THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 2182 OF 2014

Madhukar s/o Dhondibapu Hambarde,
Age 54 yrs., Occu. Agri.,
R/o Ashti, Tq. Ashti, Dist. Beed. **... APPELLANT**
(Orig. Claimant)

VERSUS

1. The State of Maharashtra,
Through Collector, Beed.
(Copy to be served on G.P.
High Court at Aurangabad)

2. The Executive Engineer,
Beed Minor Irrigation, Division, Beed
Zilla Parishad, Beed. **... RESPONDENTS**
(Orig. Opponents)

...

Mr. S. L. Bhapkar, Advocate for Appellant.

Mr. G. O. Wattamwar, AGP for Respondent No.1.

Mr. A. R. Tapse, h/f Mr. P. D. Suryawanshi, Advocate for Respondent No.2.

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CORAM : **P. R. BORA, J.**

Reserved on : 22nd August, 2016.

Pronounced on : 26th August, 2016.

JUDGMENT:

. Heard.

2 Admit.

3 By consent of the learned counsel appearing for the respective parties, the appeal is taken up for final disposal.

4 The Appellant has filed the present appeal seeking enhancement in the amount of compensation awarded by the learned Civil Judge Senior Division, Beed, in LAR No.690 of 2010, decided on 2nd July, 2014.

5 The land of the Appellant, admeasuring 4 Hectare 28 Ares out of Survey No.488 situated at Ashti town, Taluka Ashti was acquired for the purpose of Village Tank No.5, at Ashti. Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as "the Act") was issued on 24th July, 2003. Award under Section 11 of the Act came to be passed on 25th August, 2005. The Special Land Acquisition Officer assessed the compensation of the acquired land at the rate of Rs.1,625/- per Are. Dissatisfied with the compensation so offered, the Appellant preferred reference under Section 18 of the Act to the Collector, Beed, who in turn, forwarded it for adjudication to the Civil Court, Beed, and was registered as LAR No.690 of 2010.

6 The Appellant had claimed the compensation of his acquired land at the rate of Rs.4,000/- per Are. In order to

substantiate the claim so made by him, the Appellant had adduced the necessary oral and documentary evidence before the Reference Court. The Appellant himself had entered the witness box and had deposed in support of his claim. The Appellant had also placed on record about four sale instances. The learned Reference Court after having assessed the oral and documentary evidence brought on record before it, determined the market value of the acquired land at the rate of Rs.3,000/- per Are and accordingly enhanced the amount of compensation. In the present appeal, it is the contention of the Appellant that the Reference Court has not awarded adequate compensation.

7 Shri Bhapkar, the learned counsel for the Appellant submitted that total four sale instances were placed on record by the Appellant at Exhibits – 16, 17, 18 and 19. The learned counsel submitted that all the four sale instances were of the lands situated at Ashti town in the vicinity of the land acquired of the Appellant. The learned counsel submitted that certified copies of all the aforesaid sale-deeds are placed on record before the Trial Court. The learned counsel submitted that by bringing on record the aforesaid sale instances, the Appellant has sufficiently proved that the market value of his acquired land was more than 10,000/- per Are, however, the

learned Reference Court has erroneously determined the market value of the acquired land at the rate of Rs.3,000/- per Are. The learned counsel, therefore, prayed for adequate enhancement in the amount of compensation and consequent modification in the impugned award. The learned counsel placing reliance on the judgment of the Honourable Apex Court in the case of ***Chindha Fakira (dead) Through LRs Vs. Special Land Acquisition Officer, Jalgaon***, reported in, ***[(2011) 10 Supreme Court Cases 787]*** submitted that out of the sale instances brought on record, the sale instance wherein highest value is received to the land, needs to be preferred for determining the amount of compensation.

8 Shri A. R. Tapse, learned counsel holding for Shri P.D.Suryawanshi, learned counsel for Respondent No.2 supported the impugned judgment. The learned counsel submitted that the sale instances, which are relied upon by the Appellant / Claimant, cannot be held to be comparable sale instances, and as such, the Reference Court has rightly not accepted the market price as has been received to the lands, which were subject matter of the said sale instances while determining the amount of compensation in the present matter. The learned counsel has relied upon the judgment of the Division Bench of this Court in the case of ***Gracinda Braganza & ors. Vs.***

Special Land Acquisition Officer (N) & anr., reported in, ***[2010 (6) MAH.L.J. 944]***. The learned counsel also relied upon the judgment of the learned Single Judge of this Court in the case of ***Deputy Collector and S.D.O. & L.A.O. & anr. Vs. Mrs. Filomena da Fransco Barreto & ors.***, reported in, ***[2014 (1) AIR BOM R 239]***, and one more judgment in the case of ***State of Maharashtra Vs. Parubai Vithal Gawade***, reported in, ***[2011 (3) ALL MR 47]***.

9 Shri G. O. Wattamwar, learned AGP adopted the argument advanced on behalf of the learned counsel appearing for the acquiring body and prayed for dismissal of the appeal.

10 I have carefully considered the submissions advanced on behalf of the learned counsel appearing for the respective parties. As well, I have perused the impugned judgment and the evidence on record. The material on record reveals that the Appellant had deposed before the Reference Court to substantiate the contention raised by him in the reference application. In his testimony before the Reference Court, the Appellant claimed the compensation at the rate of Rs.4,000/- per Guntha (Are). The Appellant had also placed on record the certified copies of the four sale-deeds pertaining to the lands situated at Ashti, which according to him were in the vicinity of his acquired land. The Respondents, admittedly, did not adduce any

oral or documentary evidence.

11 In so far as the quality and potentiality of the acquired land is concerned, the learned Reference Court has observed in para 19 of the impugned judgment that the acquired land appears to be of good quality and potentiality. The Reference Court has further observed that 7/12 extract of the acquired land (Exhibit – 22) shows existence of well and the crop column thereof shows that the crops like sugarcane, chilly, wheat and gram were used to be taken.

12 The Reference Court had, thereafter, elaborately discussed the sale instances, as were produced on record by the Appellant / Claimant, which are at Exhibits – 16 to 19. The land, which is the subject matter of Exhibit – 16 was admeasuring 1 Acre 3 Ares and was sold by registered sale-deed on 12th December, 2002, for the consideration of Rs.2,00,000/- i.e at the rate of Rs.4,651/- per Are. The sale-deed at Exhibit – 17 pertains to the sale of 32 Ares land executed on 28th January, 2000, and the consideration received was at the rate of Rs.3,000/- per Are. The another sale-deed executed on 12th December, 2002, of the land admeasuring 85 Ares is at Exhibit – 18 wherein the consideration was received to the said land at the rate of Rs.12,781/- per Are. Sale-deed at Exhibit – 19 is in respect of transaction done on 12th December, 2002, in respect of 68

Ares land, which was sold at the rate of Rs.9,947/- per Are.

13 It is not in dispute that all the four sale instances are of the period before issuance of notification under Section 4 of the Act for acquisition of the land, which is the subject matter of present appeal. The learned Reference Court after having discussed the aforesaid four sale instances, had noted the positive and negative factors of the acquired land in para 22 of the judgment and has determined the market price of the acquired land at the rate of Rs.3,000/- per Guntha (Are) as on the date of notification under Section 4 of the Act. The Reference Court has observed that the Appellant in his cross-examination has admitted that the sale instances are not of the lands exactly adjacent to the acquired land. The Reference Court has further recorded that since the Appellant did not produce on record the map, it is difficult to positively conclude that the lands, sale instances in respect of which are placed on record, are in the vicinity of the acquired land.

14 I have carefully perused the evidence of the Appellant before the Reference Court. It is true that the Appellant had admitted in cross-examination that lands, which were subject matter of sale instances, do not come within the boundaries of the acquired land. However, it has not been disputed that all the four sale instances

placed on record pertain to the lands situated at Ashti town. It is significant to note that in his examination-in-chief, the Appellant had specifically deposed that the acquired land is on Ahmednagar-Beed road and that in the adjacent survey number, the residential houses are built and there is also a college nearby the acquired land and also a ginning factory. It was also deposed by him that the acquired land was at the distance of 0.5 km from Ashti town. The facts so stated by the Appellant are remained undisturbed in the cross-examination also.

15 Considering the facts as aforesaid, it appears to me that the Reference Court while determining the amount of compensation has adopted a more conservative approach, which has resulted in determining the market price of the acquired land on a lower side. Even if the sale instances occurred in the year 2002 are kept out of consideration and the market price of the subject land is decided to be fixed on the basis of sale-deed executed in the year 2000, it must have been determined at the rate more than Rs.3,000/- per Are as has been determined by the Reference Court. Further it does not appear to me that the other sale instances are to be completely kept out of consideration. As has come on record the price received to the lands in the aforesaid sale instances ranges from Rs.4,651/- per Are to Rs.12,781/- per Are. Even if it is decided to determine the market

value assuming that the acquired land was not situated at such an advantageous place as were the lands under sale instances, in my opinion, the market value of the acquired land could not have been determined at the rate below Rs.4,000/- per Are. I reiterate that the land, which was subject matter of Exhibit – 17 and which was sold in January 2000 i.e. much prior to the issuance of notification under Section 4 of the Act and also prior to the date of taking possession of the acquired land, can be held to be a base for determining the market value of the acquired land and on the basis of it, the market value of the acquired land can be reasonably determined at Rs.4,000/- per Are. The sale-deed at Exhibit – 17 pertains to a semi irrigated land. The acquired land, which is the subject matter of present appeal also falls in the category of semi irrigated land in view of the fact that a well was existing in the said land and sugarcane crop was being taken in the said land. The amount of compensation, therefore, needs to be enhanced to the aforesaid extent. Hence the following order:

O R D E R

I. The first appeal is partly allowed.

II. The award impugned in the present appeal stands modified as under:

The market value of the acquired land is determined at the rate of Rs.4,000/- per Are. The Appellant, in addition to the market value of the land, shall be entitled to the statutory benefits and the interest as per the provisions of the Land Acquisition Act.

III. The award of the Reference Court impugned in the present appeal shall stand modified to the aforesaid extent.

IV. In the facts and circumstances of the case, no order as to the costs.

[P. R. BORA, J.]

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