

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

**FIRST APPEAL NO. 4140 OF 2016.
WITH
CIVIL APPLICATION NO. 1317 OF 2011.**

- | | | |
|--|----|---|
| 1 The State of Maharashtra
Through Collector, Jalgaon. | .. | Appellants
(Original
Respondents) |
| 2 The Special Land Acquisition Officer,
III, U.T.P.H., Jalgaon. | | |

Versus

Shri. Somnath Kalu Patil, Age – 27 years, [S.P.A.] Deelip Kalu Patil, Age- 29 years, Occu. Agriculturist, R/o. Gartad, Taluka Chopada, District Jalgaon.	..	Respondent (Original claimant)
---	----	--------------------------------------

...

Mr. A. M. Phule, Assistant Government Pleader for Appellants.
Mr. S. D. Sonar h/f. Mr. V. B. Patil, Advocate for Respondent.

...

CORAM : K.K. SONAWANE, J.

DATED : 23TH NOVEMBER, 2017.

J U D G M E N T :-

Heard. Admit. Taken up for final hearing on merit with the consent of the respective learned counsel for both sides.

2. This appeal is filed by the appellant – State of Maharashtra against the impugned Judgment and Award passed by the Ad-hoc District Judge, Amalner, in Land Acquisition Reference No. 193 of 1993, dated 23rd October, 2008, allowing the enhancement of compensation amount in the Land Acquisition Reference Petition filed under Section 18 of the Land Acquisition Act, 1894 (in short, "Act") by the respondent-original claimant.

2. It has been contended that the respondent- Somnath Kalu Patil was the owner and in possession of the land bearing Gat No. 123/1 admeasuring 0.07 R. located at village Kurwel, Taluka Chopada, District Jalgaon. The respondent- State of Maharashtra acquired the land of respondent (original claimant) for the purpose of Hatnur Project. The notification under Section 4 of the Act was published on 25-06-1986. After compliance of procedural formalities, the S.L.A.O. declared the Award under Section 11 of the Act and awarded total sum of Rs.2,688/- i.e. @ Rs.384/- per R to the claimant. Being dis-satisfied with the market value determined by the S.L.A.O., the claimant accepted the compensation amount under protest and preferred the reference petition under Section 18 of the Act for enhancement of compensation amount.

3. In response to the notice, the respondents - State of Maharashtra and S.L.A.O. have appeared in the proceedings and raised the objection to the contentions put-forth on behalf of claimant. The respondents filed written statement (Exh.10) on record and denied the allegations nurtured on behalf of claimant. It was asserted that the market value determined by S.L.A.O. was just, proper and reasonable, which was prevailing over within the vicinity of land under acquisition during the period of notification under Section 4 of the Act i.e. in the month of June-1996. Therefore, no question arises for enhancement of compensation amount at the behest of claimant. The Reference Court, after appreciating the oral and circumstantial evidence on record, arrived

at the conclusion that the S.L.A.O. should have awarded the market value @ Rs.600/- per R. to the land under acquisition. Therefore, the reference petition filed on behalf of original claimant came to be partly allowed. The compensation awarded to the claimant was directed to be enhanced @ Rs.600/- per R. Being aggrieved by the findings of Reference Court, the respondent- State of Maharashtra knocked the door of this Court and filed the present First Appeal to redress its grievances.

4. Learned AGP submits that the findings expressed by the Reference Court are erroneous, illegal and rest upon the surmises and conjunctures. The S.L.A.O. has determined correct market value of the land under acquisition, but the Reference Court has given unnecessary importance to the document of sale deed produced on record on behalf of claimant. The amount awarded by the Reference Court is exorbitant, excessive and same is liable to be set-aside and quashed. The learned AGP requested to allow the appeal.

5. The learned counsel for claimant raised the objection and asserted that the Reference Court has appreciated the facts and circumstances on record in its proper perspective. The respondent-State of Maharashtra did not adduce any evidence on record. The claimant produced the document of sale deed dated 11-03-1985 for the land admeasuring 0.60 R. which was sold for a consideration of Rs.40,000/-. The learned counsel for the claimant supported the

findings expressed by the Reference Court and prayed to dismiss the appeal.

6. Admittedly, the matter pertains to the small area of land admeasuring 0.07 R. under acquisition. The S.L.A.O. after considering the circumstances determined the compensation to the tune of Rs.2,688/- i.e. @ Rs.384/- per R. The claimant claimed the market value @ Rs.1,000/- per R. for the land under acquisition by filing reference petition under Section 18 of the Act. The land under acquisition was classified as dry land. The notification under Section 4 of the Act was published on 25-06-1986. Therefore, it is incumbent to consider the market value of the land prevailing in the vicinity of the land under acquisition during the period of notification under Section 4 of the Act in the month of June-1986 i.e. prior to the date of notification.

7. The circumstances on record adumbrates that there were endeavours on behalf of respondents to adduce the evidence of S.L.A.O. Shri Namdeo Sapkal. He has filed affidavit in lieu of examination-in-chief on record before the Reference Court. But, thereafter, he did not turn-up to Reference Court to make himself available for cross-examination on behalf of claimant. Therefore, his affidavit of examination-in-chief would lost its force for lack of cross-examination on the part of claimant to elicit the truth. Obviously, no any evidence is available on record for consideration produced on behalf of respondent- State of Maharashtra.

8. The claimant produced the certified copy of document of sale deed dated 11-03-1985 for a land admeasuring 0.60 R. located at village Khachane. The land was sold for a consideration of Rs.40,000/-. The claimant did not examine vendor or vendee of the alleged sale instance. There are no material on record to point out that the alleged sale deed of land Gat No. 110 and 109 of the village Khachane for consideration of Rs.40,000/- was of similar quality, fertility and potentiality with the land under acquisition.

9. It is lucid that the market value of the land connotes the price of the land which a willing seller is reasonably expected to fetch in the open market from a willing purchaser. Section 23 of the Act enumerates the circumstances for appreciation while determining the amount of compensation. The basic criteria for consideration is that the market value of the land under acquisition should be calculated on the basis of market value prevailing over within the vicinity, on the date of publication of notification under Section 4 of the Act. While determining the market value of the land acquired, it has to be correctly determined and paid so that there is neither unjust enrichment on the part of acquiring body nor undue deprivation on the part of owner. It is also incumbent while determining the market value, the disinclination of the vendor to part with his land and urgent necessity of purchaser to buy must be discarded. Moreover, there are no any specific formula for determination of just and correct market value of the land under acquisition. In the case of **ONGC vs. Sendhabhai Vasiram Patel**

(2005) 6 SCC 454, it has been delineated that some amount of guess work is permissible for computation of just and proper market value payable for the lands under acquisition. There would be no straight jacket formula for universal application to all cases under the Land Acquisition Act.

10. In view of aforesaid legal guidelines, it would justifiable to explore the evidence adduced on behalf of claimant in this case to determine the market value of the land under acquisition. The sale deed of land Gat No. 110 and 109 admeasuring 0.60 R. for consideration of Rs.40,000/- was made available on record for appreciation. Admittedly, the acquired land was from village Kurwel, Taluka Chopada, whereas, the land under sale was located within the vicinity of village Khachane. There is no evidence on record to point out the distance in the village Kurwel and village Khachane on record. However, the Reference Court considered the certified copy of sale deed dated 11-03-1985 being comparable sale instance for assessment of market value for the land situated in the vicinity of village Kurwel. It was the sale instance prior to notification under Section 4 of the Act, which was published on 25-06-1986 in this case. The Reference Court calculated the market value @ Rs.600/- per R., whereas, S.L.A.O. determined the market value @ Rs.384/- per R.

11. It would be reiterated that the land under acquisition is of small piece of land. Moreover, the Government of Maharashtra

has issued the Government Resolution dated 23-02-2017 and given the direction that in case of enhancement of compensation not more than four times than the ready reckoner rate, there would not be any appeal against that Award of Reference Court. In view of the Government Resolution, it was guided by the Government authority not to file appeal to the High Court against the Award passed by the Reference Court in claim petition under Section 18 of the Act, wherein the market value determined by the Reference Court is less than four times of the ready reckoner rate. Keeping in mind the object and purpose of the aforesaid Government Resolution issued by the authority of appellant, I find that in the matter in hand the compensation amount awarded by the Reference Court was not more than four times than the ready reckoner rate in the area, as well as, being compensation for smaller area of land under acquisition it can be approved being just, proper and reasonable market rate. There is no propriety to cause any interference in the findings expressed by the learned Reference Court for determination of market value in this case. Accordingly, the First Appeal being devoid of merit deserves to be dismissed.

12. In the result, in view of the aforesaid discussion, the First Appeal stands dismissed. There shall be no order as to the costs. Pending Civil Application No. 1317 of 2011 does not survive and stands disposed of accordingly.

[K. K. SONAWANE]
JUDGE