

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

FIRST APPEAL NO. 484 OF 1994

1. Pralhad Venkatrao Hivrale,
age 32 yrs, Occ. Agri,
R/o Methi, Tq. Mukhed,
Dist. Nanded.
2. Madhav Maroti,
age 30 yrs, Occ. Agri,
R/o Pala, Tq. Mukhed,
Dist. Nanded.
3. Raghunath Maroti,
age 15 yrs, Occ. Agri,
R/o Pala, Tq. Mukhed. ..Claimants...

VERSUS

1. State of Maharashtra
Through the Collector,
Nanded.
2. The Special Land Acquisition Officer,
PT and MIW, Nanded. ..Respondents..

...

Advocate for Appellants : Mr M.D. Narwadkar h/f
M.V.Deshpande
AGP for Respondents: Mr S S Dande

...

CORAM : V.K. JADHAV, J.

Dated: March 23, 2017

...

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award passed by the Civil Judge Senior Division, Biloli dated 7.1.1994 in LAR No.23/1992 (new) 54/1992 (old), the

original claimants preferred this appeal.

2. Brief facts, giving rise to the present appeal are as under :-

a] The agricultural land owned and possessed by the claimants came to be acquired for the purpose of construction of Jamkhed Medium Project Tank. Notification under section 4 of the Land Acquisition Act was published on 27.5.1985. The SLAO has awarded compensation @ Rs.7,500/- per Hectare. Being aggrieved by the inadequate compensation awarded by the SLAO, the appellant original claimants preferred LAR No.23/1992 (new) 54/1992 (old). It has been contended in the claim petition that SLAO has not considered the objections raised by the claimants. It has been contended that the acquired land is situated at the bank of the river having potentiality of giving yield of two crops in a year. The SLAO has not considered the situation, location, potentiality and advantages of the acquired land. The Land Acquisition Officer has also not considered the sale instances from the said area. The appellants claimants used to fetch net income of

Rs.10,000/- per acre from the acquired land.

3. Respondent-State has strongly resisted the said reference petition by filing written statement. It has been contended that SLAO has awarded just and reasonable compensation for the acquired land. It has been contended that the claimants have failed to place any evidence on record despite of the service of notice u/s 9 of the Act. The S.L.A.O. has considered bonafide transactions of the land in the area and fixed the market value of the land. It has been contended that the claim of the claimant is too high and exorbitant.

4. The appellants claimants have adduced oral and documentary evidence in support of their contentions. Respondent-State has not adduced any evidence. The learned Civil Judge S.D. Biloli by its impugned judgment and award dated 7.1.1994 dismissed the reference petition with costs. Hence, this appeal.

5. The learned counsel for the appellant submits that the reference court has not considered the location, fertility and the potentiality of the acquired lands. The

reference court has not considered sale instances at exh.33 and 34 respectively on which the claimants have placed their reliance. The lands under the sale instances are situated at a distance of one mile from the acquired land. However, the reference court has discarded those sale instances and dismissed the claim petition in toto.

6. The learned counsel for the appellant submits that some of the agriculturists from the same award whose reference petitions came to be dismissed by the Reference Court approached to this Court by filing FA No.606/1994 and other connected appeals. This Court by judgment and order dated 6.8.2013 in FA No.606/1994 and other connected appeals quashed and set aside the judgment and order passed by the reference court and awarded the compensation at the enhanced rate of Rs.10,000/- per acre corresponds to Rs.25,000/- per hectare.

7. The learned AGP submits that the claimants have failed to substantiate their claim and therefore, the

reference court has rightly dismissed the reference petition. The learned AGP submits that so far as sale instance at exh.34 is concerned, the land under said sale instance exh.34 is small portion of land and compared to the larger area of the land under acquisition, the Reference Court has rightly discarded the sale instance from consideration. The learned AGP however has not disputed that this court in F.A. No.606/1994 and other connected appeals quashed and set aside the dismissal order passed by the Reference Court in respect of the other agriculturists-claimants whose lands were acquired for the same project and awarded the compensation at the enhanced rate of Rs.10,000/- per acre corresponds to Rs.25,000/- per Hectare.

8. On careful perusal of the judgment and award passed by the Reference Court, though, the Reference court has discussed at length about the sale instance exh.33, discarded said sale instance without any justifiable reasons. On careful perusal of the said sale instance exh.33, it appears that land admeasuring 81R

sold on 28.2.1984 for a consideration of Rs.16,500/- under a registered sale deed. Said sale deed was executed much prior to the section 4 notification in respect of the acquired land which came to be published in the official gazette on 27.5.1985.

9. This Court in FA No.606/1994 and other connected appeals, in paragraph no.15 of the judgment, has made following observations.

“15.The learned Reference Court in view of no documentary evidence, has held that since the sale instance is regarding land at village Hasnal and present lands are of village Tupdal, no proximity is shown and therefore the said sale instance was rejected. However, land acquisition proceedings for construction of Jamkhed Medium Project shows that lands of five villages were acquired. Those were village Hasnal, Tupdal(Budruk), Tupdal (Khurd), Chaundi and Pala. The award passed by the land acquisition officer shows that lands survey no.21, 23, 24 and 27 of village Hasnal were acquired for the said project. The present sale instance is of land survey no.26/c of village Hasnal. Thus, the proximity of the land is ex-facie proved. This sale instance shows that 81 R of land was sold on 24.2.1984 for a price of Rs.16,500/- i.e.Rs.8,250/- per acre. Since the notification under section 4 of the Land Acquisition Act was published on 27.5.1985 i.e. more than one year after the execution of the said sale instance, in my view, in the present cases also, compensation at the rate of Rs.10,000/- per acre i.e. Rs.25,000/- per hectare would be the true market value.”

10. In view of the discussion above and in terms of the view already taken by this court in respect of the land from the said award, the appellants-original claimants are entitled for the compensation at the enhanced rate of Rs.25,000/- per Hectare. Hence, following order.

O R D E R

- i] First Appeal is hereby allowed. No costs.
- ii] Judgment and Order passed by the Civil Judge Senior Division, Biloli dated 7.1.1994 in LAR No.23/1992 (new) 54/1992 (old) is hereby quashed and set aside.
- iii] LAR No.23/1992 (new) 54/1992 (old) is hereby partly allowed with costs.
- iv] Respondent State is directed to pay the compensation to the claimants @ Rs.25,000/- per hectare with solatium @ 30% and the statutory benefits and interest, as per law.
- V] Decree be drawn up accordingly.
- Vi] Appeal is accordingly disposed of.

SD/-

(V.K. JADHAV, J.)

...

aaa/-