

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2074 OF 2015

Naganna Piraji Sastarphod died
 Yadavrao naganna Sastarphod

... Appellant

Vs.

The State of Maharashtra
 through District Collector,
 Nanded and Ors.

... Respondents

Mr. G.N. Chincholkar, Advocate for the Appellant.

Mr. B.A. Shinde, Advocate for respondent no.2.

CORAM : A.V. NIRGUDE, J.

DATE : 31-08-2016.

Per Court :

1. Admitted.
2. Heard.
3. By consent of parties taken up for final hearing.
4. This appeal challenges judgment and award dated 01/04/2015 passed by the learned Civil Judge Senior Division Link Court, Mukhed, District Nanded in Land Acquisition Reference No. 339 of 2007. The appellant was the claimant and his reference was partly allowed.
5. Facts leading to this litigation are as under:
6. The Government of Maharashtra acquired 1 H 49 R land from survey no. 73/2 of Village Marajwadi, Taluka Mudkhed, District Nanded for certain irrigation project. From the same village and villages surrounding it several lands were acquired for this project. The notification under section 4 of the Land Acquisition Act, 1894

(Said "Act") was issued on 09/07/1998. The Special Land Acquisition Officer awarded approximately Rs. 95,000/- per hectare etc. The reference court increased the compensation to the extent of 1,15,000/- per hectare.

7. The appellant had demanded Rs. 4 lakh per hectare. The question is "what was of the market value of the land on or about 09/07/1998?"

in order to prove his claim the appellant proved three sale instances of lands situated in surrounding villages. The appellant stated that the sale instances are of lands which are more or less similarly situated. The appellant had also stated 50 R land out of the reference land was irrigated one.

The land acquisition officer had classified the acquired lands into three classes: irrigated land, non-irrigated land and Pothkharab. He prescribed a different rates for these types of lands.

8. The appellant could prove that in one sale instance the land was about 28 R dry land and was sold for Rs.50,000/-, therefore, the market value in 1997 of this land was about 1,78500 per hectare. The second sale instance is of 06/10/1997, the land ad-measured 1 H 22 R was sold for Rs. 2 lakhs. This means that the market rate of this land at that time was Rs. 1,63000 per hectare. Both these lands were not irrigated. On the other hand, the land in question was partly irrigated.

9. The learned judge of the reference court, thus, had sufficient material to decide as to what could have been the market value of the land in question on the day of notification. The learned judge, however, almost ignored this evidence which is discussed above. He placed reliance on a previous judgment delivered by his predecessor in respect of a piece of land of the same village Marajwadi.

10. In my view, placing reliance on such judgment was not proper in presence of actual evidence. When evidence is not sufficient or is not available, reliance can be placed on a previous judgment. The learned judge of the reference court in this case almost blindly followed the previous judgment.

11. In view of this, I have to re-apprise the evidence that came on record for deciding the market value of the land. In my view, having regard to land being partly irrigated market value of the land in question could be Rs. 2 lakh per hectare. Rest of the reliefs granted by the Reference court shall remain intact. The appeal should, therefore, succeed partly. The first appeal is accordingly allowed. Award be prepared accordingly.

(A.V. NIRGUDE)
JUDGE

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