

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 542 OF 2003

01 Marotrao s/o Kishanrao Maske Appeal abated
against

Appellant no.1 vide
Court's order dated
25.01.2023.

02 Patingrao s/o Kishanrao Maske,
age: 40 years, Occ: Agril.,
R/o Wardi, Tq. Kalamnuri,
District Parbhani.

Appellants

Versus

01 The State of Maharashtra,
through the Collector, Parbhani.

02 The Additional Special Land
Acquisition Officer, Purna
Project, Kalamnuri, District
Parbhani.

Respondents

Mr. S. V. Mundhe, advocate for the appellant.
Mr. B. V. Virdhe, AGP for Respondents.

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 21st June, 2023.

PRONOUNCED ON : 11th July, 2023.

JUDGMENT :

1 The appellants, who are original claimants, have

challenged the judgment and award dated 07.02.1995, in LAR No. 325/1991, passed by the learned Civil Judge, Senior Division, Hingoli (hereinafter referred to as the 'learned Reference Court') for further enhancement of compensation in respect of their acquired lands. However, during pendency of this appeal, appellant no.1 died and despite sufficient opportunity, no steps were taken for bringing his legal heirs on record. As such, the appeal stood abated against him vide order dated 25.01.2023.

2 The background facts are as under:

The land bearing S.Nos. 35/3, 36, 16, 14 and 2 of village Wardi, totally admeasuring 22 acres 32 gunthas, owned by the appellants/claimants were acquired by the Government for the purpose of reservoir. The notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') was published on 10.07.1975 and subsequently, the concerned Land Acquisition Officer passed an award on 08.03.1979 and determined the compensation in respect of aforesaid land @ Rs.7500/- per hectare, that means,

Rs.3000/- per acre. Feeling aggrieved with the said rate, the appellants/claimants preferred the aforesaid Land Acquisition Reference and the learned Reference Court, by considering the material on record, enhanced the same up to Rs.5000/- per acre from Rs.3000/- per acre. Hence, this appeal for further enhancement of compensation.

3 The learned Counsel for the appellants vehemently argued that despite production of comparable sale instances at Exhibits-16 and 18, showing prevailing market value of the lands under acquisition being around Rs.10000/- to Rs.11000/- per acre, the learned Reference Court has discarded the same and granted very meager amount of compensation to the tune of Rs.5000/- per acre. The learned Counsel for the appellant, therefore, contends that the compensation granted by the learned Reference Court needs to be enhanced.

4 On the contrary, the learned AGP submits that the learned Reference Court has already granted reasonable

enhancement of compensation and, therefore, no interference is required in the impugned judgment and award.

5 Heard rival submissions and also perused the entire oral and documentary evidence on record.

6 Admittedly, notification under Section 4 of the Act was issued on 10.07.1975 followed by the award of the Land Acquisition Officer dated 08.03.1979, granting compensation @ Rs.3000/- per acre. It is significant to note that the appellants/claimants have produced on record copies of sale deeds at Exhibits-16 and 18, being comparable sale instances. They also examined Uttam Maske and Dadarao and relied upon copy of the judgment in LAR No.73 of 1982 in respect of the lands at Wardi.

7 So far as applicability of earlier/previous judgment in respect of the land from same area is concerned, it is now well settled that such judgment cannot be relied upon blindly, but other attending factors as regards location, fertility and

potentiality of the land under acquisition, also need to be considered. Further, it is also settled by the Hon'ble Apex Court that the market value of the land under acquisition is to be determined on the basis of material produced before the learned Reference Court and for that purpose, no reliance can be placed on the observations of the Land Acquisition Officer. In short, the claimants must prove all the necessary facts which would be helpful for determination of true market value of the land under acquisition at the relevant time.

8 Under Section 23 (1) of the Act, certain guidelines are given for determination of market value of the land under acquisition and it is contemplated that such market value of the land must be the price of the land under acquisition prevailing on the date of publication of notification under Section 4 (1) of the Act. Undisputedly, the notification under Section 4 of the Act, in the instant matter, was published on 10.07.1975. Therefore, the aforesaid date is material for determination of market price of the land. The appellants have produced on record copies of two sale deeds at Exhibits-

16 and 18 and from those sale deeds, it can very well be ascertained that the lands mentioned therein were sold between the range of Rs.9000/- to Rs.11000/- per acre. However, the sale deed at Exhibit-16 appears to be in respect of the land at village Kharwad, which is situated at the distance of 2/3 Kms from village Wardi. It further appears that the said sale deed is dated 08.03.1982, which means, executed after about 7 years from the date of notification in the instant matter. As such, rate around Rs.10000/- per acre, mentioned in this sale deed, is not the market price of the land under acquisition, in the instant matter, in the year 1975. Thus, the said rate cannot be equated with the market price of the land under acquisition at the relevant time.

9 Same is the case in respect of sale deed at Exhibit-18. It is also not from the same village Wardi, but it is from village Dongargaon. Moreover, the aforesaid sale transaction is dated 22.06.1981 i.e. much after the date of notification under Section 4 in the instant matter. Though the rate is mentioned in the said sale deed around Rs.10000/- to

Rs.11000/- per acre, it cannot be considered as a comparable sale instance to determine the market price of the land under acquisition for similar reasons. Therefore, both these sale instances are not helpful to the appellants/claimants for determination of prevailing market rate.

10 It is extremely important to note that though the appellants could not produce any other sale instance of the same village Wardi and of the same relevant period, but the learned Reference Court, on the basis of oral evidence adduced by the appellants, has come to the conclusion that the claimants have at least established the fact that the compensation awarded by the Land Acquisition Officer was inadequate. Accordingly, the learned Reference Court has enhanced the amount of compensation by fixing the market price of the lands under acquisition, at the relevant time, @ Rs.5000/- per acre. Other statutory benefits have also been awarded by the learned Reference Court. Thus, in the absence of any specific evidence showing that the market price of the lands under acquisition was around Rs.7000/-

per acre, the learned Reference Court has reasonably and properly determined the same @ Rs.5000/- per acre.

11 Considering all these aspects, I am of the opinion that no interference is required in the impugned judgment and award, which appears to be just and proper.

12 In the result, appeal stands dismissed. No costs.

(SANDIPKUMAR C. MORE)
JUDGE

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