

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

FIRST APPEAL STAMP NO.8677 OF 2015

1. The State of Maharashtra,
through Special Land Acquisition
Officer, Aurangabad
 2. The Executive Engineer,
Minor Irrigation Local Sector,
Aurangabad
- ..Appellants

Versus

1. Mohammad Hanif Maqbool Khan,
Age Major, Occu. Agril.,
 2. Gafoorkhan s/o Maqbool Khan,
Age major, Occu. Agril.,
 3. Alikha s/o Maqbool Khan,
Age major, Occu. Agril.,
- All r/o Fardapur, Taluka Soygaon,
District Aurangabad
- ..Respondents

Mr P.P. More, A.G.P. for appellants

CORAM : N.W. SAMBRE, J.

DATE : 20th July 2015

PER COURT

1. This appeal is by the State and the Acquiring Body under Section 54 of the Land Acquisition Act (hereinafter referred to as 'the Act' for brevity).

2. The land of the claimant/respondent to the extent of 1 hectare 40-R came to be acquired out of Gut No.32, which was totally ad measuring 6 hectare 95-R. The acquisition was pursuant to Section 4 notification issued on 7th February 2002.

3. The Special Land Acquisition Officer has made an offer of Rs.1050/- per R compensation. The respondents/claimants claimed the same to be inadequate, as such Land Acquisition Reference No.555 of 2006 was preferred by the respondents/claimants before the Court of Civil Judge, Senior Division, Aurangabad. Learned Civil Judge, Senior Division enhanced the claim at the rate of Rs.5,600/- per R, as such present appeal.

4. Mr More, learned Assistant Government Pleader for the appellants would urge that compensation awarded was at exorbitant rate, without any basis.

5. So as to support his contention, learned A.G.P. has invited attention of this Court to the analysis of the evidence and the considerations before the learned reference Court so as to substantiate his contention about awarding exorbitant compensation. He would further urge that the land in question was termed to be an irrigated land by the reference Court, however, it is hard to digest that in Gut No.32, the irrigated facility is available to the entire Gut No.32 which is consisting 6 hectare 95 R. He would further urge that no crop statements of the previous years was brought before the Court so as to establish the claim and as such, sought to canvass issue about appreciation of evidence.

6. Having considered the contentions of learned A.G.P. for the appellant and with his assistance, I have also perused the examination-in-chief and cross-examination of claimant Mohammad Hanif (PW-1) at Exh.12. It is required to be noted that the entire Gut

No.32 is consisting of 6 hectare 95 R out of which 1 hectare 41 R land was acquired.

7. The claimants have produced on record the 7/12 extract of Gut No.32 so as to establish their claim that the land under acquisition was irrigated land.

8. Admittedly, the land under acquisition was from Gut No.32 and there is entry of well in the said Gut number as is apparent from the revenue record. Apart from above, it is required to be noted that the said claim was subjected to cross-examination at the behest of the appellants, however, respondents could not elicit from the deposition of said witness as regards absence of irrigation facility for the acquired land from Gut No.32 i.e. 6 hectare 95 R.

9. Apart from above, so far as the crop statement is concerned, noting was put to said witness by the acquiring body while countering his claim qua the land in question is an irrigated land.

10. It is also required to be taken note of the fact that the land in question is located adjacent to the Aurangabad-Jalna road which is major State highway.

11. The reference Court then has proceeded to consider the sale instance dated 3rd September 1998, very closely located land to the land under acquisition. The said land was sold on 3rd September 1998 for a total consideration of Rs.2142/- per R and the said amount was rounded to Rs.2000/- by the reference Court while considering the enhancement. In the present case, Section 4 notification was issued

on 7th February 2002 and as such, the reference Court, based on the judgment of Apex Court in the matter of **Kashmir Singh Vs. State of Haryana & Ors., in Civil Appeal No.11030/2013 decided on 13th December 2013**, increase of 12% per annum on sale price which was granted for the said sale instance, was taken into account to be a base for determining the value of enhancement of compensation, has enhanced the said amount to Rs.2,800/- per R as on issuance of Section 4 notification.

12. The reference Court doubled the said amount i.e. Rs.5,600/- per R having regard to the fact that the land under the transaction was a dry crop land.

13. The enhancement granted by the reference Court is based on the evidence and the law laid down by the Apex Court in the matter of considerations of enhancement.

14. In my opinion, no case for interference is made out. As such, appeal fails, stands dismissed.

(N.W. SAMBRE, J.)

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