

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

FIRST APPEAL NO.216 OF 2002

The State of Maharashtra
through Collector, Osmanabad.

**...APPELLANT
(Original Respondent)**

VERSUS

Vasant Bandoba Jhadpide, Age:
Nil. Occup.Bhopi r/o Tuljapur
Tq.Tuljapur, Dist. Osmanabad.

**...Respondent
(Original claimant)**

...

Mr.S.N.Morampalle, AGP for appellant.

Mr.K.B.Jadhav, Advocate, h/f Mr. K.B.Bhise,
Advocate for respondent.

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CORAM: P.R.BORA, J.

DATE : July 19th, 2016

ORAL JUDGMENT:

1. The present appeal is filed against the award passed by the Civil Judge, Senior Division, at Osmanabad, in Land Acquisition Reference No.230/1991 on 13th March, 1995. Vide the impugned award the learned trial Court

has awarded compensation to the tune of Rs.5,00,000/- (Rs. five lacs) to the respondent herein by way of compensation of his house, which was acquired for the purpose of widening of road in the city of Tuljapur.

2. For acquisition of the aforesaid property, Section 4 notification was issued on 22nd January, 1988 whereas the award under Section 11 of the Act came to be passed on 23rd February, 1989. The Special Land Acquisition Officer has determined the total compensation to the tune of Rs.18,091/-. Since the respondent herein was aggrieved with the compensation so awarded, he preferred Reference under Section 18 of the Act. In the Reference application, the respondent relied upon two sale instances; one executed on 15.6.1988 and the other executed on 28.10.1988. The property which was the subject matter of the sale deed dated 15.6.1988 was admeasuring 100 sq.ft. and was sold for value of Rs.1,75,000/- whereas the property which was sold vide the sale deed dated 28.10.1988 was sold at the rate of Rs.40,000/- and the area of the said property was 56 sq.ft. It was the contention of the respondent before the

Reference Court that his property was abutting to the Mahadwar road and was in the prime locality of the city of Tuljapur. It was the further contention of the respondent that since the property was situated on the Mahadwar road, it was having commercial value. It was further contention of the respondent that he had spent around Rs.95,000/- for renovation of the said property. The relevant witnesses were examined by the respondent before the Reference Court. Approved valuer was also examined by the respondent before the Reference Court. As against it, neither any oral evidence was adduced nor any sale instance was produced on record by the State i.e. the present appellant.

3. After considering the evidence on record, the learned Reference Court determined total compensation payable to the present respondent to the tune of Rs.5,00,000/- (Rs. five lacs). Aggrieved thereby, the State has filed the present appeal.

4. Mr. S. N. Morampalle, learned A.G.P. appearing for the appellant State, submitted that the Reference Court

has awarded an exaggerated amount towards the compensation. Learned A.G.P. further submitted that the Reference Court has implicitly relied upon the sale instances cited by the respondent herein, however, has failed to consider that the concerned properties were not comparable with the property in question and were at a longer distance from the subject property and, as such, the same rate could not have been awarded for the property in question. Learned Counsel further submitted that the Reference Court has ignored the observations made by the Special Land Acquisition Officer while determining the amount of compensation. Learned A.G.P., therefore, prayed for setting aside the said award and prayed for confirming the amount of compensation awarded by the Special Land acquisition Officer.

5. Learned Counsel appearing for the respondent has supported the impugned judgment. Learned Counsel submitted that the learned Reference Court has passed a well reasoned order and has relied upon the sale instances duly proved by the present respondent and hence no interference is required in the award so passed.

6. After having heard learned A.G.P. and the learned Counsel appearing for the respondent and on perusal of the impugned award and other material placed on record, apparently, it does not appear to me that any interference is required in the award impugned in the present appeal. Admittedly, no evidence was adduced on behalf of the State before the Reference Court. Indisputably, no sale instance was placed on record and proved by the respondent State. As against this, respondent has duly proved two sale instances and did also examine the approved valuer. Two sale instances were on record of the Reference Court relying on which the Reference Court has determined the amount of compensation. The first sale instance, which has been relied upon by the respondent is of the date 15.6.1988 and the land of the subject matter of the said sale deed was 100 sq.fts. and was sold at the rate of Rs.1,75,000/- and the other sale instance was of the date 28th October, 1988, and the subject property was admeasuring 56 sq.fts. which has received value of Rs.40,000/-. As has come on record, both the properties are at the distance of

less than 100 feet from the subject property. The Reference Court has further elaborately discussed that the property was located at a prominent place on the Mahadwar road, leading to famous Tulaja Bhavani temple. The Reference Court has further rightly observed that the subject property was having a commercial value. The Reference Court has further taken into account the evidence adduced by the respondent as regards to the amount spent by the respondent amounting to Rs.95,000/- for renovation of the said property prior to about four years of the alleged acquisition. In view of the fact that Section 4 notification was issued on 22nd January, 1988, I do not find any fault on the part of the Reference Court if it has relied upon the sale instances dated 15.6.1988 and 28.10.1988, which are of the same period. The Reference Court further has rightly taken into account the arrangements which were required to be made by the respondent for severance and for shifting of the electrical meters from the subject property and awarded adequate compensation in that regard. After having considered the material on record, it does not appear to me that the Reference Court has committed any error in awarding the

compensation to the tune of Rs.5,00,000/- (Rs. five lacs). Even in the appeal, nothing has been brought to the notice of this Court to have different conclusion than the one recorded by the Reference Court. In the above circumstances, the appeal fails and is accordingly dismissed, however, without any order as to the costs. Pending Civil Application, if any, stands disposed of.

(P.R.BORA)
JUDGE

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AGP/216-02fa