



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3381 OF 2015

Radhabai w/o Kalu Titame
Age- 67 years, Occu: H.H. & Agril,
R/o. Nimbral, Tq. Akole,
District- Ahmednagar.

...APPELLANT
[Orig. Claimant]

VERSUS

1. The State of Maharashtra
Through its Secretary,
Water Resources Department
Mantralaya, Mumbai-32.
2. The Collector, Ahmednagar,
Through Special Land Acquisition
Officer No. 3, Aurangabad Road,
Ahmednagar.
3. The Executive Officer,
Urdhva Pravara Right Canal,
Division Akole, District- Ahmednagar.

...RESPONDENTS
[Orig. Respondents]

Mr. R.L. Kute, Advocate for appellant
Mr. B.R. Surwase, Advocate for respondent No. 3
Mr. R.B. Dhaware, AGP for State

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 9th SEPTEMBER, 2024
PRONOUNCED ON : 20th SEPTEMBER, 2024

JUDGMENT :

1. By this appeal filed under section 54 of Land Acquisition Act, 1894, claimant challenges judgment and award

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dated 26.08.2015 passed by Civil Judge, Senior Division, Sangamner in Land Acquisition Reference No. 9 of 2012.

2. 36 Are land out of Gut No. 66/11 of the claimant was acquired for construction of Upper Pravara Right Canal. Notification under section 4 of the Land Acquisition Act, 1894 (for short "L.A. Act") was published in Gazette on 27.03.2008 and in Daily Sarvamat and Nagar Times on 22.03.2008. Declaration under section 6 was published in Gazette on 08.01.2009 and in the newspapers i.e. Daily Anand Sangamner and Daily Shrirampur Express on 25.03.2009 and 12.01.2009. Special Land Acquisition Officer passed award on 20.04.2011 and awarded compensation to the acquired land @ 3,40,000/- per Hectare. Being dissatisfied with the award claimant preferred Land Acquisition Reference No. 9/2012. Owner of the land Gut No. 66/9 whose 2 Are land was acquired by same notification also filed Land Acquisition Reference No. 10/2012. Both references were tried together and claimant filed purshis to treat the evidence led in Land Acquisition No. 10/2012 about sale instance. Reference Court partly allowed the references and awarded compensation @ Rs. 4,50,000/- per Are. Claimant is aggrieved by inadequate compensation awarded by the

Reference Court.

3. Heard learned advocate for claimant, learned AGP for State and learned advocate for acquiring body.

4. Learned advocate for the claimant submits that declaration under section 6 was published in Gazette on 08.01.2009 and in newspapers on 25.03.2009 and the award was passed on 20.04.2011, which is beyond the period of two years, in view of Section 11A of the L.A. Act. Therefore, award is lapsed, hence acquiring body needs to take fresh steps for acquisition of land of claimant. In support of this submission he relied on *Mohan and Another vs. State of Maharashtra and Others*, AIR 2007 SC 2625.

By relying on the amendment made in the first appeal, he submits that, claimant has challenged the award on the ground that award is beyond the period of two years in view of Section 11A of the L.A. Act and therefore award is lapsed.

In the alternate he submits that Reference Court has awarded inadequate compensation and has committed error in not relying on sale instance at Exhibit-18 by which 12 Are land was sold @ Rs. 16,66,000/- per Hectare. The same was discarded by Reference Court by giving unacceptable reasons.

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He submits that Reference Court has observed that Survey No. 43 is adjacent to the gavthan by relying on the village map Exhibit-26. Only a river is passing in between land of claimant and land Gut No. 43. He submits that, in fact claimant's land is also near gavthan area. Further submission is that the Reference Court has relied on sale instance at serial No. 9 in the final award by which 17 Are land out of Gut No. 68/12 was sold for Rs. 71,000/- i.e. @ 4,17,647/- per Hectare. He submits that Reference Court has ignored the sale instance at serial no. 3 by which 14.5 Are land out of Gut No. 44/6 is sold for Rs. 2,00,000/- i.e. @ 14,28,572/- per Hectare. By relying on ***Mehrawal Khewaji Trust (Regd.) Faridakot and Others vs. State of Punjab and Others***, AIR 2012 SC 2721 he submits that sale instance of highest value ought to have been relied upon by the Reference Court and claimant is entitled for said rate as per serial no. 3 of the award.

5. Per contra, learned advocate for acquiring body submits that ground of lapsing of award under Section 11A of the L.A. Act is not available to the claimant as the claimant has acquiesced the award and has accepted the compensation amount and challenged it before the Reference Court seeking

enhanced compensation. If he wanted to raise this ground, then immediately after passing of the final award he ought to have approached this Court by filing writ petition, which the claimant has failed to do and therefore this ground is not available to him. He submits that land of the claimant is near village Mahaldevi whereas land Gut No. 43 and 44 are adjacent to gavthan of village Nimbral. Similarly, land Gut No. 52 is on the bank of canal, therefore, these lands have fetched higher market value. By supporting impugned judgment and award passed by the Reference Court he submits that there is no merit in the first appeal and it may be dismissed.

6. In reply, learned advocate for claimant submits that Gut No. 66 is on the boundary of village Mahaldevi and not near that village. Therefore, there is no merit in the submission of acquiring body.

7. Learned AGP supported the impugned judgment.

8. Heard learned advocate for claimant, learned AGP for State and learned advocate for acquired body at length. Perused the record.

9. At the outset, argument of the claimant that award is passed beyond the period of two years as provided under

Section 11A of the L.A. Act and therefore it has lapsed is stated to be rejected. The judgment relied upon by claimant in Mohan and Another (supra) was passed in appeal filed against the impugned judgment of this Court in a writ petition, therefore, it is clear that claimants therein had filed writ petition challenging the acquisition on the ground that since award is passed beyond the period of two years, provided under Section 11A of the L.A. Act, same is lapsed. In the present case, claimant has not challenged the award by filing writ petition and has accepted the compensation under protest and filed reference seeking enhancement, hence, said ground is not available to the claimant.

10. Coming to the next argument of claimant seeking enhancement of compensation, two sale instances Exhibits- 18 and 19 are relied upon before the Reference Court. By sale instance (Exhibit-18), land Survey No. 4315 admeasuring 12 Are situated at mauje Nimbral, Taluka- Akole along with share in the water of Ambika Samudaik Panipurvatha Yojna is sold on 13.03.2006 for consideration of Rs. 2,00,000/- i.e. (@ Rs. 16,66,600/- per Hectare).

By sale instance (Exhibit-19) dated 15.05.2007, 43

Are irrigated land out of Survey No. 52/12 was sold for consideration of Rs. 4,00,000/- i.e. (@ Rs. 9,30,232/- per Hectare).

11. The Reference Court has refused to rely on sale instance Exhibit-18 on the ground that land under said sale instance is adjacent to the purchaser of Survey No. 43/13 and therefore, there is every possibility that higher consideration amount is paid by the purchaser. Reference Court has further refused to rely on sale instance Exhibit-19 on the ground that land under said sale instance is at far distance from the acquired land, and claimant has failed to bring on record any evidence to show that said land is nearer to the acquired land.

12. Reference Court has relied on sale instance at serial no. 9 in the award (Exhibit-20) for arriving at market value, in which by sale deed dated 25.02.2008, land admeasuring 0.17 Are out of Gut No. 68/12 is purchased for consideration of Rs. 71,000/- i.e. (@ Rs. 4,17,647/- per Hectare). By relying on said sale instance and as the land of claimant is irrigated land, Reference Court has awarded compensation @ Rs. 4,50,000/- per Hectare. The claimant is right in submitting that Reference Court has ignored sale instances at serial nos. 2 and 3, which

are as follows:

अ. न.	खरेदी दिनांक	क्षेत्र	गट नं	आकार	खरेदी किंमत	हेक्टरी आकार	हेक्टरी किंमत	जमीन वर्ग
१	-	—	—	—	—	—	—	—
२	२०/६/०६	०.२६	४९/७	१.१५	२,००,००० / —	४.४२	७,६९,२३१ /—	३
३	१३/१०/०६	०.१४.५	४४/६	०.७५	२,००,००० / —	५.३५	१४,२८,५७१ /—	४
४	-	—	—	—	—	—	—	—

13. Indeed there is substance in the contention of claimant that Reference Court without assigning any reason has ignored sale instances at serial nos. 2 and 3. Land admeasuring 0.14.5 Are out of Gut No. 44/6 was sold for consideration of Rs. 2,00,000/- i.e. (@ Rs. 14,28,571/- per Hectare), which is mentioned at serial no. 3 in the award is abutting to the gavthan and is adjacent to land under sale instance Exhibit-18. There is every possibility that because the said land is adjacent to the gavthan, it has fetched higher price.

14. Considering the evidence on record it would be appropriate to consider sale instance at Exhibit-18 for determining market value of the acquired land. From the village map (Exhibit-26) placed on record it appears that land under sale instance Exhibit-18 is abutting to the gavthan. It further

appears that acquired land Gut No. 66 of the claimant is situated at some distance from land Gut No. 43 and both these lands are divided by a river. There is river in between gavthan, land Gut No. 43, 44 and the acquired land. By sale instance (Exhibit-18) land is sold @ Rs. 16,66,600/- per Hectare. In view of decision in *Chindha Fakira Patil (D) through L.Rs v. The Special Land Acquisition Officer- Jalgaon*, AIR 2012 SC 481, highest sale instance needs to be taken into consideration and hence sale instance at (Exhibit-18) being highest sale instance, needs to be taken into consideration for determining market value of the acquired land. As per this sale instance, market value of the land under sale instance is Rs. 16,66,600/- per Hectare. The sale instance being of the year 2006 i.e. two years prior to the date of notification under Section 4 of the L.A. Act, 10% increase per year needs to be added in view of decision in *Mehrawal Khewaji (supra)*. Thus, the market value would be Rs. 16,66,600 + 3,33,320 i.e. 20% equals to Rs. 19,99,920/-.

15. Considering the fact that land under sale instance (Exhibit-18) and land Gut No. 44 are abutting to gavthan it would be appropriate to make 50% deduction from the market value of land i.e. $19,99,920 - 50\% = 9,99,960/-$. Since,

Reference Court has awarded compensation @ Rs. 4,50,000/- per Hectare, by deducting the same, claimant is entitled for enhanced compensation @ Rs. 5,49,960/- (9,99,960 - 4,50,000).

16. In the result, following order:

ORDER

- (I) First Appeal is partly allowed with proportionate costs.
- (II) Impugned judgment and award dated 26.08.2015 passed by Civil Judge, Senior Division, Sangamner in Land Acquisition Reference No. 9 of 2012 is modified to the effect that claimant is held entitled for enhanced compensation @ Rs. 5,49,960/- per Hectare along with all statutory benefits.
- (III) Acquiring Body shall deposit the enhanced compensation amount along with statutory benefits in the Reference Court within 12 weeks from uploading of this judgment. On such deposit, claimant is entitled to withdraw the same.
- (IV) Claimant shall pay additional Court fees as per rules.

[NITIN B. SURYAWANSHI, J.]