

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

**REVIEW APPLICATION NO. 47 OF 2014
IN
FIRST APPEAL NO. 2092 OF 2012**

Pralhad Chintamanrao Rudrawar
Died through his L.Rs.
Smt. Shantabai Pralhadrao Rudrawar
and others .. Applicants

Versus

The State of Maharashtra and others .. Respondents

Shri P. D. Bachate, Advocate h/f Shri Satej S. Jadhav, Advocate
for Applicants.

Shri P. S. Patil, Addl.G.P. for Respondent Nos. 1 and 2.

Shri S. V. Mundhe, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 10TH NOVEMBER, 2017.**

FINAL ORDER :

. The applicants seek review of the judgment passed by this Court dated 24.01.2013 in First Appeal No. 2092 of 2012 partly allowing the appeal.

2. The land of the applicant is acquired. The Reference Court enhanced the compensation to Rs. 20,000/- per acre. In appeal this Court had enhanced the compensation to Rs. 40,000/- per acre. The land of the applicant to the extent of 40R was

acquired.

3. Mr. Bachate, the learned counsel for the applicant submits that, while deciding the appeal, this Court had not considered the location of the property. The property is situated on State Highway. Seventy per cent of the plot is abutting to State Highway. Ginning factory is near the acquired land of the applicant. The Reference Court in case of land acquired from Sy. No. 439 and 244 has awarded compensation at the rate of Rs. 4/- per square feet. The land of the applicant is in a more advantageous position and as such will be entitled for higher compensation amount. Even the notification U/Sec. 4 of the Land Acquisition Act in case of acquisition of land from Sy. No. 439 and 244 is earlier to Sec. 4 notification of the land acquired of the applicant. The sale price of the auction of the plots is also placed on record. According to the learned counsel compensation at the rate of Rs. 5/- per square feet would be reasonable.

4. Mr. Mundhe, the learned advocate for the respondent No. 3/acquiring body submits that, scope of review would be in a narrow compass. Re-appreciation of the entire evidence would not be permissible. An error apparent on face of record can only be considered. This Court while deciding first appeal had considered the sale deeds, auction receipts and, thereafter, has passed the order. According to the learned counsel, the appellant/applicant admitted in his evidence that, land Sy. No.

439 is situated in a more advantageous position and had road from three sides. Naturally, such a land will have more market price. According to the learned counsel, this Court having considered entire evidence on record had determined the compensation at the rate of Rs. 40,000/- per acre. The learned counsel further submits that, even the applicant admitted that, he is taking agricultural crops from the said land and is using the said land for agricultural purposes. No N. A. permission has been obtained in respect of acquired land. All these aspects were considered by this Court while deciding the appeal.

5. Mr. Mundhe, the learned counsel for the acquiring body relies on following judgments.

- i. N. Anantha Reddy Vs. Anshu Kathuria & others reported in 2014 All SCR 337.
- ii. Smt. Meerabhanja Vs. Smt. Nirmalakumari Chadhury reported in 2014 All SCR (O.C.C.) 154.
- iii. Spanco Ltd. Vs. A to Z Maintenance and Engineering Services Ltd. & another reported in 2010 All MR 572.
- iv. Kamlesh Verma Vs. Mayavati and others reported in 2013 All M.R. 572
- v. Hariyana State Industrial Development Corporation Ltd. Vs. Mawasi and others reported in 2012 All SCR 1850.

6. There cannot be any debate with the proposition that, this

Court while exercising jurisdiction under review will be slow in reviewing the order, unless an error apparent on face of the record is shown or it is shown that the material evidence is ignored.

7. While deciding the appeal, I had considered that the land appears to be agricultural land and there was no non agricultural permission and the land adjacent to the appellant's land had been converted into plots and the plots are auctioned by the municipal council. However, while passing the judgment in appeal, this Court did not consider the judgment of the Reference Court in reference bearing L. A. R. No. 200 of 1985 and another judgment in reference bearing L. A. R. No. 399 of 1982. In L. A. R. No. 399 of 1982, the acquired land was from land Sy. No. 244 adm. 11 Acres and 04 Guntha at Gangakhed. The present land is also situated in Gangakhed and within the municipal limits of Gangakhed. In L.A.R. No. 200 of 1985, the land under acquisition was from Sy. No. 439 also situated at Gangakhed. The acquired land was plot admeasuirng 60 x 60 of small area. The acquisition appears to be in the same period, though exact date of notification U/Sec. 4 of the L. A. Act does not appear in the said judgment of the Reference Court. However, the reference is registered in the year 1982 in respect of land Sy. No. 244, meaning thereby that the notification U/Sec. 4 of the Land Acquisition Act has to be prior to the year 1980.

8. In the present case, notification U/Sec. 4 of the L. A. Act is of the year 1980. The Court has awarded compensation of Rs. 3.50 paise per square feet in respect of acquired land from Sy. No. 244 in Reference No. 399 of 1982. While passing the judgment in appeal, this Court did not consider the award passed in the said reference, though the acquisition appears to be of the same period of the land situated in the municipal limits of Gangakhed and the present land also being situated within the municipal limits of Gangakhed. In the present matter, the Reference Court has arrived at a conclusion that the acquired land has N. A. potentiality and the applicant is also running Ginning factory. Considering acquisition in L. A. R. No. 399 of 1982 to be of large chunk of land and the compensation is awarded at Rs. 3.50 paise per square feet and as the present land is also situated in same vicinity and the acquisition is also of almost the same period, I feel it appropriate to award the compensation at Rs. 3.50 paise per square feet. However, the said compensation would not be for entire 40R land. The compensation can only be awarded for the plotable area of the land which would come to about 30000 square feet.

9. In the light of the above, I recall the order dated 24.01.2013 in F. A. No. 2092 of 2012 and pass the following order.

10. The appellant in the said appeal (present review applicant) shall be entitled for compensation at the rate of Rs. 3.50 paise

per square feet for an area of 30000 square feet of the land in stead of the compensation of Rs. 20,000/- as awarded by the Reference Court. The rest of the award passed by the Reference Court is maintained. The review application accordingly is disposed of. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Nov. 17