SHANKARRAO BHAGWANTRAO PATIL ETC. A

v.

THE STATE OF MAHARASHTRA & ORS.

(Civil Appeal Nos. 5712-5713 of 2021)

SEPTEMBER 20, 2021 B

[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

Land Acquisition Act, 1894 – Compensation – Deduction towards development cost – Appellants' land acquired – Compensation awarded by Land Acquisition Collector – Dissatisfied, reference sought – Reference Court awarded compensation at the rate of Rs.70 per square feet – In appeal, High Court reduced the compensation to Rs.317/- per square meter (29 per square feet) – Held: Land in question was rocky and had a moorum *soil – Such land is not cultivable – In the facts of the present case, deduction towards the development cost at the rate of 50% is warranted – Order of the Reference Court is justified in law – High Court reduced the compensation drastically without any reasonable basis – Appellant entitled to a compensation at the rate of Rs.70/- per square feet from the date of award by the Land Acquisition Collector with interest as directed – Constitution of India – Art.142.* C D E

Land Acquisition Act, 1894 – Compensation – Exemplar of a smaller plot as compared to a larger area – Deductions on account of – Discussed.

Disposing of the appeals, the Court

Held: 1.1 The reliance of the appellant on the Exemplar Exhibit 31 (one of the two sale deeds relied on by the appellant, the other being Exhibit 30) is absolutely untenable and based on a false representation. Exhibit 31 is excluded from consideration *inter alia* for the reason that the property was sold on 4.9.1996, but still it continued to be reflected in the name of the vendor and even the permission to raise construction after the sale was granted to the vendor. Exhibit 30 is part of the same survey number whereby land was sold at the rate of Rs.137.76 square feet. In the present case, there is no evidence that the sale exemplar Exhibit 30 was a part of any developed layout but is an F G H

A **isolated instance of sale. Such sale of a small area as compared to the acquisition of 9000 square meters can be taken into consideration after a suitable deduction is made on account of the development cost. The land in question was rocky and had a *moorum* soil. Such land is not cultivable. Still further, the State has taken possession of a part of the land in 1984 and another part in 1992 as is apparent from the reading of the two awards of the Special Land Acquisition Officer. It has also come on record that the land, subject matter of the appeals, is similarly situated and forms a part of Bhoom Municipal Council. The Bhoom town has a small population of 17150. The possession of the land was taken for construction of government quarters and a road. Since the use of the land for a government quarter was known, therefore, the smaller area was sold keeping in view the intended use of the land acquired for the residential purposes. The deduction of 50% is proper as the sale deed was executed after 11 years of possession of rocky land and *moorum* soil was taken. Therefore, deduction towards the development cost at the rate of 50% is warranted in the facts of the present case. Thus, the compensation to be awarded is (137.76/2 = 69 rounded off to Rs.70 per square feet) which was the market value assessed by the Reference Court as well. [Paras 10, 16][246-A-D; 249-B-F]**

E *Meharawal Khewaji Trust v. State of Punjab* **(2012) 5 SCC 432 : [2012] 4 SCR 24 – held inapplicable.**

Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and Anr. **(1988) 3 SCC 751 : [1996] 2 SCR 444;** *Lal Chand v. Union of India and Anr.* **(2009) 15 SCC 769 : [2009] 13 SCR 622;** *Kasturi and Ors. v. State of Haryana* **(2003) 1 SCC 354 : [2002] 4 Suppl. SCR 117 – relied on.**

1.2 The order of the Reference Court is justified in law whereas the High Court has reduced the compensation drastically without any reasonable basis. Therefore, the appellant is entitled to a compensation at the rate of Rs.70/- per square feet from the date of award by the Land Acquisition Collector. Apart from statutory benefits, such compensation has been arrived at keeping in view the development activity that has already taken

H

place by the virtue of possession of the acquired land delivered to the State. The possession of the land acquired was taken in the year 1984/ 1992. Instead of remitting the matter to the Land Acquisition Collector for determination of the compensation for use and occupation by the State, it is deemed appropriate to decide this issue in the present appeal itself. There is no evidence that such land was being put to use by the landowners even prior to the taking of possession by the State. But the fact remains that the possession has been taken without payment of compensation depriving the landowners of the right to use land. Therefore, the land owners would be entitled to interest on the amount of compensation awarded at the rate of 9% per annum from the date of possession which was taken in the year 1984/1992 till the date of notification under Section 4 of the Land Acquisition Act, 1894 on the amount awarded after acquisition that is the sum of Rs.70/- per square feet. The appellant shall be entitled to others statutory benefits on the compensation amount of Rs.70/- per square feet from the date of award till realization. [Paras 17-19][249-F-G; 250-A-E]

Maya Devi (Dead) Thr. Lrs v. State of Haryana and Anr. **(2018) 2 SCC 474 : [2018] 1 SCR 225;** *R.L. Jain v. DDA & Ors.* **(2004) 4 SCC 79 : [2004] 2 SCR 1156;** *Madishetti Bala Ramul v. Land Acquisition Officer* **(2007) 9 SCC 650 : [2007] 7 SCR 222;** *Tahera Khotoon & Ors. v. Revenue Divisional Officer/Land Acquisition Officer & Ors.* **(2014) 13 SCC 613;** *Balwan Singh & Ors. v. Land Acquisition Collector & Anr.* **(2016) 13 SCC 412 : [2016] 2 SCR 163 – referred to.**

Case Law Reference

[2012] 4 SCR 24	**held inapplicable**	**Para 6**
[2018] 1 SCR 225	**referred to**	**Para 7**
[2004] 2 SCR 1156	**referred to**	**Para 8**
[2007] 7 SCR 222	**referred to**	**Para 8**
[2016] 2 SCR 163	**referred to**	**Para 8**
[1996] 2 SCR 444	**relied on**	**Para 12**

A	**[2009] 13 SCR 622**	**relied on**	**Para 14**
	[2002] 4 Suppl.SCR 117	**relied on**	**Para 15**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.5712-5713 of 2021.

B From the Judgment and Order dated 22.03.2016 of the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.1373 of 2003 and First Appeal No.63 of 2004 and order dated 27.07.2016 in Review Application Civil No.81 of 2016 in First Appeal No.1373 of 2003.

With

C Civil Appeal Nos.5714-5715 of 2021

Jayant Bhushan, Sr. Adv., Atul Babasaheb Dakh, Tushar Bhushan, Amartya Bhushan, Ketan Paul, Advs. for the Appellants.

Sachin Patil, Rahul Chitnis, Aaditya A. Pande, Geo Joseph, Advs. for the Respondents.

D

The Judgment of the Court was delivered by

HEMANT GUPTA, J.

1. The present appeals are directed against the order dated 22.03.2016 passed by the High Court of Judicature at Bombay, Aurangabad in the First Appeals filed by the land owners and the State determining the compensation of the land acquired at the rate of Rs.317/- per squaremeter (29 per squarefeet) apart from the statutory benefits, thus reducing the compensation awarded by the learned Reference Court on 13.08.2003 at the rate of Rs. 70 per squarefeet.

E

F 2. The land of the appellants measuring 40R (1R = 100 square meters or 1089 square feet) comprising of a land survey no. 220/4/b was taken into possession by the State through private negotiations on 14.09.1984. The market price payable to the landowners was to be settled by negotiations but, since the price could not be decided, therefore the land comprising land survey no. 220/4/b admeasuring 40R was intended to be acquired vide notification dated 04.02.1999 under Section 4 of The Land Acquisition Act, 1894[1] published in the Maharashtra Government Gazette. Such land is the subject matter of Civil Appeals arising out of SLP (Civil) Nos. 33471-33472 of 2016.The State also intended to acquire

G

H [1] For short the 'Act'

land admeasuring 30R and 20R comprising of Survey Number 212/b and 220/4 vide the above said notification as well. The possession of such land was taken on 21.10.1992. Such land is the subject matter of Civil Appeals arising out of SLP (Civil) Nos.33876-33877 of 2016. The other statutory requirements were completed and two separate awards were announced. The learned Special Land Acquisition Collector determined market value considering the two sale instances both dated 24.04.1997 forming a part of the land comprising of Survey No. 220 of an area of 92 square meters sold for a sum of Rs. 3500/-. The first award was announced on 26.03.2002in respect of the land admeasuring 40R. The learned Special Land Acquisition Collector awarded a sum of Rs.232/- per squaremeter. The second award was announced by the Land Acquisition Collector on 6.4.2002 awarding a compensation of Rs.217/- per squaremeter for 1390 squaremeters of land out of Survey No. 220/4 and Rs.168/- per square meters comprising of Survey No. 212/1/b, whereas in respect of the land admeasuring 100 square meters out of Survey No. 212/1/b, a compensation of Rs. 179/- per square meter was granted.

3. The land owners dissatisfied with the amount of compensation, sought reference under Section 18 of the Act claiming compensation at the rate of Rs. 150/-per square feet for the entire land measuring 90R. It has also come on record that the land, subject matter of the appeals, is similarly situated and forms a part of Bhoom Municipal Council. The population of Bhoom Municipal Council is 17510and the land is described in the revenue record as barren land. PW 1 – Shankarrao had admitted that the land was rocky and *moorum* (powdered rock) soil.

4. The land owners relied upon two sale deeds, i.e. Exhibit 30 dated 05.04.1995 whereby the landfalling under Survey No. 220 was sold for a sum of Rs. 3,00,051/- in pursuance of an agreement to sell dated 02.11.1994. A sum of Rs. 1,00,000/- was to be paid before 1.11.1995. The Reference Court calculated the rate of the sale price, it was recorded to be Rs. 137.76 per square feet. The rate has not been disputed before the High Court or even before this Court. The land owners relied upon another sale deed i.e. Exhibit 31 dated 04.09.1996 whereby the land measuring 49.5 x 16.5 feet(816. 75 square feet) was sold for a sum of Rs.1,90,000/-that is Rs. 232.50 per square feet. Such property is described as Municipal Council New Property Number 1480 and 1480/1. The learned Reference Court arrived at the compensation of Rs.70/- per

A square feet of the land acquired after deducting 20% of the price mentioned in Exhibit 30 and 31 on account of development charges.

5. However, the High Court in further appeals filed by the State and the land owners dismissed the appeal of the land owners for enhancement but reduced the compensation to Rs.317/-square meter B (29 per squarefeet). The High Court found that the sale instances are in respect of the land but in fact the houses were constructed thereon therefore, the sale deed includes the cost of construction of the house, such cost has to be reduced. The High Court also held that since the acquisition is of a large area of 9000 square meters, therefore, the suitable development charges are required to be deducted as the sale instances C pertain to the smaller area. After discussing the evidence, the High Court redetermined the compensation as mentioned above.

6. Before this Court, Mr. Jayant Bhushan, learned Senior Advocate on behalf of the land owners argued that as per Exhibit 30, a plot measuring 66 x 33 feet (2178 square feet/ 202 square meter) was sold D at the rate of Rs.137.76 per square feet. Another sale instance Exhibit 31, a plot measuring 815.75 square feet was sold at the rate of Rs.232.62 per square feet. The land, subject matter of the sale instance Exhibit 30 and 31 are close to the acquired land inasmuch as the land in Exhibit 31 is just 150 feet from the acquired land. It is argued that the sale instances E are of an open land. Therefore, the finding of the High Court that the land had houses is not supported by evidence as the permission for construction was granted only in the year 1997 after the acquisition of sale deed dated 1996. The learned counsel further argued that in view of the judgment of this Court in **Meharawal Khewaji Trust** v. **State of Punjab**[2], the highest rates from the sale exemplar is to be taken, therefore, F Exhibit 31 is a more suitable exemplar which is required to be madethe basis for determination of compensation.

7. The learned counsel for the appellant also relied upon the judgment of this Court reported as **Maya Devi (Dead) Thr. Lrs** v. **State of Haryana and Anr**.[3] that 33% deduction could be made for G large lands being acquired when the exemplar is for a smaller area. Thus, with Exhibit 31 having the sale price of Rs.232/- per squarefeet and 33% deduction is made, the rate would come out to be Rs.160 per

[2] (2012) 5 SCC 432

H [3] (2018) 2 SCC 474

squarefeet. Therefore, the amount claimed by the land owners i.e. at the rate of Rs.150/- per square feet should have been awarded.

8. It is also argued that since the possession was taken in the year 1984/ 1992 though the notification under Section 4 of the Act was published in the year 1999, therefore, an interest on the amount of compensation awarded from the date of possession should have been granted. The reliance is placed upon judgments of this Court reported as **R.L. Jain** v. **DDA & Ors**.[4], **Madishetti Bala Ramul** v. **Land Acquisition Officer**[5], **Tahera Khotoon & Ors.** v. **Revenue Divisional Officer/Land Acquisition Officer & Ors**[6]., **Balwan Singh & Ors.** v. **Land Acquisition Collector & Anr**.[7]. It is thus argued that the order of the High Court to remit the matter to the Collector for determination of the compensation from the date of possession till the date of notification is clearly erroneous and the land owners would remain further deprived of the value of the acquisition of land.

9. On the other hand, Mr. Sachin Patil, learned counsel for the State argued that houses were constructed on the land in question which is evident from the Tax Assessment Register for the period 1983-84 till 1.1.97 (Annexure A-3) filed by the appellant with additional documents showing the assignment of House property number. In fact, the sale deed itself is of Municipal Council Property No. 1186/1 (New No. 1481/ 1). Still further, the permission to construct relied upon by the appellant is dated 28.1.1997 which was granted to the vendor, though the land stood sold to the appellant on 4.9.1996. Thus, the entire story of the land being an open land is not true. It is argued that the land, subject to the sale exemplar is a very small area as against the large track of acquired land measuring almost 2 acres. The sale exemplars relied upon by the appellants are of the smaller area. Therefore, the deduction of atleast 50% is required to be made towards the land required for development works apart from the deduction on account of the value of the house constructed. It is argued that the sale exemplars Exhibit 30 and 31 respectively are not relevant since they are not a part of the land which is the subject matter of the acquisition. In fact, the sale exemplars referred to the Reference Court are in respect of the land acquired. Therefore, the said sale instances become the most relevant exemplars.

[4] (2004) 4 SCC 79
[5] (2007) 9 SCC 650
[6] (2014) 13 SCC 613
[7] (2016) 13 SCC 412

A 10. We have heard the learned counsel for the parties.We find that the Exemplar Exhibit 30 is in respect of Survey No. 220 of a sale deed executed on 05.04.1995. Exemplar 31 is not a part of Survey No. 220 but has been assigned Municipal Council New Property No. 1480 and 1481/1, because the land is situated close to the acquired land. The B argument that the construction was raised in pursuance of the permission granted on 28.01.1997, therefore, the finding of the High Court that the house was already constructed is not tenable. We find that the reliance of the appellant on the Exemplar Exhibit 31 is absolutely untenable and based on a false representation. A perusal of the permission dated 28.01.1997shows that it was granted to Govind Rajaram Bhagwat for C the construction of a house on Plot No. 1480/1, vendor. Such property had already been sold on 04.09.1996. Still further, the house tax assessment register produced by the appellant shows that the property was assessed to house tax in the name of Govind Rajaram Bhagwat from the year 1983-1984 till 01.01.1997. Therefore, such land had a D house constructed thereon, which was assessed to House Tax as well. The commencement certificate is not reliable since it is granted to the vendor of the purchaser. Therefore, Exhibit 31 is excluded from consideration.

11. Thus, the judgment of this Court in **Mehrawal Khewaji Trust** E is of no help to the appellant inasmuch as the best exemplar Exhibit 31 referred to by the appellant has been found to be a non-bonafide transaction. In the absence of such an exemplar, only Exhibit 30 remains to be examined in which, the plot of land, of the same survey number was sold at the rate of Rs. 137.76 per square feet.

F 12. The question of deductions on account of an exemplar of a smaller plot as compared to a larger area under acquisition has come up for consideration before this Court in **Chimanlal Hargovinddas** v. **Special Land Acquisition Officer, Poona and Anr**.[8]. This Court held as under:

G "8. …….The first two grounds are devoid of merit. It is common knowledge that when a large block of land is required to be valued, appropriate deduction has to be made for setting aside land for carving out roads, leaving open spaces, and plotting out smaller plots suitable for construction of buildings. The extent of the area required to be set apart in this connection has to be assessed by

H [8] (1988) 3 SCC 751

> the court having regard to the shape, size and situation of the concerned block of land etc. There cannot be any hard and fast rule as to how much deduction should be made to account for this factor. It is essentially a question of fact depending on the facts and circumstances of each case. It does not involve drawing upon any principle of law.
>
> xxx xxx xxx
>
> 12. In the result appellant must be awarded compensation at Rs 7000 per acre subject to deduction or allowance of 25 per cent to account for land required to be set apart for roads, open spaces etc. In other words appellant will be entitled to be paid compensation for 13 acres 7 gunthas comprised in Survey No. 85 at Rs 5250 per acre (Rs 7000 less 25 per cent i.e. less 1750 = Rs 5250) in place of the lesser sum awarded by the High Court. Appeal must be partly allowed to this extent accordingly."

13. In the aforesaid case, reliance of the landowners was on an exemplar which reflected the sale price of Rs. 20,000/- per acre which was situated on the Ganeshkhand Road as against Rs. 7,000/- per acre assessed by the High Court. The Court noticed that the unloading was Rs. 13,000/- per acre which works out at 65%.

14. In the judgment reported as **Lal Chand** v. **Union of India and Anr.**[9], this Court held that deduction for development is to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development) the deduction varies from 20% to 75% of the price of such developed plots. This Court held as under:

> "13. The percentage of "deduction for development" to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated.
>
> 14. The "deduction for development" consists of two components. The first is with reference to the area required to be utilised for developmental works and the second is the cost of the development

[9] (2009) 15 SCC 769

works. For example, if a residential layout is formed by DDA or similar statutory authority, it may utilise around 40% of the land area in the layout, for roads, drains, parks, playgrounds and civic amenities (community facilities), etc.

15. The development authority will also incur considerable expenditure for development of undeveloped land into a developed layout, which includes the cost of levelling the land, cost of providing roads, underground drainage and sewage facilities, laying water lines, electricity lines and developing parks and civil amenities, which would be about 35% of the value of the developed plot. The two factors taken together would be the "deduction for development" and can account for as much as 75% of the cost of the developed plot.

xxx xxx xxx

22. Some of the layouts formed by the statutory development authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the "deduction for development" factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%."

15. This Court in the judgment reported as **Kasturi and Ors.** v. **State of Haryana**[10]**,** held that there may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. This Court held as under:

"7 ……..However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be

[10] (2003) 1 SCC 354

remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose."

16. Exhibit 30 is part of the same survey number whereby land was sold at the rate of Rs.137.76 square feet. In the present case, there is no evidence that the sale exemplar Exhibit 30 was a part of any developed layout but is an isolated instance of sale. Such sale of a small area as compared to the acquisition of 9000 square meters can be taken into consideration after a suitable deduction is made on account of the development cost. The land in question was rocky and had a *moorum* soil. Such land is not cultivable. Still further, the State has taken possession of a part of the land in 1984 and another part in 1992 as is apparent from the reading of the two awards of the Special Land Acquisition Officer. The Bhoom town has a small population of 17150. The possession of the land was taken for construction of government quarters and a road. Since the use of the land for a government quarter was known, therefore, the smaller area was sold keeping in view the intended use of the land acquired for the residential purposes. The deduction of 50% is proper as the sale deed was executed after 11 years of possession of rocky land and *moorum* soil was taken. Therefore, we find that deduction towards the development cost at the rate of 50% is warranted in the facts of the present case. Thus, the compensation to be awarded is (137.76/2= 69 rounded off to Rs.70 per square feet) which was the market value assessed by the Reference Court as well.

17. We find that the order of the learned Reference Court is justified in law whereas the High Court has reduced the compensation drastically without any reasonable basis. Therefore, we find that the appellant is entitled to a compensation at the rate of Rs.70/- per square feet from the date of award by the Land Acquisition Collector. Apart from statutory benefits, such compensation has been arrived at keeping in view the development activity that has already taken place by the virtue of possession of the acquired land delivered to the State.

18. The possession of the land acquired was taken in the year 1984/ 1992. The land owners have claimed interest from 1984/1992 when the possession was taken, whereas the acquisition is in the year 1999. In

A respect of the argument for determination of amount of compensation from the date possession was taken by the State till the date of notification under Section 4 of the Act, judgments relied upon by the appellant have been referred to in para 8 above. A perusal of the said judgments shows that grant of payment of interest for the pre-acquisition period is in the nature of an order passed under Article 142 of the Constitution to do substantial justice. Keeping in view the aforesaid judgments, we find that instead of remitting the matter to the Land Acquisition Collector for determination of the compensation for use and occupation by the State, we deem it appropriate to decide this issue in the present appeal itself.

C 19. There is no evidence that such land was being put to use by the landowners even prior to the taking of possession by the State. But the fact remains that the possession has been taken without payment of compensation depriving the landowners of the right to use land. Therefore, the land owners would be entitled to interest on the amount of compensation awarded at the rate of 9% per annum from the date of D possession which was taken in the year1984/1992 till the date of notification under Section 4 of the Act on the amount awarded after acquisition that is the sum of Rs.70/- per square feet. The appellant shall be entitled to others statutory benefits on the compensation amount of Rs.70/- per square feet from the date of award till realization. With the above said directions, the appeals are disposed of.

E

Divya Pandey Appeals disposed of.