

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1119 OF 2003

Prashant s/o Bhagwansingh Kachwa
age 28 years, occ. agril
r/o Dahegaon, Tq. Gangapur
Dist. Aurangabad
at present at Parbhani

Appellant

Versus

The State of Maharashtra
through Collector, Aurangabad.

Respondent

Mr. S.K. Adkine, advocate for appellant.
Mr. B.V. Virdhe, AGP for respondent.

CORAM : M.S. SONAK, J.
DATE : 25th JANUARY, 2018

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. Challenge in this appeal is to the judgment and award dated 03.02.2003 made by the Reference Court, refusing to enhance compensation awarded in respect of appellant's acquired land.
3. The Land Acquisition Officer in this case has awarded compensation at the rate of Rs. 11,200/- per Hectare. Appellant being dis-satisfied with the award, claimed compensation of

Rs. 1,25,000/- per Hectare and sought for reference. The Reference Court, however, by the impugned judgment and decree has declined to grant any enhancement to the appellant.

4. Mr. Adkine, learned counsel for appellant submits that the acquired land though did not have any well was provided water from the well in the neighbouring property belonging to the appellant. Therefore, even the acquired land was required to be treated as Jirayat land. He submits that two sale-deeds were produced on record which were in respect of irrigated lands, which sale-deeds, however, have been ignored by the Reference Court by observing that the acquired land was un-irrigated land. Mr. Adkine submits that acquisition was for extension of gaonthan which means that the acquired land was adjacent to the village gaonthan. By ignoring all these aspects, no enhancement has been granted. Therefore, Mr Adkine submits that this appeal may be allowed and compensation may be enhanced.

5. Mr. Virdhe, learned AGP submits that there is absolutely no evidence for grant of enhancement. He submits that there is no evidence on the point of comparability. He submits that even if the two sale-deeds are taken into consideration, the rate in respect of irrigated land comes to Rs. 33,333/- per Hectare. Since the acquired land was not irrigated land, there is absolutely no infirmity in awarding compensation at the rate of Rs. 11,200/- per Hectare which is precisely what has been awarded by the Land Acquisition Officer. For all these reasons, Mr. Virdhe submits that the appeal is liable to be dismissed.

6. From material on record, it is clear that there was no well or water supply source in the acquired property. However, there is some material to suggest that some crops were grown in the acquired land, possibly, with the help of water from the neighbouring land, which is said to be owned by the appellant himself. However, on such basis, it cannot be said that what was acquired was irrigated land. Compensation will have to be determined on the basis that this was unirrigated land but with some potential to go crops on account of its proximity to the land held by appellant.

7. In terms of the sale-deeds, which pertain to the Bagayat lands from the same village, the rate is Rs. 33,333/- per Hectare. Applying the normal thumb rule for Jirayat land, the rate can therefore be safely determined as half the rate payable to irrigated land, which, in the present case would come to approximately Rs. 17,000/- per Hectare. Again, since this land is acquired for the purpose of gaathan, it is obvious that this land was close to the village. Since there was facility of well in the adjacent land held by appellant himself, some additional compensation is due. Taking into consideration all these factors, compensation is required to be enhanced to Rs.20,000/- per Hectare.

8. Appeal is therefore partly allowed. Compensation amount is enhanced from Rs. 11,200/- per Hectare to Rs. 20,000/- per Hectare. On the increased amount, appellant will be entitled to statutory benefits as well as interest.

9. Appeal is allowed to the aforesaid extent. Respondents are

directed to rework compensation and pay additional compensation at enhanced rate to the appellant within a period of three months from today. There shall be no order as to costs.

(M.S. SONAK, J.)

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