are admittedly agricultural in nature. In all fairness, the State should have brought on record the requisite information, viz., the nature of the crop, the annual average yield, availability of irrigation facilities, etc. so as to enable the reference court to arrive at a correct decision in regard to grant of compensation under the Act. [Paras 12 and 13] [229-A-D]

A **2.2. In order to assess potentiality of a land, the court may not only have to bear in mind the purpose for which the lands were sought to be acquired but also the subsequent events to some extent. In a case of this nature the court may proceed on the presumption that** B **such a vast tract of land, viz. lands of 96 villages were sought to be acquired at the same time for construction of New Bombay. Some guess-work is inevitable, However, the judgment rendered by the High Court in respect of the lands covered in Civil Appeal No. 4264-65** C **of 2002 may be a safe guide particularly when the reference court itself opined that the valuation of the land should be determined at Rs. 10 per sq. m. Thus, the said valuation adopted may be considered as providing for some guideline. Therefore, keeping in view the aspect of** D **potentiality of the land and positive and negative factors, compensation at the rate of Rs. 10/- per sq. m. would subserve the ends of justice. [Paras 15, 18, 19 and 25] [229-G-H; 232-C-D; 235-A-C]**

Rao Narain Singh (Dead) by Lrs. v. Union of India **(1993)** E **3 SCC 60 and** *Viluben Jhalejar Contractor (dead) by Lrs. v. State of Gujarat* **(2005) 4 SCC 789, referred to.**

Case law referene:

(1993) 3 SCC 60	**referred to**	**Para 17**
F **(2005) 4 SCC 789**	**referred to**	**Para 17**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4259 of 2002.

G From the Judgment & Order dated 13.06.2001 of the High Court of Judicature at Bombay in first Appeal No. 233/1989.

WITH

C.A. NO. 4266/2002, 4262/2002, 4260-4261/2002, 4263/

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2002, 4264-4265/2002.

Uday U. Lalit, Shivaji M. Jadhav, Prasenjit Keswani, Nitin Sangra, Amol Chetak and Prasant Kumar for the Appellants.

Sanjay V. Kharde and Asha Gopalan Nair (for Ravindra Keshavrao Adsure) for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. These appeals involving similar questions of fact and law were taken up for hearing together and are being disposed of by this common judgment.

2. By reason of a notification dated 3.02.1970, the State of Maharashtra expressed its desire to acquire a large chunk of land situated in 96 villages for the purpose of forming new twin city near Bombay called as 'New Bombay Project'. By reason of the said notification, 53 acres of land, i.e., 5300 sq. m. belonging to the appellants herein and situated in village Wahal in the District of Raigad, Maharashtra was sought to be acquired.

A declaration in terms of Section 6 of the Land Acquisition Act (for short "the Act") was made on 21.05.1971.

3. A notice under Section 9 of the Act was issued pursuant whereto the claimants – appellants filed their applications for payment of enhanced compensation.

4. The Land Acquisition Collector made its award. Aggrieved by and dissatisfied therewith, the appellants filed applications before the Collector for reference in terms of Section 18 of the Act pursuant whereto reference was made to the Court of District Judge in the year 1986.

5. Before the Reference Court, the parties adduced their respective evidences. Appellants examined one Jeevan Kulkarni (PW-2) as an expert witness. He made valuation of

A the lands in question. He visited the land on or about 20.06.1987 and prepared a report estimating the value of the land at the rate of Rs.15/- per sq. m., i.e., Rs. 60,000/- per acre. By reason of the award dated 30.01.1988, the Reference Court awarded compensation at the rate of Rs. 5/- per sq.m. with all
B other benefits.

6. In reference cases involved in Civil Appeal Nos. 4260-4261 of 2002 *(Ramdas Dattatraya Naik v. The State of Maharashtra)* and Civil Appeal Nos. 4264-4265 of 2002 (Dattatraya Krishna Naik (since deceased) through his
C proposed Legal Representatives) v. The State of Maharashtra), however, compensation was awarded upon adopting the belting method at the rate of Rs. 6 and 10 per sq. m. respectively.

7. Both the parties preferred appeals and cross-appeals
D thereagainst. By reason of the impugned judgment, whereas the appeal preferred by the appellants had been dismissed, the cross appeals preferred by the State in Civil Appeal Nos. 4260-4261 of 2002 and in Civil Appeal Nos. 4264-4265 of 2002 was allowed holding that compensation determined at the rate of
E Rs. 5 per sq. m. was justified. However, in Civil Appeal Nos. 4264-4265 of 2002 where the Trial Court awarded compensation at the rate of Rs. 10 per sq. m., it was reduced to Rs. 7/- per sq. m. by reason of the impugned judgment.

8. Mr. Uday U. Lalit, learned senior counsel, in support of
F these appeals, would contend that the Reference Court as also the High Court could not have rejected the testimony of Mr. Jeevan Kulkarni who made a modest estimate in regard to valuation of the land at the rate of Rs. 15 per sq. m.

G Drawing our attention to a judgment of the Bombay High Court in *Unama Padu Hudar & Ors. v. The State of Maharashtra* [First Appeal No. 754 of 1986, decided on 25 & 26th February, 1993], the learned counsel urged that in respect of villages Panvel and Kamothe, the High Court itself adopted
H belting system and granted various amounts of compensation

depending upon the proximity of the village from the National Highway running between Bombay and Pune to the following effect:

"Group No.	First Appeal No.	Rate granted per sq. m.
I. Abutting the Highway	754/1986 763/1986	25
II. Within 800 Metres	751/1986 (Part) 756/1986	23
III. Abutting Kamothe Z.P. Road to 1200 Metres	753/1986 751/1988 (Part) 752/1986	22
IV-A. 800 Mtrs. to 2200 Mtrs from Bombay – Pune Highway	755/1986	20
IV-B. 20 Mtrs from Z.P. Rd., & Gaothan to 640 Mtrs from Z.P. Rd & Gaothan	743/1986	20"

9. Our attention was also drawn to the fact that in some cases where award could not be made and published within a period of two years from 24.09.1984 from which date Section 11A was inserted in the Act, a fresh notification was issued in the year 1986. Recently, the Bombay High Court by reason of a judgment and order dated 21.06.2007 has granted compensation at the rate of Rs. 1,725/- per sq. m. It was urged that in these views of the matter and keeping in view the fact

A that the appellant in Civil Appeal No. 4259 of 2002 has paid great fees for obtaining compensation at the rate of Rs. 20 per sq. m., this Court may award compensation suitably.

10. Mr. Sanjay V. Kharde, learned counsel appearing on behalf of the State, on the other hand, supported the impugned judgment.

For the sake of convenience, we may hereto below place the relevant details:

Civil Appeal No.	Area	Award	Reference Court	High Court
4259 of 2002	5300 sq. m.	Re. 1	Rs. 5	Rs. 5
4266 of 2002	13600 sq.m.	Re. 1	Rs. 5	Rs. 5
4262 of 2002	23300 sq. m.	Re. 1	Rs. 5	Rs. 5
4260-61 of 2002	19800 sq. m.	Re. 1	Rs. 6	Rs. 5
4263 of 2002	22490 sq. m.	Re. 1	Rs. 5	Rs. 5
4264-65 of 2002	5 acres 2 guntas	Re. 1	Rs. 10	Rs. 5 (in one case Rs. 7)

11. The purpose for acquisition of land was building a new city. A vast tract of land was sought to be acquired. Indisputably, in terms of Section 23 of the Act, the market value of the land was required to be determined as was obtaining in the year 1970 when the notification under Section 4 of the Act was issued. It is unfortunate that despite the fact that notification was issued under Section 4 of the Act as far back as on 3.02.1970 and a declaration under Section 6 of the Act was issued on 21.05.1971, the award came to be passed only on 30.06.1986 and that too probably, only having regard to the consequences ensuing in terms of Section 11A of the Act.

12. A finding of fact was arrived at by the learned Reference Judge that no sale instance was available for the lands situated in the village Wahal and there was no industrial or commercial development therein. The Pune-Bombay Highway was constructed in the year 1978. The M.I.D.C. pipeline was constructed in the year 1978. There was no railway station nearby the village. The villagers did not obtain any electricity connection. The land was a grassy land.

13. In absence of any example of sale being available, the reference court was required to take recourse to other methods of valuation. We do not find that enough materials had been brought on record to establish the yield of the lands sought to be acquired, which are admittedly agricultural in nature. In all fairness, the State should have brought on record the requisite information, viz., the nature of the crop, the annual average yield, availability of irrigation facilities, etc. so as to enable the reference court to arrive at a correct decision in regard to grant of compensation under the Act

14. Although the lands in question were agricultural in nature, they were being used for making a town like Bombay. A new port known as Nhava Sheva Port had come into being which is a few kilometers away from the village. The roads were being constructed. The road to Nhava Shiva Port from Bombay is a District Board Road which is within 7 Kms. from the village in question. A copy of the new Bombay Development Plan has been placed before us to point out construction of the National Highway, i.e., Bombay-Pune road as also the other District Board roads.

The potentiality of a land for the purpose of development as also for building purposes would depend upon a large number of factors.

15. For the said purpose, the court may not only have to bear in mind the purpose for which the lands were sought to be acquired but also the subsequent events to some extent. In

A a case of this nature the court may proceed on the presumption that such a vast tract of land, viz., 96 villages were sought to be acquired at the same time for construction of New Bombay.

16. We are not unmindful of the fact that development in the entire area was not possible at one point of time. B Development of the area must have taken place in phases. We are also not unmindful of the fact that the price of the land may skyrocket depending upon the development as also future potentiality.

C 17. The High Court, as noticed hereinbefore, in respect of village Kamothe adopted a belting system. It awarded compensation varying from Rs. 20 to Rs. 25 per sq. m. depending upon the proximity from the National Highway. In respect of a village Panvel, however, although the lands were D not proximate to the National Highway but a standard was adopted for the purpose of grant of compensation on the proximity from the District Board Roads.

18. If that criterion is to be adopted, in our opinion, some E subsequent events may also be taken into consideration therefor. In search of legal principles of valuation of land, we may notice some decisions.

In *Rao Narain Singh (Dead) By LRs. v. Union of India* [(1993) 3 SCC 60], this Court held:

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"8. Building potentiality of the acquired land, claimed to be possessed by the acquired land, can assume no significance in the instant case as 'the comparable sales method' of valuation of land is resorted to by the High G Court. Such method is resorted to, as the acquired land was found to be comparable in its essential features with land(s) respecting which evidence of certain sale deed(s), was produced. Hence, the contention of the learned counsel for the appellant raised to establish that the acquired land had building potentiality at the time of its H

acquisition, need not engage our consideration." A

Yet again in *Viluben Jhalejar Contractor (dead) By LRs. v. State of Gujarat* [(2005) 4 SCC 789], it was held:

"The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors *vis-à-vis* the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under: B C

Positive factors	Negative Factors
(i) smallness of size	(i) largeness of area
(ii) proximity to a road	(ii) situation in the interior at a distance from the road
(iii) frontage on a road	(iii) narrow strip of land with very small frontage compared to depth
(iv) nearness to developed area	(v) lower level requiring the depressed portion to be filled up
(v) regular shape developed	(v) remoteness from locality
(vi) level *vis-à-vis* land under acquisition	(vi) some special disadvantageous factors which would deter a purchaser

D E F G H

A (vii) special value for an owner of an adjoining property to whom it may have some very special advantage.

B Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development C charges may range between 20% and 50% of the total price."

19. Applying the aforementioned legal principles to the fact of the present case, we are of the opinion that if the belting D system is taken recourse to, compensation at the rate of Rs. 10/- per sq. m. would sub-serve the ends of justice.

20. The Reference Court in another case leading to First Appeal No. 646 of 1995 [*State of Maharashtra v. Shri Trimbak Joma Thakur*] fixed the amount of compensation at Rs. 230 E per sq. m. The Reference Court in the instant case, having regard to the non-agricultural potential of the land, made the valuation at the rate of Rs. 5 per sq. m. It was held:

"...Admittedly those lands are not from village Wahal. F Considering this type of evidence of an expert, I certainly conclude that bearing in mind the distance of the acquired lands from Panvel which is far expanding city, this land has certainly N.A. potentiality in the year 1970 also. There are other industrial developments and particularly Nhava Sheva G Port Trust, Navy, the lands would have certainly fetch the price more than the awarded price. In the circumstances, from the evidence on record, I say that the Opponent has paid less compensation and it is necessary to increase the amount of compensation....Thus, considering the H evidence before me, I can guess the possible correct rate

of compensation and according to me, it is necessary to award compensation at the rate of Rs. 5 per square metre for the present acquired lands."

21. We have arrived at the rate of Rs.10/- per sq. m. of land for the purpose of grant of compensation because the distance between village Panvel and Wahal is about nine kms. Panvel was a municipal area, Wahal was a gram panchayat. We have noticed hereinbefore that even the electricity had not reached the Village Wahal.

22. Appellant in Civil Appeal No. 4259 of 2002, in his deposition categorically admitted the factors to which we have taken note of heretobefore as regards non-development of the land. The expert opinion of the valuer also could not be fully relied upon as not only he had visited the village in the year 1986 but also in his evidence, he admitted:

"...In my valuation report, I have taken capitalization method. While taking income capitalization method, I have noted that in the Indian context, it is very difficult to prove the agri. Income because of the heart percentage illiteracy and no accounts are maintained by the agriculturist..."

It is in that view of the matter, the Reference Court did not rely upon his evidence, stating:

"I found that Mr. Kulkarni has not considered the aspect of capitalization properly. For the purpose of capitalization, he mainly relied upon the lease in favour of M.I.D.C. In fact M.I.D.C. has installed the pipeline in the year 1978 as stated by the claimant. So on the date of notification, the lease instance was not available. Consequently, the conclusion drawn by Mr. Kulkarni on the strength of capitalization will not be helpful to determine the price of the land as on the date of notification. Further, Mr. Kulkarni has considered the sale instances from villages in Thane District. Mr. Kulkarni has fairly admitted that he could not

A get any sale instance from village Wahal or the adjoining villages. He has further admitted that there are no industrial or commercial activities in village Wahal in 1970. Thus, his guess work, with regard to N.A. potentiality is based on the sale instances and the awards which he has
B considered. From his report it appears that he has considered, sale instance from village shahabaj which is 3 to 4 kms. away from village Wahal. The rate paid in the sale instance is Rs. 7.77 per square metre. The Awards which he has considered also show that amounts of Rs. 8
C to Rs. 15 per square metre are awarded by various Courts for adjoining lands..."

23. Another aspect of the matter cannot also be lost sight of. In the instant case, the Land Acquisition Collector valued the lands at 35 paise per sq. m., the Reference Court opined that
D valuation would be Rs. 5 per sq.m. Whereas in First Appeal No. 754 of 1986 decided on 26.02.1993, the Land Acquisition Collector itself valued the land at the rate of Rs. 6 per sq.m. wherewith the Reference Court did not differ and the belting system for the first time was adopted by the High Court itself,
E in First Appeal No. 646 of 1995 decided on 21.06.2007, the Land Acquisition Collector valued the lands at the rate of Rs. 200 to 230 per sq. m. which was upheld by the Reference Court. In that case, notification under Section 6 of the Act was issued in the year 1986. Within a span of 16 years, a lot of
F development had taken place. The lands in question in that case involved commercial lands and deeds of sale were available for the purpose of determination of the amount of compensation.

G 24. However, if not the judgment dated 21.06.2007, the judgment dated 26.02.1993, in our opinion, can be put to use at least for a limited purpose, viz., option of belting method and grant of compensation on the basis of the proximity of the National Highway and the other.

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25. Keeping in view the aforementioned principles in mind, we have arrived at the aforementioned figure of Rs. 10 per sq. m.

In a case of this nature, in our opinion, some guess-work is inevitable. [See *Viluben Jhalejar Contractor* (supra)]. We must, however, add that the judgment rendered by the High Court in Civil Appeal No. 4264-65 of 2002 may be a safe guide particularly when the Reference Court itself opined that the valuation of the land should be determined at Rs. 10 per sq. m. Thus, the said valuation adopted may be considered as providing for some guideline.

26. The appeals are allowed in part and to the extent mentioned hereinbefore. In the facts and circumstances of the case, there shall be no order as to costs.

R.P. Appeals partly allowed.