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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

First Appeal No.1101 of 2002

Shri Prithvinath Kaul
since deceased through LR.
Vijay P. Kaul
Age 60
r/o Raj Bhavan, Guru Nanak Nagar,
Shankar Sheth Road,
Pune 411002. … Appellant

V/s.

1. The State of Maharashtra

2. The Special Land Acquisition Officer
No.15 -
having office opp. Government
Polytechnic High School,
Ghole Road, Pune 411 004. … Respondents.

Ms. A.R.S. Baxi	Advocate for the Appellant
Mr. A.R.Patil	Addl.G.P. for the Respondent.

CORAM : S.M. MODAK, J

DATE : 5th November 2026.

LATA SUNIL PANJWANI Digitally signed by LATA SUNIL PANJWANI Date: 2026.11.05 17:17:21 +0530

JUDGMENT:

1. The reference initiated at the instance of the Claimant was dismissed by Court of 5th Extra Joint District Judge, Pune in

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L.R.No.89/1992 vide judgment dated 27th July 2001. It is on account of not making out the case of enhancement. The correctness of the said judgment is challenged by the claimant by way of this appeal.

2. So the issue involved in this appeal is whether the claimant has made out a case for enhancement and whether he has adduced sufficient evidence to that effect before the Reference Court.

3. On this background I heard learned Advocate Ms. Bakshi for the Appellant and learned AGP. The relevant facts for our consideration are as follows:-

A) The land bearing Survey No.18/3/B is situated at Village Wanwadi, Taluka Haveli. The Appellant is the owner of the said land.

B) There is a notification issued under Section 4 of the L.A.R. Act on 20th November 1991 for the purpose of road widening. An area of land admeasuring 115 sq. meters was decmarcated. The Appellant objected.

C) Respondent No.2 - Special Land Acquisition Officer No.15 has offered Rs.4,30,702/- at the rate of Rs. 261/- per sq. meter.

D) The Appellant was not satisfied and hence he requested the Collector to make a reference under Section 18 of the

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said act. It was made to the District Court, Pune.

4. The Appellant examined following witnesses:-

1) Vijay Prithvinath Kaul – Son of claimant.
2) Akhtar Ahmed Shaikh – Income tax Inspector.
3) Arun Awadhuh Pundlik – Valuer.
4) Mahendra Mahabare, Junior Clerk from office of Sub-Registrar.

5. The State has not adduced any evidence. After appreciating the evidence the Reference Court held that there was no satisfactory evidence.

6. Learned Advocate Ms. Bakshi has taken me through the oral evidence and documentary evidence. She submitted that atleast the rate fixed by Assistant Director of Town Planning addressed to the Pune Municipal Corporation ought to have been considered by the Reference Court. Whereas learned AGP submitted that it cannot be considered. On the point of not considering the copies of the sale deed not being the certified copies, learned AGP relied upon observations in case of ***Cement Corporation of India Ltd. v/s. Purya and others***[1].

7. With their assistance, I have gone through record. Though Vijay Kaul deposed about plan submitted to Corporation, it is not produced in Court. He has also not deposed that it was sanctioned. It was very much necessary in order to ascertain use of the land

1 (2004) 8 Supreme Court Cases 270

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present and its potentiality. However, that evidence is not available.

8. Date of notification under Section 4 of the Land Acquisition Act is 4th September 1991. The Court has to ascertain the market value of the acquired land on said date. Son of Claimant tendered copies of sale deeds dated 6th April 1994 and 17th October 1989 (answered in Para-8 of Cross). Reference Court has not considered them. Miss Baxi submitted that they are photocopies of the original sale deeds. It is true when any owner looses his land in acquisition, he is sufferer. He has to fight with Government firstly by way of objection and then for getting correct compensation. He cannot get it merely by asking. He has to prove his case by producing authentic materials. The claimant did made an attempt to collect copies of sale deeds. But when claim for compensation has to be decided, Court has to ascertain whether document is legally admissible.

9. Supreme Court in case of *Cement Corporation* (supra) has dealt with the controversy about proof of contemporary sale instances. It is true there are rules of proof of documentary evidence as per Evidence Act. They are referred. Supreme Court commented on special provisions of Section 51-A of Land Acquisition Act amended by Act No.68 of 1994. As per Section 51-A, two documents can be accepted as evidence of the transactions in the documents. They are:-

a) Certified copy of document which is registered under Registration Act.

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b) Copy given under Section 57 of Registration Act on inspection.

10. Admittedly, copies of sale deeds are not certified copies of sale deeds. They are registered. It is held if there are certified copies then Court can draw presumption of the contents even though executant of document is not examined (Para-31). Altogether it is rebuttable presumption. In view of these observations, I am unable to accept the submission of Miss Baxi.

11. Second piece of evidence is evidence of valuer Arun Pundlik. From his report we can gather that area of acquired plot 200 ft. in length and 60 ft. in width. He admits development of land is not possible as there is no road. He has opined market price of the land in that area is Rs.1500/- to Rs.2000/- per square meter. He has given this opinion on the basis of enquiry made in sub-registrar office. However, he has not obtained any certificate for sub-registrar office. Even he has not seen any sale deeds to ascertain market rate. No doubt opinion is relevant but it has to be given on the basis of materials and not on the basis of surmises.

12. It is settled law that expert opinion can be relied if materials referred by him are produced and they are genuine. No doubt materials referred by him are relevant but they were not produced before the reference Court. In view of this, expert opinion cannot be considered.

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13. It is true that Akhtar Shaikh is examined in order to prove the sell of the property conducted in auction. It was due to undervaluation of the consideration. The property is situated at Hadapsar. However, he has not produced any document. Oral evidence without the document has no value. The document is required so that Court can ascertain the proximity in time and in location. This evidence cannot be considered in support of the claim for enhancement.

14. Last piece of evidence is evidence of junior clerk from sub-registrar office. He has produced copy of chart prepared by Asst. Director of Town Planning for the purpose of valuation of lands for the purpose of stamping of documents for registration purpose. Learned Advocate Miss Baxi has put more stress on rates mentioned therein and she submitted that even concerned witness is also examined.

15. Learned AGP submitted such rates cannot be considered for determining market value for compensation under Land Acquisition Act. He is right. Supreme Court in case of ***Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad***[2] has dealt with this issue (Para-5). Hence, his evidence is not of any use.

16. Certainly Appellant tried his best to collect materials and prove it in Court, the reference Court found certain shortcomings in them. I agree with the same for reasons given hereinafter.

2 (1994) 4 SCC 595

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17. The award is cryptic but the conclusion cannot be faulted. We are bound by rules of evidence. I find no fault in the conclusion drawn by the reference Court. I appreciate the efforts made by learned Advocate Miss Baxi but those efforts are not sufficient to convince me to take a view against the judicial interpretation given by the Constitutional Courts.

18. Hence, I find no merit in the appeal. It is dismissed without any order of costs.

(S.M. MODAK, J.)

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