

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

FIRST APPEAL NO. 1762 OF 2015

Rameshwar S/o Sakharam Dahatonde, Aged
60 Years, Occupation Agriculturist, Resident
of Parola, Taluka and District Hingoli

APPELLANT

V E R S U S

- 1 The State of Maharashtra, Through Collector
Parbhani, now at Hingoli, District Hingoli
- 2 The Special Land Acquisition Officer, MKU,
Parbhani, now at Hingoli
- 3 Rustum S/o Sakharam Dahatonde, Aged 55
Years, Occupation Agriculturist, Resident of
Parola, Taluka Parola, District Hingoli

RESPONDENTS

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RESPONDENTS

Mr. Bhagwan S. Kudale, Advocate for the Appellant
Mr. S.P. Sonpawale, A.G.P. for Respondent Nos. 1 & 2 - State

CORAM : A.V. NIRGUDE, J.

DATE : 22nd August, 2016

ORAL JUDGMENT :

1. At the request of learned counsel for the parties, both these Appeals are taken up for final hearing at admission stage.

2. Heard both the sides.

3. Both these Appeals challenged the Judgment and Award dated 24th July, 2003, passed by the learned Civil Judge, Senior Division, Hingoli, in L.A.R. Nos. 90 of 1996 and 49 of 1992. The lands acquired were 73 Are and 2 Hectare, respectively. Both these lands were acquired for Parola Percolation Tank, for which Notification under Section 4 of the Land Acquisition Act was issued on 07th January, 1988. The Award was passed on 28th November, 1989. For the purpose of awarding compensation, the Special Land Acquisition Officer tried to determine the market value of the land on the basis of circumstances and the type of crops taken in the lands. The Special Land Acquisition Officer awarded compensation @ Rs.5,000/- per Acre.

4. The appellant filed references under Section 18 of the Land Acquisition Act and contended that the market value of the land was more than Rs.15,000/- per Acre. The State of Maharashtra opposed the References and justified the compensation awarded by the Special Land Acquisition Officer.

5. In order to prove the market value on the date of Notification under Section 4 of the Act, the appellant examined himself. He stated on oath that the lands under acquisition belonged to him and were of black soil and fertile. He also asserted that he was getting income of Rs.5,000/- per Acre per year. He asserted further that at the time of acquisition, the market price was Rs.20,000/- per Acre. In addition to this, the appellant examined one Nanarao as Witness No.2, who stated that he has sold his 1 Hectare 29 Are land of village Balsund @ Rs.15,000/- per Acre on 25th August, 1998. It came on record that the land of Nanarao was situated at the distance of 10 k.ms. from the lands in question. Nanarao in his deposition stated that his land was at the distance of 2-3 k.ms. from the lands in question. He said both the lands were similar in nature, and in addition to this evidence, the appellant also produced on record certified copy of the Judgment of the Civil Judge, Senior Division, Hingoli, passed in L.A.R. No. 50 of 1992. The said Judgment pertains to a land acquired at village Sawa. The learned Civil Judge, Senior Division, Hingoli in that Judgment held that the market value of the land in question could be Rs.10,000/- per Acre. The learned Judge of the lower Court rejected the evidence which came on record in the form of judgment in L.A.R. No. 50 of 1992. He however accepted the deposition of Nanarao and his sale-deed showing the market value @ Rs.15,000/- per Acre as relevant. But, he said that the said instances of Nanarao took place after publication of Notification under Section 4 of the Land Acquisition Act. He considered it that the market price mentioned in the sale-deed and made average. He held that using method of average, the market value of the land in question could be about Rs.8,000/- per Acre.

6. The learned counsel for the appellant asserted that the said instance of Nanarao is relevant and ought to have been accepted for deciding the market value. He also asserted that the word 'average market price' used by the learned Judge of the lower Court was unknown to law. Having gone through the Judgments of the lower Court I did not understand the meaning of the term 'average market price' used by the learned Judge of the lower Court. For the purpose of taking average, the learned Judge ought to have taken into account more than one instance in which different market values are reflected. Utilizing those two or more figures, he could have determined average market value. But, since in this case there was only one market value on record, it was for him to either take it into account or reject it altogether. The learned counsel for the appellant is also aware that the said instance of Nanarao was of August, 1988, whereas the Notification was issued in January, 1988.

7. The question that arose for my consideration in these Appeals is, whether a sale instance of subsequent date is relevant evidence or not. The words used in Section 23 (firstly) are "the market value of the land at the date of publication of Notification under Section 4 of the Act". What do the words 'at the date of publication' means? Is it that the Court should find out market value of the land in question exactly on the date of Notification? Or the court should market value during the relevant period which comprised of a few months on either side? It is common knowledge that in order to prove the market value, litigants places reliance on sale instances. A litigant might file sale instances of few months prior to the date of Notification or few months subsequent to Notification. In this case,

the said instance is of August, 1988, i.e. about eight months later. Such sale instance in my view is a relevant piece of evidence subject to moderation based on the time lapsed between the date of publication of Section 4 Notification and the date of sale deed. There is nothing on record to indicate that because of Notification under Section 4 of the Act, the prices of lands in surrounding area increased significantly.

8. Therefore, having regard to subsequent date of said instance, I am inclined to moderate the market price indicated therein. In my view, having regard to the facts of the case, the market value indicated in the sale-deed should be reduced by about 7%. The market value of the land on the date of Notification thus could be approximately Rs.14,000/- per Acre. I am therefore inclined to allow the Appeals partly. I am holding that the appellant is entitled for the market value of the land @ of Rs.14,000/- per Acre. The Award shall be modified accordingly. As regards solatium and interest, the judgment of the lower Court shall remain unchanged. The office to prepare Award accordingly. In view of this, both the Appeals are accordingly allowed partly.

[A.V. NIRGUDE, J.]