

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO. 2 OF 2009

Special Land Acquisition Officer (7)
Mumbai and Mumbai Suburban District
Pratapgad Co-op Housing Society,
Vinayak Apartment, Opp Haffkins,
1st Floor, Parel Village, Mumbai - 400012

And

Shri. Gebilal Gangaram Patel
C/o Shivam Collection, Station Road,
Maria Villa Building, Vikhroli (W)
Mumbai – 400079

... Claimant

Versus

The Commissioner,
Municipal Corporation of Greater Mumbai
Municipal Head Office, Annex Building,
4th Floor, Mahapalika Marg,
Fort, Mumbai – 400001

... Acquiring Body

Mr. Himanshu Takke - AGP for State of Maharashtra.

Mr. P. G. Lad a/w Mr. Shivprasad D. Borade i/b Ms. Komal R. Punjabi for the
Acquiring Body – BMC.

CORAM : FARHAN P DUBASH, J.

RESERVED ON : 6th MARCH 2026
PRONOUNCED ON : 6th APRIL 2026

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JUDGEMENT:

1. The present Reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter, referred to as the "*said Act*") has been preferred by the Claimant seeking enhancement of compensation in respect of land bearing CTS No. 54, admeasuring 15.5 sq. metres, situated at Village Hariyali, Taluka Kurla, Mumbai Suburban District, Mumbai (hereinafter, referred to as the "*said land*").
2. Before advertng to the merits of the Reference, a brief recital of facts, insofar as they are relevant for adjudication of the present proceedings, is set out hereunder:
 - A) The said land came to be acquired for a public purpose, namely construction of a railway overbridge at a level crossing connecting Vikhroli Railway Station to Lal Bahadur Shastri Marg.
 - B) A notification under Section 4 of the said Act was issued on 24 August 2006 and was duly published in the Government Gazette as well as in the Free Press Journal newspaper.
 - C) The declaration under Section 6 read with Section 17 of the said Act was issued on 25 January 2007 and published in the Government Gazette on 8 February 2007.
 - D) Notice under Sections 9(1) and 9(2) of the said Act was issued on 20 February 2007.
 - E) Possession of the said land was taken under the urgency provisions contained in Section 17 of the said Act on 12

February 2008 and was handed over to the Acquiring Body without awaiting the passing of the Award.

- F) On 16 October 2008, the Special Land Acquisition Officer (7) (hereinafter referred to as the “*SLAO*”) passed the Award granting compensation of Rs. 1,62,102/- to the Claimant.
- G) Being dissatisfied with the quantum of compensation, the Claimant sought a reference under Section 18 of the said Act and relied upon certain documents in support of the claim for enhancement.

3. It is pertinent to note that despite repeated opportunities granted by this Court, including orders dated 11 June 2025 and 7 January 2026, the Claimant has remained absent. By the said orders, the Claimant was specifically put to notice that the matter would proceed in his absence in the event of non-appearance. Despite this, when the matter was listed for final hearing on 6 March 2026, the Claimant remained absent. The Reference was, therefore, heard in his absence.
4. Mr. P. G. Lad, learned Counsel appearing for the Acquiring Body, at the outset submits that the Claimant is merely a tenant and not the owner of the said land. In support thereof, he invites attention to Exhibit “B” annexed to the compilation of documents relied upon by the Claimant in the Affidavit in lieu of Examination-in-Chief dated 13 December 2016, namely an Index-II relating to assignment of “Hotel Sanjay” for a consideration of Rs. 90,000/- in respect of CTS No.54.
5. He submits that the Claimant has examined only himself and has been cross-examined on behalf of the Acquiring Body. According to him, the Claimant has relied upon a valuation report dated 15 June 2015

prepared by M/s. Atts Associates valuing the acquired land at Rs. 12,41,658/-. However, the author of the valuation report has not been examined. In the absence of examination of the valuer, he submits that the report cannot be relied upon as substantive evidence. In support, reliance is placed upon Section 60 of the Indian Evidence Act, 1872, which mandates that opinion evidence must be proved through the testimony of the person holding such opinion.

6. Mr. Lad further relies upon the judgment of the Supreme Court in *Chimanlal Hargovindas V/s. Special Land Acquisition Officer, Poona*¹ wherein it has been held that an award passed by the SLAO is merely an offer and the burden lies upon the Claimant to establish entitlement to enhanced compensation by adducing cogent oral, documentary, and expert evidence. Mere exhibition of documents, he submits, does not amount to proof thereof.
7. He further submits that Exhibit “D” relied upon by the Claimant appears to be a licence issued by the Brihanmumbai Municipal Corporation for running “Hotel Sanjay”. Despite this, the Claimant has admittedly not claimed compensation towards loss of business. Reliance is placed upon the notes of evidence of the Claimant, particularly the following portion of his cross-examination:

*“Q.44 I put it to you that you have no loss of business and hence you have not sought compensation towards loss of business.
Ans. I have not claimed for it.”*
8. It is therefore submitted that the Claimant has failed to adduce any evidence demonstrating that the market value of the acquired land

1 AIR 1988 SC 1652

was higher than that determined by the SLAO and, consequently, the Reference deserves dismissal.

9. I have heard Mr. Lad for the Acquiring Body and have perused the material on record. The principal question which arises for my consideration in this Reference is whether the Claimant has discharged the burden of establishing inadequacy of compensation awarded under the Award.
10. It is well settled that in a Reference under the said Act, the burden squarely lies upon the Claimant to establish, by cogent and reliable evidence, that the compensation awarded by the SLAO is inadequate. Mere production or marking of documents does not dispense with proof in accordance with law.
11. In the present case, the Claimant has examined only himself. No independent witness, comparable sale instance, or expert evidence has been adduced. Though reliance is placed upon a valuation report prepared by M/s. Atts Associates assessing the value at Rs.12,41,658/-, the valuer has not entered the witness box. In view of Section 60 of the Indian Evidence Act, 1872, opinion evidence must be proved through the author thereof. The valuation report, therefore, cannot be treated as substantive evidence and cannot be relied upon.
12. In *Chimanlal Hargovindas (supra)*, the Supreme Court has clarified that a reference under Section 18 of the said Act is not an appeal against the Award of the SLAO. The Court must determine market value solely on the basis of evidence adduced before it. Material relied upon by the SLAO cannot be considered unless duly proved in the Reference proceedings. In the present case, no independent evidence has been produced to establish a higher market value.

13. As regards the licence for running a restaurant, mere production of such licence does not *ipso facto* justify enhancement of compensation. In his cross-examination, the Claimant has candidly admitted that he has not claimed compensation towards loss of business. If reliance was sought to be placed upon commercial use of the premises for enhancement of valuation, it was incumbent upon the Claimant to lead cogent evidence in that regard, which has not been done.
14. In the aforesaid circumstances, this Court finds no merit in the present Reference. The Claimant has failed to discharge the burden of proving that the compensation awarded by the SLAO is inadequate or that the acquired land possessed a higher market value warranting enhancement. No interference with the Award is therefore called for.
15. Hence, the following order:

:: ORDER ::

- (A) The Award passed by the Special Land Acquisition Officer (7) on 16 October 2008 awarding compensation of Rs. 1,62,102/- to the Claimant is hereby upheld.
- (B) The Land Acquisition Reference stands dismissed with no order as to costs.

(FARHAN P. DUBASH, J.)

Ajay Jadhav