IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3470 OF 2016

1] Shashikant S/o. Khanderao Deshpande,
Age 65 years, Occ. Agriculture,
R/o. Hansal (P.M.) Tq. Mukhed,
Dist. Nanded.

2] Khanderao s/o. Jaganathrao Deshpande,
Died through LRs

A] Sushilabai w/o. Khanderao Deshpande,
Age 75 years, Occ. Household.

B] Avinash S/o. Khanderao Deshpande,
Age 60 years, Occ. Agriculture,
at present R/o. Near Vithal Reddy Mill,
Deglur, Tq. Deglur,
Dist. Nanded.

C] Shashikant S/o. Khanderao Deshpande,
Age 59 years, Occ. Agriculture,
R/o. Hansal, Tq. Mukhed,
Dist. Nanded.

D] Sulbha w/o. Anilrao Patil
Age 57 years, Occ. Household,
R/o. Surdi, Tq. Barshi,
Dist. Solapur.

E] Ruprekha w/o. Satishrao Gunjotikar,
Age 53 years, Occ. Household,
R/o. Ashok Nagar, Tq. & Dist. Nanded.

F] Vandana W/o. Narayanrao Ghate,
Age 51 years, Occ. Household,
R/o. 15, Siddeshwarpit, Tq. and Dist. Solapur.

.. APPELLANTS
{original petitioners}

VERSUS.

1] The State of Maharashtra through
District Collector, Nanded.

2] The Special Land Acquisition Officer,
M.I.W. Nanded Division, Dist. Nanded.

3] The Executive Engineer, Vishnupuri
Project Division No.1, Jagamwadi,
Tq. and Dist. Nanded.

.. RESPONDENTS.

Mr. Sudhir V. Kulkarni, Adv. for appellant.
Mr. S.R. Yadav, AGP for respondent Nos. 1 and 2.
Mr. S.C. Arora, Advocate for respondent No. 3

CORAM : K.K. SONAWANE, J.

DATE : 21st NOVEMBER, 2017.

JUDGMENT : -

1] Heard. Admit. Taken up for final hearing on merit with the consent of the respective learned counsel for both sides. This appeal is filed by the appellants-original claimants agitating the correctness of the impugned judgment and award passed in LAR No. 334 of 2004 dated 21.4.2014 by the Civil Judge Senior Division, Link court at Mukhed, Dist. Nanded, under Section 18 of the Land Acquisition Act. It has been alleged that the Reference court has granted meager amount of compensation for the lands of the appellant under acquisition. The appellants/claimants, therefore, claimed enhancement of compensation by filing the present appeal.

2] The respondent - Govt. of Maharashtra has acquired the agricultural lands of the appellant/original claimant for the purpose of

"Submergence are of Lendi Project". The notification under Section 4 of the Land Acquisition Act was published on 4th February, 1998. After compliance of procedural formalities, the respondent Special Land Acquisition Officer determined the market value of the acquired lands of the claimants and declared the award. The LAO calculated the market value of the land under acquisition of the claimants as follows :-

Sr.No.	Gut No.	Area	Rate
1	Gut No. 47	6H 56R	Rs. 59,550 per hec
2	Gut No.15/2	3 H, 40 R (pot kharab 39 R)	Rs. 59,055 Per hec
3	Gut No. 48	3 H, 83 R	Rs. 64,035 per hec
4	Gut No. 8/1	42 R	Rs. 59,625/- per hec
5	Gut No. 2/1	38 R (pot kharab 02 R)	Rs. 68,490/- per hec
6	Gut No. 16/1	1 H, 12 R (pot kharab 06 R)	Rs. 61,365/- per hec
7	Gut No.51	4 H, 27 R	Rs. 59,880/- per hec

3] The aforesaid lands of the appellants/claimants under acquisition were considered as "Dry Lands". The appellants/claimants did not accept the award declared by the Special Land Acquisition Officer and put in controversy the market value calculated by the Land Acquisition Officer for their acquired lands. Thereafter, the appellant/claimant preferred the Reference Petitions by invoking remedy under Section 18 of the Land Acquisition Act for enhancement of compensation.

4] The learned Reference Court after appreciating the factual aspects of the matter and evidence adduced on record, was pleased to partly allow the Reference Petitions filed under Section 18 of the Land Acquisition Act. But, the appellants/claimants did not satisfy with the price of the acquired lands arrived at by the Reference Court. Therefore, the appellants/original claimants preferred the First Appeal No. 56 of 2012 with civil application No. 9735 of 2012 seeking permission to lead additional evidence into the matter. It was contended on behalf of the appellants/claimants that there were 4 sale instances of the lands located within the vicinity of lands under acquisition. But, the claimants/appellants were not aware about the execution of these sale deeds even after due diligence. But, now they procured the extract of sale deeds and sought permission to lead additional evidence. According to the appellants/claimants, the sale deeds were executed prior to the notification issued under Section 4 of the Land Acquisition Act in this case. Therefore, these documents are the comparable sale instances for determination of just and proper market value of the acquired land. This Court (**Coram : Mrs. Mrudula Bhatkar,J**), allowed the civil application and remanded back the matter to the Reference Court for additional evidence on the part of present appellants/claimants and to calculate the market value of the acquired lands afresh.

5] Accordingly, the Reference Court once again dealt with the proceedings filed under Section 18 of the Land Acquisition Act on behalf of the appellant after relegating the matter by this Court. The reference court proceeded to record the evidence of claimants afresh. The witness Shrikant Deshpande stepped into the witness box on behalf of appellants and filed his affidavit in lieu of examination in chief on record. He has also produced the extract of sale instances comparable in nature for appreciation. The Reference Court considered the entire factual aspect of the matter and, partly allowed the reference petitions. The reference Court determined the market value @ 80,000/- per hectare for the lands of the appellants/claimants under acquisition.

6] Even after re-appreciation of evidence on record afresh by the Reference Court, the appellants-original claimants did not satisfy with the quantum of market value re-assessed by the reference court and once again approached to this court by filing the present appeal seeking enhancement of compensation. The appellant/claimants prayed to re-determine the just and correct market value prevailing over in the vicinity of the lands under acquisition during the relevant period of publication of notification under section 4 of the Land Acquisition Act.

7] Shri S.V. Kulkarni, learned counsel for the appellant submits that the Reference Court did not appreciate oral and circumstantial evidence on record in its proper perspective. The Reference court ought to have considered the extract of the comparable sale instances produced on record on behalf of appellants in proper manner. The findings of the Reference Court for calculation of the market value @ 80000/- per hectare are totally misconceived, imperfect and based on surmises and conjectures. The sale deeds on record reflect the market value of the lands in the vicinity would be more than Rs. 3,70,000/- per hectare. But, the Reference Court granted meager amount and committed error by passing the impugned award. It caused injustice and prejudice to the claimants/appellants. The Reference Court ought to have considered the price of the lands under acquisition @ Rs. 2 Lakh per hectare, but the Reference Court committed error and awarded meager price. Therefore, he prayed for enhancement of compensation amount.

8] The question raised in this appeal, is as to whether the market value @ 80000 per hectare calculated by the Reference Court would be the just, true and proper market value of the lands under acquisition of the claimants in this case ?.

9] Having heard the rival contentions and the factual aspect of the matter, I find no force in the arguments canvassed on behalf of appellants in this matter. Admittedly, the learned Reference court considered the lands under acquisition of the claimants were of "dry land" category. The appellants/original claimants produced the certified copies of 4 number of comparable sale instances to facilitate the Reference Court to determine just and true value of the lands under acquisition, prevailing over within the vicinity during the publication of notification under Section 4 of the Land Acquisition Act. The certified copies of the sale deeds are on record vide Exhibits 68 to 71. Except these 4 sale instances, there are no any other material available on record for the Reference Court to determine the market value of the acquired lands. The respondent LAO did not adduce any sort of evidence on record. In such circumstances, the reference Court, with no alternative, proceeded to consider these 4 sale instances produced on record for calculation of the market value of the acquired land, the details of these 4 sale instances are as follows :-

[a] The sale instance at Exh. 68 came to be executed on 16.1.1997 for 0.10 Are land located in village Bhendegaon for consideration of Rs. 35000/- per R.

[b] The sale instance at Exh. 69 came to be executed on 7.5.1997 for 0.10 Are land located in village Bhendegaon for consideration of Rs. 3700/- per R.

[c] The sale instance at Exh. 70 came to be executed on 12.5.1997 for 0.37 Are land located in village Itgayal for consideration of Rs. 1351/- per R.

[d] The sale instance at Exh. 71 came to be executed on 16.1.1997 for 0.15 Are land located in village Hansal or consideration of Rs. 1667/- per R.

10] It is lucid that the market value of the lands connotes the price of the land which a willing seller is reasonably expected to fetch in the open market from a willing purchaser. Section 23 of the Land Acquisition Act enumerates the circumstances to be appreciated while determining the compensation. The basic criteria to be taken into consideration is that the market value of the land under acquisition should be calculated on the basis of the market value prevailing over within the vicinity, on the date of publication of notification under Section 4 of the Land Acquisition Act. While determining the market value of the land acquired it has to be correctly determined and paid so that there is neither unjust enrichment on the part of acquiring body nor undue deprivation on the part of the owner. It is also incumbent while determining the market value the disinclination of the vendor to part with his land and urgent necessity of purchaser to buy must be discarded. Moreover, there are no any specific formula for determination of just and correct market value of the land under acquisition. In the case of ***ONGC vs.Sendhabhai Vasiram Patel (2005)6 SCC 454***, it has been delineated that some amount of guess work is permissible for computation of just and proper market value payable for the lands under acquisition. There would be no straight jacket formula for universal application to all cases under the Land Acquisition Act.

11] Admittedly, in the matter in hand, the date of publication of notification under Section 4 of the Land Acquisition Act was 4.2.1998. All the lands under acquisition were of "dry land" category. The appellants/claimants produced the above referred 4 sale deeds being comparable sale instances for determination of market value of the lands under acquisition. But, there was no any evidence adduced on record to show that the lands under acquisition were of similar character having potentiality and advantages, which possessed by the lands under sale. In absence of evidence of such nature, the Reference Court considered these sale instances, being comparable sale instances and determined the market value of the lands under acquisition. It is to be noted that the respondents/State did not prefer any appeal agitating the findings of the reference Court. Therefore, inference can be drawn that respondent/State accepted the finding expressed by the reference Court.

12] The Reference Court's conclusion appears rest on the sale instances produced at Exh.70 executed in the month of May 1997 for the land located in village Itgayal. It was a sale deed executed prior to notification under section 4 of the Land Acquisition Act in this case. The total area admeasuring 0.37R of the land was under sale for consideration of Rs. 50,000/- in lump-sum. In the evidence, it has brought on record that the village Bhendegaon and village Itgyal were at a distance of 5 Kms. There were no efforts on the part of claimants to bring on record the exact location of the lands under acquisition as well as the lands under sale. However, the Reference court has considered the sale instance at Exh.70 being a comparable sale deed for the reason that it was a sale of large area of 0.37 R for lump-sum consideration of Rs. 50,000/-. The Reference Court proceeded to discard the sale deeds produced at Exhibits 68,69, and 71 being sale instances executed for the smaller area. Obviously, in all these 4 sale instances the sale deed Exh.70 appears to be a sale instance of land admeasuring 0.37 R. Rest of the sale instances appears to be of smaller area. The Honourable Apex Court in the case of ***Ravindra Narayan and another vs. Union of India, reported in AIR 2003 SC 1987,*** categorically laid down in paras. 6 and 7 as follows :-

> "6. Where large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to three decisions of this Court in The Collector of Lakhimpur Vs. Bhuban Chandra Dutta (AIR 1971 SC 2015), Prithvi Raj Taneja (dead) by LRs vs. The State of Madhya Pradesh and another (AIR 1977 SC 1560) and Smt. Kausalya Devi Bogra and others vs. Land Land Acquisition Officer, Aurangabad and another. (AIR 1984 SC 892).
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> 7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices."

11] In the instant case, the sale instances (Exh.70) for 0.37 R land was available on record for basis of the calculations of correct and true market value of the acquired land. The reference court did not appreciate the other sale-instances for determination of market value of land under acquisition being sale-deed of small area. Therefore, reference court proceeded to consider the sale deed (Exh.70) as comparable sale. Unfortunately, no such evidence is available on record to appreciate the disinclination of the vendor or necessity of the purchaser for the alleged sale transactions produced on record. Therefore, the sale transaction (Exh.70) considered by the Reference Court appears to be the just, proper and reasonable for basis to determine market value.

12] It has also been considered by the Reference court that there was one mango tree located in the land under sale at (Exh.70). The Reference Court correctly determined and deducted the value of the mango tree to the tune of Rs. 15,000/- from the consideration price of Rs. 50,000/-. and calculated the market value of the total land admeasuring 0.35 R @ 94,400/- per hectare. It has also been correctly held that the land under sale (Exh.70) was located at a distance of 5 Kilometers from the village Hansal of appellant/claimant. Therefore, by reasonable deduction of Rs. 14,500/- per hectare the valuation calculated by the Reference Court to the tune of Rs. 80,000/- per hectare appears to be the just and proper price of the lands under acquisition. There is no infirmity or error in the findings expressed by the learned Reference Court.

13] Rest of the sale deeds being sale deeds of smaller area were rightly discarded by the Reference Court. Hence, there is no propriety to cause any interference in the conclusions drawn by the learned Reference Court for determination of market value in this case. Accordingly, the first appeal being devoid of merit deserves to be dismissed. Hence, the appeal stands dismissed. There shall be no orders as to costs.

[K.K. SONAWANE]
JUDGE.

grt/-