

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

First Appeal No. 541 of 1997

- 1) Sakharam Baburao Babar,
Age Major,
Occupation: Agriculturist,
- 2) Haribhau Baburao Babar,
Age Major,
Occupation: Agriculturist
Both R/o Shevgaon,
Taluka Shevgaon,
District Ahmednagar. **.. Appellants.**

Versus

- * The State of Maharashtra. **.. Respondent.**

Shri. Atul B. Gatne, Advocate, for appellants.

Shri. A.R. Borulkar, Assistant Government Pleader, for
respondent.

CORAM: T.V. NALAWADE, J.

DATE : 10th FEBRUARY 2016

JUDGMENT:

- 1) The appeal is filed by the original claimant to challenge the judgment and award of Land Acquisition Reference No.244 of 1991 which was pending in the Court of the Civil Judge, Senior Division, Ahmednagar, Reference Court. Both the sides are heard.

2) Land Gat No.260 admeasuring 3 hectares 98 R situated at village Shevgaon, Tahsil Shevgaon, District Ahmednagar belonging to the present appellants is acquired by the State Government for construction of overhead water tank for supply of drinking water to public. Notification under section 4 of the Land Acquisition Act was published on 29-6-1989. The Special Land Acquisition Officer gave rate of Rs.10,000/- per hectare. The Reference Court has increased this rate to make it Rs.40,000/- per hectare. The Reference Court has held that the acquired land is irrigated, bagayat land.

3) Learned counsel for the original claimants submitted that some sale instances were produced on the record and on the basis of those sale instances the Reference Court ought to have given rate of more than Rs.80,000/- per hectare to the claimants. This Court has carefully gone through the record produced before the Reference Court and the sale instances. One sale instance was of 2 R portion (Exhibit 25) and this portion was purchased for consideration of Rs.6000/- on 7-11-1988. The sale instance was from village Shevgaon but the

purpose for which this portion was purchased was different. The land was sold as non agricultural land, the land which can be used for any non agricultural purpose and even plot number was given to this land by the owner, developer. All the development facilities were given in respect of this plot and that can be seen from the copy of sale deed. In view of these circumstances the Reference Court has refused to rely on this sale deed and this Court holds that no error is committed by the Reference Court in that regard.

4) Another sale instance is of 15-10-1985 and it is also in respect of land situated at Shevgaon. 29 R portion was sold for consideration of Rs.17,000/-. The evidence given on sale instance shows that the vendor has stated that this land was of similar quality, having quality of the land which is acquired by the Government. There is further admission that the purchaser had no access to his land and for getting right of way he had purchased the land under this sale deed. In the sale deed also there is mention that the purchaser was allowed to use the road having width of 15 feet which was already converted to

non agricultural purpose. This land is situated at the distance of four furlongs from the land acquired. Another sale instance dated 24-1-1991, post notification, was produced and that sale instance is rightly rejected by the Reference Court. That was in respect of bagayat land and 45 R was shown to be sold for Rs.45,000/-.

5) The land from second sale instance was jirayat land. The witness of the claimant has given evidence that it was having similar quality and similar facilities. The Reference Court has given rate of Rs.40,000/- per hectare but the aforesaid sale deeds are not accepted as the base and there is no convincing reasoning given for fixing market price as Rs.40,000/- per hectare. On one hand the Reference Court has held that the land acquired had non agricultural potentiality but the rate of Rs.40,000/- per hectare only is given.

6) The learned counsel for the appellants, claimants, placed reliance on a case reported as **(2015) 2 SCC 160 (Nirmal Singh v. State of Haryana)**. This Court has carefully gone through the facts of the reported case.

The acquired property was within limits of municipal council and the sale instances of non agricultural land were given. In the present matter the land was situated at some distance from the village though in the vicinity of this land there are structures of hospital, residential quarters and church. Sale instances of jirayat lands are given and the evidence is given that the land of the claimants was of similar quality. The Special Land Acquisition Officer had held that the land of the claimants was jirayat land and accordingly rate was given. In view of the substantive evidence given by the claimants before the Reference Court and the facts and circumstances of the present case this Court holds that the sale instance of 29 R portion for the consideration of Rs.17,000/- can be used as comparable sale instance. It can be said that higher price was given as purchasing this land was for convenience of the purchaser. This is a minus factor but the transaction is of four years prior to the notification and so increase of 10% per annum could have been given. These factors can be adjusted against each other. It can be said that the rate given in the sale instance can be used as the base for ascertaining the market price which comes to

Rs.586/- per R. This Court holds that the observations made by the Apex Court in the case cited supra are of no use to the present appellants as the facts of the present case are altogether different.

7) In the result, following order :-

8) The appeal is allowed. Judgment and award of the Reference Court is modified to give the rate of Rs.586/- per R. All the statutory benefits are to be given on this amount. Award to be prepared accordingly.

Sd/-
(T.V. NALAWADE, J.)

rs1