

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

FIRST APPEAL NO.78 OF 2014

The Executive Engineer,
(Civil and Construction)
Maharashtra State Electricity
Distribution Company,
Near Tajmahal Talkies,
Dist. Osmanabad

.. APPELLANT
(Orig. Respondent No.3)

Versus

01. Shamrao s/o Gundiba Bhogal (Died)
Through Legal Heirs :

1A. Girjabai w/o Shamrao Bhogal (Died)
Through Legal Heirs (Respondent No.1B) :

1B. Dimakhrao s/o Shamrao Bhogal,
Age : 35 years, Occu : Agri,
R/o. Lohata (East), Tal. Kallam,
Dist. Osmanabad

.. RESPONDENTS
(Orig. Claimants)

02. The State of Maharashtra,
Through The Collector, Osmanabad,
Dist. Osmanabad

03. Sub Divisional Officer,
Bhoom, Dist. Osmanabad

.. RESPONDENTS
(Orig. Respondent Nos.1 & 2)

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Shri. Uday S. Malte, Advocate for the appellant
Shri. S. A. Wakure, Advocate for respondent No. 1
Shri. R. B. Bagul, AGP for respondents No. 2 & 3

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**CORAM : P.R. BORA, J.
DATED : JULY 7, 2017**

ORAL JUDGMENT :

. Present appeal is filed against the Judgment and Award dated 27th June, 2012 passed by Jt. Civil Judge, Senior Division at Osmanabad in L.A.R. No.398/2002.

2. The land, which is the subject matter in the present appeal, was acquired by the appellant for construction of sub-station at village Hingangaon, Tal. Kallam, Dist. Osmanabad. Total 74 Are land was acquired out of Gat No.60/4 situated at village Hingangaon. The notification under Section 4 of the Land acquisition Act (hereinafter referred to as the 'Act') was published in the Official Gazette on 15.05.1997 and the Award under Section 11 of the Act came to be passed on 21st July, 1999. The Special Land Acquisition Officer (hereinafter in short 'SLAO') had offered the compensation for the acquired land at the rate of Rs.33,000/- per hectare. Dissatisfied with the amount of compensation so offered, the claimants had preferred an application under Section 18 of the Act to Collector, Osmanabad and the same was forwarded to the civil court for adjudication. The claimants had claimed the compensation at the rate of Rs.3,00,000/- per hectare. In order to substantiate the claim so raised by them, the claimants themselves have deposed before the reference Court and had also placed on record one sale instance at Exh.31. No oral or

documentary evidence was adduced by the acquiring body or by the State. The reference Court after having assessed oral and documentary evidence brought before it, determined the market value of the acquired land at the rate of Rs.1,50,000/- per hectare and accordingly enhanced the amount of compensation. Being aggrieved by the Judgment and Award, the acquiring body has preferred the present appeal.

3. Shri. Malte, learned Counsel appearing for the appellant assailed the impugned award on various grounds. The learned Counsel submitted that, the tribunal has failed in appreciating that, the sale instance which was relied upon by the claimants was of a different village and the land, which was the subject matter of the said sale deed, was not at all comparable with the subject land. The learned Counsel submitted that, as has come on record the land which was the subject matter at Exh.31 was abutting to the public road and was irrigated land. In the circumstances according to the learned Counsel the market value of the subject land could not have been determined on the basis of the consideration received to the land which is the subject matter of Exh.31. The learned Counsel submitted that, on the contrary the SLAO had considered the overall circumstances and after having physically visited to the acquired

land, has determined the value of land and has accordingly offered the compensation. The learned Counsel submitted that, the reference Court has nowhere disclosed as to why it find it necessary to reduce the value of the land, which was the subject matter of Exh.31 by only 30% while deciding the market value of the subject land on the basis of the said land. The learned Counsel submitted that, no rational criteria was applied and that has resulted in determining the market value of the subject land on higher side. The learned Counsel submitted that, in absence of any cogent and sufficient evidence brought on record by the claimants to substantiate their claim, there was no reason for the reference Court to enhance the amount of compensation that too on such an higher side. The learned counsel therefore prayed for setting aside the Award and to reconfirm the amount of compensation as was offered by the SLAO.

4. Shri Wakure, learned Counsel appearing for the original claimants supported the impugned Judgment and Award. The learned Counsel submitted that, the tribunal has rightly considered the evidence which was adduced by the claimants in the form of sale instance at Exh.31 and has accordingly determined the market value of the subject land. The learned Counsel submitted that, in fact the compensation as has been enhanced by the reference Court is much

less than it was expected by the claimants. The learned counsel submitted that, no interference is required in the impugned Judgment and Award.

5. I have carefully considered the submissions made on behalf of the learned Counsel appearing for the respective parties. The reference Court has determined the market value on the basis of the sale instance which was produced on record by the claimants at Exh.31. The said land was situated at village Shiradhon, Tal Kallam. It was admeasuring 1 Acre and was sold by the registered sale deed on 15.04.1997 for the consideration of Rs.1,37,000/- i.e. at the rate of Rs.3,42,500/- per hectare. The learned tribunal in para 18 and 19 of the impugned Judgment has elaborately discussed as to how it has determined the market value of the subject land on the basis of the said sale instance. Though it is vehemently argued by the learned Counsel Shri. Malte that the land involved in Exh.31 was irrigated land and was abutting to the public road and was also belonging to some another village and as such the same could not have been the base for determining the market value of the subject land, I am not convinced with the submissions so made. In absence of any other evidence, the tribunal was left with no option to consider the said sale deed which was duly proved by the claimants.

6. Admittedly no evidence was adduced on behalf of the acquiring body or the State. It further appears that, the tribunal has not blindly relied upon the sale instance placed on record by the claimants. The tribunal has rightly referred the Judgment of this Court in the case of *The Collector Yevatmal Vs. Laxman Jumale* reported in [2010 (3) ALL MR 342] to hold that, the market value of the land from adjacent village can also be considered for determining the market value. It further reveals that, having considered the fact that, the land which was subject matter of Exh.31 was irrigated land and was abutting to public road, the necessary deductions are appropriately made by the reference Court while determining the market value of the subject land. As has come on record though the land which was the subject matter of Exh.31 was sold at the rate of Rs.3,42,500/- per hectare. The reference Court has determined the market value of the acquired land at the rate of Rs.1,50,000/- i.e. less than half of the amount, which was received towards consideration to the land which was the subject matter of Exh.31. It is quite evident that, the tribunal has considered the fact that, the acquired land which was *jirayat* land could not fetch the same prize and so straightway half of the amount was reduced by the tribunal. Further having regard to the fact that, the said land was abutting to the road,

the further deductions were made and accordingly the market value of the subject land has been determined by the reference Court at the rate of Rs.1,50,000/- per hectare. It does not appear to me that, the tribunal has committed any error in determining the market value of the acquired land or has determined it arbitrarily on higher side or excessively.

7. It was rightly pointed out by Shri. Wakure the learned Counsel appearing for the original claimants that the subject land was adjacent to the village and was utilized for erecting sub station and as such was having N.A. potentiality and it could have yielded the same prize or even more than that as was determined by the reference Court. After having considered entire evidence on record, it does not appear to me that any interference is required in the Judgment and Award impugned in the present appeal. The appeal deserves to be dismissed and is accordingly dismissed, however, without any order as to costs.

[P.R. BORA, J]