IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 426 OF 2002

Shrinivas s/o. Babarao Patil,
Age 75 years, Occ. Agri.
R/o. Bhatangali, Tq. Omerga,
Dist. Osmanabad, through
General Power of Attorney
Balasaheb s/o. Shriniwas Patil (Jagtap)
Age 22 years, Occ. Agri.
R/o. Bhatangali, Tq. Omerga,
Dist.Osmanabad.

[DIED THROUGH LR's]

1] Sumanbai w/o. Shriniwasrao Patil
Age 71 years, Occ. Household
R/o. Bhatangali, Tq. Lohara,
Dist. Osmanabad.

2] Vidhulata w/o. Vilasrao Deshmukh,
Age 53 years, Occ. Household,
R/o. Jagalpur, Tq. Chakur,
Dist. Latur.

3] Vandana wd/o. Dhanraj Jagtap (Patil)
Age 48 years, Occ. Household,
R/o. Bhatangali, Tq. Lohara,
Dist. Osmanabad.

4] Kamal w/o. Ashokrao Patil
Age 49 years, Occ. Household,
R/o. Kopra, Tq. Ahmedpuar,
Dist. Latur.

5] Vimal w/o. Anilrao Patil
Age 45 years, Occ. Household,

R/o.Ashti, Tq. Mohol,
Dist. Solapur.

6] Balasaheb s/o. Shriniwas Jagtap (Patil)
Age 42 years, Occ. Agril,
R/o. Bhatangali, Tq. Lohara,
Dist. Osmanabad.

7] Satish Shriniwasrao Jagtap (Patil)
Age 38 years, Occ. Agril.
R/o. As above.

.. APPELLANT

VERSUS

The State of Maharashtra
through the Collector, Osmanabad.

.. RESPONDENT.

With

FIRST APPEAL NO. 564 OF 2002

Manik S/o. Babarao Patil
Age 60 years, Occ. Agril.
R/o. Bhatangali, Tq. Omerga,
Dist. Osmanabad.

.. APPELLANT

VERSUS

The State of Maharashtra
through the Collector,
Osmanabad.

.. RESPONDENT.

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Mr. B.N. Patil, Advocate for appellants
Mr. B.V. Virdhe, GP for respondents.

CORAM : K.K. SONAWANE, J.

DATE : 18th December, 2017.

JUDGMENT : (Per : K.K. Sonawane, J.)

1] In these two appeals, the controversy lies within a narrow compass relating to the valuation of lands acquired for submergence area of Lower Terna Project at village Bhatangali, Taluka Omerga, Dist. Osmanabad. As the points in issue in both the appeals are identical in nature, these appeals are dealt with together for its adjudication on merit by this common judgment.

2] The lands of appellant bearing Surve No. 166, 28/1 and 28/2 admeasuring 12.36 R, 0.19R, and 1.22 R respectively, located at village Bhatangali were acquired by the respondent/State for lower Terna Project. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as, “Act 1894”) was published on 13.10.1984. After completion of procedural formalities, the SLAO declared the award under Section 11 of the Act 1894 and awarded compensation @ 130 per R, for lands of the claimants under acquisition. The appellants/claimants did not accept the compensation determined by the SLAO and the Reference Applications were made on their behalf under Section 18 of the Act 1894. The learned Reference Court considered the evidence adduced on record and fixed the compensation of land Survey No. 166 @ Rs. 14,000/- per Acre, i.e. Rs. 350 per R and compensation for land Survey NO. 28/1 and 28/2 @ Re. 1 per

Square Feet. Despite enhancement of compensation, the appellants/claimants did not satisfy with the market value quantified by the Reference Court for their acquired lands. Therefore, the present appeals came to be filed on behalf of appellants/claimants to redress their grievances.

3] The learned counsel Shri B.N. Patil for appellants in both the appeals vehemently submitted that the impugned judgment and award of the Reference Court is erroneous, imperfect and against the principles of natural justice. The Reference Court did not appreciate the evidence on record in its proper perspective. According to learned counsel Shri Patil the prices of all the agricultural lands within the precincts of village Bhatangali were more than Rs. 20,000/- per Acre during the period of notification under Section 4 of the Act 1894, which was published in the year 1894. The acquired land Gat No. 166 was of rich and black cotton soil. There was irrigation facility available in the lands. The village Bhatangali was within the command area of sugar factory located at village Killari, Taluka Ausa. The claimants were taking yield of sugarcane crops from the acuired land and supply the same to the sugar factory. The acquired lands Survey No. 28/1 and 28/2 were located nearby the residential area and these lands were having NA potentiality. The Reference Court did not consider all these facts in proper manner. According to learned counsel Shri Patil, there was pipeline, cattle shed, well for irrigation purpose in the acquired lands. But, these improvements were not taken into consideration by the Reference Court. The learned counsel Shri Patil submits that the comparable sale instances produced on record were not appreciated by the Reference Court in its proper perspective and meager compensation was awarded.

4] In refutal, the learned AGP for respondent/State contends that the market value determined by the Reference Court for the acquired lands of the claimants appears to be just, proper and reasonable. The evidence on record was correctly appreciated by the trial court. There was no infirmity or error in the findings of Reference Court. Therefore, interference in the impugned judgment and award is totally unwarranted, at the instance of the appellants.

5] Admittedly, the Reference Court preferred the comparable sale method to determine the market price for acquired lands of claimants. The comparable sale instances has to be identified from its proximity with the location of acquired land as well as proximity of the period of execution of sale deeds with the period of notification published under section 4 of the Act of 1894. The amount of compensation cannot be ascertained with mathematical calculation. While considering the comparable sale instances, the Reference court has to taken into consideration the similarity in between two pieces of land.

6] In order to prove the claim, appellant Shri Manikrao Patil stepped into the witness box and adduced his evidence (Exh.28). Another appellant – Shriniwas Patil is his elder brother. The appellant Manik deposed that their lands survey No.28 was having NA potentiality. It was located nearby the Gaothan area of village Bhatangali. The plotting were demarcated in the acquired land. Moreover, some of the plots were also sold to the villagers by the claimants. According to claimants, the part of land survey Nos. 28/1 and 28/2 were acquired by the Government authority for extension of gaothan area. He testified that the another land Survey No.166, was the black cotton soil and fertile land. They were taking yield of sugarcane, chilli, wheat etc. from the acquired lands. There was irrigation facility available in the land from the well. Pipeline was also laid in the field for watering the crops. The claimant produced sale instances of the villages Mangrul and Hasalganj (Exh.15 and 16). The claimant Manik explained that the villages Hasalganj and Mangrul were at a distance of 3 to 4 kms. from village Bhatangali. He has also produced the certified copy of award passed by the Reference Court in LAR No. 682/1989 in which market value @ Rs. 20,000/- per acre was granted by the Reference Court for the lands located nearby the vicinity of lands under acquisition. According to claimants, all the lands were having similar quality and fertility. The claimant also produced the relevant documents of 7 x 12 extract and certificate issued by the Killari Sugar Factory etc. In addition, the claimants examined witness Apparao Gavande (Exh.27). He was the Government personnel from the office of Land Acquisition at Latur. He deposed that he had an occasion to visit to the land Survey No. 28 of the claimant. After site inspection, he prepared the draft award and forwarded it to the higher authority for approval. He had considered the NA potentiality of the land at the time of determination of its market value.

7] The copy of the award declared under section 11 of the Act 1894 by the Land Acquisition Officer in this case, was placed on record (Exh.13) before the Reference Court. The contents of the award, except the disputed portion depicting the exercise to determine the valuation of the acquired land could be considered for appreciation to ascertain location, fertility etc. of the acquired lands. Admittedly, it has been pointed out in the award that the acquired lands from village Bhatangali were located on the bank of river Terna. All these lands were of rich, fertile and black cotton soil capable of producing both Kharip and Rabbi crops. There was irrigation facility available in the lands under acquisition. The basic amenities were also provided in the village.

8] The Reference Court while evaluating the market price of acquired land Survey No.166 admeasuring 12.36 R considered documents of sale deeds (Exh.15 and 16) being comparable sale instances produced on record. These sale instances were of the lands located at village Mangrul and Hasalganj. The respondent Government authority did not adduce any evidence before the Reference Court to traverse the claim of the claimants. Pursuant to the legal guidelines delineated in the case of ***Chimanlal Hargovinddas vs. Special Land Acquisition Officer Pune, reported in AIR 1988 Sc 1652***, the court has to treat the reference petition filed under Section 18 of the Act, 1894 as an original proceeding and determine the market value afresh on the basis of material produced and proved before it.

The material utilized by the Land Acquisition Officer for making the valuation vide award under Section 11 of the Act, 1894 cannot be used by the Court unless the same is produced and proved before it.

8] As referred supra, the certified copies of the two sale instances were available on record for consideration by the Reference Court. Pursuant to provisions of Section 51A of the Act 1894, these certified copies of the sale transactions registered under the Registration Act have to be accepted as evidence of transaction recorded in such documents. No doubt, these instances are pertains to the lands having proximity with the lands under acquisition as well as both the transactions were executed in the year 1987 and 1975, respectively; and much prior to the notification under Section 4 of the Act 1894 published in the year 1984. The claimant Manik deposed that the lands under sale were located at a distance of 3 to 4 Kms. away from the lands under acquisition having similar characteristics, fertility and quality. These sale instances appear most relevant and satisfy the test of "comparable sale" of the lands. The land survey No. 18-C admeasuring 1 Acre 07 R of village Mangrul was sold for a consideration of Rs. 25,000/- in the yar 1982. There were 3 HP electric motors installed on the wells and pipeline for irrigation purpose in the lands. After deducting valuation of electric motors, pipeline, electric connection, irrigation facility etc., the market price of the agricultural lands in the vicinity would be visualiazed @ Rs. 14,000/- per acre approximately.

9] Another sale instance was of land Survey No. 158/B admeasuring 2 Acre 0.1 R land located within the vicinity of village Hasalganj. The land was sold for consideration of Rs. 21,000/- in the year 1975. It is to be noted that the vendee in the present sale deed was the adjoining the land owner and he purchased the land under sale for his convenience. This factor is also required to be considered for requisite deduction while ascertaining fair and reasonable market value of the acquired land. The sale instance (Exh.16) executed in the year 1975 demonstrates that the land admeasuring 2 Acres 01 R was sold for a consideration of Rs. 21,000/- i.e. Rs. 260 per R. The price of the agricultural land was accrued to Rs. 260 per R x 40 R = 10370 say, Rs. 10,000/- per acre. As referred supra, the purchaser in these comparable sale instance was the adjoining land owner and he must have purchased the land adjoining to own land for his convenience. Therefore, the reasonable deduction @ 40% in the price money is required to be calculated to ascertain the exact value of agricultural land. After deducting 40% amount from the consideration of Rs.10.370/-, the value of the land would accrue to Rs. 6,500/- per acre i.e. [Rs. 10,370/ minus 4148 i.e. 40% of 10,370/- = 6222, say 6500/-]. Therefore, price of the agricultural land during the year 1975 within the vicinity would be Rs. 6,500/- per acre approximately. The notification under Section 4 of the Act, 1894 in the present case was published in the year 1985-86. It is essential to take into account the escalation of the market price of agricultural lands within the vicinity. After considering 10% increase per year in the price of lands within the vicinity since year 1975 uptil 1985-86 for 10 years, the market price of the land would accrue to Rs. 13,000/- per acre (i.e. Rs.6500 price money + 6500/- 10% increase = 13000 per acre). Therefore, the price of land Survey No.166 under acquisition during relevant period must be @ Rs. 13000 to Rs. 14000 per acre. The Reference Court has correctly calculated the valuation of the land Survey No. 166 @ Rs.14,000/- per acre. In view of these circumstances, further enhancement of compensation at the behest of claimants appears to be unsustainable, unreasonable and not considerable at all. There is no impediment to accept the valuation calculated by the Reference Court for the land Survey No.166 under acquisition @ Rs. 14,000/- per acre determined by the Reference Court.

9] Now, in regard to the market price of rest of the land Survey No. 28/1 and 28/2 acquired on behalf of respondent State, there was ample evidence on record to draw the inference that the land Survey No. 28/1 and 28/2 were having NA potentiality. The claimant produced the village sketch map to show the location of land Survey No. 28/1 and 28/2 issued by the Revenue Authority at (Exh.30). The public documents of sketch map manifestly demonstrate that the land Survey No. 28/1 and 28/2 were located abutting to the Gaothan area of village Bhatangali. Moreover, some portions of the lands under acquisition were previously acquired by the respondent Government of Maharashtra for extension of Gaothan area. The Reference Court has rightly appreciated the NA potentiality of the lands under acquisition and determined its market price @ Rs. 1.00 Per Square Feet. The claimants placed reliance on the documents of draft award as well as certified copy of the award of Land Acquisition Officer for land Survey No. 303 and 304 of village Killari. But, these documents would not render any assistance to the claim of the appellants. The circumstances indicate that the Reference Court calculated the price of the acquired land Survey No. 28/1 and 28/2 on the basis of some guess work and obviously same is permissible. In the aftermath, the circumstances constrained to accept the price determined by the Reference Court as a just and reasonable price for land Survey No. 28/1 and 28/2 of the claimants under acquisition. These lands were having NA potentiality. Therefore, it is necessary to consider all these relevant factors while evaluating the market price of the lands under acquisition. In such circumstances, the interference in the impugned judgment and award passed by the Reference Court appears to be totally unwarranted, unjustifiable and indefensible.

10] In the result, the market price of acquired lands of the claimants, calculated by the reference court is essential to be upheld being just and reasonable price. No further enhancement of compensation is conceivable and ponderable at the instance of claimants in these appeals. In sequel, the appeals fail and are dismissed. No orders as to costs. Accordingly, both the appeals stand disposed of in above terms.

[K.K. SONAWANE, J]

grt/-