

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 1063 OF 2007
WITH
CIVIL APPLICATION NO. 6306 OF 1996

The State of Maharashtra,
Through Collector, Osmanabad **....Appellant.**

Versus

1. Mohamad Maqsud s/o. Mohmad Saheb,
Age 48 years, Occu. Agriculture,
R/o. Kallam, Tq. Kallam, Dist. Osmanabad.
2. Gulam Mohioddin s/o. Imam Saheb,
Age 44 years, Occu. & R/o. As above. **....Respondents.**

Mr. C.V. Dharurkar, AGP for appellant.

CORAM : T.V. NALAWADE, J.
DATED : 12th January, 2016.

JUDGMENT :

1) The appeal is filed to challenge the judgment and award of L.A.R. No. 223/1988, which was pending in the Court of Civil Judge, Senior Division, Osmanabad. As the compensation is enhanced by the Reference Court, the State Government has challenged the decision. Heard the learned AGP for appellant.

2) Land Survey No. 223 situated within limits of Municipal Council, Kallam, District Osmanabad is acquired for housing project. The notification under section 4 of the Land

Acquisition Act was published on 25.9.1979, but the award was prepared in the year 1986. The Special Land Acquisition Officer (S.L.A.O.) gave the rate of Rs. 15,000/- per Hector, approximately Rs. 1.5 per sq. ft. It is the case of original claimant, owner that the rate at that place was around Rs. 6,000/- per Gunta and it had N.A. potential. The proceeding was opposed by the State Government.

3) The claimant placed reliance on three sale instances. The sale deeds are proved. Though the sale deeds are subsequent to the date of publication of notification under section 4 of the Land Acquisition Act, those sale deeds need to be considered as the lands under sale deeds are situated at the distance of 200 ft. from the land acquired. Surrounding the acquired land, there were commercial structures.

4) One sale instance mentioned in Exh 18 is of year 1981 and in the sale instance, portion of Survey No. 224 was purchased by a Society. In view of these circumstances, it cannot be said that it is not a genuine sale instance. Area of around 2178 sq. ft. was purchased for the consideration of Rs. 10890/-. Thus, the rate was more than Rs. 4/- per sq. ft. In other sale instance of year 1980, the area of 825 sq. ft. was purchased for

Rs. 4,000/-. On one hand, Reference Court has come to the conclusion that the market price per square feet was around Rs.7/- to Rs.8/-, but after considering the other circumstances the Reference Court has fixed the market price at Rs. 4/- per sq. ft.

5) The award prepared by the Land Acquisition Officer shows that he had classified the lands in to five groups and he had considered the land revenue in respect of these lands. He had then calculated the market price on that basis as Rs. 1500/- per Hector. This was not proper method. Further, N.A. potential of the land acquired was not at all considered by the Land Acquisition Officer. In view of these circumstances, this Court holds that it is not possible to interfere in the decision of the Reference Court.

6) In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/