IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

963 FIRST APPEAL NO. 906 OF 2004

1. Prabhakar S/o Sahebrao Nagare
Age: 54 years, Occu.: Agriculture,
R/o. Ukhad Pimpri, Tq.Georai,
Dist.Beed.

2. Sou.Geetabai W/o Prabhakar Nagare
Age: 49 years, Occu.: Household & Agri.,
R/o. As above.

3. Sou.Sheelabai D/o Keshavrao Sangale
Age: 40 years, Occu.: Household & Agri.
R/o. As above. ..Appellants

VERSUS

. State of Maharashtra
Through Collector, Beed. ..Respondent

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Advocate for Appellants : Mr.N.P.Bangar
AGP for Respondent/State : Mr.B.V.Virde

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CORAM : M.S.SONAK, J.
DATE : 2nd FEBRUARY, 2018

ORAL JUDGMENT:-

1) The challenge in this appeal is to the Judgment and award dated 7.10.2003 made by the Reference Court at

Beed.

2) In this case, the appellants' land ad-measuring around 5 hectare was acquired for public purpose of the expansion of Gaothan vide Notification under Section 4 dated 17.4.1994. The Land Acquisition Officer (LAO) awarded compensation @ Rs.225/- per Are and the Reference Court has enhanced the same to Rs.783/- per Are. However, the Reference Court declined to award any compensation in respect of fruit bearing trees and portion of pipeline, which passes though the acquired land.

3) Mr.N.P.Bangar learned counsel for the appellant submits that in this case, four Sale-Deeds were produced as comparable instances. He submits that Exh.41 is in relation to appellants' own land being the portion of the land prior to it's acquisition. He submits that as per the Sale-Deed, which was executed on 17.5.1984 i.e. almost ten years prior to Section 4 Notification, the

rate was Rs.833/- per Are. He submits that 10% escalation is due for each year. Thus, the claim of compensation @ Rs.2,500/- per Are was quite justified and the Reference Court erred in restricting the rate to only Rs.783/- per Are.

4) Mr.Bangar learned counsel submits that the compensation in respect of fruit bearing trees and pipeline has been unjustifiably denied. He submits that there is evidence and infact it has been accepted by the Reference Court that such trees and pipeline were existed in the property acquired.

5) Mr.B.V.Virde learned AGP submits that the Sale-Deed at Exh.41 was in respect of very small portion of land i.e. 12 Gunthas and therefore, does not amount to comparable instance. He further submits that the Sale-Deed is in respect of land, which was abutting the Government road and therefore, Sale-Deed in respect of that land was not comparable. Learned AGP submits that

there is no evidence that the pipeline was in existence on the date of issuance of Section 4 Notification. He submits that Panchanama was prepared in 1996 i.e. 2 years after issuance of Section 4 Notification. He submits that since compensation has been paid for the land, there was no reason to pay separate compensation in respect of trees. He submits that the award made by the Reference Court is quite adequate and no case is made out to interfere in the same in this appeal.

6) In this case, the Reference Court has relied upon the sale instance at Exh.41, which pertains to appellants' own land ad-measuring about 12 Gunthas, which is sold on 17.5.1984 for consideration of Rs.10,000/-. This indicates that in the year 1984, this piece of land was sold @ Rs.833.33 per Are. The Reference Court has made a deduction of 25% because the Sale-Deed of land was for a small piece whereas the acquired land ad-measures 5 hectares. There is no infirmity in this deduction. Similarly, the Reference Court has deducted further 20%

because the land was abutting the Government road. Again there is no infirmity in such deduction because the land, which abuts the Government road will certainly valuable than the land which is not. Upon deduction of 45%, the Reference Court arrived at a comparable rate of Rs.458.15 per Are on the basis of sale instance at Exh.41.

7) Thereafter, the Reference Court taking cognizance of the fact that Section 4 Notification in the present case was issued almost after ten years i.e. on 17.4.1994, has granted escalation of only 5% each year. Here the Reference Court can be said to erred. This is because escalation to be granted in such cases is normally of 10% p.a. The appellants have produced three other Sale-Deeds and from the perusal of the same, there is clear indication that the price of even agricultural land in this area was escalating. In the light of such evidence and also the fact that escalation of 10% is normally allowed, the Reference Court ought to have granted

escalation of 10% p.a. instead of 5% p.a. that would take the rate to Rs.1188.25 per Are. Further, taking into consideration that there were fruit bearing trees, though there is no case made to award separate compensation for trees, the rate can be assessed at Rs.1,200/- per Are. In the facts and circumstances of the case and relying upon the material on record, Rs.1,200/- per Are would be an appropriate rate.

8) There is no case made out to grant any separate compensation in respect of trees or pipeline. Infact, there is no clear evidence about the existence of pipeline on the date of issuance of Section 4 Notification. In any case, since the compensation is being determined @ Rs.1,200/- per Are, the same will take into consideration the circumstance as regards fruit bearing trees.

9) This appeal is therefore partly allowed. The compensation is enhanced to Rs.1,200/- per Are in place

of Rs.783/- per Are. The appellants will be entitled to proportionate statutory benefits and interest on this enhanced amount.

10) The respondent is directed to compute the compensation payable in terms of the present Judgment and order and thereafter, pay/deposit in this Court the same within eight weeks from today. Upon deposit, the appellants shall be entitled to withdraw the same unconditionally.

11) There shall be no order as to costs.

[M.S.SONAK, J.]