

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

FIRST APPEAL NO. 1111 OF 2015

1. Ambadas s/o Pralhadrao Deshmukh
Aged 70 years, Occu: Medical
practitioner r/o Kahala (Budurk)
Tq. Naigaon and Chikhalwadi
Dist. Nanded.
2. Girish s/o Ambadasrao Deshmukh
Aged 36 years, Occu: Medical
practitioner r/o Kahala (Budurk)
Tq. Naigaon and Chikhalwadi
Dist. Nanded.
3. Mahesh s/o Ambadasrao Deshmukh **.. Appellants**
Aged 36 years, Occu: Medical
practitioner r/o Kahala (Budurk)
Tq. Naigaon and Chikhalwadi
Dist. Nanded.

VERSUS

1. The State of Maharashtra,
Through Collector, Nanded.
2. The Special Land Acquisition
officer (B & C) Collector Office
Campus, Nanded
3. Executive Engineer **... Respondents**
Vishnupuri Project-2, Nanded.

Mr. C. R. Bharaswadkar , Advocate for appellant
Mr. S. R. Yadav, AGP Advocate for respondents 1 and 2,
Mr. P. R. Tandale Advocate for respondent No.3

CORAM : V. K. JADHAV, J.

DATE : 21st March, 2016

PER COURT :

1. Being aggrieved by the judgment and award passed

by the learned Civil Judge, Senior Division, Biloli dated 18.11.2011 in L.A.R. No. 183/2010, the original claimants have preferred this appeal for enhancement in compensation.

2. Brief facts giving rise to the present appeal are as follows:

i. Respondent Nos. 1 and 2 acquired total 55 R land i.e. 19 R land from Gat No. 213, 8 R land from Gat No. 118 and 28 R from Gat No.181 situated at village Kahala Bk. Taluka Naigaon District Nanded owned and possessed by the appellants/original claimants, for the purpose of construction of Right Canal Vishnupuri Project of Irrigation. Notification under section 4 of the Land Acquisition Act was published on 07.07.2005. Respondent No.2, fixed the market value of the acquired land @ Rs.1,37,000/- per hectare and accordingly offered total compensation of Rs.1,03,196/- to the appellants/claimants for acquisition of their lands. The appellants/claimants have accepted the said amount under protest and filed application under Section 18 of the Land Acquisition Act for enhancement. Accordingly, respondent No.2 has referred the said application under Section 18 for determination of objection regarding

amount of compensation to the reference court. The learned Civil Judge, Senior Division, Biloli by its impugned judgment and award dated 18.11.2011, held that the compensation awarded by respondent Nos. 1 and 2 for the acquired land to the appellants/claimants is inadequate and improper and awarded enhancement in compensation to the tune of Rs.89,030/- in total. Hence this appeal.

3. Learned counsel for the appellants/original claimants submits that the acquired land is situated within 27 Kms. from Nanded city and Krushnur MIDC area is 8 Kms. away from the acquired land. The learned counsel submits that the learned Civil Judge, Senior Division has not relied on the sale instance of the year 2002 submitted by the appellants/claimants. The learned counsel submits that the Court below has discarded the sale instance mainly on the ground that the sale deed was executed prior to three years of the date of notification in the present case. Learned counsel submits that village Kahla (Bk), where the acquired land is situated, is a prominent place having all civic amenities. The learned counsel submits that the reference court has not considered the prevalent market price as on the date of notification reflected by way of

sale instance of the land in the vicinity of the acquired land. The learned counsel submits that the reference court awarded inadequate and minimal compensation to the appellants claimants only on the basis of conjuncture and surmises.

4. The learned counsel for the appellants further submits that the reference court has discarded the sale deed Exh.29 on the ground that it was executed three years prior to the date of issuance of notification under Section 4 of the Land acquisition Act. The learned counsel submits that on the other other hand, the reference court should have awarded 10% escalation as market value as the said sale deed relied upon by the claimants was executed three years prior to notification under section 4 of the Land Acquisition Act.

5. Learned counsel for the appellants, in order to substantiate his submission, placed reliance on the decision of the Hon'ble Supreme Court in the case of **Soundarrajan(dead)Thr. L.Rs. Vs. Special Tahsildar, Karur-Dindigul Broadgauge Line** reported in **2011 AIR SCW 6100.**

6. The learned counsel for respondent No.3

acquiring body submits that the reference court has rightly discarded the sale instance of the year 2002 and granted 20% increase over the rates considered by Respondent Nos.1 and 2. The learned counsel submits that the reference court held that no reliance can be placed on the sale instance Exh.29 for determination of market value of the acquired land at the relevant time. Learned counsel submits that no interference is called for in the impugned judgment and award and the appeal is liable to be dismissed.

7. I have also heard learned APP for respondent Nos. 1 and 2.

8. Following points arise for my consideration and I have recorded my findings thereon for the reasons mentioned below:

	Points	Findings
1)	Whether the reference court has : rightly assessed the compensation as per the then prevailing market price ?	In the negative.
2)	Whether the judgment and order dated 18.11.2011 passed by the the Learned Civil Judge, Senior Division, Biloli in L.A.R No.183/2010 calls for	In the affirmative

interference ?

2) What order ? : As per final order.

9. The appellant original claimant No.1 Ambadas has deposed that the acquired lands were well developed and productive and the appellants/claimants were getting income of Rs.15,000/- to Rs.20,000/- per acre every year. The reference court has also accepted that respondent Nos.1 and 2 awarded inadequate and minimal compensation to the appellants/claimants. The reference court has also accepted that the amount awarded by respondent Nos.1 and 2 does not reflect true market price of the acquired land.

10. Sale deed Exh. 29 goes to show that on 28.06.2002 one Laxman Kshirsagar had sold 45 R land out of Gat No.138 situated at said village Kahala (Bk) Taluka Naigaon and Chikhalwadi Dist. Nanded to appellant/ claimant No.1 for total consideration of Rs. One lakh. It is thus clear that the the land admeasuring 45 R was sold @ Rs.2,22,000/- per hectare.

11. Learned counsel for the appellant claimant has shown the village map to this Court to point out that

the land Gat No.138 under the sale deed Exh.29 is situated near the acquired lands in the same village. However, the said map cannot be considered at this stage as it was not produced before the reference court at the time of appreciation of evidence. However, I do not find any justification in the impugned judgment and award while not considering sale deed Exh. 29.

12. On careful perusal of sale deed Exh. 29, it appears that the land admeasuring 45 out of land Gat No. 138 situated in the same village was sold for consideration of Rs. One lakh. I do not find any extraordinary circumstances appearing in the sale deed that the land under the sale deed was sold for excessive amount due to some other special reasons. Considering the same, it has to be held that the land under the sale instance Exh.29 was sold as per the then prevailing market price at village Kahala (Bk.) The learned Judge of the reference court ought to have considered the said sale deed Exh. 29. However, the reference court has discarded the said sale instance Exh. 29 for the reason that it was executed three years prior to the issuance of notification and the sale deed was not proximate to the notification under section 4(1) of the Land Acquisition Act dated 07.07.2005 from the time end. In

my opinion, this approach of the reference court is improper, incorrect and illegal.

13. So far as the escalation of 10% in the market value is concerned, since sale deed Exh. 29 was executed three years prior to notification under section 4 of the Land Acquisition Act in respect of acquired land, I do not think that the appellants/ claimants are entitled for the same for the reasons that even though the sale deed was produced before the Court and the compensation claimed as per the market price reflected from that sale deed, the appellants claimants have failed to claim amount of compensation by considering 10% escalation in the market value reflected in the sale deed Exh. 29.

14. In view of this, the claimants are entitled for enhancement in the amount of compensation awarded by respondents 1 and 2 and as such, they are entitled to compensation @ Rs.2200/- per R. Total 55 R land is acquired. Thus the the claimants are entitled to receive total compensation of Rs. 1,21,000/- ((Rs.2200x55). The appellants /claimants have already received Rs.74,510/- from the respondents as awarded by the Special Land Acquisition Officer. Thus, the

complainants are entitled for difference amount of Rs.46490/- (1,21,000- 74510).

15. Accordingly I answer the points for determination and pass following order:

O R D E R

i. Appeal is hereby partly allowed.

ii. Judgment and award dated 18.11.2011 passed by the Civil Judge, Senior Division, Biloli in L.A.R. No. 183/2010 is modified to the following effect.

(i) Respondents do jointly and severally pay to the appellants/claimants enhanced compensation @ Rs.2200/- per R i.e. total compensation of Rs.1,21,000/- for the acquired land admeasuring 55 R. (19 R out of Gat No. 213, 8 R out of Gat No. 118 and 28 R out of Gat No.181), by deducting an amount of Rs.74,510/- as awarded by the Special Land Acquisition Officer.

(ii) Thus the claimants are entitled for difference amount of Rs.46,490/- in total alongwith interest and statutory benefits as awarded by the reference court, except for the

period for which delay is sought to be condoned
as per order passed by this Court dated 18.02.2015
in Civil Application No. 2994/2014.

iii. Rest of the judgment and award passed by the
reference court stand confirmed.

iv. Appeal is accordingly disposed of.

v. In the circumstances, there shall be no order as to
costs.

(V. K. JADHAV, J.)

JPC