

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

FIRST APPEAL NO. 572 OF 2002

Rajmal s/o Dongar Patil,
Age: 53 years, Occupation: Agriculturist,
R/o. Ektas, Post. Shahpur,
Tq, Amalner, District: Jalgaon. ..Appellant

Versus

1. The State of Maharashtra
2. Zilla Parishad, Jalgaon. ..Respondents

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Mr. R.M. Deshmukh, Advocate for Appellant.
Mr. A.M. Phule, AGP for Respondent/State.
Mr. M.R. Goyanka, Advocate for Respondent No.2.

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**CORAM : P.R. BORA, J.
DATED : 03rd SEPTEMBER, 2018.**

ORAL JUDGMENT:-

. Heard Shri Deshmukh, learned counsel
appearing for the appellant, Shri Goyanka, learned
counsel appearing for the acquiring body and Shri
Phule, learned AGP for the State.

2. Lands of the present appellant were
acquired way back in the year 1977 for the
construction of percolation tank at Village Ektas,
Taluka Amalner, District Jalgaon. Two lands were
acquired, one is gut no. 26 admeasuring 4 H 61 R

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situated at Village Ekalahare and another admeasuring 34 R out of gut no.31 situated at Village Ektas. The notification under Section 4 of the Land Acquisition Act 1894 (hereinafter referred to as 'the Act') was published in the official gazette on 28.7.1977. The possession of the lands was obtained even prior to publication of the Section 4 notification.

3. Award under Section 11 came to be passed on 22.8.1979. The learned SLAO offered total compensation of Rs. 15,186/- for acquisition of the land gut no. 26 admeasuring 4 H 61 R and for the land admeasuring 34 R out of gut no. 31, the compensation offered was of Rs.1,462.80/-. Dissatisfied with the amount of compensation so offered, the appellant who is hereinafter referred to as the claimant preferred an application under Section 18 of the Act to the Collector Jalgaon, who in turn forwarded the said application for adjudication to the District Court at Jalgaon. The Court is hereinafter referred to as the Reference Court. Before the Reference Court, the claimant had claimed the compensation to the tune of Rs. 18,734/-. In order to substantiate the enhancement

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claimed by him, the claimant himself deposed before the Court and also examined few witnesses and placed on record certain sale instances. No evidence was adduced on behalf of the acquiring body or the State Government. The learned Reference Court after having assessed the oral and documentary evidence on record, dismissed the reference application. Aggrieved by, the claimant has preferred the present first appeal before this Court.

4. Shri R.M. Deshmukh, learned counsel appearing for the appellant criticized the impugned judgement and award on various grounds. The learned counsel submitted that the Reference Court adopted too technical approach and failed in appreciating the evidence on record, which has resulted in miscarriage of justice. The learned counsel submitted that the enhancement as was sought by the claimant was reasonable and must have been granted by the Reference Court. The learned counsel, therefore, prayed for allowing the appeal and to enhance the amount of compensation adequately.

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5. Shri Goyanka, the learned counsel appearing for the acquiring body supported the impugned judgement and award. The learned counsel submitted that a well reasoned judgement has been passed by the Reference Court and no interference is required in the judgement so passed. The learned counsel submitted that whatever sale instances were produced on record by the applicant, were of the period after publication of Section 4 notification and as such, they were rightly discarded by the Reference Court. The learned counsel further submitted that though, the claimant subsequently brought on record the sale-deed pertaining to the land situated at Village Bhilali, claiming the same to be of the period prior to issuance of Section 4 notification, the same has also been rightly rejected by the Reference Court observing that necessary pleadings as about the comparability of the said land with the acquired land were lacking. The learned counsel, therefore, prayed for dismissal of the appeal.

6. I have given due consideration to the submissions advanced by the learned counsel appearing for the respective parties. I have

perused the impugned judgement and the evidence on record. The Reference Court has rejected the request of enhancement made by the claimant amongst other grounds also for the reason that the claimant had accepted the amount of compensation offered by the SLAO without lodging any protest. The learned Reference Court has referred to the second proviso to Section 31 of the Act and analysing the evidence in light of the said provision, has recorded a finding that the reference application preferred by the claimant was liable to be rejected since, there was no evidence on record showing that the amount of compensation offered by the SLAO was accepted by the claimant by lodging his protest or under protest. The reasoning so given by the Reference Court cannot be sustained. It is not the requirement of law that there must be something in writing that the amount of compensation is being accepted by the claimant under protest. The law is now well settled that the protest can be oral also. Filing of an application under Section 18 of the Act by the claimant, itself indicates that the claimant was not satisfied with the amount of compensation offered by the SLAO. The reference

application is to be preferred within six weeks from the date of the award. If, a person prefers the award within the said period, it obviously means that though, he might have accepted the amount of compensation offered by SLAO, the same was not acceptable to him meaning thereby that he had received the said amount by reserving his right to file the application under Section 18 of the Act seeking enhancement in the amount of compensation. The finding recorded by the Reference Court rejecting the reference application on the aforesaid ground, therefore, cannot be sustained and deserves to be set aside.

7. Now about the evidence brought on record by the claimant, I see no reason to take any different view than the view taken by the Reference Court, so far as the sale instances of the period post notification under Section 4 are concerned. However, it is difficult to agree with the observations made and finding recorded by the learned Reference Court in so far as the sale instance at Exhibit-105 is concerned. The record shows that with the permission of the Reference Court further evidence was adduced and the sale

instance at Exhibit-105 was brought on record by the claimant.

8. It is further not in dispute that the sale instance at Exhibit 105 is the sale deed executed on 07.01.1976 i.e. admittedly before publication of Section 4 notification in the matter. Vide the aforesaid sale deed, one Kesharbai Amrut Patil had sold the land bearing gut No.131 ad-measuring 84 R situated at Village Bhilali to one Pundlik Haibat Patil for the consideration of Rs.14000/- i.e. at the rate of Rs.166 per R. The said sale instance has been kept out of consideration by the Reference Court by giving elaborate reasons. I have carefully gone through the reasoning as has been given by the Reference Court. However, I find it difficult to agree with the observations so made by the learned reference Court. The said sale instance has not been relied upon by the learned reference Court for the reason that it pertains to Village Bhilali whereas, the acquired lands were of village Eklahare and Ektas and there was no evidence on record showing the distance between Village Bhilali and Village Eklahare and Village Ektas. It has been further observed by the Reference Court that the

claimant in his evidence before the Court or AW-4 Amrut in his testimony before the Court, did not even whisper about the comparability of the land, which was the subject matter of the sale instance at Exhibit-105 with the acquired lands. In the circumstances, the reference Court has declined to consider the aforesaid sale instance.

9. Merely because, the claimant or the witness Amrut did not depose in their respective testimonies about the comparability of the land, which was the subject matter of the sale instance at Exhibit-105 with the acquired land, no such conclusion could have been reached by the reference Court that the sale instance was not of the comparable land. It has to be kept in mind that, when the sale instance was sought to be brought on record, the only reason for bringing on such sale instance was that the market value of the acquired land can be determined on the basis of the said sale instance. Moreover, only because the claimant did not make any attempt to bring on record the distance between Village Bhilali and Village Eklahare and Village Ektas, the reference Court could not have outrightly kept the said sale

instance out of consideration. It was well within the competence of the reference Court to direct one of the parties or in that case to the Land Acquisition Officer to place on record the information as about the distance between Village Bhilali and Village Eklahare. In the matters in the Land Acquisition Act and more particularly in the reference applications under Section 18 of the Act, the Court owes the responsibility to determine the true market value as prevailing on the date of its acquisition. Thus, that also can not be a ground for totally keeping the sale instance at Exhibit-105 out of consideration.

10. It appears to me that, the sale instance at Exhibit-105 can very well be considered for determining the market value of the acquired land. As has come on record, the agricultural land which was the subject matter of the sale instance at Exhibit 105 was ad-measuring 84 R and it received the value of Rs. 14000/-. The material on record also reveals that, it was an irrigated land. Thus, from the evidence on record it is revealed that for the irrigated land, the rate which was received to the land in question was Rs.166 per R.

11. For the lands acquired of the present claimant, the compensation was offered by the SLAO at the rate of Rs.33 per R for the land gut no.26 and Rs.43 per R for land gut no.31. Though, it is the contention of the applicant that gut no. 31 was irrigated land in absence of any evidence, it has to be taken to be a dry land. Thus, even if it is presumed that both the lands were non irrigated lands, considering the rate received to the land which was the subject matter of Exhibit-105, the market value of the acquired lands at the prevailing time can very well be determined.

12. It is true that there is no sufficient evidence on record showing distance between Village Bhilali and Village Ekalahare and Village Ektas. However, during the course of arguments, when a query was made by me to learned AGP and the learned counsel appearing for the acquiring body, the counsel obtained the information about the distance between two villages from the Google Map and submitted that the distance in between these two villages is approximately 10 km. Considered the facts as aforesaid, it appears to me that the

claimant has certainly made out a case for some enhancement in the amount of compensation offered by the SLAO.

13. Considering the fact that the lands acquired were non irrigated and that the distance between Village Bhilali and Village Eklahare and Village Ektas is around 10 kms if, even less than half of the rate which was received to the land, which was the subject matter of Exhibit-105, is held as the market rate of the subject lands, it would meet the ends of justice. I, therefore, hold the claimant entitled to receive Rs. 45/- per Are as market rate for his acquired lands. I also hold the claimant entitled for the statutory benefits and interest on the enhanced amount of compensation under the provision of the Act. Hence the following order:

ORDER

- (i) The market value of the lands acquired by the claimant is determined as Rs. 45 per Are. Accordingly the amount of compensation payable to the claimant be assessed and deducting the amount of compensation already paid, the enhanced

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amount of compensation be paid to the claimant with statutory benefits and the interest as permissible under law.

(ii) The award be drawn accordingly.

(iii) The appeal thus, stands partly allowed.

(P.R. BORA, J.)

Mujaheed//