IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.741 OF 2003

01 Kaqzi Saleem Mohiyddin Siddiqui,
s/o Khursheed Mohiyuddin,
aged 55 years, Occ: Service and
agriculture, Resident of Mumbai.

02 Kazi Kaleem Mohiyuddin Siddiqui
s/o Kazi Khurshid Mohiyuddin,
aged 43 years, Occ: service and
Agriculture, Resident of Aurangabad.

03 Tanseem Siddiqui w/o Mohammed
Sadruddin Siddiqui, aged 40 years,
Occ: Household, Resident of
Aurangabad

04 Tahseen Siddiqui w/o Urooj Ahmed
Siddiqui, died, through Lrs:

041 Kazi Uruj Ahmed Siddiqui s/o
Ghouse Mohiddion,
age: 57 years, Occ: Nil,
R/o Vazir Manzil,
Kirana Chawdi, Shaguj,
Aurangabad.

042 Afshan Siddiqui w/o Irfan Siddiqui,
age: 34 years, Occ: Household,
R/o H.No.1-23-14/1, Shahbazar,
Aurangabad.

043 Sohail Ahmed Siddiqui s/o
Uruj Ahmed Siddiqui,
age: 32 years, Occ: service,
R/o Vazir Manzil, Kirana Chawdi,
Shahgunj, Aurangabad.

044 Raza Siddiquie s/o Uruj Ahmed
Siddiqui, age: 30 years,
Occ: Service, R/o Vazir Manzil,
Kirana Chawdi, Shahgunj,

Aurangabad.

045 Sanober Siddiqui d/o Uruj Ahmed
Siddiqui, age: 20 years, Occ: Nil,
R/o H.No.1-23-14/1, Shahbazar,
Aurangabad.

Versus

The State of Maharashtra Respondents

Mr.Mujtaba Gulam Mustafa, advocate for appellants
Mr.A.M.Phule, A.G.P. for the Respondent

CORAM : M.S.SONAK, J.
DATE : 31st January, 2018.

ORAL JUDGMENT :

1 The challenge, in this appeal, is to the judgment and award dated 29.11.2002 made by the Reference Court enhancing the compensation from Rs.125/- per Are to Rs.380/- per Are in respect of the acquired land.

2 Mr.Mujtaba, learned Counsel for appellants, submits that in this case, the enhancement should have been at least Rs.1750/- per Are. He submits that three sale instances were produced and even though the Reference Court has treated the sale instances as comparable sale instances from the same vicinity, excessive deductions have been made as a result of which, compensation has been enhanced only to Rs.380/- per Are. He points out that in terms of the sale instances, compensation should have been enhanced to at least Rs.1750/- per Are.

3 Learned Counsel for appellants further submits that the actual area of the acquired land was 12 hectares and 15 Ares, but the Land Acquisition Officer and the Reference Court has incorrectly treated area of the acquired land as only 10 hectares 08 Ares.

4 Learned Counsel for appellants submits that in this case, there is evidence that the acquired property was irrigated by a well. He submits that there is evidence about the crops which were grown in the irrigated land. He submits that on the sole ground that no sugarcane was grown in the acquired land, the Reference Court has erroneously treated the acquired land as dry land. He, therefore, submits that the correct area of the acquired land be taken as 12 hectares and 15 Ares and further, rate enhanced be raised to Rs.1750/- per Are.

5 Mr.A.M.Phule, learned A.G.P., submits that there is overwhelming evidence on record that the acquired land was dry land and not an irrigated land. He points out that mere existence of well does not convert the acquired land into irrigated land. He points out that the sale instances relied upon relate to *bagayat* lands and, therefore, are not comparable with the acquired land. He points out that area of the acquired land has been correctly stated by the Land Acquisition Officer and correctly confirmed by the Reference Court. Mr.Phule, relying upon **SLAO Vs. Sidappa Omanna Tumari & others**, (1995) Supp 2 SCC 186, submits that the market value should not be determined on the basis of sale instances relating to small parcels of land. For all these reasons, Mr.Phule submits that the compensation awarded by the Reference

Court is quite adequate and warrants no interference.

6 The appellant, in the present case, in his application for Reference, raised specific dispute as regards area of the acquired land. At the earliest instance, the appellant submitted that the correct area of the acquired land is 12 hectares and 15 ares and not 10 hectares and 08 Ares as stated in the award of the Land Acquisition Officer. Before the Reference Court, this issue was squarely raised and in order to establish the correct area, the appellant had applied for and the Reference Court has appointed Court Commissioner from the office of TILR to measure the acquired land. The Court Commissioner has submitted a report, according to which, area of the acquired land comes to 11 hectares and 92 Ares. Ordinarily, this report ought to have been accepted by the Reference Court, in stead, the Reference Court has rejected this report on the ground that there was no proper service of notice to the office of SLAO. The SLAO, or in any case, the State, was very much party to the Reference proceedings. It is, in these Reference Proceedings, TILR was appointed as Court Commissioner with a direction to carry out survey measurement of the acquired land. Mr.Bhaskar Kagade, P.W.2, who actually carried out survey measurement, has been examined in the Reference proceedings. Taking into consideration all these circumstances, there is no reason to reject the Court Commissioner's report that the acquired area measures 11 hectares and 92 Ares and not 10 hectares 08 Ares. To that extent, therefore, the impugned award warrants interference.

7 So far as the rate is concerned, the evidence on record indicates that the acquired land had a well in it. In fact, even compensation has been paid in respect of the well and, therefore, existence of well cannot be denied. The evidence on record also indicates that the acquired land had a black cotton soil and further, that certain crops were also grown in the acquired land. It is true that on the basis of the evidence on record, it cannot be said that the land was *bagayat* land, in the sense, that normally *bagayat* crops were not grown there. However, the evidence also does not support the finding of the Reference Court that this was a dry land. The compensation will, therefore, have to be determined on the basis that quality of this land was superior to the dry land but not equivalent to the irrigated land. This means that the acquired land will have to be recorded as semi irrigated land and compensation will have to be determined on the said basis.

8 In this case, at least 3 sale instances were produced by and on behalf of the appellants. The sale instances were from Georai town, whereas, acquired lands were from village Pandharwadi. However, the Reference Court has rightly held that village Pandharwadi is at a distance of Georai and, therefore, the sale instances can be considered as sale instances from the same vicinity. One of the sale instances (Exhibit-49) relates to sale of property admeasuring 03 Ares for which the rate reflected is Rs.2000/- per Are. Obviously, the sale deed in respect of such small area will not be comparable. Therefore, as rightly submitted by learned A.G.P., relying upon **Sidappa** (*supra*), this sale instance will have to be discarded from consideration.

9 There are two other sale deeds i.e. Exhibit-47 and Exhibit-52, which relate to 13 gunthas and 32 gunthas, respectively. As per the sale instance at Exhibit-47, the rate comes to Rs.1300/- per Are, however, as per the sale instance at Exhibit-52 the rate comes to Rs.781.25 per Are. The average rate, therefore, approximately comes to Rs.1040/- per Are. However, both these sale instances are in respect of relatively small areas of land as compared to the acquired land. The sale deed areas are not so small so as to warrant their discard, however, some deductions are due on account of smallness. The sale instances were admittedly in Georai town, whereas, acquired land is in Pandharwadi village. Taking into consideration all these minus factors, deduction of at least 40% is due from out of the rate determinable by the sale instances. This means that the rate in respect of acquired land will have to be determined at the rate of Rs.600/- per Are. In the matters of this nature, some element of guesswork is inevitable. Taking into consideration the evidence on record in its entirety and after making suitable deductions to the extent of 40% from out of the rate determined on the basis of sale instances, it will be appropriate to pay compensation @ Rs.600/- per Are in stead of Rs.380/- per Are.

10 Learned Counsel for the appellants submits that less compensation is paid in respect of acquisition of well. From the material on record, compensation of over Rs.13,000/- has already been paid in respect of the well and same is adequate considering the evidence on record.

11 This appeal is, therefore, partly allowed. The correct area of the acquired land is to be taken as 11 hectares 92 Ares and compensation is to be determined on the basis of this correct area. However, the rate of compensation is to be taken as Rs.600/- per Are in place of Rs.380/- per Are. The appellants shall be entitled to the proportionate statutory benefits and interest on the basis of this enhanced compensation.

12 Respondents are directed to compute the compensation on the aforesaid basis and to deposit the same in this Court within a period of eight weeks from today. Upon deposit, the appellants shall be at liberty to withdraw the same unconditionally.

13 Appeal is partly allowed to the aforesaid extent. There shall be no order as to costs.

M.S.SONAK
JUDGE

adb