

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

FIRST APPEAL NO. 1350 OF 2004

Harish Ratanlal Bhansali,
Age : 40 years, Occu. Agriculturist,
& Business, R/o Goregaon,
Tq. & Dist. Hingoli.

...APPELLANT

V E R S U S.

1. The State of Maharashtra,
Through the Collector, Parbhani,
(Now Hingoli)
2. The Special Land Acquisition Officer,
Upper Penganga Project, Parbhani No. 2
Parbhani.

... RESPONDENTS

...
Mr. P.S. Agrawal, Advocate for appellant.
Mr. S.R. Yadav, AGP for respondents
....

CORAM : K.K. SONAWANE, J.

RESERVED ON : 4th DECEMBER, 2017.

PRONOUNCED ON : 11th JANUARY, 2018.

JUDGMENT :-

1. The appellant – original claimant, taking recourse of section 54 of the Land Acquisition Act, 1894 (For short "Act of 1894") preferred present appeal, agitating the quantum of compensation amount determined under section 18 of the Act of 1894 by the Civil Judge, Senior Division, Hingoli, (for short "Reference Court") vide impugned judgment and award dated 31-03-2004 in Land

Acquisition Reference No. 36 of 1989. It has been alleged that Reference Court determined the inadequate, unreasonable and meagre compensation amount for the land of the appellant acquired by respondent-State for construction of percolation tank at village Gotewadi.

2. The relevant facts in present case are that, the agricultural land Survey No. 312/B ad-measuring 4 Hectare, 90 R., located at village Goregaon, Tahsil Hingoli, belonging to the appellant was acquired by the respondent – State for construction of percolation tank at village Gotewadi. A notification under section 4 of the Act of 1894 was published in Government Gazette on 06-02-1986. After compliance of procedural formalities, Special Land Acquisition Officer (for short "SLAO") declared the award under section 11 of the Act of 1894 and determined the market value of the land under acquisition @ Rs. 6500/- per hectare. The SLAO also awarded Rs. 7907/- for the trees and Rs. 19,428/- towards Well and other improvements carried out in the acquired land. Being dissatisfied with quantum of compensation amount determined by the SLAO, appellant-original claimant preferred Reference Application under section 18 of the Act of 1894 and claimed enhancement of compensation amount. It has been alleged that the SLAO awarded very meagre and inadequate compensation for acquired land as well as trees, well and other structures located in it. The amount of Rs.3,79,265/- was claimed towards enhanced compensation amount in the reference application.

3. In response to notice, respondent-State caused its appearance in the Reference application and denied the entire contentions propounded on behalf of claimant by filing written statement (Exhibit-7). The respondent – State contends that the SLAO has correctly appreciated the factual aspects as well as potential value of the lands under acquisition in proper manner. Therefore, there was no merit in Reference Application filed under section 18 of the Act of 1894 on behalf of claimant. In order to establish the claim, appellant-claimant examined himself on oath at (Exhibit-52). He has also examined P.W. 2-Suhas Pingalikar, Consulting Engineer to prove the valuation of improvements carried out in the acquired land. The valuation report prepared by the Valuer Shri. Suhas Pingalikar was produced on record at (Exhibit-34). In addition, the claimant also produced certified copies of comparable sale instances (Exhibit-30 and 32) on record to facilitate for fixing the market value of the acquired land. He has also produced on record the documents i.e. bills issued by Cotton Federation, 7/12 extracts of the acquired land, permission for digging the well by Tahsildar etc. The respondent - State did not lead any evidence to traverse the contentions propounded on behalf of claimant. The Reference Court after appreciation of entire evidence adduced on record, arrived at the conclusion that market value of the acquired land of claimant would be Rs.15,000/- per hectare. The Reference Court also awarded Rs.30,572/- towards well and other improvements in the field. The amount of

Rs.33,712/- was granted for trees in addition to compensation awarded by the SLAO in his Award. Accordingly, Reference Court passed the impugned judgment and award, which is the subject-matter of present appeal.

4. Learned counsel for appellant-original claimant vehemently submitted that Reference Court did not appreciate the evidence on record in its proper perspective. The Reference Court committed error while determining the very meagre and inadequate amount of compensation. The acquired land was fertile and irrigated land having water source from well. The sale instances produced on record were not considered in proper manner by the Reference Court. The acquired land was located within precincts of village Goregaon and all basic amenities were available in the village. The acquired land had an future potential value, but the Reference Court did not appreciate all these relevant factors while ascertaining its market value. The Reference Court failed to determine the valuation of the trees and improvements made in the land, resulting into awarding meagre amount to the claimant. Learned counsel for appellant explained the circumstances in detail and urged that the compensation @ Rs. 25,000/- per acre be awarded to the claimant for his acquired land. He has also solicited enhancement of compensation of Rs.40,000/- as well as Rs.92,200/- for fruit bearing trees, well and other improvements made in the acquired land.

5. In refutal, learned AGP raised objection and contends that

the Reference Court considered all the factual aspects in proper manner. There were no legal infirmities or imperfection in the findings expressed by the learned Reference Court. The document of sale-deeds produced on record were not comparable sale instances. However, the Reference Court considered these sale instances and granted enhanced compensation @ Rs. 15,000/- per hectare for the acquired land. According to learned AGP, compensation for trees were also allowed to be enhanced without any proof. The evidence of P.W. 2 Shri. Pingalikar, Civil Engineer was cryptic and slender in nature and it would not render assistance for determining value of structures raised in the land. He further added that amount granted by Reference Court for structures, well etc. in the land itself is exorbitant and excess one. Eventually, he prayed not to nod in faovur of appellant-original claimant for any further enhancement of compensation amount in this appeal.

6. At this juncture, it is worth to mention that the Reference Court considered the comparable sale method to ascertain the market value of land under acquisition. The comparable sale instances have to be identified on the basis of its proximity with crucial period of notification under section 4 of the Act of 1894 and also with situation of the lands under acquisition. The law postulates that market value means price that willing purchaser would pay to willing seller for the property. The disinclination of the vendor to part with land and urgent necessity of the purchaser to buy should be disregarded. It is also settled principle of law that

there is no straight jacket formula provided under law to resolve the controversy on market value of land under acquisition, but some guess work is permissible while computation of market value of the acquired land. However, the parties have to lead evidence to show that lands have greater value and potential to ascertain the market value prevailing during the period of notification under section 4 of the Act of 1894. Onus to prove entitlement to higher compensation is upon the claimant.

7. In the instant case, the appellant claimant examined himself on oath before the Reference Court. He deposed that the acquired land was irrigated and fertile land. He was taking yield of cotton, sugar cane, wheat, banana etc. He produced 7/12 extract of the land under acquisition. He has also relied upon the receipts of cotton federation on record. The claimant also relied upon the sale instances of land located in villages Sawna as well Goregaon itself. These sale deed were executed in the year 1986 and 1981 for consideration of Rs.25,000/- and Rs.38,000/- respectively. The area of the land under sale was 0.39 R. and 0.53 R. respectively. The appellant-claimant claimed Rs. 25,000/- per acre towards market value for his acquired land on the basis of these comparable sale instances produced on record.

8. Admittedly, the provision of Section 51-A of the Act of 1894 prescribed that the certified copy of the sale instances registered under Registration Act, 1908 has to be accepted as evidence of

transaction recorded in such document. The extract of comparable sale-deeds and certified copy of deposition of vendee from these sale transactions recorded in proceeding of LAR No. 42 of 1990 came to be produced on record in this case on behalf of claimant. These documents are at (Exhibits-30 to 33) in the record of trial Court. In view of section 80 of the Evidence Act, these documents have an presumptive value being part of record or memorandum of evidence given by witness in judicial proceeding i.e. LAR No. 42 of 1990. It would be presumed that these documents are genuine one being part of evidence duly recorded in the judicial proceedings. Therefore, there is no impediment to appreciate these documents of sale transactions for computation of market value of the land under acquisition.

9. While appreciating the sale instance of land survey No. 51/1 of village Sawna Ta. Hingoli, it reveals that the said sale-deed was executed on 17-04-1986 i.e. after publication of notification under section 4 of the Act of 1894 in the Government Gazette on 06-02-1986 in this case. Moreover, notification under section 4 of the Act of 1894 was published in daily news paper circulated in area of village Goregaon in the month of December, 1985. Therefore, it is cumbersome to appreciate that sale instance of land survey No. 51/1 of village Sawna would be comparable sale instance. In addition to aforesaid circumstances, the claimant produced certified copy of deposition of vendee of sale deed, namely, Bhikaji Thorat, who was examined in the proceeding of LAR No. 42 of 1990. He

deposed that the land under sale was located at the distance of 2 k.m. away from the land under acquisition. In such circumstances, the sale instance of village Sawna could not be considered as a good guide for computation of value of the land under acquisition.

10. The another sale-deed produced on record is from village Goregaon itself executed on 19-06-1981. The land admeasuring 00.53 *R.* from survey No. 182 was sold for consideration of Rs. 38,000/- including right to avail water facility from the well. The extract of evidence of vendee Shri. Gyanoji Kawarkhe recorded in the proceeding of LAR No. 42 of 1990 was produced in this case on behalf of claimant. The evidence of vendee Shri. Gyanoji proved the recitals of sale-deed (Exhibit-32) for sale transaction of land Survey No. 182 admeasuring 00.53 *R.* for consideration of Rs. 38,000/-. Unfortunately, vendee Gyanoji did not whisper about proximity of the land under sale with land of the appellant-claimant under acquisition. He had also not verbalized about identical characteristic and potential of land under sale and land under acquisition. Therefore, in absence of material evidence about identicalness of land under acquisition as well as land under sale, it would unsafe to conclude that the land under acquisition would fetch similar market value at par with the price shown in the document of sale-deed (Exhibit-32).

11. It is also worth to mention that minute scrutiny of recitals of the sale instance (Exhibit-32) reflects that sale transaction of

agricultural land survey No. 182 admeasuring 00.53 R. land was executed in between both the real brothers *inter-se* as vendee and vendor. The recitals also adumbrates that vendor Shri. Limbaji s/o Ganpati Kawarkhe ventured to sale the land to his real brother owing to acute need of money for refund of loan liability as well as to toil the remaining part of his land etc. Therefore, necessity of sale by vendor would be crucial factor, liable to be disregarded for appreciation being comparable sale instance. In such circumstances, sale-deed of land Survey No. 182 being transaction in between the real brothers *inter-se* and executed in acute need of money would not be an comparable sale instance to determine the market value of land under acquisition. It would not render any guidance for calculating the fair and reasonable market value of the land under acquisition.

12. It is to be noted that the Hon'ble Apex Court in the case of ***Chimanlal Harigovind Vs. Special Land Acquisition Officer, Pune*** reported in **1988 SC 1652** delineated the ratio that Reference under section 18 of the Act of 1894 is not an appeal against award declared by the SLAO under section 11 of the Act of 1894. The Court cannot take into consideration the material relied upon by the SLAO in his award unless these materials are produced and proved before the Court. As referred above, the claimant in the instant case produced the documents of sale-deed on record being comparable sale instances, but after examination of all relevant factors, it reveals that these sale instances cannot be considered as

comparable sale-deeds to ascertain market value of the acquired land.

13. The intense scrutiny of findings expressed by the Reference Court reflects that the Reference Court adopted superficial approach instead of examining all the ramifications of evidence available on record to ascertain the just and fair market value of the acquired land. Moreover, it cannot be overlooked that the claimant also failed to establish that the price of his acquired land would fetch more than Rs. 25,000/- per annum in the year 1986. Be that as it may, the Reference Court on some guess work calculated the market value of the acquired land @ Rs. 15,000/- per hectare. The respondent – State did not agitate the findings of the Reference Court while calculating the market value of the acquired land @ Rs.15000/- per hectare. The respondent/State did not ventilate any grievance against it, in any appellate forum. In such peculiar circumstances, it would be perceivable that market value determined by Reference Court appears to be a reasonable, fair and proper one. Moreover, the appellant-claimant is also not entitled for any further enhancement of compensation in this case.

14. Now, in regard to valuation of trees, well and other improvements etc. carried out by claimant in the field, it reveals that SLAO has awarded total sum of Rs.7907/- for trees and Rs. 19,428/- for other structures and improvements in the land. However, the Reference Court allowed the enhancement of

compensation to the tune of Rs.30,572/- for well, plat form, pipe-line, temple, farm house and cattle shed etc. In addition, enhanced amount of Rs. 33,712/- came to be awarded for trees excluding amount of Rs.6288/- already paid by the SLAO.

15. The claimant adduced evidence of P.W. 2 -Suhas Pingalikar to prove the valuation report of structures erected in the land (Exhibit-34). His evidence appears to be cryptic and scanty in nature. He has not described any detail particulars or mode and manner in which he proceed to calculate the value of each and every item shown in the report (Exhibit-34). At this juncture, it is profitable to make a reference of observations made by the Division Bench of this Court (Principal seat) in paragraph No. 20 of the case- **State of Maharashtra and another Vs. Chandrakant Mangilal Samdadia and another** reported in **2013(1) Mh.L.J. 397** as under:

".....
 As regards the market value of the structures and wells on the lands, the Claimants have examined one Hemant Haribhau Dhatrak who is the Civil Engineer. He has set out the market value of the wells, houses, gobar gas plant, water storage tank, etc. He has merely stated the figures of the market value in his evidence without stating the basis for coming to the conclusion as to why that a particular structure or a particular well was having the said market value. It is a mere opinion evidence without disclosing the basis for forming opinion. Therefore, his evidence will have to be kept out of consideration."

16. The P.W.2 Shri. Suhas Pingalikar, Valuer was the Diploma holder in Civil Engineering. He prepared the report (Exhibit-34) in the year 1986 on visiting to suit site at the behest of claimant. The impugned award under section 11 was declared by SLAO in the month of December, 1988. The claimant produced the extract of application dated 25-02-1987 filed in the office of SLAO. The claimant ventilated the grievance in regard to survey and joint measurement carried out on behalf of Government Agency. But, in the said application dated 25-02-1987 there was no reference about valuation Report (Exhibit-34) prepared by P.W.2 - Suhas Pingalikar in the year 1986. It remains a conundrum that for what reason claimant did not disclose about the valuation report of P.W.2- Suhas Pingalikar anywhere before the SLAO till filing of Reference Application under section 18 of the Act of 1894. The evidence of P.W.2-Suhas Pingalikar did not inspire confidence and appears not free from blemish.

17. The claimant produced document of permission granted by the Tahsildar for digging the well. But, it would not prop-up THE weak edifice of the claimant's case for the reason that valuation report of well prepared by the valuer, namely, Shri. Suhash Pingalikar found not credible and believable one. Apart from all these circumstances, Reference Court was pleased to award enhanced compensation of Rs. 30,572/- to the claimant on account of improvements carried out in the acquired land. It would be reiterated that, respondent-State did not raise any objection about

quantum of compensation awarded by Reference Court towards improvements made in the acquired land. Therefore, it would be unjust and improper to cause any interference in the findings recorded by the Reference Court. In the result, no any further enhancement of compensation is permissible in favour of claimant in addition to the amount granted by the Reference Court.

18. The claimant also ventilated the grievance about quantum of compensation awarded for fruit bearing trees located in the acquired land. It is to be noted that except the bare version of claimant, there is no any other sustainable evidence available on record to evaluate the costs of fruit bearing trees of the appellant located in the acquired land. In absence any report of expert from Horticulture Department, it would unsafe to proceed for assessment of the costs of fruit bearing trees. Nodoubt, while ascertaining the value of fruit bearing trees, it is imperative to take into consideration the age of trees, its fruit bearing capacity, income per annum from the trees, costs of fire wood etc. Unfortunately, all these statistical particulars are not available in the matter in hand. Hence, there is no alternative but to arrive at the conclusion that the claimant failed to discharge his onus to establish the costs of fruit bearing trees located in his acquired land.

19. In view of aforesaid discussion, it appears that appellant-original claimant is not entitled for any further enhancement of compensation than the amount awarded by Reference Court. There

are no circumstances favourable to the claimant for granting enhancement of compensation amount in this case. The document of sale-deeds produced on record from village Sawna and Goregaon cannot be considered as comparable sale instances for determination of market value of the acquired land. The evidence of valuer Shri. Suhas Pingalikar adduced on behalf of claimant in this case found incredulous and not free from blemish. It cannot be relied upon for inference to favour the claimant in this matter. In absence of report of expert from Horticulture Department, as well as detail particulars about age of fruit bearing trees, its fruit bearing capacity, income of the trees etc., it would difficult to determine just compensation for the fruit bearing trees allegedly located in the acquired land. It cannot be overlooked that the Reference Court adopted superficial approach while granting enhanced compensation amount in favour of claimant. Unfortunately, respondent- State did not raise any objection against impugned award passed by the Reference Court. In such backdrop, there is no propriety to cause any interference in the findings expressed by the Reference Court at the behest of claimant. In the result, present appeal being devoid of merit deserves to be dismissed.

20. Accordingly, appeal stands dismissed. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.
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