

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL (ST.) NO. 7877 OF 2015

1) The State of Maharashtra,
Through The Special Land Acquisition Officer,
Jayakwadi Project-1, Aurangabad

2) The Executive Engineer,
Minor Irrigation, Local Sector,
Aurangabad

...APPELLANTS
(Ori. Respondents)

VERSUS

Baburao Kashinath Gadekar,
Age: 42 years, Occu. Agriculture,
R/o. Girsavali, Tq. Phulambri,
Dist. Aurangabad

...RESPONDENT
(Ori. Claimant)

Mr P. P. More, Asstt. Govt. Pleader for appellants;
Mr A. B. Kale, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 14th July, 2015

ORAL ORDER :

With the consent of the parties, the appeal is taken out for final disposal at the stage of admission.

2. Heard Mr More, learned Asstt. Govt. Pleader appearing on behalf of the appellants. In his usual persuasive manner, learned A.G.P. has tried to assail the judgment and award delivered by the Reference Court, whereby the compensation was enhanced from Rs.1345 - Rs.1560 to

Rs.3,250/- per R as against the claim of Rs.5,000/- per R made by the claimants.

3. The land in question was acquired for the purpose of construction of a percolation tank at Girsavali, Taluka Phulambri, for which section 4 notification was issued on 8th October, 2005 and the award came to be declared on 13th April, 2007.

4. The possession of the land in question was taken on 20th June, 2001, i.e. prior to issuance of section 4 notification.

5. Mr More, learned Asstt. Govt. Pleader has strenuously urged that in view of the fact that the possession of the land was taken on 20th June, 2001, the sale instance Exh.17, dated 12th August, 2002, which is of Gat No.72, ought not to have been taken into account by the learned Reference Court. According to him, though the sale instance is for a small piece of land, i.e. 20 R, which was sold for Rs.50,000/-, the location of the said land, the relativity of the land under acquisition, the transaction after the possession of the land in question was taken, was not at all dealt with by the Reference Court. According to him, the enhancement of Rs.3,250/- per R is unreasonable and without any basis.

6. Mr A.B. Kale, learned Counsel appearing on behalf of the respondent-claimant, has supported the impugned award and has invited attention of this Court to the fact that the Reference Petition proceeded *ex parte* against appellant no.2 – acquiring body. Apart therefrom, learned Counsel would urge that the appellants have neither entered into witness box nor led any documentary evidence, so as to oppose the claim of the respondent and thus, sought dismissal of the appeal.

7. Upon consideration of the submissions made by the respective Counsel, it is noticed that appellant no.2 – acquiring body remained *ex parte*. Admittedly, the appellants have not examined any witness so as to establish their case that sale instance at Exh.17 was at an exorbitant rate, which was subsequent to the possession of the land acquired, which was on 20th June, 2001. Apart from above, it is required to be noted that the sale deed at Exh.17 was brought before the Reference Court and was established through the evidence of the claimant, however, nothing was elicited from the cross-examination of the said witness on behalf of the appellants and the said sale instance at Exh.17 was rightly taken into account by the Reference Court while granting enhancement of compensation.

8. In my opinion, the enhancement granted is based on the sale instance, which is properly appreciated and scrutinized by the Reference

Court.

9. The sale instance is in relation to the same village and of the adjoining Gat number of the land under acquisition.

10. In view of above, no case for interference is made out. The appeal fails and stands dismissed with no order as to costs.

11. In view of dismissal of the appeal, Civil Application No.5741 of 2015 does not survive and stands disposed of.

(N.W. SAMBRE, J.)

amj