

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

910 FIRST APPEAL NO. 350 OF 2000

Monuddin Bapu Mulani
Age: 48 years, Occu.: Agriculture,
R/o.Ansurda, Tq. & Dist.Osmanabad ..Appellant

VERSUS

The State of Maharashtra
(Through Collector, Osmanabad
Tq. & Dist.Osmanabad.) ..Respondent

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Advocate for Appellant : Mr.P.S.Koshti
AGP for Respondent/State : Mr.S.P.Deshmukh

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CORAM : M.S.SONAK, J.
DATE : 8th FEBRUARY, 2018

ORAL JUDGMENT:-

1) Heard Mr.P.S.Koshti learned counsel for the appellant and Mr.S.P.Deshmukh learned AGP for the respondent. The challenge in this appeal is to the Judgment and award dated 30.9.1999 made by the Reference Court dismissing the appellant's Reference and holding that the compensation of Rs.13,500/- per Hectare awarded

by the Land Acquisition Officer is fair and proper.

2) Mr.P.S.Koshti the learned counsel for the appellant submits that the appellant had examined himself and had also produced certified copy of the Sale-Deed of the year 1982 from the area, which is hardly 500 ft. from the acquired land. As per this Sale-Deed, the rate of the comparable land was Rs.15,000/- per Acre or Rs.37,500/- per Hectare. He submits that this sale instance has been rejected by the Reference Court on the sole ground that the vendor or the vendee were not examined. He relied on the provisions contained in Section 51-A of the Land Acquisition Act, 1894 to submit that certified copy can be accepted as evidence of the transaction recorded in such document without a necessity of examining either vendor or vendee. On this basis, he submits that compensation @ Rs.15,000/- per Acre or Rs.37,500/- per Hectare was required to be awarded in favour of the appellant.

3) Mr.S.P.Deshmukh learned AGP points out that there is no evidence of comparability even assuming that the sale-instance would have been considered in evidence. He submits that the evidence on record otherwise suggest that the sale-instance was in respect of irrigated land and the purchaser was the owner of adjacent land and therefore, consented to pay such a high price. He submits that there is really no evidence in support of the claim for enhancement and therefore, this appeal is liable to be dismissed.

4) From the perusal of the impugned Judgment and award, and also the record, it is clear that the main reason why the Reference Court has rejected the sale-instance is because neither the vendor nor vendee came to examined in support of the certified copy of the sale-instance so produced. At that time, there were certain decisions which stated that even certified copy may not be admitted

in evidence and may not be relied upon unless either vendor or vendee or atleast attested witness has been examined. In context of Section 51-A of the Land Acquisition Act, 1894, there has been a change in legal position as well. As a result of which, there is no bar to accept certified copy of sale-instance as evidence in any proceedings under the Land Acquisition Act, 1894. Therefore, the rejection of the sale-instance at Exh.17 by the Reference Court was erroneous and warrants interference.

5) The sale instance was of the year 1982 and the Section 4 Notification in the present case is of the year 1985. Therefore, by grant of some escalation, the rate in terms of sale-instance, as in the year 1985, can be safely taken at atleast Rs.40,000/- per Hectare.

6) The appellant has examined himself and has deposed as to the quality of the acquired land. However, there

is no corroborative evidence to support the bare statement that the land was either irrigated or Bagayat land. Therefore, the acquired land will have to be regarded as unirrigated or Jirayat land.

7) In the course of cross-examination of the appellant, particularly, in the context of sale instance Exh.17, on behalf of the respondent, said suggestions were put to the effect that the land under the sale-instance was irrigated land due to the existence of the Well. Further, suggestion was put that the purchaser was the owner of the adjacent land. Therefore, even if we proceed on the basis that the land covered in the sale instance was a irrigated land or Bagayat land, then applying the Thumb Rule, there can be no difficulty in determining compensation of the acquired land, which is stated to be at a distance of 500 ft. from the land of sale instance Exh.17, @ Rs.20,000/- per Hectare. There is normally a Thumb Rule that price of the Jirayat land is half that of

Bagayat land. The appeal is therefore, partly allowed and compensation in respect of the acquired land is now determined @ Rs.20,000/- per Hectare in place of Rs.13,500/- per Hectare. Appellant will be entitled to statutory benefits and interest on the enhanced amount.

8) There shall be no order as to costs.

9) The respondent is directed to compute the compensation as stated above and thereafter, deposit the compensation amount in this Court within a period of 12 weeks from today. Upon deposit, the appellant shall be entitled to withdraw the amount, unconditionally.

[M.S.SONAK, J.]