

NON REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 368-369 OF 2022
(ARISING OUT OF SLP (CIVIL) NOS. 3526-27 OF 2019)

MADHUKAR S/O GOVINDRAO KAMBLE &
ORS.

.....APPELLANT(S)

VERSUS

VIDARBHA IRRIGATION DEVELOPMENT
CORPORATION & ORS.

.....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The landowners are in appeal aggrieved against the judgment passed by the High Court of Judicature at Bombay, Nagpur Bench on 17.07.2017 whereby the compensation for the land acquired was assessed as Rs.56,500/- per hectare. The order of the Reference Court enhancing the amount of compensation to Rs.1,95,853/- per hectare was set aside in the order impugned in the present appeal.
2. The land admeasuring 2.42 hectares of land was intended to be acquired in pursuance of the notification under Section 4 of the Land Acquisition Act, 1894¹ published on 25.02.1999 for the purpose of

1 The Act

resettlement of affected person from Lower Wardha submergence project.

3. The Special Land Acquisition Officer granted compensation at the rate of Rs.56,500/- on 31.07.2000. The landowners aggrieved against the inadequate determination of the market value sought references under Section 18 of the Act. Before the learned Reference Court, five sale exemplars were relied upon, out of which Exh.34 and Exh.35 were excluded on the ground that such sale exemplars were after the date of publication of notification under Section 4 of the Act. However, the three sale exemplars were considered i.e. Exh. 31, Exh.32 and Exh.33. The date of sale, land survey number; amount of the sale consideration and the price at the rate per hectare was sole is mentioned in the following table:

Exhibit	Date of sale	Survey No	Area sold	Price paid in Rupees	Rate per Hectare in Rupees
Exh. 31	11.2.1998	67/1	2.70 hectares	4,50,000/-	1,66,666.66
Exh. 32	5.12.1998	337	2.20 hectares	2,20,000/-	1,00,000/-
Exh. 33	30.10.1998	216/1, 314/3	151 sq.mtrs (0.0151)	19,710/-	13,073,00/-

4. The learned Reference Court found that Exh.31 and Exh.32 is of agricultural land but there is no concrete evidence to conclude that the land in these two exemplars were having non-agricultural potentiality

at the time of acquisition. The sale exemplar Exh.33 was taken into consideration though it was in respect of a small portion. The sale deed Exh. 33 was executed by Nagar Parishad, Deoli after conducting public auction. The learned Reference Court proceeded to take Rs. 130.73 per sq. mtr. as the base value. It was also noticed that the land was adjacent to road whereas as per the map of Exh.30, the land acquired falling part of Survey No.592 has no access to road. The Reference Court found that the land in sale deed Exh.33 is in the near vicinity of the land acquired but deducted 30% of the value on account of non-similarity, 30% on account of the sale being of a small area and another 30% on account of development charges. Thus, the Reference Court found that per hectare market value would be Rs.1,95,853.55/-. It is the said compensation which was allowed by the Reference Court along with the statutory benefits.

5. The landowners in their reference have averred that the acquired land was near to the populated area of Deoli town having all the facilities like Educational Institutions, Banks, Tahsil Office, Hospitals, Courts and is located within the municipal area of the Deoli. The State in its reply have simply denied the claim for enhancement without disputing the location of the land acquired.
6. In fact, one of the landowners, Prakash as a witness examined on behalf of the landowners deposed that the land, subject matter of the sale deed Exh.33 is near to the acquired land. The landowners have

reserved the land for non-agricultural use i.e. residential plots considering heavy demands in the locality. In the cross-examination, only the suggestion was put to the witness that there were no houses or offices near the acquired land or that acquired land is at a distance of 4 to 5 kms from the highway.

7. One Mr. Rahul Shakarrao Sangle, an architect, was examined by the landowner. He is the one who prepared a map of the proposed layout Exh. 30 and valuation report. In the cross-examination, he deposed that the acquired land is at around $\frac{1}{2}$ km from highway. He denied the suggestion that the acquired land is at 5 to 7 kms from highway. On the other hand, the respondent, Ravindra Bhalchandra Khanjaji, Special Land Acquisition Officer, deposed that there is electricity office, Municipal Council, Primary School in the village but has not deposed regarding the location of land or its proximity with the educational Institutions, Banks, Tahsil Office, Hospitals, Courts or that the land is not located within the municipal area etc. as deposed by a witness examined on behalf of the landowner.
8. Learned counsel for the appellant argued that the learned Reference Court has made deduction to the extent of 90% from the best sale instance which is near to the acquired land. The Reference Court has made deduction 30% of the value on account of non-similarity, 30% on account of the sale being of a small area and another 30% on account of development charges. Therefore, the compensation awarded by the

Reference Court has been illegally interfered with by the High Court. The sale exemplars Exh.31 and Exh.32 are of agricultural land which have no potentiality for non-agricultural activity comparable to the acquired land for residential and commercial purpose being in close vicinity near to such Educational Institutions, Banks, Tahsil Office, Hospitals, Courts. Therefore, the order of the High Court is not sustainable. Thus, the appellant prayed for restoration of the order passed by the Reference Court.

9. On the other hand, learned counsel for the respondent argued that the sale exemplars Exh.31 and Exh.32 were of agricultural land whereas the land acquired was a non-agricultural land. Therefore, the High Court had rightly set aside the compensation based on a sale exemplar of a small area of 151 square meters.
10. We have heard learned counsel for the parties and find that the High Court has erred in law in setting aside the determination of market value of the land by the Reference Court.
11. The evidence produced by the landowners is that the acquired land is close to Educational Institutions, Banks, Tahsil Office etc. whereas there is no evidence that the irrigated agricultural land has the potential of use for either residential or commercial purposes. It is not the nature of land which alone is determinative of the market value of the land. The market value must be determined keeping in view the various factors including proximity to the developed area and the road etc. As per the

evidence led by the landowners, the land acquired is ½ km from the road. The land is close to developed residential or commercial or institutional area. On the other hand, there is no evidence that Exh.31 and Exh.32 are in any way comparable to the land acquired. The High Court has erred in law in holding that since the land of the sale exemplars Exh.31 and Exh.32 is of irrigated agricultural land whereas the land acquired is unirrigated, is not the reasonable yardstick to determine market value of the land as the land in question is close to already developed area.

12. Therefore, we find that the reasoning of the High Court is fallacious and not sustainable. Consequently, the appeals are allowed. The order passed by the High Court is set aside and that the order of the Reference Court is restored.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

**NEW DELHI;
JANUARY 31, 2022.**