

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Civil Appellate Jurisdiction.**

FIRST APPEAL NO. 990 OF 2003.

**SAMBHAJI SHIVAJI RAJEBHOSALE.
VERSUS
STATE OF MAHARASHTRA.**

Appearance =>

Mr. Parag V. Barde, Advocate for the Appellant.

Mr. D.R. Korde, Additional Government Pleader for the Respondent.

CORAM : S.V. Gangapurwala, J.

DATE : 8th October, 2015.

Per Court :-

Present appellant being dis satisfied with the Award of compensation passed by the Special Land Acquisition Officer filed Land Reference Application under Section 18 of the Land Acquisition Act. Said reference bearing LRA No.256 Of 1988 was partly allowed by the Reference Court on 6th August, 2003.

[2] Present First Appeal is preferred for further enhancement in the compensation amount.

[3] Heard Mr. Parag Barde, learned counsel for the Appellant. He submits that the Special Land Acquisition Officer has awarded the compensation @ Rs.30,000/- per Hector. The Reference Court has

awarded the compensation @ Rs.50,000/- per hector. The Reference Court while awarding the compensation has relied upon the sale instance Exhibit – 61 of adjoining village. The Reference Court considered the said sale instance to be comparable sale instance however committed mathematical error while computing the price of the land under the sale deed Exhibit – 61. In the said sale deed Exhibit – 61, 100 Sq Mtrs land was sold for Rs.5000/- same would come to Rs. 5 Lakhs per hector. But, the Reference Court considered the said sale price of Rs.50000/- per hector and awarded the compensation @ Rs.50,000/- per hector. Thus, it is the case of the sheer mathematical mistake.

[4] The learned counsel submits that, when the Reference Court has come to the conclusion that the sale instance is of same vicinity as of the acquired land and the same compensation is to be awarded then compensation @ Rs. 5 Lakhs per hector ought to have been awarded.

The learned counsel relied on the Judgment of Hon'ble Apex Court in case of Radha Madaliyar V/s. Special Tahasildar (Land Acquisition), T.N.H. Board, reported in 2011 S.C. 54.

[5] The learned Additional Government Pleader submits that sale instance relied is in respect of small area of land. The acquired land is huge chunk of land admeasuring 6 Hectors 54 Are. The Reference Court ought to have deducted further amount as said sale deed is in respect of Non Agricultural plot and acquired land is agricultural land.

[6] With the assistance of the learned counsel for respective parties, I have gone through the Record & Proceedings, so also the Judgment.

[7] The land of the appellant admeasuring 6 Hectar 54 Are of village Paritwadi, Taluka Karjat has been acquired vide notification under Section 4 of "the Act" dated 11th July, 1985. The Special Land Acquisition Officer has awarded the compensation @ Rs.30,000/- per hector. The appellant had claimed compensation @ Rs. 5 Lakhs per hector. Various sale deeds were produced by the appellant on record i.e. Exhibit – 59 to 63. The Reference Court has basically relied on sale instance Exhibit – 61. All the sale instances are of village Rashin. As after assessing evidence, the Reference Court has come to the conclusion that the said sale instance is of nearby vicinity of the acquired land, it can be considered.

[8] Except Exhibit – 61, all other sale deeds are in respective of plots of Co Operative Society. However, if we peruse the rates of all the sale deeds, including Exhibit – 61, it appears that, rates are almost same.

[9] Perusal of Exhibit – 61 shows that 100 Sq.Mtrs area of plot was sold for Rs.5000/- I am not ready to accept the said sale consideration in toto for granting the compensation amount. Said sale instance is in respect of N.A. Plot and acquired land is agricultural land. No doubt, even the land acquired is for construction of quarters, which would show that it is in the urban area. Acquired land can be said to have N.A. Potentiality. However, same was not N.A. Land, as of sale deed Exhibit – 61 and other sale deeds.

[10] In view of the fact that said land was situated in adjoining village and was N.A. Plots, I would deduct 50% of the amount of the sale consideration of the said sale deed for granting the compensation. Same would come to Rs.2,50,000/- per hector. In the result, I pass the following order :-

ORDER

(i) Award dated 6th August, 2003 passed by the Reference Court in Land Reference Application No.256 Of 1988 is modified.

(ii) It is held that the Appellant – Claimant is entitled to receive compensation @ Rs.2,50,000/- per hector.

(iii) The Respondent shall pay compensation to the Appellant – Claimant @ Rs.2,50,000/- per hector.

(iv) The other statutory benefits as awarded by the Reference Court are maintained and upheld.

(v) The Appellant shall be entitled for solatiam of 30% as admissible.

(vi) The Appellant is entitled for the benefit of interest under Section/s 34 and 28 of “the Act” for one year @ Rs.9 % per annum from the date of Notification under Section 4 of “the Act” and thereafter after lapse of one year, @ Rs.15% per annum.

(vii) First Appeal stands partly allowed, accordingly.

(viii) No costs.

(S.V. GANPURWALA, J.)