

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

FIRST APPEAL ST.NO.32027 OF 2014

The Executive Engineer,
Sthapathya Construction &
Parikshan 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. Manik s/o Narhari Panchal
(died) through L.Rs.
- 1-a. Madhav s/o Manikrao Panchal,
Age 60 years, Occu. Agri.,
R/o Karadkhel, Taluka Udgir,
District Latur
- 1-b. Shivaji s/o Manikrao Panchal,
Age 58 years, Occu. Agri.,
R/o Karadkhel, Taluka Udgir,
District Latur
- 1-c. Nagnath s/o Manikrao Panchal,
Age 54 years, Occu. Agri.,
R/o Karadkhel, Taluka Udgir,
District Latur
- 1-d. Manohar s/o Manikrao Panchal,
Age 52 years, Occu., Agri.
R/o Karadkhel, Taluka Udgir,
District Latur
2. The State of Maharashtra
through the Collector, Latur
District Latur
3. Special L.A.O. Or S.D.O.,
Udgir, Taluka Udgir, Dist. Latur

..Respondents
(Resp.No.1 – Orig.Claimant
through L.Rs. 1-a to 1-d
Resp.No.2 & 3 Original
opponents/respondents)

Mr S.V. Mundhe, Advocate for appellant
Mr S.P.Daund, A.G.P. for respondents 2 and 3
Respondents No.1-a to 1-d served in Civil Application No.618 of 2015
(for delay)

CORAM : N.W. SAMBRE, J.

DATE : 20th March 2015

PER COURT

1. As the Civil Application No.618 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, the appellant has questioned the legality and validity of the judgment and award dated 29th October 2013, passed by the learned Civil Judge, Senior Division, Udgir, District Latur in Land Acquisition Reference No.993 of 2010 (old No.246 of 2006).
3. The land in question is owned by the respondents No.1-a to 1-d herein and the same was required by the appellant for the purpose of construction of 33 K.V. Sub-station, Karadkhel, Taluka Udgir, District Latur.
4. The land ad measuring about 80-R out of Survey/Gat No.390 situated at village Karadkhel, Taluka Udgir, owned by the respondents 1-a to 1-d herein was acquired by the Land Acquisition Officer for the above referred purpose and ordered payment of compensation at the rate of Rs.78,000/- per hectare. The respondents-claimants thereby feeling aggrieved preferred reference, as according to them 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 situated by the East side of new Karadkhel village on Latur-Udgir road via Nalegaon. The breadth of the said road is about 100 feet and is at developed tar road. There is Zilla Parishad school, one veterinary hospital and 200 houses at the new gaathan and Karadkhel village is having facility of water supply, electricity, education, co-operation society, gram panchayat. The land in question is adjacent to the said village and was having non-agricultural potentiality, which according to the claimants, was not considered by the Land Acquisition Officer and as such, prompted them to file reference. The reference Court answered the reference thus :

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

- 1) The claimant is entitled for enhanced compensation @ of Rs.14/- 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 26-07-2002 to 06-09-2004 approximately for 25 months.
- 4) The claimant on enhanced compensation entitled for interest @ of 9% U/Sec. 28 of Land Acquisition Act for the

first year from 26-07-2002 to 25-07-2003. He is further entitled for interest @ of 15% per annum as per Section 28 of Land Acquisition Act on enhanced amount from 26-07-2003 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 claimants 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 accordant to him, even if the land under acquisition is located adjacent to the village Karadkhel, still its non-agricultural potential and returns thereof are taken into account by the reference Court on very higher side.

6. In addition to above, he would urge that the claimants have failed to produce sufficient and reliable evidence in support of their claim and he has sought to place on record so as to urge that the price determination in Land Acquisition Reference No.993/2010 Old 246/2006 was unjustified. He further urged that the quality of the land in question, its potential, its surrounding area should have been taken into account. In addition to above, he has urged that the genuine sale instances of the relevant period when the land was

notified for acquisition, should have been taken into account, as according to him, the Land Acquisition Officer, having regard to the same has granted adequate compensation at the rate of Rs.78,000/- per hectare. He would further urge that the cost of small plots i.e. 53 square meters at the rate of Rs.10,000/- cannot be equated with that of the bigger area of respondents and the nature of the land acquired, as the plot of which valuation was taken into account, was a developed property whereas the land acquired was completely undeveloped. As such, according to him, the findings recorded by the reference Court are liable to be set aside.

7. The respondents – land owners 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 petitioners prove 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 property ? | ..Yes @ of Rs.14/-
per square feet |

- (3) Whether the claimant is entitled to get 30% solatium, 12 % component, 9% and 15% 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.14/- 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 No.4 at Exh.18, the evidence of CW-2 Anil Phulari at Exh.31 and evidence of Ramdas CW-3 at Exh.34. The reference Court has taken into account the record copy of the award Exh.21, copy of E-statement at Exh.22, copy of award dated 28th July 1999 at Exh.23 and its E-Statement at Exh.24, the map provided by the claimants, issued by T.I.L.R., Udgir at Exh.25, the record copy of order of Tahsildar, Udgir in respect of conversion of agricultural land into non-agriculture purpose in respect of Survey/Block No.396 of Karadkhel, Taluka Udgir, owned by Manohar and Prabhu, the copy of the sale deed Exh.27 and copy of 7/12 extract of Survey/Block No.390 at Exh.28. The certified copy of the judgment of Land Acquisition Reference No.232/2004 decided on 24th April 2008 by the Civil Judge, Senior Division, Ahmedpur camp Udgir at Exh.29 and panchnama at Exh.33, valuation report of Valuer Phulari at Exh.32.

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 respondents No.1-a to 1-d was acquired for 33 K.V. Sub-station of M.S.E.B., Karadkhel. The reference Court noted that the Land Acquisition Officer under Section 4 of the Act fixed the price of the land at Rs.780/- per R whereas the claim was for Rs.50/- per square feet. The appellant has not adduced any evidence.

13. The learned reference Court, having regard to the evidence of witness Manohar, who has disclosed that Survey No.390 of Karadkhel, land ad measuring 80-R acquired by the State, located adjacent to the village Kharadkhel, was having non-agricultural potential. He has narrated about the location of said land adjacent to main road connecting Udgir. He has also stated that there are number of institutes, hotels and warehouses and industries located adjoining the road adjacent to the land under acquisition. It was also recorded that the population of village Karadkhel is around 10,000 and the land in question is adjacent to said highway i.e. Latur-Udgir road. He has also brought on record that there are new houses surrounding the land in question and the said land has the facilities like road, drains. As such, he has sought to establish that the land in question has non-agricultural potential. It is also brought on record that an award was passed on 28th July 1999 awarding compensation of Rs.60,600/- per hectare in relation to the Block No.396 which was acquired under Notification No.1997/LNQ/CR-11 for the purpose of extension of gaathan and at that time, the compensation of Rs.13/- per square feet

was awarded. He has also established that the land of the respondents was acquired in 2002 and as such, could have been awarded compensation at the rate of Rs.13/- per square feet which was awarded to similar land in 1997.

14. Though in cross-examination, the said Survey No.390 was sought to be established as hilly land and having no water source, however, it could be easily established that the distance between the said land and the land of the respondents is about 1 km. It was also brought on record that the sale deed dated 22nd February 1996 in relation to Gram Panchayat house No.21, vendor Shashikala sold the said property total ad measuring 53 square meters for a consideration of Rs.10,000/- to one Tukaram. As such, what is brought on record by virtue of said transaction was that the property was worth around Rs.303/- per square meter.

This Court cannot ignore the fact that the situation of land on hillock with non-agricultural potential is the basis of claim for enhancement.

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

16. The Valuer, Anil Phulari who was examined at Exh.31 has stated that he had visited the said village and also Block No.390 of the village which was acquired for 33 K.V. Sub-station, M.S.E.B. Karadkhel.

According to him, he has inspected the property in question which is located at Latur-Udgir road at Karadkhel. According to him, the said property is situated about 200 meters towards South side of the acquired land. It was also brought on record by him, there is Police Chowki adjacent to the acquired land, Sambhaji chowk adjacent to acquired land and all amenities are available at a distance of 1 to 2 Kms. He has placed on record the earlier sale instances at Exh.32. The learned reference Court, having analysed the said evidence has reached to a conclusion that the claim of the respondents was required to be enhanced. The learned reference Court, having regard to the evidence brought before it i.e. Exh.27, a copy of sale deed dated 22nd February 1996 in favour of Tukaram in regard to plot No.21 in Grampanchayat record, which was purchased for a consideration of Rs.10,000/-, has noticed that the area of the said plot is 569 square feet and hence, purchaser who was examined as CW-3 has purchased the said property at the rate of Rs.17.57 paise per square feet. The sale deed was taken into account as one for open piece of land. Said property is situated at a distance of 1000 feet from the acquired land.

17. 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.14/- 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 claimants

through their witness Manohar and the CW-3 Valuer - Phulari. The documentary evidence which was on record, i.e. sale deed at Exh.27, 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.

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

(N.W. SAMBRE, J.)

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