IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 13th OF FEBRUARY, 2025

FIRST APPEAL No. 1411 of 2023

ROSHAN MEENA

Versus

UP MUKHYA ENGINEER AND ANOTHER

Appearance:

Shri Ankur Maheshwari, Shri Anshu Gupta and Shri Faiz Ahmed Qureshi- Advocates for appellant.

Shri Praveen Kumar Newaskar- Deputy Solicitor General and Shri Naval Kishore Chaturvedi- Advcoate for respondent No.1.

Shri G.K. Agrawal – Government Advocate for respondent No.2/State.

JUDGMENT

1. This appeal has been filed under Section 74 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 against the award dated **31-3-2023** passed by Principal District Judge, Sheopur in MJC No.13/2022 for enhancement of compensation amount.

2. This Court by a separate order passed today in connected **F.A. No. 1414 of 2023 (Babulal Meena Vs. Dy. Chief Engineer and another)** has held as under :

> 1. This appeal has been filed under Section 74 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 against the award dated 31-3-2023 passed

by Principal District Judge, Sheopur in MJC No. 21/2022 for enhancement of compensation amount.

2. The facts necessary for disposal of this appeal in short are that for conversion of Narrow Gauge Railway Line into Meter Gauge Railway Lines, the lands of village Bardhabujurg, Raipura and Dantardakhurd were acquired. One Railway Station is already situated in village Dantardakhurd. About 8.200 hectares of land of village Dantardakhurd, 2.394 hectares of land of Raipura and 17.555 hectares of land of village Bardhabujurg, in all 28.689 hectares of land was acquired under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (In short Act, 2013).

3. The Land Acquisition Officers, ascertained the market value of the lands on the basis of Collector Guidelines. As per the Collector Guideline, the market value of land situated in village Raipura was assessed as Rs. 30,00,000/- per hectares whereas as per Collector Guidelines, the market value of land situated in village Dantardakhurd and Bardhabujurg was ascertained as Rs. 12,13,333/- per hectare. The compensation for the building constructed over the land belonging to the appellant was also ascertained.

4. Being aggrieved by the award passed by the Land Acquisition Officer, the Appellant invoked Section 64 of Act 2013 and by the impugned award, the Court below has enhanced the compensation amount.

5. As the Appellant is not satisfied with the compensation amount ascertained by the Court below, therefore, this Appeal has been filed on the following two grounds :

(i) For ascertaining the market value of the land, the Court below has relied upon the Collector Guidelines, whereas single piece of land has been acquired and merely because the land falls within village Raipura, Dantardakhurd, and Bardhabujurg, therefore, different yardsticks for ascertaining the market value should not have been adopted. The Appellants are also entitled for the same compensation which has been awarded in respect of land of village Raipura.

(ii) That construction cost building of the Appellant has not been valued properly.

6. Per contra, the Counsel for the respondents submitted that the Court below has rightly assessed the compensation and doesnot require any interference.

7. Heard the learned Counsel for the parties.

Market Value of irrigated land situated in village Dantardakhurd and Bardhabujurg.

8. Section 26 of Act, 2013 reads as under :

26. Determination of market value of land by Collector.—(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—

(*a*) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(*b*) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(*c*) consented amount of compensation as agreed upon under sub-section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects,

whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11.

Explanation 1.—The average sale price referred to in clause (*b*) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.—For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that—

(*a*) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(*b*) the registered sale deeds or agreements to sell as mentioned in clause (*a*) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(*c*) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority,

the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.

9. Thus, it is clear that for ascertaining the market value, the Court has to consider the provisions of Section 26(1)(a) or (b) or (c) **whichever is higher.** Therefore either the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or (*b*) the average sale price for similar type

of land situated in the nearest village or nearest vicinity area; or (*c*) consented amount of compensation as agreed upon under sub-section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher is to be considered.

10. The Land Acquisition Officer had assessed the market value of irrigated agricultural land falling in village Raipura as Rs. 30 lac per hectare. Whereas the average market value of the land falling in villages Dantardakhurd and Bardhabujurg has been assessed as Rs. 12,13,333/-. The Court below has held that since, the land falling in village Raipura was commercial land and was situated adjoining to the city therefore, the land situated in village Dantardakhurd and Bardhabujurg cannot be equated with the land situated in village Raipura. However, the Court below failed to see that the Land Acquisition Officer, had assessed the market value of the land falling in village Raipura by treating it to be an irrigated agricultural land and not by holding that the said land has any commercial value. Therefore, the reasons assigned by the Court below for drawing a distinction between the land of village Raipura and Dantardakhurd and Bardhabujurg cannot be upheld.

11. Now the only question for consideration is as to whether the land situated in village Dantardakhurd and Bardhabujurg can be equated with land situated in village Raipura for the purposes of ascertaining the market value ?

12. Section 26(1)(a) and (b) of Act 2013 have already been reproduced in previous paragraphs. Collector guideline can be one of the guiding factor for ascertaining the market value but Collector guideline cannot be a solitary guideline for ascertaining the market value. Section 26(1)(b) of Act, 2013 provides that for ascertaining market value, the average sale price for similar type of land situated in the nearest village or nearest vicinity area can also be a guiding factor and the **higher market value has to be fixed**.

13. The Court below has not considered the case from the angle of Section 26(1)(b) of Act 2013. The land has been acquired for construction of Railway Station and Railway Line. For construction of Railway Station, a single piece of land is required. Merely because the said single piece of land consisted of land situated in village Raipura, Datardakhurd and Bardhabujurg, it cannot be said that the said land is not situated in the nearest village or nearest vicinity. For the purposes of ascertaining the market value, a single piece of land cannot be

divided into three different parts on the basis of the villages. Vinod Kumar Sharma (D.W.1) has stated that distance of land of village Bardhabujurg and Dantardakhurd is 1.5 Km. This witness has also stated that the land situated in village Raipura is adjoining to land situated in village Bardhabujurg. **This witness in para 5 of his cross examination has admitted that all the lands which have been acquired are irrigated lands and the market value of all the lands is same.** However, stated that the Collector Guideline is different.

14. The Court below has not given any importance to this vital admission made by Vinod Kumar Sharma (D.W.1). Neither the Land Acquisition Officer, nor the Court below have considered that when a single piece of land has been acquired for construction of Railway Station and Railway Line and all the lands are irrigated and even according to Vinod Kumar Sharma (D.W.1), the lands of village Bardhabujurg and Dantardakhurd are adjoining and contiguous to each other and land of Raipura is adjoining to village Bardhabujurg and the market value of all the lands is same, then why all the lands cannot be treated as similar type of land situated in the nearest village or nearest vicinity area?

15. Merely because the single piece of land, which has been acquired falls within three different villages, the market value of the said land cannot be ascertained merely on the basis of Collector guidelines. Even assuming that the lands of village Badhabujurg and Dantardakhurd are 1.5 kms away, still that would not make any difference. Generally a train consists of 22 bogies and an engine. The Railway Station not only consists of Railway Platform, but also has different offices which are to be constructed by the side of the platform for smooth running of trains. Cabins are also required to be constructed for change of railway tracks etc. Thus, the length of a railway station is generally more than 1.5 km.s.

16. The Supreme Court in the case of **Ali Mohammad Beigh v. State of J&K,** reported in **(2017) 4 SCC 717** has held as under :

> **11.** As noted earlier, Village Chandapora is situated adjacent to Villages Bhagichandpora and Pazwalpora; while so, there was no reason why the Reference Court differentiated the land of the appellant landowners of the acquired land in Chandapora Land Reference No. 15 of 2002 by awarding lesser compensation of Rs 2,50,000. On a perusal of the judgment of the Reference Court in Reference No. 15 of 2002, it is seen that the witnesses were examined by the appellants to substantiate their case that the

market rate of the land in Village Chandapora in the year 1998 was about Rs 8,00,000 per kanal. Though the Tahsildar of the area recommended Rs 2,50,000 per kanal, the witnesses have stated that the compensation fixed by the Tahsildar was not reliable and not based on any material. The appellants have also produced a sale deed by one Mr Bansilal under which he sold a small strip of land measuring 1360 sq ft in the vicinity of the acquired land for an amount of Rs 1,00,000. But the Reference Court discarded the evidence of witness Bansilal on the ground that under the sale deed only a small area of land was sold and the sale deed cannot be taken to be a representative character of the entire land. In our view, the Reference Court was not right in discarding the said sale deed which was supported by oral evidence of the witnesses, to substantiate their claim that the market rate assessed by the Tahsildar at Rs 2,50,000 was not a fair compensation.

12. When the lands are more or less situated nearby and when the acquired lands are identical and similar and the acquisition is for the same purpose, it would not be proper to discriminate between the landowners unless there are strong reasons. In *Union of India* v. *Bal Ram*, this Court held that if the purpose of acquisition is same and when the lands are identical and similar though lying in different villages, there is no justification to make any discrimination between the landowners to pay more to some of the landowners and less compensation to others. The same was the view taken in *Union of India* v. *Harinder Pal Singh*, wherein this Court held as under: (SCC pp. 568-69, paras 15-16)

"*15*. We have carefully considered the submissions made on behalf of the respective parties and we see no justification to interfere with the decision of the Division Bench of the Punjab and Haryana High Court which, in our view, took a pragmatic approach in fixing the market value of the lands forming the subject-matter of the acquisition proceedings at a uniform rate. From the sketch plan of the area in question, it appears to us that while the lands in question are situated in five different villages, they can be consolidated into one single unit with little to choose between one stretch of land and another. The entire area is in a stage of development and the different villages are capable of being developed in the same manner as the lands comprised in Kala Ghanu Pur where the market value of the acquired lands was fixed at a uniform rate of Rs 40,000 per acre. The Division Bench of the

> Punjab and Haryana High Court discarded the belting method of valuation having regard to the local circumstances and features and no cogent ground has been made out to interfere with the same.
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> *16*. In our view, in the absence of any contemporaneous document, the market value of the acquired lands of Village Kala Ghanu Pur which were acquired at the same time as the lands in the other five villages was correctly taken to be a comparative unit for determination of the market value of the lands comprising the lands forming the subject-matter of the acquisition proceedings under consideration. …"
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> **13.** When the lands are acquired at the same time and for the same purpose that is for resettlement of Dal dwellers, the lands situated in three different villages, namely, Chandapora, Bhagichandpora and Pazwalpora, and since the land is similar land, it would be unfair to discriminate between the landowners and other references and the appellants who are the landowners in Reference No. 15 and pay less that is, Rs 2,50,000 per kanal to the appellants and pay more to other landowners that is, Rs 4,00,000 per kanal. Impugned judgments of the High Court in CIA No. 211 of 2009 and Cross-Appeal No. 64 of 2011 are to be set aside by enhancing the compensation to Rs 4,00,000 per kanal. As a sequel to this, the order passed in review is also to be set aside.

17. Under these circumstances, this Court is of the considered opinion, that fixation of different market value merely on the basis of Collector Guidelines of the said village cannot be approved and after applying the provisions of Section 26(1)(b) of Act, 2013, it is held that the average market value of the lands falling in village Dantardakhurd and Bardhabujurg is to be treated at par with the market value of land falling in village Raipura. Therefore, it is held that the market value of land falling in village Dantardakhurd and Bardhabujurg which has been acquired is Rs. 30 Lac per hectare.

Valuation of Construction

18. Rakesh Parashar (D.W.2) has stated that as per the S.O.R. of P.W.D. the construction cost is Rs. 11,000 per Sq. Meter whereas as per the Collector Guideline the valuation has to be done @ of Rs. 6,300 per Sq. Meter and accordingly the valuation of the constructed property has been done @ Rs. 6,300 per Sq. Meter.

19. The Court below has held that although the S.O.R. of P.W.D. is Rs. 11,000/- per square meter, but generally when tenders are issued,

the bids are submitted below 20 to 30% of S.O.R. It was also held that the S.O.R. of P.W.D. is generally 30 to 40% more than the actual cost and if actual cost is taken to be 60% of the S.O.R., then it would come to around Rs. 6,300 per sq. Meter and accordingly, it was held that valuation of the constructed property @ of Rs. 6,300 per square meter is appropriate.

20. It is really surprising then why the P.W.D. has fixed the S.O.R. at an exorbitant rate? If the actual cost of construction is around Rs. 6,300/- per square Meter then what is the basis of fixing the S.O.R. @ of Rs. 11,000/- per square meter? Thus, either P.W.D. has fixed the S.O.R. at an exorbitant rate having no nexus with the actual cost of construction, or the Collector Guideline is not based on actual cost of construction. Therefore, neither the S.O.R. of the P.W.D. nor the Collector Guideline can be taken as an authentic parameter for fixing the construction cost.

21. Rakesh Parashar (D.W.2) who had valued the property has stated in para 4 of his cross examination that the construction was of good quality, tiles were affixed and the house was finished with steel railings, Wall putti and colour. Thus, it is clear that the house was not a *Kachha* house but was well finished house of good quality. Neither the appellant nor the respondents have led any evidence with regard to the actual cost of the construction. For constructing a house, not only the raw material is required but the construction cost includes the labour charges also. In absence of any evidence to show the actual cost, this Court is of the considered opinion, that an average cost has to be calculated on the basis of S.O.R. issued by P.W.D. and the Collector Guideline. As per the S.O.R. of the P.W.D., the construction cost is Rs. 11,000/- per Sq. Meter whereas as per Collector Guideline it is Rs. 6,300/- per Sq. Meter. Therefore, the average construction cost can be taken as Rs. 8,650/- per Sq. Meter. Thus, the construction cost is enhanced to Rs. 8,650/- per Sq. Meter from Rs. 6,300/- per Sq. Meter.

22. No other arguments were advanced in respect of compensation under other heads.

23. Therefore, the average market value of the land of village Dantardakhurd and Bardhabujurg is fixed as Rs. 30 Lacs per hectares and construction cost is fixed as Rs. 8,650/- per Sq. Meter,.

24. *Ex-consequenti*, the award dated 31-3-2023 passed by Principal District Judge, Sheopur in MJC No. 21/2022 is hereby **affirmed with aforesaid modification.**

> 25. The Executing Court is directed to calculate the Compensation amount in the light of the enhanced market value of the land and enhanced cost of construction.
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> 26. Appeal succeeds and is allowed to the extent mentioned above. No order as to cost.

3. Since, the present case is also duly covered by the judgment passed in the case of **Babulal Meena (Supra),** therefore, this appeal is also allowed in the terms and conditions of judgment passed in the case of **Babulal Meena (Supra)** and the average market value of the land of village Dantardakhurd and Bardhabujurg is fixed as Rs. 30 Lacs per hectares and construction cost is fixed as Rs. 8,650/- per Sq. Meter,.

4. *Ex-consequenti*, the award dated 31-3-2023 passed by Principal District Judge, Sheopur in MJC No.13/2022 is hereby **affirmed with aforesaid modification.**

5. The Executing Court is directed to calculate the Compensation amount in the light of the enhanced market value of the land and enhanced cost of construction.

6. Appeal succeeds and is allowed to the extent mentioned above. No order as to cost.

(G.S. Ahluwalia)
Judge

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