

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

FIRST APPEAL ST.NO.30315 OF 2014

The Executive Engineer,
(Local Sthapathya), Construction and
Repairs Division, M.S.E.B.,
Osmanabad, presently
Executive Engineer (C),
Maharashtra State Electricity
Distribution Company Ltd.,
Civil Division, Latur, Dist.Latur

..Appellant
(Orig.opponent)

Versus

1. Sunderabai w/o Sahebrao Bhalke
Age 60 years, Occu. Agri. & Household,
R/o Wadhwana, Taluka Udgir,
District Latur

2. The State of Maharashtra,
through the Collector, Latur,
District Latur

..Respondents
(Resp.No.1 – Orig.Claimant
Resp.No.2 Original
opponents)

Mr S.V. Mundhe, Advocate for appellant
Mr R.P. Phatke, A.G.P. for respondents 2
Respondents No.1 served in C.A.No.620 of 2015 (for condonation of
delay)

CORAM : N.W. SAMBRE, J.

DATE : 20th March 2015

PER COURT

1. As the Civil Application No.620 of 2015 for delay is allowed, with
the consent of parties, appeal is taken up for final disposal at
admission stage.

2. In the present appeal under Section 54 of the Land Acquisition Act, the appellant has questioned the legality and validity of the judgment and award dated 25th October 2013, passed by the learned Civil Judge, Senior Division, Udgir, District Latur in Land Acquisition Reference No.233 of 2010 (old No.685 of 2002).

3. The land in question is owned by the respondent No.1 herein and the same was required by the appellant for the purpose of construction of 33 K.V. Sub-station.

4. The land ad measuring about 80-R out of Survey/Gat No.558 situated at village Wadhwana (Bk), Taluka Udgir, owned by the respondent 1 herein was acquired by the Land Acquisition Officer for the above referred purpose and he ordered payment of compensation at the rate of Rs.550/- per R. The respondent-claimant thereby feeling aggrieved preferred reference, as according to her, the compensation paid by the Land Acquisition Officer was inadequate. The claim before the Land Acquisition Officer was at the rate of Rs.50/- per square feet, as the land in question was claimed to have been situated just at the distance of half Km. From Wadhwana (Bk) gaathan on the Nanded-Udgir State highway. Village Wadhwana (Bk) is fully developed as there are permanent constructed houses, police station, buildings, non-agricultural plots. The land in question is adjacent to the lands having non-agricultural potentiality, which crucial aspect according to the claimant, was not considered by the Land Acquisition Officer and the same has prompted her to file reference. The reference Court answered the reference and held thus :

“ The land reference of claimant is partly allowed in proportionate costs, as follows :

1) The claimant is entitled for enhanced compensation @ of Rs.8.25/- paise per sq. feet for 60,984 sq. feet land.

2) The claimant is also entitled for solatium @ 30% U/Sec. 23(2) of Land Acquisition Act.

3) The claimant is entitled for additional component @ of 12% per annum U/ Sec 23(1-A) of Land Acquisition Act from 3-5-1998 to 2-2-2001 approximately for 33 months.

4) The claimant on enhanced compensation entitled for interest @ of 9% U/Sec. 28 of Land Acquisition Act for the first year from 3-5-1998 2-5-1999. She is further entitled for interest @ of 15% per annum as per Section 28 of Land Acquisition Act on enhanced amount from 3-5-1999 to the date of satisfaction of decretal amount.

5) If the claimant has not paid sufficient court fees, then same may be recovered before execution of decree.

6) The amount received by the claimant as per Award be deducted.

7) Award be prepared accordingly.

8) Judgment dictated & pronounced in open court.”

5. Mr Mundhe, learned Counsel for the appellant – acquiring body, would urge that the reference Court has granted the enhancement at

exorbitant rate, as according to him, even if the land under acquisition is located adjacent at a distance of more than half Km. from village Wadhwana (Bk), still its non-agricultural potential and returns are wrongly have been taken into account by the reference Court.

6. In addition to above, he would urge that the claimant has failed to produce sufficient and reliable evidence in support of her claim. He further urged that the quality of the land in question, its potential, surrounding area should have been taken into account. He has further urged that the genuine sale instances of the relevant period when the land was notified for acquisition, should have been taken into account by the reference Court, as according to him, the Land Acquisition Officer, having regard to the same had granted adequate compensation at the rate of Rs.55,000/- per hectare. He would further urge that the learned reference Court ought not to have relied on the single sale instance at Exh.21 dated 15th May 1997 having area of 3000 square feet for a total consideration of Rs.28,000/-, as there is considerable distance of 1 Km. between the acquired land and the said site. As such, according to him, the findings recorded by the reference Court are liable to be set aside.

7. The respondent No.1 - land owner though served, none appears.

8. With the help of learned Counsel for the appellant, I have gone through the observations made by the reference Court and the record available therewith.

9. The reference Court has framed the following issues for its consideration and answered the same accordingly:

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| (1) | Does petitioner proves that the L.A.O. has awarded inadequate compensation to the acquired land ? | ..In the affirmative |
| (2) | If yes, what will be the reasonable compensation to the claimant in respect of the acquired land ? | ..Yes @ of Rs.8.25 ps. per square feet |
| (3) | Does the claimant entitled to get 30% solatium, 12 % increase and interest in the compensation amount ? | ..In the affirmative |

10. What is observed from the above referred issues is, the reference Court has proceeded to award Rs.8.25 ps. per square feet and has enhanced the claim to that extent. The reasons in support of the same reflect complete application of mind by the reference Court.

11. The material that was available before the reference Court was the evidence of claimant's power of attorney viz. Bharat Bhalke at Exh.15, evidence of CW-2 Purushottam Deshmukh at Exh.24, Subhash Mundkar at Exh.25 and CW-4 Valuer Anil Phulari at Exh.26. The reference Court has taken into account the record copy of the award Exh.18, copy of E-statement at Exh.19, copies of sale deeds at Exh.20, and 21, copy of 7/12 extract at Exh.22 and power of attorney executed by claimant in favour of Bharat Bhalke, at Exh.23, valuation report at Exh.27.

12. From the oral evidence of the parties, so also with the aid of documentary evidence, it was established that the land of the present respondent No.1 was acquired for 33 K.V. Sub-station of M.S.E.B., Wadhwana (Bk). The reference Court noted that the Land Acquisition Officer under Section 4 of the Act fixed the price of the land at Rs.8.25 paise per square feet, whereas the claim was for Rs.50/- per square feet.

13. The learned reference Court, having regard to the evidence of witness Bharat, who is son and power of attorney of the claimant-respondent No.1 herein has disclosed that village Wadhawana (Bk) is situated on Nanded-Udgir State highway and the acquired land is just adjacent to State highway Wadhwana-Jalkot, having all amenities like roads, drains. The village Wadhwana (Bk) is having population of more than 15,000 and having all the facilities like transportation, electricity, drinking water, medical aid, banking, police station, college etc. As such, he has sought to establish that the land in question has non-agricultural potential. The respondent No.1-claimant brought on record sale-deeds at Exh.20 and 21 in respect of house property Old No.7 (New No.646) and an open plot ad measuring 3000 sq.ft. Situated in Block No.610 of village Wadhwana. The claimant has also examined one Purushottam Deshmukh as CW-2 at Exh.24 and his evidence discloses that he has sold his plot by registered sale deed dated 15th May 1997 in favour of Nagnath Mathpati for a consideration of Rs.28,000/-. According to him, the acquired land is situated ahead of his land towards road Wadhwana Pati to Wadhwana, which is fully developed having school and houses since 1998. The claimant also

examined one Subhash Mundkar at Exh.25. According to him, one Sunil Katampalle has sold his plot to one Kiran ad measuring 20 x 20 feet having Gram Panchayat No.646 for a consideration of Rs.1,00,000/-. According to him, the acquired property of the respondent No.1-claimant is situated at a distance of 1500 feet from the said plot. However, during cross-examination of this witness he asserted that at the time of said agreement he was not present. The claimant-respondent No.1 also examined Valuer Anil Phulari at Exh.26 and according to him, on 3rd November, 1999 he had been to village Wadhwana and visited Block No.558 of said village, which was acquired for 33 K.V. Sub-station, Wadhwana. According to him, he had inspected the acquired property. He has asserted that the acquired land is surrounded by commercial and residential complexes and calculated the rate as per earlier sale instances produced by the agriculturists. According to him, the lands of surrounding area of acquired land are converted into non-agricultural use and there are buildings constructed upon those land.

14. It was also established that the said aspect was lost sight of by the Land Acquisition Officer.

15. The learned reference Court, having analysed the said evidence has reached to a conclusion that the claim of the respondent was required to be enhanced. The learned reference Court, having regard to the evidence brought before it i.e. Exh.21, a sale deed executed by Purushottam Deshmukh dated 15th May 1997 in favour of Nagnath Mathpati for a consideration of Rs.28,000/-. The sale deed was taken

into account as open piece of land. Said property is situated at a distance of 2000 feet from the acquired land.

16. Having regard to the above referred evidence and the case laws, the reference Court has proceeded to decide the case and has ordered the payment of compensation at the rate of Rs.8.25 paise per square feet. The submissions made by Mr Mundhe, learned Counsel for the appellants, in my opinion, in regard to the excessive valuation of the acquired land qua its location, is required to be rejected, having regard to the oral evidence brought on record by the claimant through her witnesses Bharat (her power of attorney) CW-2, Subhash Mundkar CW-4 and CW-4 the Valuer - Phulari. The documentary evidence which was on record, i.e. sale deed at Exh.21, the other documents, such as the certificate from the T.I.L.R., the sale instances which are brought on record in relation to the adjacent properties, has rightly prompted the reference Court to pass order of enhancement. The reference Court has taken into account the entire evidence and analysed the same for reaching to a conclusion in the matter of grant of award in question.

17. In view thereof, no case for interference is made out. The appeal, which lacks merits is dismissed.

(N.W. SAMBRE, J.)

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