

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

FIRST APPEAL NO. 3734 OF 2016

1. Mahananda w/o Balaji Hulsure,
Age : 40 years, Occu. Agriculture,

2-A) Dhiraj s/o Dattatraya Bagdure,
Age : 12 years, Occu. Education,

2-B) Suraj s/o Dattatraya Bagdure,
Age : 14 years, Occu. Education,

2-C) Deepa d/o Dattatraya Bagdure,
Age 17 years, Occu : Education,

No.2-A to 2-C, All Minors U/g of
Their Father
Dattatraya s/o Madhavrao Bagdure,
Age 42 years, Occu : Agriculture,

3. Narayan s/o Nivrutti Biradar,
Age : 50 years, Occu. Agriculture,

4. Sanjay s/o Vithalrao Patil,
Age : 42 years, Occu. Agriculture,

5. Baburao s/o Deorao Mugale,
Age : 57 years, Occu. Agriculture,

6. Madhav s/o Gundaji Bagdure,
Age : 72 years, Occu. Agriculture,

7. Vyankat s/o Manik Gangathade,
Age : 54 years, Occu. Agriculture,

8. Sanjay s/o Kantrao Sardeshmukh,
Age : 45 years, Occu. Agriculture,

All R/o Hosur, Tq. Nilanga,
District Latur.

...APPELLANTS
(Orig. Claimants).

VERSUS

1. The State of Maharashtra,
Through District Collector,
Latur District Latur.
2. The Sub-Divisional Officer,
Nilanga, Tq. Nilanga,
District Latur.
3. The Executive Engineer,
Latur Minor Irrigation Division,
Latur District Latur

...RESPONDENTS

(Orig. Respondents)

Shri S.B. Gastgar, Advocate for Appellants
Shri S. J. Ganachari, AGP for State
Shri S.G. Bhalerao, Advocate for Respondent No.3.

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CORAM: P.R. BORA, J.

Date of reserving the judgment : 20.06.2017
Date of pronouncing the judgment: 21.08.2017.

JUDGMENT:

1. The original claimants in LAR No.1/2014 decided on 7th of October, 2015, by the Court of Civil Judge, Senior Division, Nilanga, at Latur, have preferred the present appeal seeking enhancement in the amount of compensation as awarded by the said Court.

2. The non agricultural land admeasuring 450.60 sq.mts. Out of Gat No.375 of village Hosur, owned by the appellants, who are hereinafter referred to as the claimants, was acquired for construction of additional road of Halgara to Hosur for Hanumantwadi Storage Tank at village Hosur. The notification under Section 4 of the Land Acquisition Act, hereinafter referred to as the Act, was published on 20th September, 2011, and the award under Section 11 came to be passed on 12th of June, 2013. The Special Land Acquisition Officer determined the market value of the said land at the rate of Rs.490/- per square meter and, accordingly offered the compensation to the claimants. Dissatisfied with the amount of compensation so offered, the claimants preferred an application under Section 18 of the Act which was adjudicated by the Court of Civil Judge, Senior Division, at Nilanga (hereinafter referred to as the Reference court). The Reference Court determined the market value of the acquired land at the rate of Rs.1446/- per sq.mt. And, accordingly, enhanced the amount of compensation. Dissatisfied with the compensation so determined, the claimants have preferred the present appeal seeking

enhancement in the said amount.

3. Shri Gastgar, learned Counsel appearing for the appellants claimants, submitted that the Reference Court has failed in considering that the lands adjacent to the acquired lands were sold at the rate of Rs.200/- per sq.ft. And that was the prevailing market value of the acquired land at the relevant time. Learned Counsel submitted that the three sale instances (Exh.18 to Exh.20) were brought on record by the claimants to substantiate their claim but the Reference Court has not properly appreciated the said evidence. Learned Counsel, therefore, prayed for adequate enhancement in the amount of compensation on the basis of the evidence placed on record by the claimants.

4. Shri S.G.Bhalerao, learned Counsel appearing for the acquiring body, supported the impugned judgment and award. Learned counsel submitted that the Reference Court has determined the market value of the acquired non agricultural lands on the basis of the sale instance placed on record by the claimants themselves and, as

such, the claimants are now estopped from raising any objection to the market value as has been determined by the Reference Court. Learned counsel submitted that the appeal is devoid of any substance and, therefore, prayed for dismissal of the appeal. Learned A.G.P. adopted the arguments advanced by Shri Bhalerao, learned Counsel.

5. I have carefully considered the submissions made on behalf of the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and the evidence on record. Claimant nos. 1 to 8 are the owners and possessors of the plot out of Gat No.375 situate at village Hosur to the extent of 83 sq.mt., 16 sq.mt., 41.82 sq.mt., again 41.82 sq.mt., 84 sq.mt., again 84 sq.mt., 50 sq.mt. and 50 sq.mt., respectively; in total 450.64 sq.mt. As noted hereinabove, the Special Land Acquisition Officer had determined the market value of the said plots at the rate of Rs.490/- per sq.mt. and has accordingly offered the amount of compensation to the respective claimants. Before the Reference Court the claimants had claimed the compensation at the rate of Rs.300/- per sq.ft. In order to substantiate the claim so

raised by them, one of the claimants, namely, Dattatraya Madhavrao Bagdure deposed before the Reference court. The claimants had also examined three more witnesses, namely, Kalidas Dhondiram Biradar, Pandurang Laxman Biradar, Dhanaji Rajaram Biradar in order to prove the sale instances on which reliance was placed by them for the purpose of determining the market value of the acquired lands.

6. On behalf of the respondents though no oral evidence was adduced, certified copies of two sale instances were placed on record at Exh.37 and Exh.38 to buttress their contention that the Special Land Acquisition Officer had correctly determined the market value of the acquired lands. The Reference Court has elaborately discussed the evidence adduced by the claimants in the form of sale instances in paragraph nos. 7 to 10 and 11 and 12 of the impugned judgment. As noted earlier, three sale instances were brought on record by the claimants to substantiate their claim for enhancement in the amount of compensation. The sale instances were duly proved by the claimants through the evidence of PW 2

to PW 4. The sale deeds are at Exh.18, Exh.19 and Exh.20.

7. The property which was the subject matter of Exh.18 was the Gram Panchayat House No.148 situate at village Hosur admeasuring 9.66 meters and it was sold by registered sale deed executed on 17th of October, 2003, for consideration of Rs.20,000/- i.e. at the rate of Rs.2070/- per sq.mt. The sale deed at Exh.19 pertains to Gram Panchayat House No.387 situate at village Hosur admeasuring 33.35 sq.mts. And it was sold on 4.4.2005 for value of Rs.62,000/- i.e. at the rate of Rs.1854 per sq.mt. The property which was involved in the sale deed at Exh.20 was Gram Panchayat House No.324/1 situate at village Hosur admeasuring 8.36 sq.mts. and it was sold on 11.6.2008 for the price of Rs.10,000/- i.e. at the rate of Rs.1,196/- per sq.mt.

8. The sale deeds which were placed on record by the respondents are at Exh.37 and Exh.38. The Gram Panchayat House No.206 admeasuring 57.62 sq.mts. was the subject matter of Exh.37. The said house situate at village Hosur was sold for the consideration of Rs.10,000/-

i.e. at the rate of Rs.173/- per square meter on 9.11.2009. Sale deed at Exh.38 pertains to Gram Panchayat House No.338/2 situated at village Hosur admeasuring 190 sq.ft. and the same was sold on 13th of July, 2011, for Rs.5,000/- i.e. at the rate of Rs.126/- per sq.mt.

9. Perusal of the impugned judgment reveals that the Tribunal has kept the sale instances at Exh.18 and Exh.19 out of consideration observing that both the said sale instances were pertaining to the period prior to more than six years. The Reference Court has preferred to rely upon the sale instances at Exh.20. The Reference Court has observed that the sale deed at Exh.20 executed on 11.6.2008 was nearer in proximity of time considering the date of issuance of Section 4 notification vide which the subject lands were acquired. It is further observed by the Reference Court that the sale deed at Exh.20 was pertaining to open land whereas the sale deeds at Exh.18 and Exh.19 were pertaining to the constructed houses. The impugned judgment also reveals that the Tribunal has also taken into account the fact that the sale instance at Exh.20 was executed prior to about two years of the

publication of Section 4 notification in the Government gazette. Section 4 notification though was published in the Government gazette on 29th of July, 2010, it was displayed in the village on 20.9.2011. The Reference Court has, therefore, notionally increased the price received to the land involved in Exh.20 and accordingly has determined the market value of the acquired lands at the rate of Rs.1446/- per sq.mt.

10. After having considered the reasons assigned by the Reference Court for determining the market value of the acquired lands at the rate of Rs.1446/- per sq.mtr., it does not appear to me that the Reference Court has committed any error. Perusal of the sale deeds at Exh.18 and Exh.19 clearly reveals that both the sale deeds were pertaining to the constructed houses whereas the acquired lands were open lands. The Reference Court was, therefore, fully justified in not considering the said sale instances. In fact, they were not comparable sale instances. Moreover, as has been observed by the Reference Court in paragraph no.9 of the impugned judgment, the house property involved in Exh.18 was

purchased by PW 4 Dhanaji, the said property was at a distance of 100 feet to 150 feet from his ancestral house. He had, therefore, a reason to purchase the said property by giving a higher price. Similarly, PW 3 Pandurang, who sold Gram Panchayat House No.387, which was involved in the sale instance at Exh.19, admitted in his cross examination that the purchaser purchased the said house since it was near to his existing house and that there was a shop in the said property.

11. Considering the facts as above, it has to be stated that the Reference Court was fully justified in not relying on the sale instances at Exh.18 and Exh.19. It also cannot be ignored that though the respondents had placed on record two sale instances at Exh.37 and at Exh.38, the same were also not considered by the Reference Court for the same reasons though the consideration received in the said sale transactions was considerably on lower side than the consideration received to the open land involved in the sale deed at Exh.20. Though the appellants have objected that the Tribunal has erred in not considering the sale instances at Exh.18 and Exh.19, there appears no

substance in the objection so raised in view of the sound reasons assigned by the Reference Court. Moreover, the sale instance at Exh.20 also was relied upon by the claimants themselves. Undisputedly, it was of the period in near proximity to Section 4 notification issued for acquisition of the subject lands. The Tribunal has also given notional enhancement / increase in the price received to the land which was the subject matter of Exh.20. Considering all these circumstances, unhesitatingly, it can be said that the Reference Court has not committed any error in determining the market value of the acquired lands at the rate of Rs.1446/- per sq.mt. The appellants have utterly failed in making out any case so as to enhance the amount of compensation than awarded by the learned Reference Court.

12. The First Appeal being devoid of any substance, deserves to be dismissed, and accordingly, it is dismissed, however, without any order as to the costs.

(P.R.BORA)
JUDGE

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