

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

FIRST APPEAL NO. 540 OF 1997

Shripati Namdeo Gadge

[since deceased through L.Rs.] :

.... APPELLANT/

[ORI. CLAIMANT]

1-A. Laxman Shripati Gadge

Age : 42 Yrs., Occ. Agril.,

R/o : Village Kapurwadi,

Tq. & Dist. Ahmednagar.

1-B. Bhausahab Shripati Gadge

Age : 40 Yrs., Occ. Agril.,

R/o : Village Kapurwadi,

Tq. & Dist. Ahmednagar.

1-C. Raju Shripati Gadge

Age : 42 Yrs., Occ. Agril.,

R/o : Village Kapurwadi,

Tq. & Dist. Ahmednagar.

V E R S U S

The State of Maharashtra

.... RESPONDENT

WITH

FIRST APPEAL NO. 571 OF 1997

Vishnu Trimbak Kakade
 Age : 47 Yrs., Occ. Agril.,
 R/o : Kapurwadi, Tq. &
 Dist. Ahmednagar.

.... APPELLANT/
 [ORI. CLAIMANT]

V E R S U S

The State of Maharashtra

.... RESPONDENT

.....

Mr. A.B.Gatne, Advocate for Appellant.

Mr. K.N.Lokhande, A.G.P. for Resp. - State.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 9th FEBRUARY, 2016

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JUDGMENT :

1. The first proceeding is filed to challenge the Judgment and Award of the Reference Court delivered in L.A.R. No. 577/1993 and the second proceeding is filed to challenge the Judgment and Award in L.A.R. No. 570/1993. Two References are decided by the learned Civil Judge [Sr.Division], Ahmednagar, the Reference Court. The original claimants/owners have challenged the decisions for getting enhancement of the compensation. Learned counsels

for both sides are heard.

2. The lands of 2 claimants from village Kapurwadi, taluka and district Ahmednagar are acquired for the purpose of percolation tank. The Notification u/s 4 of the Land Acquisition Act was published in official gazette on 08/06/1989. The Special Land Acquisition Officer held that the lands of the claimants are Jirayat lands and gave the rate of ₹ 100/- per R. The Reference Court has given the rate of ₹ 25,000/- per Hector i.e. ₹ 250/- per R. The claimant from first proceeding had $1/3^{\text{rd}}$ share in land S.Nos. 47,48 and 49/1 in total area of 2 H. 35 R. and compensation is given in respect of this $1/3^{\text{rd}}$ share. The claimant from the second proceeding was having 4 R. portion and compensation is given in respect of that portion.

3. It appears that L.A.R. No. 573/1994 was also decided along with the aforesaid two matters by the Reference Court. In view of the rate given in L.A.R. No. 573/1994, Reference Court gave the rate of ₹ 25,000/- per Hector to the present claimants. The claimants placed reliance on the sale instance dated 02/05/1989. It was in

respect of 20 R. portion from S.No. 105/2 and this portion was sold for the consideration of ₹ 20,000/-. The sale instance is duly proved. The land from sale instance was Jirayat land. The road of 15 ft. width was given to the purchaser by the vendor for approaching the land of purchaser. Though in the Judgment of the Reference Court there is mention that the Notification u/s 4 of the Land Acquisition Act was published on 09/03/1989, the record and Written Statement of the Govt. show that the Notification was published subsequent to the date of sale instance. In view of this circumstance, the Reference Court could have considered and used the sale instance proved by the claimant. The Reference Court has observed that the portion was purchased for probably creating poultry farm there and so higher rate was given. The Reference Court has considered some sale instances which were before the Special Land Acquisition Officer. However, such evidence was not given before the Reference Court by the State Govt.

4. On the basis of this sale instance which was considered by the Special Land Acquisition Officer, the Reference Court has held that the market price was

₹ 25,000/- per Hector. This approach was not correct. Even if it is considered that some road having width of 15 ft. was given in addition, the value could have been reduced accordingly. The circumstance that the purchaser wanted to use it for having poultry farm there, could not have been used adversely against the claimants as there was no such mention in the sale deed and the property was sold as piece of agricultural land. Even if the aforesaid circumstance like convenience of the purchaser and giving additional road of 15 ft. width are considered, the value can not be reduced much. If plus and minus factors are adjusted, the value can be reduced to 50%. So, the market price was at least ₹ 50,000/- per Hector i.e. ₹ 500/- per R.

5. In the result, following order is made.

ORDER

- [i] Both the Appeals are allowed.
- [ii] The market rate is to be given to make it ₹ 500/- per R. in place of ₹ 250/- per R.
- [iii] All statutory benefits be given as per the decision given by the Reference Court.

[iv] Award be prepared accordingly in both Appeals.

[T.V.NALAWADE, J.]

KNP/F.A. 540...1997 - [J]