

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 861 OF 2007

The State of Maharashtra
Through the Collector
for Special Land Acquisition Officer
at Osmanabad

...Appellant

versus

Trimbak s/o Narharrao Deshpande
Age 57 years, Occ. Service
R/o. Dhoki,
Tq. and District Osmanabad

...Respondent

.....
Mr. B.V. Virdhe, A.G.P. for the appellant
Mr. A.R. Devkate, advocate for the respondent
.....

WITH
CROSS OBJECTION (ST.) NO. 16407 OF 2007
IN
FIRST APPEAL NO. 861 OF 2007

Trimbak s/o Narharrao Deshpande
Age 68 years, Occ. Service & Agri.
R/o. Dhoki,
Tq. and District Osmanabad

...Applicant

versus

The State of Maharashtra
Through the Collector
the Special Land Acquisition Officer
at Osmanabad

...Respondent

.....
Mr. A.R. Devkate, advocate for the applicant
Mr. B.V. Virdhe, A.G.P. for the respondent
.....

ALONGWITH
FIRST APPEAL NO. 862 OF 2007

The State of Maharashtra
Through the Collector

for Special Land Acquisition Officer
at Osmanabad

...Appellant

versus

Smt. Suman w/o Trimbakrao Deshpande
Age 60 years, Occ. Nil
R/o. Dhoki,
Tq. and District Osmanabad

...Respondent

.....
Mr. B.V. Virdhe, A.G.P. for the appellant
Mr. A.R. Devkate, advocate for the respondent
.....

WITH
CROSS OBJECTION (ST.) NO. 16405 OF 2007
IN
FIRST APPEAL NO. 862 OF 2007

Smt. Suman w/o Trimbakrao Deshpande
Age 50 years, Occ. Nil
R/o. Dhoki,
Tq. and District Osmanabad

...Applicant

versus

The State of Maharashtra
Through the Collector
the Special Land Acquisition Officer
at Osmanabad

...Respondent

.....
Mr. A.R. Devkate, advocate for the applicant
Mr. B.V. Virdhe, A.G.P. for the respondent
.....

CORAM : V. K. JADHAV, J.
DATED : 22nd MARCH, 2017

ORAL JUDGMENT:-

1. Being aggrieved by the common judgment and award dated 21.9.2006, passed by the learned Civil Judge, Senior Division, Osmanabad in L.A.R. No. 335 of 1996 and 166 of 1997, the respondent State has preferred first appeal Nos. 861 of 2007 and 862 of 2007 respectively,

whereas the original claimants have filed cross objections.

2. Brief facts giving rise to the present appeals are as follows:-

a) The State Government has acquired the lands owned and possessed by the claimants for the purpose of extension of Gaothan of village Deolali. Notification under section 4 was published in the Government gazette on 14.3.1991. The Special Land Acquisition officer had passed award on 17.8.1995 and awarded the compensation at the rate ranging from Rs.25,800/- to Rs. 34,000/- per hectare. Being aggrieved and dissatisfied with the inadequate compensation awarded by the S.L.A.O. the claimants preferred L.A.R. No. 335 of 1996 and 166 of 1997 respectively. It has been contended in the said reference petitions that the acquired lands are situated at village Deolali, a village near to Osmanabad city. There are facilities of transport to Barshi, Osmanabad and Dhoki. It has been also contended that the main base of acquisition purpose are resettlement/residential purpose. The distance of Osmanabad city and Deolali is short and the acquired lands thus become portion of Osmanabad city. However, the S.L.A.O. has not considered the same and he has determined the compensation merely on the basis of revenue assessment. Accordingly, the claimants have claimed the compensation at the enhanced rate of Rs.15/- per sq. ft. for the acquired lands.

b) The appellant State has strongly resisted those reference petitions on the ground that at the time of acquisition, the price of the land was not at the rate of Rs.15/- per sq. ft. The appellant State has also denied the averments made in the reference petitions, including the distance of village Deolali and Osmanabad city, etc.

c) The claimants have adduced their oral as well as documentary evidence in support of their contentions. The appellants State has not adduced any evidence. Learned C.J.S.D. Osmanabad, by judgment and award dated 21.9.2006 awarded the compensation at the enhanced rate of Rs.9/- per sq. ft. for the acquired lands alongwith other statutory benefits. Being aggrieved by the same, the State has preferred aforesaid two first appeals whereas the claimants have also preferred cross objections.

3. Learned A.G.P. for the appellant State submits that the Reference court has considered the sale instance Exh.39, which is of village Kajala. The claimants have placed their reliance on the agreement of sale in respect of agricultural land situated at village Deolali for which the claimant Trimbak Deshpande was party, however, those transactions were not concluded owing to the publication of notification about acquisition of the said land. The learned A.G.P. submits that village Kajala is not adjoining village and

as per the location shown in the Google map, village Kajala is at a distance of near about 30 kilometers from acquired land. The learned A.G.P. submits that the reference court has relied upon the sale instance Exh.39 and accordingly awarded the compensation at exorbitant rate. The learned A.G.P. submits that the S.L.A.O. has awarded compensation on square feet rate by treating the land as non agricultural land. Even the Reference court has not considered 25% deduction towards development of aforesaid land, if at all, the reference court has considered and treated the non agricultural potentiality of the acquired lands.

4. Learned counsel for the respondents/original claimants submits that the claimant Trimbak has examined himself and also examined five witnesses in respect of contentions raised in reference petitions. So far as the sale deed at Exh.39 is concerned, the claimants have examined the witness, purchaser - Tanaji Madhukar Kshirsagar. He has deposed that distance between villages Kajala and Deolali is about 5 kilometers. As per the contents of sale deed Exh.39 and as deposed by this witness, he has purchased open plot measuring 33x33 sq. ft. out of survey No. 1/12 situated at village Kajala from one Abhaykumar Deshpande for consideration of Rs.10,000/-, under registered sale deed dated 26.3.1985. He has further made it clear that the distance between

the acquired land owned and possessed by Trimbak Deshpande and purchased land is about 4 kilometers. He has also deposed that he has purchased the above said plot as per the prevailing market price considering the situation, facilities and valuation of the surrounding area, convenience and potentialities. As per the consideration shown in the sale instance Exh.39, it appears that he has purchased the said plot at Rs.9.20 per sq. ft.

5. Learned counsel for the respondents/claimants submits that State has only suggested the distance between two villages as 30 kilometers which he has denied. However, the appellant State has not adduced any evidence to substantiate the said contention. Learned counsel submits that though reference court has not considered the agreements of sale Exh.41 and 42, respectively, executed in the year 1989, as the transactions in the said agreement of sale were not concluded, still then, those agreements of sale speak about market price of said land, having N.A. Potentiality in the said area. Learned counsel submits that the reference court, after considering the sale instance Exh.39, has not added 10% in the consideration price of the said sale instance, as the date of notification is of the year 1991 whereas the sale deed Exh.39 came to be executed in the year 1985. Learned Judge of the reference court without any discussion and ignoring the aforesaid aspect

awarded enhanced compensation at the rate of Rs.9/- per sq. ft. The Reference court ought to have awarded the compensation as claimed by the claimants. In view of the consideration shown in the sale instance Exh.39 and after considering the addition of 10% per year, the rate of Rs.14.16 per sq. ft. should have been considered by the Reference court.

6. Learned counsel for the respondents/claimants submits that this Court had an occasion to deal with the first appeal No. 634 of 2003 in respect of land from the same village acquired in the year 1985 in which notification under Section 4 was published by the State Government on 10.7.1985. This court has considered the evidence on record and sale instances from the said area and confirmed the order passed by the Reference court awarding compensation at the enhanced rate of Rs.6/- per sq. ft. Learned counsel submits that in the year 1985, this court has considered the market value of the land having N.A. potentiality of village Deolali and awarded compensation at the rate of Rs.6/- per sq. ft. and in the present acquisition the date of notification is almost after a period of six years.

7. Learned counsel for the respondent original claimants submits that from the same award wherein the Reference court has awarded

compensation at the rate of Rs.7/- per sq. ft., the respondent State has preferred first appeal No. 1213 of 2015 and other connected appeals and this court in those appeals, by judgment and order dated 29.7.2015, though come to the conclusion that the claimants are entitled for compensation at the enhanced rate of Rs.11/- per sq. ft., confirmed the order passed by the Reference court for the reason that original claimants in those petitions restricted their claim to the extent of compensation at the rate of Rs.7/- per sq. ft..

8. On careful perusal of pleadings, evidence and judgment and award passed by the Reference court, it appears that the lands owned and possessed by the claimants were acquired for the purpose of extension of Gaothan. Reference court has rightly considered the N.A. potentiality of the acquired lands and awarded compensation on the basis of square feet. Even this court has considered the same and accordingly confirmed the order passed by the Reference court considering that the acquired land is N.A. land or having potentiality of N.A. land.

9. On careful perusal of the contents of sale instance Exh.39, it appears that witness Tanaji Kshirsagar had purchased open plot measuring 33x33 sq. ft. situated at village Kajala from one Abhaykumar Deshpande for consideration of Rs.10,000/- under

registered sale deed 10.7.1985. Witness Tanaji has also mentioned the distance between acquired land and the land under sale instance. Though he was subjected to cross examination at length, there is nothing in his cross examination to disbelieve his version. Though learned A.G.P. orally submitted about the distance between acquired land and village Kajala on the basis of some modern technology, however, failed to substantiate the same by adducing any evidence before this Court or by filing any application seeking appropriate reliefs in this regard. Even though the suggestion is given to witness Tanaji Kshirsagar about distance between the acquired land and the land under sale instance, the respondent State has not bothered to adduce any evidence. Even the respondent State has not produced the adjoining village maps on record. As per the consideration shown in the sale instance Exh.39, it appears that witness Tanaji had purchased the said plot at the rate of Rs.9.20/- per sq. ft. So far as the notification under Section 4 in respect of acquired land is concerned, the same was published in the year 1991. Learned counsel for the respondents/claimants have not made any submissions in respect of evidence of the valuer, which is not considered by the Reference Court. The learned Judge of the Reference Court has not considered the addition of amount at the rate of 10% per annum from the date of sale deed till issuance of notification under Section 4 in respect of acquired land. However,

the distance, as discussed above, between the acquired land and the land under sale instance matters in this case.

10. On careful perusal of award Exh.74, the S.L.A.O. has also mentioned that the land under acquisition at village Deolali is 8 kilometers away from Osmanabad town. The S.L.A.O., while determining the compensation for the acquired land, considered the sale instances prior to issuance of notification of the acquired land from adjoining villages and those are mentioned in the award as Ruibhar and Shekapur villages. The claimants have also placed their reliance on the sale instance Exh.40 of the year 1985, wherein the land under sale instance situated at village Ruibhar was sold at the rate of Rs.5.12/- per sq. ft. and after considering 10% addition per year from the date of sale instance and date of notification of the acquired land, the price of the said land comes to Rs.8.20/- per sq. ft. Witness Tanaji Kshirsagar has deposed about distance between village Kajala and that of acquire lands. The Reference court has considered the potentiality and N.A. use of the acquired land and accordingly awarded the compensation at square feet rate. In such case, the distance hardly matters. Thus consideration of fertility, similarity of the agriculture land in the adjoining villages and distance hardly matters. In the instant case, S.L.A.O. has observed in the award about the distance between village Deolali and Osmanabad

city. The learned counsel for the respondents-claimants has also submitted that village Deolali is comparatively larger than village Kajala. In view of this also, the land at village Deolali having N.A. potentiality would fetch more price compared to similar land situated at village Kajala. Thus, considering the sale instance Exh.40 and 39, average of both the sale instances considered and after addition 10% per year from the date of those sale instances, till issuance of notification under Section 4 of the acquired land, the market rate in the prevailing area comes to Rs.11/- per sq. ft..

11. Even this Court in first appeal No. 1213 of 2015 and other connected appeals, in para 6 of the order though considered enhancement at the rate of Rs.11/- per sq. ft. however, confirmed the order passed by the Reference court thereby awarding the compensation at the rate of Rs.7/- per sq. ft. on the ground that the claimants in those petitions restricted their claim of compensation at the rate of Rs.7/- per sq. ft..

12. In view of above discussion and in the light of the observations made by this court, in the aforesaid appeal, the claimants are entitled for compensation at the rate of Rs.11/- per sq. ft. with all other statutory benefits those are available to them. Thus, the appeals preferred by the State are liable to be dismissed whereas the cross

objections are required to be partly allowed to the extent as discussed above. Hence, I proceed to pass the following order:-

O R D E R

- I. First appeal Nos. 861 of 2007 and 862 of 2007 are hereby dismissed. No costs.
- II. The cross objection (st.) No. 16407 of 2007 and cross objection (st.) No. 16405 of 2007 are hereby partly allowed.
- III. The claimants are entitled for compensation at the rate of Rs.11/- per sq. ft. for their acquired lands with all statutory benefits and the judgment and award dated 21.9.2006, passed by the learned Civil Judge, Senior Division, Osmanabad in L.A.R. Nos. 335 of 1996 and 166 of 1997, stand modified accordingly.
- IV. The award be drawn up accordingly.
- V. Both the appeals as well as the cross objections are disposed of.

VI. Needless to say that any bank guarantee is furnished by the respondents-claimants, while withdrawing the amount of compensation, as directed by this court, the same shall stand discharged.

(V. K. JADHAV, J.)

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