

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

FIRST APPEAL NO. 1328 OF 2004

Rajekhan s/o Meharkhan Khonde,
Since Died through his L.Rs.

- (A) Sattar s/o Rajekhan Khonde,
Age: 40 yrs, Occ. Agri & Service,
R/o : Ruibhar, tq. Osmanabad.
- (B) Gaffar s/o Rajekhan Khonde,
Age-29 years, Occu. Agril.,
r/o Ruibhar at present Pohner,
tq. Osmanabad
- (C) Alam s/o Rajekhan Khonde,
Age 27 yrs, Occu. Agril.,
r/o at present at Pohner,
tq. Osmanabad.
- (D) Jamma s/o Rajekhan Khonde,
Age: 24 yrs., Occu. Agril.,
r/o as above.
- (E) Baba s/o Rajekhan Khonde,
Age : 22 years, occ.Agril.,
r/o as above.
- (F) Hasina d/o Rajekhan Khonde,
Age : 20 yrs. Occu. Household,
r/o as above.
- (G) Nurkhan s/o Rajekhan Khonde,
Age : 18 yrs, Occu. Household,
r/o as above.
- (H) Smt. Khanutbee w/o Rajekhan Khonde,
Age: 62 yrs, occ. Agril & household,
r/o as above.

....Appellants
(Original Claimants)

Versus

The State of Maharashtra,
through the Collector, Osmanabad.

...Respondent
(Original Respondent)

...
Mr. Jayant R. Patil, Advocate for appellants
Mr. B. V. Virdhe, AGP for respondent
...

CORAM : SUNIL P. DESHMUKH, J.

DATED : 19th MARCH, 2018.

ORAL JUDGMENT :

1. This is an appeal filed by land owners, whose entire land Gut No. 420 admeasuring 2 Hectare, 81 Are situated at village Ruibhar, taluka Osmanabad, had been acquired by respondent-State for Rui medium project along with several other lands. It has been contended by the appellants-owners that aforesaid land had been irrigated by well with installation of electric motor. Notification under section 4 of the Land Acquisition Act, 1894 had been issued on 19-10-1982 and award had been passed by the land acquisition officer on 20-02-1987 granting compensation for acquired land at the rate of Rs.10,500/- per Hectare, whereas, claimants had demanded compensation at the rate of Rs. 1,00,000/- per Hectare. While claimants had been before civil court under land acquisition reference bearing no. 261 of 1991, reference court under award dated 12-12-2002 had enhanced same only to the tune of Rs.12,000/- per Acre which works out approximately Rs. 30,000/- per Hectare. As compensation rate had been far below market price and rate demanded by claimants-appellants, appellants are before this

court in first appeal under section 54 of the Land Acquisition Act, 1894.

2. Mr. Jayant Patil, learned counsel submits that compensation granted in respect of acquisition of land has been far below then prevailing market price and the appellants are doubly affected. Not only source of livelihood has been removed but also very less compensation has been awarded than worth of land / prevailing market price, and further that he could not acquire other land with meagre compensation awarded by the Land Acquisition Officer and later also award in reference did not give deserved enhancement. He additionally submits that in respect of the lands in the vicinity which were acquired under same notification and for same project, the reference court has awarded compensation at the rate of Rs. 40,000/- per Acre which may be close to compensation demanded by the appellants. The land acquisition references were preferred by owners in the vicinity bearing No. 242 of 1991, 262 of 1991, 253 of 1991 and 22 of 1993. The court under award dated 27-04-1994, had granted compensation at aforesaid rate. The claimants therein have also received compensation amounts and have been in better place now than the appellants, since in the conditions as prevailing around said time, some investment could be made by those claimants, and have created earning sources for themselves. Since the appellants have yet not received their due

compensation for acquisition of their land, they are suffering dire consequences and their condition is bad.

3. Learned counsel for appellants submits that Exhibit-51 in his land acquisition reference No. 261 of 1991, had been Exhibit-15 in those land acquisition references. The same had weighed with reference court and award had been passed on 27-04-1994, enhancing compensation to the tune of Rs. 40,000/- per Acre. He submits that Exhibit-51 ought to have received similar treatment as had been given to it in those land references. Perusal of award and sale instance Exhibit-51 shows that same has been cursorily discarded. Learned counsel submits that land involved in present matter and lands in those references have close proximity with each other. As such, he requests that appeal be allowed by giving similar treatment to the land involved in present matter in respect of payment of compensation as received for lands involved in those matters.

4. He submits that it was incumbent on the reference court to consider decision in land acquisition reference No. 242 of 1991 and others referred to *supra*, which is placed at Exhibit-55. Perusal of award would reflect that there are no proper reasons given as to why said decision was not amenable for consideration. He submits that having regard to provisions under the Indian Evidence Act, such decision would have been relevant

for consideration while evaluating compensation for lands of claimants. He submits that even otherwise reasons given do not reflect any application of mind to the evidence on record. In the decision in references bearing No. 242 of 1991 and other companion matters, reference court has quite elaborately dwelt upon Exhibit-15 in those cases (Exhibit-51 in present matter) and had given reason as to why sale instance will have to be considered and is relevant. He further adverts to that other sale instances and the registered agreement of sale executed in respect of other lands in the vicinity also show that land value is much more than the amount awarded by the Land Acquisition Officer and reference court. Reference court in the present matter has absolutely missed out on these vital considerations and has made short work of Exhibit-51 as well as failed to apply the mind to the reasons given in the decision in other Land Acquisition References.

5. On the other hand, Mr. Virdhe, learned AGP submits that Exhibit-51 was required to be discarded, since it is hardly disputable that concerned land had been within the municipal area of Osmanabad and further that land acquisition reference court's decision dated 27-04-1994 in references bearing No. 242 of 1991 and other companion matters can hardly be relied on, for, none of the claimants therein had been examined in the present matter. He submits that land falling in municipal council

area and agricultural land would not be said to be comparable and, as such, consideration weighed with reference court was proper. He submits that Exhibit-51 would by itself will not be sufficient evidence for lack of examination of claimants.

6. In this matter, it may have to be referred to that there is no serious dispute about that land involved in present matter is in close proximity of lands concerned in land acquisition reference No. 242 of 1991 and other companion matters. Land in present matter is situated around similar distance as lands involved in land acquisition reference No. 242 of 1991 and others from the land under sale instance Exhibit-51.

7. While decision in 1994 in land acquisition reference No. 242 of 1991 and other companion matters in respect of lands in vicinity Exhibit-15 (Exhibit-51 in this matter) has been considered, its relevance shall not be lightly brushed aside without proper appreciation in the present matter. It appears that reference court has committed error by cursorily discarding the same. In the decision in land acquisition reference No. 242 of 1991, reference court in 1994 had considered that *although* land under sale instance is situated in municipal area, it had close proximity with lands being acquired. Further land under sale instance might have been acquired by purchasers for certain purpose, yet there had been no conversion for said purpose and

lands continued to be used for agricultural purpose.

8. As a matter of fact, transactions, which have been referred to in land acquisition reference No. 242 of 1991 and companion matters in 1994, Exhibit-51 in present matter (Exhibit-15 in those matters) and agreement of sale coupled with quality of lands had weighted with reference court. It appears that reference court in the present matter had adopted a too pedantic approach. Reference court had been in error in not giving similar treatment or parity to present reference with the matters which were already decided in 1994.

9. Although, learned AGP has submitted that decision in land acquisition reference No. 242 of 1991 and other companion matters could not be considered for benefit of the claimants, it may well have to be adverted to that position is not disputed the decision of 1994 in Land Acquisition Reference will have taken into account by this court as the appeals filed against decision in land acquisition reference No. 242 of 1991 and companion matters by State and/or acquiring body have been stand dismissed. As such, one thing undisputably emerges existence of decision in said land acquisition reference No. 242 of 1991 and other companion matters is accepted. In such a case, arguments of learned AGP that decision in said land acquisition reference would not be considered coupled with relevant provisions of

Evidence Act and Land Acquisition Act and about treatment to be given to such decision, lose its significance.

10. As such, taking totality of circumstances into account eschewing pedantic approach in the matter, while indisputably lands concerned were irrigated, it would be expedient that claims compensation in present matter should receive similar treatment on the ground of parity in view of decision dated 27-04-1994 in land acquisition reference No. 242 of 1991 and other companion matters. It is not a case where no evidence had been led indicating market price of the land in vicinity and the evidence as adduced had already been appreciated in other matters had been given treatment and as such parity requires similar treatment to the present matter accordingly.

11. The appeal is therefore allowed.

12. Land acquisition compensation be paid to the claimants at the rate of Rs.40,000/- per Acre and consequential statutory benefits also be given to them pursuant to the provisions of Land Acquisition Act, 1894. The calculations be worked out accordingly and as such award of land acquisition reference stands modified as aforesaid.

Sd/-

[SUNIL P. DESHMUKH]
JUDGE

MTK.