

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

FIRST APPEAL NO. 1027 OF 2005

1. Special Land Acquisition
Officer (I), Upper Tapi Project,
Hatnur, Jalgaon.
 2. The Executive Engineer,
Waghur Dam Division, Jalgaon
 3. The Collector, Jalgaon
-Appellants.**

Versus

Tarabai Bhikan Kumawat,
Age-47 years, Occ. Agriculture,
R/o Neri Bk., Tal. Jamner,
Dist. Jalgaon

....Respondent.

Mr. K.N. Lokhande, AGP for appellants.

Mr. S.P. Golegaonkar, Advocate for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 6th January 2016.

JUDGMENT :

1) The appeal is filed to challenge the judgment and award of L.A.R. No. 189/2001 which was pending in the Court of Civil Judge, Senior Division, Jalgaon, Reference Court, under the Land Acquisition Act. Heard the learned A.G.P.

2) The land of present respondent - Tarabai is acquired for Upper Tapi Project (Hatnur) -1, Jalgaon. Notification under

section 4 of the Land Acquisition Act 1894 was published in official gazette on 12.7.1997. The Special Land Acquisition Officer (S.L.A.O.) held that the area of 47 R. of Block No. 44/2B (part) situated at village Neri Bk., belonging to respondent, was Potkharab portion and the market value of Potkharab land of that area was Rs. 1500 per Hector. Thus, the compensation was calculated at Rs. 705/-. It is the case of the owner, respondent that the market value of the land was much more and it was around 3.79 lakh per Hector. The owner contended that even if it is presumed that the land was Jirayat land and it was Potkharab portion of Jirayat land, she was entitled to get Rs. 88,115/- in respect of 47 R. portion. The proceeding was opposed by State and Acquiring Body.

3) In support of the claim, the owner examined herself and evidence was given of sale instances. Witnesses were examined to prove the sale instances. The sale deeds were placed on record at Exh. 21, 45 and 48. The two sale deeds dated 23.5.1996 and 12.2.1997 and the 7/12 extracts were also produced. Copy of judgment delivered in another reference bearing L.A.R. No. 257/2001 decided with connected matters on 20.10.2001 was produced. In that matter, the Court had held that the value of the Bagayat land per hector was Rs. 4.15 lakh

and value of Jirayat land was Rs. 2.25 lakh. The S.L.A.O. was examined by the respondent and he produced some sale instances for the period from 20.6.1994 to 12.6.1997. The village map was also produced on the record. It was the grievance of the owner that highest sale instances which were genuine sale instances were not considered by the S.L.A.O. It was submitted that the land from sale instances were situated on other side of river Waghol and this river had divided the two villages Neri Bk. and Neri Khurd and so, the sale instances of Neri Khurd could have been considered.

4) The Reference Court has considered the sale instances which were before the S.L.A.O. and the sale instances on which the owner was relying. Some sale instances on which owner was relying were also considered by S.L.A.O. But, the S.L.A.O. had refused to rely on those sale instances by giving reason that the rate was not as per the rate given in ready reckoner used by the Sub-Registrar's Office. This reasoning is not at all acceptable and so, the Reference Court has refused to accept the rate fixed by S.L.A.O. The S.L.A.O. has indirectly used the ready reckoner for ascertaining the market price. The Reference Court has considered the map of the village and many transactions from Index II Register of Sub-Registrar. The

proximity of those lands is taken into consideration from all angles. The sale transactions from the sale deeds of April 1997 to June 1997 are considered. It is held that the sale instances in respect of the land Block No. 29 and 177 are most comparable sale instances. The distance between the land acquired and these lands and the quality of the lands is considered. Then the average market price of two sale instances is determined and it is held that per hector market price was Rs. 1,22,000/-. It can be said that one sale instance was even of Rs. 1,38,983/- and this instance also could have been used by the Reference Court, but aforesaid method is used.

5) The Reference Court has held that the land of the owner was Photkharab land and accordingly, as per the settled position of law, the value of Potkharab land per hector is taken as Rs. 61,000/-. In view of these circumstances, this Court holds that there is nothing on the basis of which interference is possible in the decision given by the Reference Court.

6) In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

SSC/