

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.570 OF 1998

Maharashtra State Electricity
Board (Now MSEDCL)
Through the Executive Engineer
(Civil), Osmanabad,
District Osmanabad.

= **APPELLANT**

VERSUS

1) Prabhuappa s/o Sivanappa Garthe
(Died through his L.rs.)

1-A) Smt.Shobha w/o Arun Garthe,
Age: 50 Yrs., occu. Household,

1-B) Sagar s/o Arun Garthe,
Age:25 Yers., occu. Education.

1-C) Rajabhau s/o Prabhuappa Garthe,
Age:53 Yrs., occu. Agril.

1-D) Sudhir s/o Prabhuappa Garthe,
Age: 50 yrs., occu. Agril.

1-E) Narendra s/o Prabhuappa Garthe,
Age: 43 Yrs., occu. Agril.

All R/o Ghatnandur,
Tq.Ambejogai, Dist. Beed.

- 2) The State of Maharashtra
Through the Collector,
Latur. = **RESPONDENTS**

Mr. S.M.Godsay, Advocate for Appellant;
Mr. S.V.Warad, Advocate for Respondent No.1;
Mr. SP Deshmukh, AGP for Respondent No.2.

CORAM : P.R.BORA, J.

DATE : 31st August, 2016.

ORAL JUDGMENT:

- 1) Heard learned Counsel for parties.
- 2) The appellant has filed the present appeal challenging the judgment and order dated 19th December, 1997 passed by Civil Judge, Senior Division, Latur in LAR No.712/1991. The aforesaid reference application was filed by the present respondents for claiming enhancement in the amount of compensation as awarded by the Special Land Acquisition Officer.
- 3) It is not in dispute that the land of the respondents was acquired for the purpose of

erection of 33 KV sub-station at Village Kingaon, Tq. Ahmedpur. The land admeasuring 1 hectare and 10 Ares owned by the present respondents was acquired. A notification under Section 4 of the Land Acquisition Act, 1894 (for short, the Act) was published on 12th January, 1986; whereas Award under Section 11 of the Act came to be passed on 31st May, 1989. The material on record shows that the possession of the acquired land was taken prior to issuance of Section 4 Notification by way of private negotiations. The Special Land Acquisition Officer, after having considered the sale-instances and by visiting the acquired land and by performing all other formalities, offered the rate of Rs.3.47 ps per sq.ft. and accordingly determined the amount of compensation.

4) Dissatisfied with the amount so offered, the respondents approached the Collector, Latur by way of filing Reference Application under Section 18 of the Act, which was in turn forwarded for adjudication to the Civil Court at

Latur.

5) The learned Reference Court, after having assessed the evidence oral as well as documentary, brought before it, determined the market value of the acquired land @ Rs.7/- per sq.ft. Excluding 25% of the land from the total acquired land, presuming that the same would have been utilized for the purpose of road and other amenities if the acquired land would have been converted for non-agricultural use, awarded the compensation for the 75% of the acquired land @ Rs.7/- per sq.ft. Aggrieved by the Award so passed, the acquiring body has filed the present appeal.

6) Shri Godsay, learned Counsel appearing for the appellant, assailed the judgment on two grounds, viz. i) that the acquiring body was not properly represented before the Reference Court and ii) as about the amount of compensation, as awarded by the Reference Court.

. The learned Counsel submitted that before the Reference Court, the Reference application was prosecuted by Asstt. Govt. Pleader and virtually there was no representation from the side of the acquiring body. The learned Counsel, relying on the judgment in the case of Agra Development Authority Vs. Special Land Acquisition Officer and Ors. - (2001) 2 SCC 646, submitted that in such circumstance, the only option available is to remit the matter back to the trial court for hearing it afresh by giving appropriate opportunity to the acquiring body to put forth its case and contest the matter on merits.

7) The learned Counsel further submitted that though from the record it is appearing that the Executive Engineer of the appellant/Board has made certain submissions, the question would be the admissions, given by the Executive Engineer, whether would bind the appellant/Board. The learned Counsel, therefore, prayed for remand of

the matter.

8) The second objection, which has been raised on behalf of the appellant is in respect of the market value as determined by the learned Reference Court. The learned Counsel submitted that without there being any cogent and sufficient evidence, the Reference Court has awarded the rate of Rs.7/- per sq.ft. for the acquired land. The learned Counsel submitted that the sale-instances, which have been relied upon by the Reference Court, are pertaining to the small pieces of land, which were already converted for non-agricultural use. The learned Counsel submitted that the land acquired of the respondents was admittedly non-agricultural land, and as such, the sale-instances cannot be said to be comparable sale instances and could not have been relied upon by the Reference Court while determining the market value of the acquired land. The learned Counsel, therefore, submitted that on this count also the impugned judgment

cannot be sustained and deserves to be set aside, if the court is not inclined to remit the matter back for fresh consideration.

9) Shri Warad, learned Counsel appearing for the respondents/original claimants, opposed the submissions made on behalf of the appellant. The learned Counsel submitted that the claimants had taken all necessary precautions in bringing on record the acquiring body as a party respondent. The learned Counsel invited my attention to the application at Exhibit-19, submitted by the claimants before the Reference Court with a prayer that the Maharashtra State Electricity Board, through Executive Engineer, Osmanabasd, be added as party respondent to the Reference proceedings. The learned Counsel further brought to my notice the say filed by the Executive Engineer, Osmanabad to the said application, who was served with a notice of the said application. In the reply so filed, the Executive Engineer, Osmanabad has in clear words

stated that M.S.E.B. may not be a necessary party to the said proceedings since it is bound to obey the decision of the Court and if the Collector directs to make payment, the MSEB would be making payment under the orders of the Collector. The learned Counsel further brought to my notice the order passed below the said application and submitted the objections raised in this regard are unsustainable and it cannot be said that there was no proper representation of the acquiring body in the Reference Court.

10) In so far as the determination of the market value of the acquired land is concerned, the learned Counsel submitted that ample evidence was brought on record by the claimants in order to substantiate the contentions raised by them in the Reference Application. The learned Counsel invited my attention to the sale-deeds, duly proved by bringing on record the necessary evidence in that regard, which are at Exh.32 and 33. The learned Counsel submitted that the said

sale instances were of the period prior to issuance of the notification under Section 4 of the Act and were of the adjacent lands. The learned Counsel further brought to my notice the value received to the agricultural lands which were the subject matter of the said sale-deeds, one was sold at the rate of Rs.7.14 ps per sq.ft. and in another the consideration was received at the rate of Rs.7.34 ps per sq.ft. The learned Counsel thereafter brought to my notice the discussion made by the Reference Court and submitted that the Reference Court has taken all precautions to deduct the amount, which may be required to be spent for development of the acquired land, if at all it is to be converted into NA purpose and has accordingly though has determined the market value of the land @ Rs. 7/- per sq.ft., has dis-entitled the claimants to receive the said rate for whole of the acquired land and has observed that the said compensation, as determined by the Reference Court will be applicable only to 75% of the acquired land.

The learned Counsel submitted that no interference is, therefore, required in the market value so determined by the Reference Court. The learned Counsel hence prayed for dismissal of the appeal.

11) I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. Though it was vehemently argued by Shri Godsay, learned Counsel appearing for the appellant/Board that there was no proper representation of the acquiring body before the Reference court, the submission so made cannot be accepted in view of the evidence on record. Considering the contents and the prayer made in the application filed at Exh.19 by the claimant and having regard to the say submitted to the said application at Exh.20 by the Executive Engineer, MSEB, Osmanabad, it does not appear to me that the appellant can raise the objection that the impugned judgment is bad in law as because the appellant was not made

party-respondent in the said matter. Further, considering the material on record, there remains no doubt that the acquiring body was duly represented before the Reference Court. I, therefore, do not find any merit in the objection so raised.

12) Now, about the other objections in regard to the determination of the market value of the acquired lands by the Reference Court. Though it has been contended by the learned Counsel appearing for the appellant that the Reference Court has fixed the market value arbitrarily and on higher side, the evidence on record does not support the contention so raised. Sufficient evidence is available on record evidencing that the acquired land was surrounded with the fully developed commercial area and was thus having N.A. Potentiality. The District Town Planner viz. Madhusudan Chintamanrao Kapalay, who was examined as a witness by the appellant, has also admitted in his testimony before the Court

that the acquired land was bearing N.A. Potentiality and that the area around the acquired land was fully developed as commercial area.

13) The material on record further shows that the sale instances, which were brought on record by the claimants were of the lands adjacent to the acquired land. The Reference Court has, therefore, rightly held the said sale instances comparable and on the basis of the value received to the lands, which were the subject matter of the concerned sale deed, has determined the market value of the acquired land. The discussion made by the Reference Court transpires that the Reference Court has objectively assessed the evidence and more particularly the evidence in the form of sale instances.

14) The objection raised on behalf of the appellant that the consideration, which was

received to the lands, which were the subject matter of the sale instances brought on record could not have been awarded to the acquired lands since the acquired land is an agricultural land, though may be having N.A. Potentiality, and the lands in the sale instances were non-agricultural lands converted into residential or commercial plots, may also not sustain for the reason that the Reference Court has considered the said aspect also while awarding the amount of compensation. The Reference Court has not awarded the compensation @ Rs.7/- per sq.ft for the whole of the acquired land. The Reference Court has awarded compensation at the aforesaid rate only to the 75% of the acquired land taking into account the fact that the development charges will be equivalent to the value of the 25% of the acquired land. It, therefore, cannot be said that the Reference Court has blindly awarded the same rate which was received to the N.A. Plots to the acquired agricultural lands.

15) After having considered the entire material on record, there appears no merit in the appeal so filed and the same deserves to be dismissed. It is accordingly dismissed without any order as to costs.

16) The respondents are permitted to withdraw the amount of compensation deposited by the Appellant/Board in this Court, if not already withdrawn.

17) There may not be any difficulty for the Registry to hand over a cheque of the aforesaid amount to the counsel appearing for the respondents, if such authority, in writing, is given by the original claimants to the counsel for respondents, and if such request is made by the counsel, in writing, to the Registry of this Court.

sd/-
(P.R.BORA)
JUDGE

bdv/