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**(2010) 04 BOM CK 0181**  
**In the Bombay High Court**  
**Case No : First Appeal No. 1141 of 1997**

The State of Maharashtra

APPELLANT

Vs

Bhikaji Anandrao Pawar and Others

RESPONDENT

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**Date of Decision :** 09-04-2010

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4

**Citation :** (2010) 3 BomCR 515

**Hon'ble Judges :** Nishita Mhatre, J

**Bench :** Single Bench

**Advocate :** V.S. Mhaispurkar, AGP, for the Appellant; K.S. Patil, for Respondent  
Nos. 1, 2, 3A, 3B, 4A to 4F, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Nishita Mhatre, J.—The first appeal has been filed by the State contending that the judgment and order of the Joint District Judge, Nashik in Land Reference No. 269 of 1987 is erroneous mainly on the ground that the Court has awarded compensation at the rate of Rs. 193/- per sq. mtr. which was far higher than that awarded in respect of other comparable plots. Cross objections preferred by the claimants indicate that the claimants are aggrieved by the aforesaid price being fixed at Rs. 193/- per sq. ft. in respect of the higher amount of Rs. 252/- per sq. mtr.

2. The undisputed facts in this case are as follows:

A notification u/s 4 of the Land Acquisition Act was published on 18.9.1986 for the acquisition of 3200 sq. mtrs out of the land bearing survey No. 176 situated at village Malegaon District Nashik. This land was acquired for constructing a drainage and pumping station for the municipality of Malegaon. An award was passed on 1.6.1987 by which the Special Land Acquisition Officer granted compensation @ Rs. 56/- per sq. mtr.

3. Aggrieved by the decision, the claimants filed Land Reference No. 269 of 1987

before the District Court. It was contended that the market value of the area was Rs. 500/- per sq. ft. as the plot was near the Bombay Agra road. It was further contended that the land had the potential of being used as non-agricultural land and therefore the claimants sought adequate compensation.

4. Considering the sale instances placed on record by the claimants and the development potential of the land, the market value was fixed at Rs. 193/- per sq. mtr. The Court denied the claimants' demand for compensation for severance and therefore awarded the compensation as follows:

5. The learned AGP appearing for the State submits that the Court has ignored the fact that the land was an undeveloped plot and has erroneously compared the same with sales in respect of the developed plots. She further submits that the Court has not considered deductions which ought to be made for development of the plot. The learned AGP has relied on the judgment of the Supreme Court in the case of Administrator General of West Bengal Vs. Collector, Varanasi, and in the case of Land Acquisition Officer, Kamrapally village (A.P.) v. Nukala Rajamallu and Ors. AIR 2004 SC 1031 to fortify her submissions with regard to the manner of ascertaining the compensation payable.

6. The learned advocate appearing for the respondent submits that the plot was reserved for a playground in 1970 and therefore at that point of time, it had no potential for development. However, thereafter according to the learned advocate, the reservation was cancelled on 6.3.1986 and the plot therefore acquired potential for development as a non-agricultural plot. He further points out that no written statement was filed by the State, nor were any sale instances placed before the Reference Court by the State. He submits that the meagre amount of Rs. 193/- per sq. mtr. fixed by the Reference Court was not adequate or just compensation.

7. With the assistance of the learned Counsel, I have perused the record and the impugned judgment. The first sale instance which the Reference Court has considered is in respect of a plot admeasuring 1550 sq. ft. A structure was built on this plot which was valued between Rs. 30,000/- to Rs. 40,000/- approximately and the land was valued at Rs. 70,000/-. On this basis, the Court found that the compensation paid was Rs. 144.05 per sq. mtr. Considering the development potential of the land acquired, the Court accepted that 30% should be deducted for development charges and, therefore, fixed the rate at Rs. 193/- per sq. mtr. The court observed that in respect of another sale instance of a plot admeasuring 79.12 metres which was sold on 25.9.1984, the rate was Rs. 252/- per sq. mtr. The Court did not consider this sale instance as the notification was of 1986, 2 years after the sale wherein the price was fixed at Rs. 250/- per sq. mtr. The court also observed that a plot like the one in the present case would not fetch the same price as a smaller plot and, therefore, fixed the price at Rs. 193/- per sq. mtr.

8. In my view, while doing so, the Court has rightly considered the fact that the

land had a potential to be developed as non-agricultural land and had, therefore, awarded Rs. 193/- per sq. mtr. The State cannot dispute this amount since no written statement was filed by it, nor were any sale instances placed on record by it.

9. The submission of the learned advocate for the respondent is that it was only because the plot was reserved as a playground that it could not be developed from 1970 to 1986. His contention that, therefore the price awarded should have been more than Rs. 300/- per sq. mtr., cannot be accepted. Even assuming the land was under reservation and, therefore could not be developed, the learned District Judge has borne in mind this factor and other relevant considerations while awarding the compensation. Undoubtedly, since the land was undeveloped the development charges would have to be taken into account while awarding the compensation. The Court has deducted 30% as development charges which according to me, is not excessive.

10. In the case of Administrator General of West Bengal (supra), the Supreme Court has enunciated the principles for determining the market value of urban land. While doing so, the Court has observed that the price fetched for a comparative land sold at the time of issuance of notice u/s 4 would be the best evidence of valuation. The court also observed that to some extent, surmises and conjectures are inevitable while making any valuation of the land. In my opinion, the reference Court while fixing the compensation has rightly considered the fact that the potential for development became available to the claimants only after 1986, when the plot was released from the reservation. The notification u/s 4 was issued six months later. Therefore, the potential price could not have risen exorbitantly within this six month period.

11. In the case of Land Acquisition Officer, Kamrapally (supra), the Supreme Court has reiterated its earlier judgment with respect to fixing compensation. While doing so it has observed that it cannot be laid down as an absolute proposition that the rate fixed for small plots cannot be the basis for fixation of the rate of compensation of a larger plot. However, in such cases necessary deductions/adjustments have to be made while determining the price. In my opinion, the reference Court has taken into consideration all these factors and has awarded the compensation @ Rs. 193/- per sq. mtr. which in my view, is neither inadequate, nor justified.

12. First appeal is dismissed. Cross objections are also dismissed.