

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

FIRST APPEAL NO.604 OF 2001

1. Bhagwan s/o Chintaman Pundgir,
Age: 31 years, Occ: Agri.,
R/o., Village Bothi, Tq. Gangakhed,
District Parbhani.
 2. Subhash s/o Chintaman Pundgir,
Age: 26 years, Occ: Agri.,
R/o. As above. ...Appellants
- versus
1. The State of Maharashtra,
Through the Collector,
Parbhani.
 2. The Special Land Acquisition
Officer, U.P. (II), Parbhani. ...Respondents

.....
Mr. S.K. Adkine, Advocate for appellant
Mr. D.R. Korde, A.G.P. for respondent/State
.....

CORAM : N.W. SAMBRE, J.

DATE : 30th JULY, 2015

ORAL JUDGMENT :

Heard respective Counsel.

2. The appellants claim to be owners of land admeasuring
1 Hecter 83 Are out of 3 Acres 66 Guntha from Survey No. 30

alongwith three mango trees situated at village Bothi, Taluka Gangakhed, District Parbhani, suffered acquisition for construction of water tank for which the award came to be passed in 1988. The appellants, as such, preferred claim for enhancement of compensation under Section 18 of the Land Acquisition Act vide L.A.R. No.694 of 1997 (old L.A.R. No.89 of 1994) claiming enhancement @ Rs.20,000/- per Acre, however accepted the claim to the extent of Rs.12,000/- pr Acre on the basis of compensation paid to their brothers who own adjacent land vide L.A.R. No. 501 of 1997.

3. The Reference Court awarded the compensation @ Rs.6000/- per Acre on the ground that the order of the Reference Court in L.A.R. No. 501 of 1997 delivered in favour of brothers of present appellants is not binding on the said Court and has proceeded to evaluate the claim for enhancement of compensation based on sale deed at Exhibit-28. As such, the present appeal.

4. The appellants herein so as to substantiate their claim have examined appellant No. 1 Bhagwan Pundgir at Exhibit-26. He has placed on record the 7/12 extract for the year 1985-1986 at Exhibit-27. He deposed that they are entitled for Rs.20,000/- per Acre. He further deposed that sale deed at Exhibit-28 which is about

land Survey No. 54 is near his land which was sold @ Rs.40,000/- per Acre. The said Survey No. 54 was dry crop land and was about 200 feet away from the land of the claimants.

5. PW-1 Bhagwan further deposed that that his land was irrigated one and he was taking sugar cane, cotton, toor and banana crops. He further stated that his step brothers Ganpati and Vithal are owners of the land which was acquired for the same purpose and the Reference Court has granted compensation @ Rs.14,000/-per Acre. He has placed on record the judgment delivered by the Reference Court in L.A.R. No. 501 of 1997 at Exhibit-30 whereby step brothers of present appellants were awarded compensation @ Rs.14,000/- per Acre,

6. As stated earlier, the claimants have examined PW-1 Bhagwan Pundgir, PW-2 Madhav Kawada and PW-3 Narayan Ramji Thawre, whereas respondents herein have not adduced any evidence.

7. The documentary evidence that was placed on record was 7/12 extract at Exhibit-27, copy of the sale deed dated 13/05/1983 at Exhibit-28, 7/12 extract of the land Gat No. 265 at Exhibit-29, appendix VI acquisition at Exhibit-32 and award

statement 'E' at Exhibit-33, Gangaikhed Taluka map at Exhibit-41, and 7/12 extract of Gat No. 265 at Exhibit-45.

8. Learned Counsel for the claimants at this stage makes solemn statement that so far as the award of compensation in L.A.R. No. 501 of 1997 in favour of Ganpati and Vitthal, who are step brothers of appellants and are having land adjacent to the land of appellants was not subjected to challenge by the acquiring body or State Government before this Court. According to him, the judgment in the said L.A.R. at Exhibit-30 is required to be accepted as it is and the claimants are entitled for the enhanced compensation @ Rs.14,000/- per Acre.

9. While opposing the above referred submissions, learned A.G.P. would urge that the compensation at enhanced rate awarded by the Reference Court is just and proper, based on the facts and evidence that was brought on record. He would further urge that sale deed at Exhibit-28 is properly analyzed and compensation @ Rs.6000/- was awarded. He would further urge that the Reference Court has given appropriate reasons for discarding the judgment in L.A.R. No. 501 of 1997 at Exhibit-30 and prayed for dismissal of the appeal.

10. In the background of above referred submissions, this Court is required to evaluate as to whether the judgment delivered in L.A.R. No. 501 of 1997 whereby the compensation @ 14,000/- per Acre was awarded would pertain to the present appellants whose land was acquired could be considered as comparative unit.

11. It is required to be noted that it is not in dispute that the land covered under L.A.R. No. 501 of 1997 which is owned by step brothers of present appellants is situated adjacent to the land of appellants, which was acquired and the land under L.A.R. No. 501 of 1997 was acquired for the same purpose under same notification under Section 4 of the Act, for which the land of the appellants was acquired.

12. In view of above parameters, it will be in the fitness of things appellants are entitled for enhancement of the compensation as for adjacent land in L.A.R., Reference Court has awarded compensation @ Rs.14,000/- per Acre, whereas in another L.A.R. Rs.6,000/- per Acre, in my opinion, the comparative unit as is sought to be relied by the appellants at Exhibit-30 is not subjected to challenge before the High Court and accepted the same.

13. Appropriate support can be drawn from the judgment of Apex Court in the matter of ***Union of India vs. Harinder Pal Singh***

and others reported in **2005 AIR SCW 5900**. Relevant paragraph-15 of the said judgment reads thus :

“15. We have carefully considered the submissions made on behalf of the respective parties and we see no justification to interfere with the decision of the Division Bench of the Punjab and Haryana High Court which, in our view, took a pragmatic approach in fixing the market value of the lands forming the subject-matter of the acquisition proceedings at a uniform rate. From the sketch plan of the area in question, it appears to us that while the lands in question are situated in five different villages, they can be consolidated into one single unit with little to choose between one sketch of the land and another. The entire area is in a stage of development and the different villages are capable of being developed in the same manner as the lands comprised in Kala Ghanu Pur where the market value of the acquired lands was fixed at a uniform rate of Rs.40,000/- per acre. The Division Bench of the Punjab and Haryana High Court discarded the belting method of valuation having regard to the local circumstances and features and no cogent ground has been made out to interfere with the same.”

14. Another judgment that could be relied upon by this Court in the matter of Smt. Padmabai w/o Ambadas Dhakulkar vs. State, Through Collector, Amravati reported in 2012(3) ALL MR 360 which is

delivered based on the judgment of this Court in the case of State of Maharashtra vs. Aniruddha Shriram Ganorkar and others vs. Amravati University, Amravati. Paragraph-2 of the said judgment reads thus :

“2. The land in question was acquired for establishment of the Amravati University. The Division Bench of this court in the case of **State of Maharashtra vs Aniruddha Shriram Ganorkar & others Amravati University, Amravati**, granted compensation to the claimants in those appeals @ Rs.1,39,500/- per hectare. The said judgment of Division Bench was followed by the Single Judges of this court in First Appeal No. 415/1996, decided on 1.12.2010. It is not in dispute that the suit land which forms the subject matter of those appeals were also acquired under the same section 4 notification for establishment of Amravati University, from Mouja Wadali. That being so, there is no reason why the appellants herein should not get the same rate of compensation that was awarded by the learned Single Judge of this court in First Appeal No. 415/1996 decided on 1.12.2010.”

15. In the present case, though it is settled position of law that the appellants need not to mention the amount of claim for enhancement, however, they themselves have restricted their claim to the extent of Rs. 12,000/- per Acre. As such, in my opinion, even

though in L.A.R. No. 501 of 1997 at Exhibit-30 the compensation awarded is @ Rs.14,000/- per Acre, the appellants restricted their claim to the extent of Rs.12,000/- per Acre only.

16. In view of above, the judgment delivered by the Reference Court in L.A.R. No. 694 of 1997 (old L.A.R. No. 89 of 1994) on 11/08/2000 is modified and the appellants herein are awarded compensation @ Rs.12,000/- per Are. The other paragraph Nos. 3, 4, 5 and 6 of the operative order in the impugned judgment shall remain as it is.

17. The appeal stands allowed in above terms.

sd/-
[**N.W. SAMBRE, J.]**