IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 651 OF 2017

Govind s/o Narsing Nalapure,
age 55 years, occ. Agril.,
R/o Nagobachiwadi, Tq. Udgir,
District Latur ...Appellant
(Orig. Claimant)

VERSUS

1] The State of Maharashtra,
through Collector, Latur,

2] The Executive Engineer,
M.I. Local Sector, Latur ...Respondents

...

Mr. S.S.Halkude, dvocate for Appellant
Mr. R.B.Bagul, AGP for Respondents

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 29.9.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 9.10.2018

J U D G M E N T :

This appeal is directed against the judgment and award, passed by the Joint Civil Judge, Senior Division, Udgir, District Latur, in Land Acquisition Reference No. 1454 of 2010 (Old

No. 355 of 2007), awarding enhanced compensation at the rate of Rs.1,500/- per Are i.e. Rs.60,000/- per acre to the acquired land of the claimant bearing Block No. 103/1, admeasuring 27 Are, situated at Nagobachiwadi, Taluka Udgir.

2. Respondent no.1 is the State and respondent no.2 is the Minor Irrigation, Local Sector, Latur.

3. Heard Mr. S.S.Halkude, learned counsel for the appellant and Mr. R.B.Bagul, learned AGP for respondents.

4. Learned counsel for the appellant submits that notification under Section 4 (1) of the Land Acquisition Act, 1894 was published on 29.6.2000 and award was passed on 15.7.2003. The Land Acquisition Officer offered compensation at the rate of Rs.523/- per Are and Rs.2,920/- per acre. When matter was referred to the Reference Court, after considering sale deed, dated 15.2.2000 at Exh.14, the Reference Court enhanced the

compensation at the rate of Rs.60,000/- per acre. Learned counsel for the appellant submits that the land under reference sale deed Exh.14 and the acquired land are of identical quality, having same advantages and disadvantages. He submits that under the sale deed Exh.14, 1/5th share in the well was purchased by the purchaser. However, on that count alone, the land under sale instance cannot be treated as irrigated land. At the most, it can be treated as seasonally irrigated land. Therefore, for ascertaining the marked value of the land on the date of notification under Section 4 (1) of the Land Acquisition Act, at the most 25 per cent value can be deducted. The land under sale instance was sold out at the rate of Rs.1,69,696/- per acre. That land was also dry crop land. Therefore, market value of the acquired land determined by the Reference Court at the rate of 60,000/- per acre is much lower than the actual market value of the acquired land.

5. His next limb of argument is that, though 24 ber trees, 5 custered apple trees and 9

sandalwood trees were standing in the acquired land, no compensation is awarded by the Reference Court for these trees. He points out that in the award lump sum amount of Rs.4407/- for fruit bearing trees and Rs.1056/- for forest trees was awarded by the Land Acquisition Officer.

6. However, learned counsel for claimant fairly concedes that the claimant has not filed valuation report issued by the Horticulture Department regarding market value and age of trees standing in the acquired land. He has also pointed out that the award shows that along with dry crops, crops of sugar cane was also taken in the acquired land. At last, he has drawn my attention towards award passed by the same court in another Land Reference No. 20 of 2005.

7. Learned AGP for the State supports the judgment, passed by the Reference Court and submits that the entries in crop statement of acquired land show that the land is dry crop land and no well is situated in the said land. Learned AGP has also

pointed out that the land under sale instance is adjoining to the land of the purchaser and on the western side of that land river is situated. According to the learned AGP, the land under sale instance being adjoining to river and having 1/5th share in the well water for the said land, it was irrigated land. Therefore, the market value fetched by that land is treated as double than the acquired land which is dry crop land.

8. Next limb of argument of the learned AGP is that, 7/12 extract of acquired land does not show existence of any tree and even the claimant has not placed on record any evidence to establish the existence as well as age and yield from the trees standing in the acquired land.

9. After going through the judgment of the Reference Court, it emerges that following guiding principles are considered by the Reference Court, which are followed while deciding the Reference under Section 18 of the Land Acquisition Act.

> “ i) Reference U/sec. 18 of the L.A. Act is not an appeal against the Award and court cannot take into account the material relied on by LAO in his Award unless the said material is produced and proved before the Court.
>
> ii) Each reference would have to be examined on its own facts scrutinizing the evidence adduced by the parties.
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> iii) It is neither permissible nor proper for the court to let down straight jacket formula universally applicable to all land references at any level of the proceedings.
>
> iv) If comparable sale instances are available then the market price of the acquired land normally is to be decided on the basis of said comparable instances if they found genuine.”

10. In addition to this, in the case of “**Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona and Anr” (AIR 1988 SC 1652),** the Supreme Court has laid down following guidelines for determining the market value of the land under Section 23 of the Land Acquisition Act. Those guidelines are as under : -

> “ (5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under sec. 4 of the Land Acquisition Act (dates of Notifications under secs. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under sec. 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account.
(1) if they are very proximate,(2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(l0) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,
ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has there after to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

Plus factors	Minus factors
1. smallness of size.	largeness of area.
2. proximity to a road.	situation in the interior at a distances from the road.
3. frontage on a road.	narrow strip of land with very small frontage compared to depth.
4. nearness to developed area.	remoteness from developed locality.
5. regular shape.	lower level requiring the depressed portion to be filled up.
6. level vis-a-vis land	some special under acquisition. disadvantageous factor which would deter a purchaser.
7. special value for an owner of an adjoining property to whom it may have some very special advantage. "	

11. In the case at hand, the entire claim of the appellant is based on sale instance Exh.14, which shows that on 15.2.2000, one Subhadrabai Ishwar Swami sold out 33 Are land out of Survey No. 92-A, situated at village Tondar, for consideration of Rs.1,40,000/-. Thus, on 15.2.2000 the market rate of land under sale instance is Rs.1,69,696/-

per acre. The land under sale instance is sold out prior to publication of notification under Section 4 (1) of the Land Acquisition Act i.e. prior to 29.6.2000. The land under sale instance is also situated in the vicinity at the distance of two Gut numbers from the acquired land. Thus, the land under sale instance is in proximity with the acquired land so far as situation as well as area is concerned. As the sale instance is prior to notification under Section 4 (1) of the Act, its genuineness cannot be doubted. Therefore, the sale instance, dated 15.2.2000 (Exh.14) can be safely considered for ascertaining the correct market value of the acquired land on the date of publication of notification under Section 4(1) of the Act.

12. So far as advantageous factors annexed to land under sale instance are concerned, the land under sale instance is abutting to the land of purchaser. The sale instance (Exh.14) also indicates that along with purchased land, the purchaser has also purchased $1/5^{th}$ share in the

well water as well as 1/5th share in one mango tree and one tamarind tree. River is also situated on the western side of land under sale instance.

13. After going through the judgment, passed by the Reference Court, it emerges that while determining the market value of acquired land, the Reference Court has deducted 30 per cent value from the market price of land under sale instance for 1/5th share in well and in two trees. For this, 30 per cent deduction even location of river on western side is considered by the Reference Court. However, it is to be noted that holding the land under sale instance as irrigated land, the Reference Court has also deducted 50 per cent value from the market value of the land under sale instance. Thus, for availability of well water and river water, the Reference Court has already deducted 50 per cent value. Therefore, for the same reason, additional deductions cannot be made from the market value of sale instance on the ground of adjoining river and purchase of 1/5th share in the well water. For the advantageous

factor i.e. situation of land of the purchaser abutting the land under sale instance, 10 per cent value can be deducted from the market value of land under sale instance.

14. So also, the Reference Court has deducted 50 per cent value from the market value of land under sale instance on the ground that it is an irrigated land. However, as rightly pointed out by the learned counsel for the appellant, irrigation from the well and river is not available for the entire year, but it depends on availability of the water in the well and river. In Marathwada Region, generally adequate water is not available in the well and river after winter season, to irrigate the agricultural land. Therefore, on the basis of location of river on the western side of land under sale instance and on the basis of purchase of 1/5th share in the well water, the land under sale instance cannot be treated as 100 per cent irrigated land. At the most, it can be treated as seasonally irrigated land. For seasonally irrigated land, maximum 25 per cent value can be

deducted from the market value of the land under sale instance, to determine the true market value of acquired land on the date of notification under Section 4 (1) of the Act. Therefore, maximum 25+10 per cent i.e. total 35 per cent value can be deducted from the market value of land under sale instance while determining the market value of the acquired land on the date of notification under Section 4 (1) of the Act. Rs.1,69,696/- per acre is the market value. 35 per cent of Rs.1,69,696/- is equal to Rs.59,393/-. If this amount is deducted from market value of Rs.1,69,696/-, the true market value of acquired land is assessed as Rs.1,10,303/- per acre.

15. Before proceeding further, I must make it clear that the acquired land cannot be treated as seasonally irrigated land, only because in the award general statement is made that along with dry crops sugar cane crop is also taken. Any such statement made in the award cannot be considered for determining the nature of the acquired land, unless the record of right indicates that some

irrigated crops are taken from the acquired land. Crop statement of acquired land indicates that only dry crops like, Tur, Soyabin, Jawar, Udid are taken from the acquired land and there is no facility of irrigation to the acquired land. Therefore, the acquired land is certainly dry crop land and not seasonally irrigated land.

16. Regarding value of the standing trees in the acquired land, it is suffice to say that neither record of right of the acquired land indicates existence of any trees in the acquired land nor the claimant has placed on record any other evidence to prove that 24 ber trees, 5 custered apple trees and 9 sandalwood trees are standing in the acquired land. Even, no evidence regarding age or annual yield from these trees is placed on record by the claimant. Thus, I have no hesitation to hold that the Reference Court has rightly refused to award compensation under the head, "compensation for trees standing in the acquired land".

17. In view of above discussion, I hold that while determining the market value of the acquired land, the learned Reference Court erroneously treated the land under sale instance as irrigated land and on that count undervalued the acquired land. As observed above, the true market value of acquired land on the date of notification under Section 4 (1) of the Act is Rs.1,10,303/- per acre. The award, passed in Land Reference No. 20 of 2005 relates to acquisition of irrigated land, and therefore, same cannot be considered for determining the market value of the acquired land in the present Land Reference. My conclusion is that the judgment and award passed by the Reference Court in Land Acquisition Reference No. 1454 of 2010 is incorrect and deserves to be modified to enhance the compensation to be awarded to the claimant to the extent of Rs.1,10,303/- per acre.

18. So far as statutory benefits under Sections 23 (2) and 23(1A) of the Land Acquisition Act and rate of interest awarded by the Reference Court are concerned, no change needs to be made

and that part of the award is upheld. I hold that this appeal deserves to be partly allowed.

19. Accordingly, First Appeal No. 651 of 2017 is partly allowed. It is held that claimant/appellant is entitled for enhanced compensation at the rate of Rs.1,10,303/- per acre for the acquired land along with statutory benefits and interest as awarded by the Reference Court. Award passed in Land Acquisition Reference No. 1454 of 2010 (Old No. 355 of 2007) be modified accordingly. Parties to bear their respective costs of the appeal. Deficit court fee, if any, be recovered from the appellant as per rules.

[**SUNIL K.KOTWAL, J.**]

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