NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 28 of 2017

1. Chhatrapal Deshmukh, Aged About 24 Years
2. Mukesh Kumar Deshmukh, Aged About 21 Years
3. Smt. Dipti Deshmukh, W/o Rajkumar Deshmukh, Aged About 33 Years
4. Smt. Sandhya Deshmukh, W/o Gopal Belchandan, Aged About 31 Years
5. Smt. Sindhu Deshmukh, W/o Ajay Kumar Deshmukh, Aged About 29 Years
6. Smt. Asha Deshmukh, Aged About 50 Years

(Applicant Nos. 1 & 2 – sons, 3 to 5- Daughter and No.6 Widow of Late Devraj Deshmukh),

All R/o Village/ Post Suregaon, Tahsil Doundi Lohara, District Balod (Chhattisgarh).

----Appellants

Versus

- State Of Chhattisgarh, through S.D.O./ Bhu Arjan Adhikari, Doundi-Lohara, Tah. Doundi-Lohara, Distt. Durg, Chhattisgarh, at Present Distt. Balod, Chhattisgarh.

---- Respondent

For Appellant	Shri B.P. Gupta, Advocate.
For State	Shri R.K. Mishra, Dy. A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

Per Hon'ble Shri Manindra Mohan Shrivasta J.

24/09/2018

1. This appeal has been filed by the claimant seeking enhancement of the compensation amount awarded under Judgment decree dated 05.12.2016 passed in land acquisition case No. 19/2013, on a reference under Section 18 made by the Collector to the District Judge, Balod, in the matter of claim of compensation by the appellant on account of acquisition of his land for irrigation purposes.

2. Undisputedly, the appellant land admeasuring 0.40 acres in Khasra No.606 and land admeasuring 0.62 acres in Khasra No. 296/1 of village Suregaon Patwari Halka No.14 Tehsil Doundi-Lohara. For the public purpose of construction of an irrigation facility, lands in village Suregaon were acquired under Land Acquisition Act under an award dated 09.12.2004 was passed. It included lands of the appellant as described above. The appellant was awarded a total compensation of Rs. 1,26,121/- in respect of both the parts of lands acquired under the irrigation project.

3. The records speak that earlier the parties had entered into a settlement in the Lok Adalat. Later on, this settlement was challenged by filing the petition under article 227 before this Court. Vide order dated 09.05.2016 passed in WP227 No.812 of 2015, the petition allowed an order dated 06.12.2014 passed by the Lok Adalat was set aside and the

pending reference case was restored to its original number.

4. After all preliminary proceedings, finally a reference under Section 18 of the Land Acquisition Act, 1894 was made by the Collector. In those proceedings, the State and the appellant were allowed to lead oral documentary evidence. Relying upon the evidence led by the State, the learned Court below came to the conclusion that award of Rs. 1,26,121/- to the appellant is just and proper and does not warrant any interference.

5. Aggrieved by the said judgment, learned counsel for the appellant argued that in the matter of assessment of compensation, the Land Acquisition Officer has not taken into consideration the guidelines framed by the State, the guidelines Ex.P-1-Ex.P-2, the rate obtained upon sale of adjacent land, nature of the land and that both the lands were irrigated, fitted with tube-well and over the land in Khasra No.606 a farmhouse was also constructed. It is also argued that the enhanced value due to proximity of the land with the main market and inhabited area has also not been taken into consideration which, according to the appellant, enhances the value even more than the rate of sale of other land in the same area.

6. On the other hand, State counsel would submit that the basis for assessment of compensation for land acquisition

has been the actual records Ex.P-3 and Ex.P-4 which show the rate of land subjected to sale purchase in the same vicinity during the relevant period 2003 & 2004. He would further submits that even if the lands of the appellant are treated to be irrigated, appropriate rate as per guidelines Ex.P-1 and Ex.P-2 has been taken into consideration and therefore, no interference is called for.

7. We have given our anxious consideration to the submission and perused records.

8. The lands of the appellant which were acquired are both situated in village Suregaon, Patwari Halka No.14 of Tehsil Doundi Lohara, District Balod. 0.62 Acres of land situated in Khasra No. 296/1 and 0.40 acres of land situated in Khasra No. 606 is also not in dispute.

9. As to what should be the compensation, the State has placed before the Court below the guidelines for sale and purchase of agricultural lands for the year 2002-2003 and 2003-2004. As per those guidelines, different rates of the land depending upon its nature has been prescribed on per hectare basis. In the guidelines of 2002-2003, in respect of village Suregaon, Rs. 2,02,500/- has been prescribed for irrigated land. If the land comprises a farmhouse, the rate per hectare has been fixed as 8,00,000/-. For the year 2003-2004 irrigated land has been valued at Rs. 2,24,000/-

per hectare. If the land comprises a farmhouse then the valuation has been assessed as Rs.8,00,000/- on per hectare basis.

10. Ex.P-3 is the sale purchase details of lands situated in village Suregaon, in respect of the period from 12.03.2003 to 12.03.2004. All the lands which have been shown to have been sold are unirrigated land of different category like “Dhana”, “Bharri”. In that document itself for village Suregaon, the irrigated lands rate per hectare has been assessed as 2,24,000/-.

11. The appellant's land Khasra No.296/1 admeasuring 0.62 acre has been shown in map Ex.D-1. In the said map, it has been recored that it is adjacent to village residential area and the market place. The other map Ex.D-2 is in respect of land comprised in Khasra No. 606 which is stated to be fitted with tube-well and a farmhouse and surrounded by cement poles and barbed wires. In the Khasra Panchsala Ex.PD-3, the two lands have been shown to be agricultural land. In the said report, land comprised Khasra No.606 is shown to be having a tube-well and a farmhouse.

12. The aforesaid documents referred to hereinabove are all public documents and not private documents. From the said document what is clearly proved is that the two lands of the appellant situated at two different locations in village

Suregaon are in the prime area abutting main road and one of them is adjacent to the market area. Moreover, the revenue record itself shows that both the lands are irrigated as they are fitted with tube-wells and land comprised in Khasra No.606 has a farmhouse also standing over it.

13. The crux of dispute is with regard to the assessment of the value of the land. While according to the Land Acquisition Officer, who assessed the value and passed the award, the basis is the sale purchase details of other lands of that village during the relevant period, but then those details are in respect of unirrigated land whereas the land of the appellant has been shown to be irrigated land as it is fitted with tube-well. The appellant has relied upon two sale-deeds Ex.D-4 and Ex.D-5. Ex.D-4 is in respect of sale of an adjacent land admeasuring 12½ decimal for a consideration of Rs. 87,500/- whereas another land has a sale-deed Ex.D-5 owned by Narottam DW-3 for Rs. 54,400/- towards sale of 7 decimal of land.

14. PW-1 the Land Acquisition Officer examined by the State does not appear to be conversant either with the records or with the proceedings. He does not appear to be conversant with the details of the land, though, as per records he is in a position to give the details of the area of the land and the amount of compensation awarded to the appellant and also

to state the value assessed in the guidelines of 2003 & 2004.

15. PW-2 Keju Singh Thakur, who is the Patwari of Halka No.26 village Suregaon is an important witness. He has deposed that both the lands of the appellant are adjacent to the village area. He has further deposed that land comprised in Khasra No.606 is abutting the main *Pakka* road connecting Suregaon to Kevat Navagaon. In respect of land comprised in Kahsra No.296/1, he deposes that it is about 25 meters away from the Basti (inhabited area). He further deposes that as per the guidelines Rs. 2,24,000/- per hectare has been assessed as the rate of irrigated land. In his cross-examination, he admits that land comprised in Khasra No. 296/1 is in the prime square of the market at about a furlong and abutting the main road. Similar statement with regard to the prime location of land comprised in Khasra No.606 is admitted that these lands because of its peculiar prime location are more valuable than the other lands. He has admitted that both the lands are irrigated and fitted with tube-wells and there is a farmhouse situated in Khasra No.606. This witness admits that during the period 2002-2003, the valuation of the lands in dispute was Rs.8,000/- per decimal. In other parts of deposition he has fully supported the case of the appellant with regard to its location, valuation, as claimed by the appellant.

16. The two sale deeds Ex.D-4 and Ex.D-5 also reveal that the valuation of the land in the adjacent area is approximately Rs.8,000/- per decimal.

17. The oral evidence of both the parties therefore supports the case of the appellant. Therefore, taking consideration the over all oral documentary evidence, appellant's case of his land being irrigated, agricultural land situated in prime location and adjacent land fetching consideration of Rs.8,000/- per decimal stands proved.

18. In that view of the matter, we are of the opinion that the compensation awarded to the appellant is not just and proper. The two lands of the appellant were required to be assessed for the payment of compensation at the rate of Rs.8,000/- per decimal as per the oral documentary evidence. In this regard, we also wish to refer to the decision of Supreme Court in the case of **Land Acquisition Officer and Mandal Revenue Officer Vs V. Narasaiah (AIR 2001 SC 1117**), wherein it has been held that in order to assess the market value of the acquired land the valuation of lands under sale-deed in the vicinity can be relied upon without examining vendee or vendor or anybody else connected with the sale. Therefore, we are inclined to enhance the amount of compensation by way of appropriate computation taking the rate of the land as Rs.8,000/- per decimal. The

total area acquired is 1.02 acres which is irrigated land. If the compensation is assessed at the rate Rs.8,000/- per decimal, the total amount of compensation to which the appellant would be entitled is Rs. 8,16,000/-. We accordingly allow the appeal and direct payment of the balance amount of compensation to the appellant within a period of three months. The balance amounts over and above what has already been paid to the appellant shall carry an interest at the rate of 12% from the date of the award and also 30% as solatium amount shall also be payable to the appellant.

19. Accordingly, the appeal is allowed.

Sd/-	Sd/-
Manindra Mohan Shrivastava	Gautam Chourdiya
Judge	Judge

Akhilesh