

Union of India v. Premlata , 2022 SCeJ 0392

Supreme Court of India

JUSTICE M.R. SHAH JUSTICE B.V. NAGARATHNA

Union of India v. Premlata and Others

Civil Appeal Nos. 176-177 OF 2022

6th April 2022

Land Acquisition Act, 1894 - S.4, S.18 - Deductions required to be made when considering transactions pertaining to small developed plots, for determining compensation of large areas - firstly, the land acquired in question is a large extent of land (45 Hectares 89 R); secondly, it was an agricultural land not fully developed; thirdly, the landowner having not filed any exemplar sale deed relating to large pieces of land sold in acres to prove the market value of the acquired land; and fourthly, exemplars relied upon by the landowner, especially Ex. 91 to 93 pertain to very small plots/parcels of land and that too, in respect of small plots which were developed and converted to non-agricultural use and the distinguishing features noticed in the land in sale deeds, Ex. 91 to 93 are not present in the acquired land, we are of the firm view that the deduction towards development charges at 1/3rd as deduced by the High Court can be said to be on a lower side - Considering the aforesaid facts and circumstances and the relevant factors, we are of the opinion that if 40% deduction is ordered to be made towards development charges, it can be said to be an appropriate deduction towards development charges in the facts and circumstances of the case.

Cases referred to:

1. *Paras 3, 6: Pitambar Hemlal Badgujar (dead) by LRs. V. Sub. Divisional Officer, Dhule, reported in (1996) 7 SCC 554*
2. *Para 3: Land Acquisition Officer & Sub-Collector, Gadwal V. Sreelatha Bhoopal, reported in (1997) 9 SCC 628*
3. *Paras 3, 6: Lal Chand V. Union of India, reported in (2009) 15 SCC 769*
4. *Paras 3, 6: Union of India V. Dyagala Devamma, reported in (2018) 8 SCC 485*
5. *Para 4: Bhagwathula Samanna & Others V. Special Tahsildar & Land Acquisition Officer, Visakhapatnam, Municipality, Visakhapatnam reported in (1991) 4 SCC 506*
6. *Paras 4, 6: Trishala Jain V. State of Uttaranchal, reported in (2011) 6 SCC 47 : (2011) 3 SCC (Civ) 178*
7. *Para 4: Nelson Fernandes & Others V. Special Land Acquisition Officer, South Goa & Others, reported in (2007) 9 SCC 447(Paragraphs 29 & 30)*
8. *Para 4: Raghubans Narain Singh V. Uttar Pradesh Government through Collector of Bijnor, reported in AIR 1967 SC 465*

9. *Para 4: Mahesh Dattatray Thirthkar V. State of Maharashtra, reported in (2009) 11 SCC 141*
10. *Para 4: Udho Dass V. State of Haryana, reported in (2010) 12 SCC 51*
11. *Para 5: Mahanti Devi V. Jaiprakash Associates Ltd., reported in (2019) 5 SCC 163*
12. *Para 5: Viluben Jhalejar Contractor V. State of Gujarat, reported in (2005) 4 SCC 789*
13. *Para 5: Manoj Kumar V. State of Haryana, reported in (2018) 13 SCC 96*
14. *Para 6: Maya Devi (Dead) through Lrs. V. State of Haryana, reported in (2018) 2 SCC 474*
15. *Para 6: Andhra Pradesh Housing Board V. K. Manohar Reddy, reported in (2010) 12 SCC 707*
16. *Para 6: Vithal Rao V. LAO, (2017) 8 SCC 558 : (2017) 4 SCC (Civ) 155]*

JUDGEMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.03.2021 passed by the High Court of Judicature at Bombay, Nagpur Bench in First Appeal No. 599 of 2019 and Cross Objection No. 14 of 2021, by which the High Court has determined the compensation for the acquired land at the rate of Rs.6/- per square foot, subject to 1/3rd deduction, both, the acquiring body as well as the original claimant have preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under: That a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the '1894 Act') was issued on 05.11.1992 seeking to acquire 65 Hectares 47 R land situated at Borkhedi Tahsil, District Nagpur. The said land was sought to be acquired by the Ministry of Defence for its Research and Development Organization. Acquisition proceedings in respect of 19 Hectares 79 R of the land were dropped and the actual land acquired came to about 45 Hectares 89 R. The dispute is with respect to four pieces of land bearing Survey Nos. 40, 41, 43/2 and 44 owned by the original claimant herein (appellant in Civil Appeal Nos. 178-179/2022).

2.1 The Land Acquisition Officer vide award dated 09.03.1995 awarded an amount of Rs.1,13,500/- per Hectare in respect of land bearing survey No. 43/2 and Rs.1,35,000/- per Hectare for the land bearing survey Nos. 40, 41 and 44. At the instance of the original claimant, a reference under Section 18 of the 1894 Act was made. The reference Court under Section 18 of the 1894 Act enhanced the compensation to Rs. 6/- per square foot, after making deduction of 25% towards development charges.

2.2 Feeling aggrieved and dissatisfied with the order passed by the Reference Court enhancing the amount of compensation to Rs. 6/- per square foot, after making deduction of 25%, the acquiring body preferred an appeal before the High Court being First Appeal No. 716/1996. By judgment and order dated 21.09.2016, the High Court set aside the Reference Court's order and remanded the proceedings for fresh adjudication on the ground that sufficient opportunity was not provided to the acquiring body to contest the

reference proceedings. That on remand, the Reference Court vide its judgment and order dated 28.08.2018 in L.A.C. No. 38/1995 enhanced/determined the compensation at Rs.6/- per square foot, after making deduction of 25%.

2.3 Feeling aggrieved and dissatisfied with the order passed by the Reference Court, the original claimant filed First Appeal No. 599/2019 before the High Court with a prayer to enhance the amount of compensation. The acquiring body also filed Cross Objection No. 14/2021 challenging the judgment and order passed by the Reference Court enhancing the amount of compensation at Rs. 6/- per square foot. By the impugned judgment and order, the High Court has modified the judgment and order passed by the Reference Court in L.A.C. No. 38/1995 and has held that the claimant shall be entitled to compensation for the acquired land at the rate of Rs.6/- per square foot, subject to 1/3rd deduction (instead of 25% deduction as per the judgment of the Reference Court) with all statutory benefits. Consequently, the first appeal preferred by the original claimant has been dismissed and the cross objection filed by the acquiring body has been allowed to the aforesaid extent.

2.4 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court dismissing the first appeal preferred by the original claimant and partly allowing the cross objection filed by the acquiring body, both, the original claimant as well as the acquiring body have preferred the present appeals.

3. Shri K.M. Nataraj, learned Additional Solicitor General of India appearing on behalf of the acquiring body has submitted that the acquiring body is assailing the impugned judgment and order passed by the High Court determining the compensation at Rs.6/- per square foot, subject to 1/3rd deduction, primarily on the following grounds:

- i) determination of compensation on square foot basis in respect of large extent of land is illegal and impermissible;
- ii) small pieces of land are not comparable to large extent of land for the purpose of determining compensation; and
- iii) deduction of development charges ought to be fixed in light of two factors, viz., extent of utilization and cost of development.

3.1 It is vehemently submitted by Shri K.M. Nataraj, learned ASG that in the present case, the acquisition proceedings were in respect of a large extent of land admeasuring around 45 Hectares 89 R. It is submitted that therefore, both, the Reference Court and the High Court have grossly erred in determining the compensation on square foot basis. It is submitted that even the land in question was a barren agricultural land. It is submitted that therefore the determination of compensation on square foot basis in respect of large extent of land is impermissible. Heavy reliance is placed on the decision of this Court in the case of Pitambar Hemlal Badgujar (dead) by LR. V. Sub. Divisional Officer, Dhule, reported in (1996) 7 SCC 554 (para 4).

3.2 It is further contended by the learned ASG that even both, the Reference Court and the High Court have erred in relying upon the sale instances which were in respect of individual

plots of land being much smaller in comparison to the land acquired. It is submitted that it is well settled that small plots of land fetch much higher market value as opposed to when large extent of land is purchased. It is submitted that therefore the sale instances in respect of small plots/parcels of land could not have been relied upon while determining the compensation in respect of a large extent of land. Reliance is placed upon the decision of this Court in the case of Land Acquisition Officer & Sub-Collector, Gadwal v. Sreelatha Bhoopal, reported in (1997) 9 SCC 628.

3.3 It is further contended by learned ASG that even otherwise, the High Court has erred in deducting only 33% towards development charges. It was elaborated that while determining the deduction on development charges, two factors are required to be considered, i.e., (i) area required to be utilized for development works; and (ii) cost of the development works. It is submitted that up to 40% of the area may be utilized for development works and the cost of providing various amenities may be up to 35% of the value of the plot. That in light of the aforesaid principles and keeping the aforesaid two factors in mind, the deduction of 33% granted by the High Court is not reasonable and ought to have been higher in view of the effect of the aforesaid factors, especially when the land was barren agricultural land. Reliance is placed upon the decision of this Court in the case of Lal Chand v. Union of India, reported in (2009) 15 SCC 769 as well as decision of this Court in the case of Union of India v. Dyagala Devamma, reported in (2018) 8 SCC 485.

3.4 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the appeals preferred by the acquiring body and dismiss the appeals preferred by the original claimant.

4. Shri Gopal Sankaranarayanan, learned Senior Advocate appearing on behalf of the original claimant has vehemently submitted that in the present case, both, the Reference Court as well as the High Court have concurrently determined the market value of the land in question at Rs.6/- per square foot by considering the potential of the acquired land. It is submitted that the basis for both the courts below to grant the same rate of compensation is that the adjacent land bearing survey No. 42 admeasuring 6.25 Hectares was converted into layout and plots therein were sold at Rs. 7/- per square foot on 12.03.1992, i.e., eight months prior to Section 4 notification dated 05.11.1992. That therefore, both, the Reference Court and the High Court have rightly relied upon the sale deeds of plots sold from survey No. 42 (Ex. 91, 92 and 93). Relying upon the decisions of this Court in the cases of Bhagwathula Samanna & Others v. Special Tahsildar & Land Acquisition Officer, Visakhapatnam, Municipality, Visakhapatnam reported in (1991) 4 SCC 506 and Trishala Jain v. State of Uttaranchal, reported in (2011) 6 SCC 47, it is submitted that sale examples of small plots can form basis for determination of compensation of a large extent of land.

4.1 It is further contended by learned counsel appearing on behalf of the original claimant that though the sale deeds of adjacent land (Ex. 91, 92 and 93) were eight months prior to Section 4 notification, by which the plots were sold at Rs.7/- per square foot, the courts below have still granted compensation only at the rate of Rs. 6/- per square foot on the premise that the adjacent land bearing survey No. 42 has a better location. It is submitted that this reasoning of the courts below is incorrect as can be seen from Ex. 55. It is urged

that even considering the sale instances of the adjacent land bearing survey No. 42 only, the claimant shall be entitled to at least Rs.8/- per square foot by giving a rise of approximately 15% for the period from 12.03.1992 to 05.11.1992.

4.2 Now insofar as deduction towards development charges is concerned, it is vehemently submitted by learned counsel appearing on behalf of the original claimant that the layout map at Ex. 90 of the land bearing survey No. 42 showed that only 15% of the land was lost in carving a layout. It is submitted that the expert valuer had also given a deduction of 25%. Therefore, the Reference Court granted deduction of 25% which ought not to have been increased by the High Court to 33%.

4.3 It is further submitted that, as such, since the deduction for adjacent land bearing survey No. 42 was only 15%, the same deduction should have been granted by both the courts below. It is submitted that further, since the land in question was acquired for construction of a Research & Development Project of the Union of India and the landowner was required to litigate for more than 28 years, no deduction should have been granted by both the courts below. In support of the above, reliance is placed on the decision of this Court in the case of Nelson Fernandes & Others v. Special Land Acquisition Officer, South Goa & Others, reported in (2007) 9 SCC 447(Paragraphs 29 & 30). Relying upon the above decision, it is submitted that the purpose for acquisition is a relevant factor for determining the extent of deduction.

4.4 It is further submitted by learned Senior Advocate appearing on behalf of the original claimant that in fact the claimant had relied upon the sale instances (Ex. 91, 92 and 93) in respect of the land bearing survey No. 42 to show the non-agricultural potential. It is submitted that as such there was considerable undervaluation in the sale instances at Ex. 91 to 93. Relying upon the sale instances at Ex. 39, 40, 41 and 47, it is submitted that there is undervaluation and even between two times to four times in the sale instances of the same village Borkhedi.

4.5 It is also submitted that the land bearing survey No. 20 of the same village at Borkhedi was sold at Rs. 15/- per square foot on 5.6.1987, i.e., five years prior to Section 4 notification dated 05.11.1992. It is submitted that therefore the value of the acquired land at Rs. 7/- per square foot in 1992 clearly shows a substantial undervaluation in the sale instances at Ex. 91 to 93.

4.6 It is further submitted that the claimants also examined the prospective purchasers at Ex. 59, 63 and 65 to prove that the valuation of the land would be in the range of Rs. 28 to Rs. 40 per square foot. That these offers were relevant pieces of evidence in view of the decision of this Court in the case of Raghubans Narain Singh v. Uttar Pradesh Government through Collector of Bijnor, reported in AIR 1967 SC 465 (paragraph 6).

4.7 It is further submitted that even the claimant also heavily relied upon the expert valuer's report at Ex. 56 who has valued the subject land at Rs. 35/- per square foot. That the credentials of the expert valuers have been admitted by the defence witness no.2 as expert valuer is a retired government personnel and is more competent to value the

acquired land. Relying upon the decisions of this Court in the cases of Mahesh Dattatray Thirthkar v. State of Maharashtra, reported in (2009) 11 SCC 141 and Udho Dass v. State of Haryana, reported in (2010) 12 SCC 51, it is urged that the valuation report of the expert should normally be accepted.

4.8 Making the above submissions and relying upon the aforesaid decisions, it is prayed to determine the compensation at Rs. 35/- per square foot for the acquired land and to modify the impugned judgment and order passed by the High Court accordingly.

5. We have heard learned counsel for the respective parties at length.

At the outset, it is required to be noted that the Reference Court enhanced the amount of compensation determining the market price at Rs. 6/- per square foot after making deduction of 25% of the same towards development charges, relying upon and considering the sale deeds in respect of plots of land bearing survey No. 42 of village Borkhedi, vide Ex. 91 to 93. It is also noted that before the Reference Court, the landowner relied upon other sale instances at Ex. 50, 51 & 27. Having considered the fact that all the sale instances were in respect of small plots, the Reference Court discarded the same. Even the High Court has also agreed with the findings recorded by the Reference Court with respect to sale instances produced as Ex. 50, 51 & 27. We are in complete agreement with the view taken by the Reference Court as well as the High Court regarding the sale instances produced as Ex. 50, 51 & 27. All the sale instances are with respect to small plots and even the same instances were of the year 1987. In the present case, notification under Section 4 of the 1894 Act has been issued in the year 1992. As per the settled position of law, small plots/parcels of land cannot offer the same market value as when a large tract of land is purchased in an open market by a willing and prudent purchaser. As per the settled position of law, generally the sale instances with respect to small plots/parcels of land are not comparable to a large extent of land for the purpose of determining the compensation. In the case of Mahanti Devi v. Jaiprakash Associates Ltd., reported in (2019) 5 SCC 163, after following the decision of this Court in the case of Viluben Jhalejar Contractor v. State of Gujarat, reported in (2005) 4 SCC 789, it is held that in case of acquisition of large tracts of land and the exemplars are of small portion of land, there shall be a suitable deduction towards development costs.

In the case of Manoj Kumar v. State of Haryana, reported in (2018) 13 SCC 96, this Court had an occasion to consider the deductions required to be made when considering transactions pertaining to small developed plots, for determining compensation of large areas and it is held that when a large area is acquired, two kinds of deductions have to be made, i.e., (i) for development, and (ii) in case of exemplar transaction is a small area, the deduction is required to be made to arrive at the value of large tract.

5.1 In the present case, the sale instance at Ex. 50 was with respect to plot admeasuring 135 Square Meters. Similarly, the sale instance at Ex. 51 was with respect to plot admeasuring 135 Square Meters. Even the sale instance at Ex. 27 was with respect to 1500 sq. ft. It is also to be noted that even in respect of sale instance at Ex. 50 dated 5.6.1987, the price determined was Rs.10.34/- per square foot and so far as the sale instance at Ex.

51 dated 10.09.1987 is concerned, the price determined was at Rs. 3/- per square foot. In the present case, the land acquired is a large area, i.e., 45 Hectares 89 R. Therefore, as rightly observed and held by the Reference Court as well as the High Court, the sale instances produced at Ex. 50, 51 & 27 are not comparable at all. We are in complete agreement with the view taken by the Reference Court as well as the High Court discarding Ex. 50, 51 & 27.

6. Now the next issue is with respect to sale instances at Ex. 91 to 93 in respect of plots out of land bearing Survey No. 42, which can be said to be comparable and/or nearer to comparable sale instances as land bearing Survey No. 42 was adjacent to the acquired land. As per the sale deeds, Ex. 91 to 93, the plots were sold at Rs.7/- per square foot. However, considering the fact that survey No. 42 was having direct access to main road and was closer to Chandrapur – Nagpur N.H. 7 than the acquired land, the Reference Court determined the market price at Rs. 6/- per square foot and determined the compensation after deducting 25% towards development charges. The High Court has enhanced the deduction from 25 % to 1/3rd, i.e., 33.33%. Thus, both, the Reference Court as well as the High Court have heavily relied upon Ex. 91 to 93 with respect to plots out of land bearing Survey No. 42 and determined the market price. It is true that as a general rule, the compensation shall not be determined on square foot basis (see Pitambar Hemlal Badgujar (d) by Lrs. (supra)). However, at the same time, in a given case, the Court may determine the compensation on square foot basis after making a reasonable deduction towards development charges, in case there are no other sale instances available.

6.1 What should be reasonable deduction towards development charges has been considered by this Court in the cases of Lal Chand (supra) and Dyagala Devamma (supra).

As held by this Court in the case of Lal Chand (supra), 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. The decision in the case of Lal Chand (supra) has been subsequently followed by this Court in the case of Maya Devi (Dead) through Lrs. V. State of Haryana, reported in (2018) 2 SCC 474 as well as in the case of Andhra Pradesh Housing Board v. K. Manohar Reddy, reported in (2010) 12 SCC 707.

6.2 In the case of Dyagala Devamma (supra), while quashing and setting aside the judgment and order of the High Court making deduction towards development charges at 25% in place of 50% as was deducted by the Reference Court, in paragraphs 19 & 20, it is observed and held as under:

“19. In addition to these principles, this Court in several cases have laid down that while determining the true market value of the acquired land especially when the acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land. It has also been consistently held that at what percentage the deduction should be made varies from 10% to 86% and, therefore,

the deduction should be made keeping in mind the nature of the land, area under acquisition, whether the land is developed or not and, if so, to what extent, the purpose of acquisition, etc. It has also been held that while determining the market value of the large chunk of land, the value of smaller pieces of land can be taken into consideration after making proper deduction in the value of lands especially when sale deeds of larger parcel of land are not available. This Court has also laid down that the court should also take into consideration the potentiality of the acquired land apart from other relevant considerations. This Court has also recognised that the courts can always apply reasonable amount of guesswork to balance the equities in order to fix a just and fair market value in terms of parameters specified under Section 23 of the Act. (See Trishala Jain v. State of Uttaranchal [Trishala Jain v. State of Uttaranchal, (2011) 6 SCC 47 : (2011) 3 SCC (Civ) 178] and Vithal Rao v. LAO [Vithal Rao v. LAO, (2017) 8 SCC 558 : (2017) 4 SCC (Civ) 155] .)

20. Keeping in mind the aforementioned principles, when we take note of the facts of the case at hand, we find that firstly, the land acquired in question is a large chunk of land (101 ac. approx.); secondly, it is not fully developed; thirdly, the respondents (landowners) have not filed any exemplar sale deed relating to large pieces of land sold in acres to prove the market value of the acquired land; fourthly, exemplar relied on by the respondents, especially Ext. P-18 pertains to very small pieces of land (19 guntas); fifthly, the three distinguishing features noticed in the land in sale deed (Ext. P-18) are not present in the acquired land."

7. Applying the law laid down by this Court on the deduction to be made towards development charges while determining the compensation to the facts of the case on hand, it is required to be noted that in the present case a large parcel of land admeasuring 46 Hectares 89 R has been acquired. The sale instances at Ex. 91 to 93 in respect of plots out of land bearing Survey No. 42 are with respect to small pieces of land admeasuring 1200 sq. ft. which were non-agricultural developed plots and even the market price mentioned in the said sale deeds were on square foot basis. In the present case, the acquired land is a barren agricultural land which may have a non-agricultural potentiality. Therefore, considering the fact that the sale exemplars/sale deeds produced at Ex. 91 to 93 are in respect of very small plots of land and were non-agricultural developed plots and even the same were on the highway and having the access to the main road, we are of the opinion that there shall be at least 40% deduction towards development charges. As such, the High Court has not assigned any good reason as to why and on what basis, it considered proper to make deduction towards development charges at the rate of 33.33% (1/3rd deduction). The High Court has not at all considered the relevant factors while making an appropriate deduction towards development charges. Therefore, considering the relevant factors on the appropriate deduction towards development charges as per the law laid down by this Court in the aforesaid decisions, and when we take note of the facts of the case on hand, we find that firstly, the land acquired in question is a large extent of land (45 Hectares 89 R); secondly, it was an agricultural land not fully developed; thirdly, the landowner having not filed any exemplar sale deed relating to large pieces of land sold in acres to prove the market value of the acquired land; and fourthly, exemplars relied upon by the landowner, especially Ex. 91 to 93 pertain to very small plots/parcels of land and that too, in respect of small plots which were developed and converted to non-agricultural use and the

distinguishing features noticed in the land in sale deeds, Ex. 91 to 93 are not present in the acquired land, we are of the firm view that the deduction towards development charges at 1/3rd as deduced by the High Court can be said to be on a lower side. Considering the aforesaid facts and circumstances and the relevant factors, we are of the opinion that if 40% deduction is ordered to be made towards development charges, it can be said to be an appropriate deduction towards development charges in the facts and circumstances of the case.

8. In view of the above and for the reasons stated above, Civil Appeal Nos. 176-177 of 2022 are hereby partly allowed. The impugned common judgment and order passed by the High Court in First Appeal No. 599/2019 and Cross Objection No. 14/2021 is modified and it is directed that the original claimant shall be entitled to the compensation for the acquired land at the rate of Rs.6/- per square foot, subject to 40% deduction towards development charges, with all statutory benefits. Consequently, Civil Appeal Nos. 178-179/2022 preferred by the original landowner stand dismissed. There shall be no order as to costs.