

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

**CIVIL APPLICATION NO. 10842 OF 2012
WITH
CIVIL APPLICATION NO. 10843 OF 2012
IN/WITH
FIRST APPEAL (ST) NO. 19710 OF 2012**

1. The State of Maharashtra,
Through Collector, Latur.
2. The Executive Engineer,
Minor Irrigation, Local Division
Latur. ...Applicants

versus

Ejaj Ahmed Hasdulla Khan
Died, through his L.Rs.

- 1/1. Farzanabegum w/o Ejaj Ahmed Khan,
Age: 50 years, Occ: Household,
- 1/2. Aseef Ejaj Ahmed Khan,
Age: 28 years, Occ: Business,
- 1/3. Arif Ejaj Ahmed Khan,
Age: 26 years, Occ: Business,
- 1/4. Rubina Ejaj Ahmed Khan,
Age: 24 years, Occ: Household,

All R/o. Omerga (Retu), Tq. Jalkot,
Dist. Latur.

...Respondents

.....

Mr. P.P. More, A.G.P. for applicant/appellant

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CORAM : N.W. SAMBRE, J.

DATE : 27th JULY, 2015

ORAL ORDER :

Heard.

2. For the reasons stated in the application, delay occurred in preferring the first appeal stands condoned. The civil Application is allowed.

3. The order of enhancement delivered by the Joint Civil Judge, Senior Division, Ahmedpur on 06/10/2010 in L.A.R. No. 324 of 2004 is subject matter of the present appeal, which is preferred by State Government and Acquiring Body.

4. Mr. More, learned A.G.P. has strenuously urged that the aspect that is taken into account by the Reference Court i.e. sale instances cannot be equated to the land under acquisition in view of the fact that it is not clear from the evidence or from the considerations of the Reference Court as to whether the land under sale deed was irrigated or non irrigated.

5. In the back ground of above referred submissions, this Court proceeds to analyze the evidence that is available on record while granting the compensation at enhanced rate.

6. The land in question was acquired pursuant to the notification under Section 4 of the Land Acquisition Act (hereinafter

shall be referred to as 'the Act' for the sake of brevity) on 20/05/1999 of which possession was taken on 17/03/1998. The Land Acquisition Officer made offer of Rs.42,000/- per Hecter, feeling aggrieved thereby, claimants sought enhancement @ Rs.3,00,000/- per Acre i.e. Rs.7,50,000/- per Hecter.

7. It is further claimed by the land owners that the land which is located in between Shirur Tajband to Mukhed Jalkot, which is State high way and village is having population of 4000. Apart from this, the claimants alleged high fertility of land and income derived from the said land.

8. Apart from above, the claimants also sought enhanced compensation for fruit bearing trees and accessories.

9. In support of the claim, the respondents-land owners have examined one of the claimant at Exhibit-24 and have brought on record the award passed by Land Acquisition Officer at Exhibit-19, E-statement at Exhibit-20, sale deed of the land bearing Gat No. 13 to the extent of 50 Are at Exhibit-21 dated 22/09/1997, sale deed dated 24/12/1997 bearing Gat No. 16 to the extent of 20 Are at Exhibit-22, and 7/12 extract at Exhibit-23.

10. The appellant acquiring body has neither adduced any oral or documentary evidence, however, has proceeded to cross examine the witnesses of the claimants.

11. The Reference Court has considered two aspects for granting enhancement; (a) compensation awarded for the land which was acquired for the same project which is adjacent to the land under acquisition and (b) the sale instances which were placed on record at Exhibits-21 and 22.

12. The Reference Court has analyzed the evidence brought before it and ordered enhancement of compensation @Rs.1,88,000/- per Hector as against the claim of Rs.7,50,000/-.

13. The perusal of the evidence as is brought on record before the Reference Court, it is noticed that while examining the claimant himself, he has brought on record the location of land, its fertility and income derived by him from the said property. Apart from above, he has also placed reliance on the sale instance at Exhibits-21 and 22 which are dated 22/09/1997 and 24/12/1997. In the present case, admittedly notification under Section 4 of the Act was issued on 20/05/1999 and sale instances were prior to notification under Section 4 of the Act.

14. Apart from above, the Reference Court has deducted considerations which were reflected in Exhibits-21 and 22 based on the judgment of the Apex Court in the matter of ***Cement Corporation of India Ltd. vs. Purya and others*** reported in **2004 AIR SCW 5534**.

15. The enhancement, in my opinion, as such is just and proper, the point as regards the status of land which is covered in Exhibits-21 and 22 as that of irrigated or non-irrigated was not agitated by the appellant themselves before the Reference Court, however, only advanced the case before it appears to be that sale instances are out of loan transactions and not genuine transactions. The said case was also not proved by present appellant though witness was subjected to cross examination.

16. As such, the present appeal is devoid of merits, hence stands dismissed. Consequently, civil application for stay is disposed of.

[N.W. SAMBRE, J.]