

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

FIRST APPEAL NO. 2959 OF 2015

1. Ankush s/o. Ramling Biradar,
Age 42 years, Occu. Agriculture,
R/o. Karwandi, Tal. Udgir,
District Latur.

**....Appellant.
(Ori.Claimant)**

Versus

1. The State of Maharashtra,
Through Collector, Latur.

....Respondent.

Mr. M.G. Biradar, Advocate for appellant.

Mrs. R.P. Gaur, AGP for respondent/State.

CORAM : T.V. NALAWADE, J.

DATED : 22nd February, 2016.

JUDGMENT :

1) The appeal is **admitted**. Notice after admission is made returnable forthwith. By consent, heard both the sides for final disposal.

2) The appeal is filed by original claimant against the judgment and award of L.A.R. No. 457/2010 (Old No. 528/2003), which was pending in the Court of Civil Judge, Senior Division, Udgir. The claimant, owner is not satisfied with the compensation awarded by the Reference Court and so, the appeal is filed.

3) The notification under section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act' for short) was published in official gazette on 10.9.1997. The Land Acquisition Officer (LAO) had given the rate of Rs. 480/- per R. The Reference Court has increased the rate to make it Rs. 2600/- per R. The Reference Court has given this rate only in respect of 128 R. portion of the land, when the land acquired was 1 Hectar 60 R. 20% area is reduced by holding that such area was required for development of the property, for using it for non agricultural use. The Reference Court has considered the sale instance at Exh. 16, proved by the claimant, but deductions are made after considering the plus factors available to the purchaser in the said transaction.

4) The Reference Court has considered the sale instance at Exh. 16 as a comparable sale instance which is from the same village. On 24.11.1994 land admeasuring 3150 Sq. Ft. was sold for the consideration of Rs. 10,000/-. As the transaction was old by two years and 9 months, as per the settled position of law, 10% increase per year can be considered in the rate and accordingly, the Reference Court has also considered and gave 10% increase in the aforesaid rate. The rate calculated

accordingly is Rs. 4000/- per R. The land under the sale instance was adjacent to the Government road and so, the Reference Court deducted 35% of the value for this plus factor from sale instance. The boundaries of the land acquired show that on one side of the land road like Sakol, Anegaon, Revrajan and Udgir passes. This land was adjacent to the village Karvandi and the land was acquired for extension of Gavthan. Thus, it can be said that making deductions of 35% was not proper for factor like road which was adjacent to the land mentioned in the sale instance. The said land was in residential zone, but the present land is also adjacent to the Gavthan and that is the only land, which was acquired for extension of Gavthan. Some deductions can be made for development of the land, for making it suitable for residence purpose. Though the Reference Court has deducted 20% of the amount, this Court holds that 30% amount can be deducted towards development cost for keeping some land for the purposes of amenities etc. This Court holds that 10% amount can be deducted for adjustment of so called plus factor mentioned in the sale instance. Thus, 40% amount could have been deducted from the aforesaid market price fixed by the Reference Court. The Reference Court actually deducted 55% amount (35 +20) from the price ascertained by the Reference Court and that was not proper approach. Once it is considered

that the land has N.A. potential, possibility of 55% deductions was not there. This Court holds that only 40% amount can be deducted from the market price of Rs. 4000/- per R. Thus, the amount of Rs. 1600/- per R. can be deducted and the price of Rs. 2400/- per R. can be given. This price needs to be given in respect of the entire area i.e. 1 Hectar 60 R. So, the following order is made.

ORDER

(I) Appeal is allowed. Judgment and award of the Reference Court is modified in following terms.

(i) The claim is allowed. The rate of Rs.2400/- (Rupees twenty four thousand) per R. is given in respect of entire area of 1 Hectar 60 R. portion.

(ii) All statutory benefits with interest as awarded by the Reference Court are to be given on this rate.

(II) Award is to be prepared accordingly.

[T.V. NALAWADE, J.]

ssc/