

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

FIRST APPEAL NO. 33 OF 2000

Kamalbai w/o Tukaram Hambarde,
age 51 years, Occ – Household,
through Special Power of Attorney
Tukaram s/o Pandurang Hambarde,
age 60 yrs, Occ – agriculture,
R/o Ashti, Tq. Ashti, Dist. Beed.

... **APPELLANT**
(Original Claimant)

VERSUS

The State of Maharashtra.
(Copy to be served on the
Government Pleader, High Court
Bench at Aurangabad.)

... **RESPONDENT**

...
Mr. Thigale Girish K. (Naik), Advocate for Appellant.
Mr. G. O. Wattamsar, AGP for Respondent / State.

...

CORAM : **V. K. JADHAV, J.**
DATE : 13th April, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and award passed by
the 4th Additional District Judge, Beed dated 14th October, 1998 in
LAR No.405 of 1994, the original Claimant has preferred this appeal.

2 Brief facts giving rise to the present appeal are as follows:

- a) The agricultural land owned and possessed by the Claimant situated at village Solewadi, Taluka Ashti, District Beed came to be acquired by the Government for Solewadi Percolation Tank. Vide Section 4 notification published on 27th September, 1990 and the Special Land Acquisition Officer has awarded the compensation at the rate of Rs.100/- per Are as per the award dated 22nd November, 1993. Being aggrieved by the inadequate compensation awarded by the Special Land Acquisition Officer, the Claimant has preferred LAR No.405 of 1994 for claiming the compensation at the enhanced rate of Rs.1,500/- per Are. It has been contended in the said reference petition that the Special Land Acquisition Officer has awarded very meager amount of compensation and the Special Land Acquisition Officer has not considered the market price of the land in the said area.

- b) Respondent / State has strongly resisted the said petition by filing the written statement. It has been contended that the Special Land Acquisition Officer has awarded just and reasonable compensation by considering the quality, locality and prevailing market value of the acquired land. It has also been contended that the Claimant has claimed the compensation at the exorbitant rate.
- c) The Claimant has adduced oral and documentary evidence to substantiate his contentions and placed reliance on the various sale instances. The Respondent / State has not adduced any evidence. The learned 4th Additional District Judge, Beed vide its impugned judgment and award dated 14th October, 1998, awarded the compensation at the enhanced rate of Rs.625/- per Are. Hence, this appeal.

3 The learned counsel for Appellant / original Claimant submits that the Claimant has mainly relied upon sale-deeds Exhibits

27, 30 and 32 respectively. The learned counsel submits that the market value of the lands of village Pandhari was Rs.40,000/- per Acre to Rs.60,000/- per Acre at the time of acquisition. The acquired land was being irrigated on the water of well by means of electric pump etc. The learned counsel submits that the Reference Court has erroneously discarded the sale instances Exhibits – 27, 30 and 32. The Appellant / Claimant has produced a map of village Pandhari Exhibit – 17 wherein the acquired land Gat No.647 is shown just adjacent to village Pandhari. However, the Reference Court has not considered the same in its proper perspective. The learned counsel submits that though the Tribunal in para 12 of the judgment has observed that the acquired land was having facility of irrigation by referring to 7/12 extract Exhibit – 16 and by observing the crop pattern, awarded the compensation at the enhanced rate of Rs.625/- per Are only. The learned counsel submits that the Reference Court ought to have awarded the compensation at the rate of Rs.1,500/- per Are.

4 The learned AGP for the Respondent / State submits that the Reference Court has rightly discarded the sale instances Exhibits

27, 30 and 32. So far as the sale instance Exhibit – 27 is concerned, the same pertains to small portion of land and the purchaser's land under said sale instance is adjacent to the land under sale instance. Furthermore, right to share in the water was also sold under the said sale-deed and as such, consideration was increased. The learned Judge of the Reference Court has therefore, rightly held that the sale instance Exhibit – 27 cannot be used as comparable sale instance for determining the value of the acquired land. The learned AGP submits that so far as sale instance Exhibit – 30 is concerned, the purchaser's land is adjacent to the land under sale instance and thus, the land under sale instance was convenient for him for cultivation purpose. Furthermore, the land under sale instance Exhibit – 30 is situated within the local limits of Ashti, which is a Tahsil place and as such, the Reference Court has rightly discarded the said sale instance for considering the market price of the acquired land. Similarly, the land under sale instance Exhibit – 32 is not of same village where the acquired land was situated. The learned AGP submits that considering the evidence on record, the Reference Court has rightly awarded the just and reasonable compensation at the enhanced rate of Rs.625/- per Are. No interference is required. There is no

substance in the appeal and the appeal is liable to be dismissed.

5 On careful perusal of the map Exhibit – 17, it appears that the acquired land Gat No.647 is situated at village Solewadi, which is just adjacent to the land situated at village Pandhari. Though the sale-deed Exhibit – 27 is for the smaller portion of land, the land under said sale instance Exhibit – 27 is situated at village Pandhari and said sale-deed was executed prior to Section 4 notification published in respect of the acquired land. It appears that 6 Ares of land under said sale-deed was sold for a consideration of Rs.12,000/- i.e. at the rate of Rs.2,000/- per Are. Even if it is considered that the land under sale instance fetch more price than the market price because the purchaser's land is situated adjacent to the land under sale instance and that the share in the water of the well also sold under the said sale instance, the Reference Court should not have discarded the said sale instance altogether from consideration. Similarly, the land under sale instance Exhibit – 30 is concerned, though it is situated at Tahsil place Ashti, admittedly, the acquired land is situated at a distance of 4 kilometers from Ashti and the distance between the acquired land and the land under sale instance Exhibit – 30 is about 3 kilometers. It appears from the contents of sale-deed Exhibit – 30 that the land has

been sold for a consideration of Rs.1,000/- per Are. So far as the land under sale-deed Exhibit – 32 is concerned, the same is also for a consideration of Rs.1,000/- per Are. The purchaser's land under sale-deed Exhibit – 30 is adjacent to the land under sale-deed and even the same is considered, even then there was no reasons for the Reference Court to discard the sale instance Exhibits 30 and 32 in its entirety.

6 The Reference Court in para 12 of the judgment has considered the facility of irrigation available to the acquired land and further considered the 7/12 extract Exhibit – 16 indicating the pattern of crop. The Reference Court has therefore, rightly considered the acquired land having irrigation facility. However, the Reference Court has merely awarded the compensation at the enhanced rate of Rs.625/- per Are. In view of the sale instances Exhibits – 27, 30 and 32, I find it just and reasonable to award the compensation at the enhanced rate of Rs.825/- per Are instead of Rs.625/- per Are. The Appellant / Claimant is thus, entitled for a compensation in respect of acquired land on the basis of market value at the rate of Rs.825/- per Are with all statutory benefits as admissible. Hence, the following order:

ORDER

I. The appeal, is hereby partly allowed with proportionate costs.

II. The judgment and award passed by the 4th Additional District Judge, Beed dated 14th October, 1998 in LAR No.405 of 1994, is hereby modified in the following manner:

“The Respondent do pay the enhanced amount of compensation at the rate of Rs.825/- per Are with all admissible statutory benefits and the interest thereon.”

III. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]