

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

FIRST APPEAL NO. 2211 OF 2014

SACHIN BAPU MALI AND ANOTHER
VERSUS
THE COLLECTOR, JALGAON AND OTHERS

...

Advocate for Appellants : Kale Ajeet B.
AGP for Respondents: Mr.S.P.Deshmukh
Advocate for Respondents : Dhongade Suresh D. Adv For Resp 3 & 4

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FIRST APPEAL NO. 1287 OF 2015

PRABHAKAR POONA MALI AND OTHERS
VERSUS
THE COLLECTOR, JALGAON AND OTHERS

...

Advocate for Appellants : Kale Ajeet B.
AGP for Respondents: Mr.S.P.Deshmukh
Advocate for Respondents : Dhongade Suresh D. Adv For Resp 3 & 4

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CORAM : S.V.GANGAPURWALA,J.

DATED : 12TH OCTOBER, 2015

ORDER :-

1] The present appellants claimants being dissatisfied with the amount of compensation awarded by the Special Land Acquisition Officer filed Reference u/s 18 of the Land Acquisition Act before Reference Court. The Reference Court partly allowed the said appeal. The present appeals are filed by the claimants for further enhancement of compensation.

2] Mr.Kale, learned counsel for appellant strenuously contends that even the Reference Court came to the conclusion that two sale deeds which were also placed before the S.L.A.O. Show that the market value of the land at the relevant time was more than Rs.8,33,000/- per hectare but the Reference Court has awarded compensation at the rate of Rs.3 lakh per hectare which is erroneous and too meager. According to the learned counsel notification u/s 4 is issued on 2/3/2006 and the sale deed Exh.13 is dated 12/7/2005 and another sale deed Exh. 12 is dated 6/9/2005. According to the learned counsel, there was no impediment for considering the said sale instances and awarding the compensation at the rate the lands were sold. The learned counsel submits that the said sale transactions are genuine and bonafide sale transactions. The evidence has been led to that effect. According to the learned counsel, even Reference Court came to the conclusion that the said sale instances were made available before the Land Acquisition Officer also. However, has considered that the other sale instances show lower consideration amounts and has accepted the sale consideration of the sale deeds which were on the lower side. According to the learned counsel, highest sale exemplar has to be considered while awarding the compensation amount. The learned counsel relies on the judgment of the Apex Court in the case of **Anjani Molu Desai Versus State of Goa and another reported in 2010 (13) SCC 710** and in the case of **Chindha Fakira Patil (D) through L.Rs. Vs The Special Land Acquisition Officer, Jalgaon** reported in AIR 2012 SC 481. The learned counsel submits that even said

sale instances were in respect of jirayat lands. There was no impediment to award the said compensation amount.

3] Mr.S.D.Dhongade, learned counsel for respondent acquiring body and the learned AGP supports the order and submits that there were 22 sale instances considered by the S.L.A.O. and the S.L.A.O. after considering the said sale instances had rightly awarded compensation amount. These sale instances which are relied by the claimants are of small areas of lands which cannot form basis for arriving at market value. According to the learned counsel, there is no evidence on record to show the fertility of the land acquired and land under the sale instances Exhs. 13 and 12. Unless it is shown that the lands under the sale which is relied by the claimants is similarly situated as that of the acquired land, the said sale instances cannot be relied.

4] With the assistance of learned counsel for the respective parties, I had gone through judgment, so also the record and proceeding. Notification u/s 4 of the Land Acquisition Act is dated 2/3/2006. The sale instances Exhs.12 and 13 relied by the claimants are dated 6/9/2005 and 12/7/2005 respectively. The SLAO has awarded compensation for the acquired lands at the rate of Rs.1,14,000/- to 1,37,000/- per hectare. The Reference Court has awarded compensation at the rate of Rs.3 lakh per hectare.

5] The lands are acquired from villages Patonda and

Mundkheda for the purpose of Patonda/Mundkheda Minor Irrigation Tank.

6] The SLAO has categorised the lands. The lands acquired are Class-V. The said fact is not disputed by the learned counsel for either parties. It has been observed by the Reference Court that consideration price of transaction of Class-V lands is upto Rs.8,33,333/- per hectare for Gat No.273.

7] Perusing the sale deeds Exh.12 dated 6/9/2005, the land admeasuring 1 hectare 20 aar is sold for Rs.10 lakhs. Recital of the said sale deeds also shows that it is jirayat land. The said sale deed cannot be said to be in respect of small area of land. It is almost of three acres. Another sale deed dated 12/7/2005 (Exh.14) is in respect of sale of 82 aar land for Rs.7 lakh, the same cannot be said to be of small area of land. The Reference Court has also observed that village Patonda is accessible to the said highway having more facilities and amenities. It has discarded these two sale instances only on the ground that there is a difference in consideration amount of the sale instances of other sale deeds and these two sale deeds. The Court observed that the market price as per other sale instances which were before the SLAO showed the market price of Rs.3 lakh to Rs.3,50,000/- and as such has awarded Rs.3 lakhs per hectare. No reason is given for not accepting the sale consideration of Exh.12 and 13 though it is from the same village and said sale instances are of dry land. The Apex Court in the case of **Anjani Molu Desai Versus State of**

Goa and another reported in 2010 (13) SCC 710 has held that if the sale transaction is bonafide and genuine then highest sale exemplar has to be considered. The Reference Court has not arrived at any other conclusion that the said sale instances Exh.12 and 13 are not bonafide or genuine sale instances. These sale instances are also in respect of dry lands. The lands acquired in the present matter are also dry. In my view, there is no impediment to award compensation at the rate of Rs.8 lakh per hectare. The said sale instances are prior to notification u/s 4 of the Land Acquisition Act.

8] In light of the above, the impugned award passed by Reference Court is modified. It is held that the appellants are entitled for compensation at the rate of Rs.8 lakh per hectare. The respondents shall pay compensation to the appellants at the rate of Rs.8 lakh per hectare. Other statutory benefits granted by Reference Court are upheld and maintained. First Appeals are accordingly disposed of. No costs.

[S.V.GANGAPURWALA,J.]

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