

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

FIRST APPEAL NO. 303 OF 2001

Sow. Mangala w/o Manohar Ganjare,
Age: 45 Years, Occu: Agri. & Household,
R/o : Bhingi as present Hingoli,
Tq. Hingoli, District Parbhani. ..Appellant

Versus

1. The State of Maharashtra
through Collector,
Parbhani.
2. The Executive Engineer,
Minor Irrigation Department
(S.S.) Parbhani.
3. The Special Land Acquisition
Officer, U.P.P.2, Parbhani
Dist. Parbhani. ..Respondent

...

Mr. S.K. Adkine, Advocate for Appellant.
Mr. A.M. Gaikwad, Advocate for Respondent No.2.
Mr. S.B. Narwade, AGP for Respondent/State.

...

CORAM : P.R. BORA, J.

DATE : 30th OCTOBER, 2018.

ORAL JUDGMENT:-

1. The appellant has filed the present appeal against the judgment and award passed in L.A.R. No.136 of 1991 by Civil Judge Senior Division at Hingoli on 08.03.2000. The aforesaid land acquisition reference was filed by the present appellant seeking enhancement in the amount of

compensation which was offered by the Special Land Acquisition Officer towards acquisition of her land for the purpose of Hadgaon Minor Irrigation Tank.

2. The agricultural lands bearing gut no.62/1 and 62/4 ad-measuring 4 H 64 R in total, owned by the appellant situated at village Bhingi Taluka Hingoli, District Parbhani were acquired for the construction of Hadgaon Minor Irrigation Tank. The notification under Section 4 of the Land Acquisition Act 1894 in that regard was published in the official gazette on 15.04.1886. The award under Section 11 came to be passed on 03.06.1989. The SLAO had offered the compensation of the acquired lands at the rate ranging from Rs. 7,500/- to Rs.8,500/- per hectare. 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 with the Collector seeking enhancement in the amount of compensation. The Collector forwarded the application so received for its adjudication to the Civil Court at Hingoli. The Civil Court is hereinafter referred to as the Reference Court.

3. In the reference proceedings, the appellant had demanded the compensation of the acquired lands at the rate of Rs.50,000/- per acre. It was the contention of the appellant that the subject lands were irrigated lands and the irrigation was on well water. In order to substantiate the claim raised by her, the claimant herself deposed before the Court and also examined one more witness by name Sanjay Sudhakar Nimdeo and has also placed on record three sale instances claiming the same to be of the comparable lands occurred during the said period. No evidence was adduced on behalf of the respondents.

4. The learned Reference Court after having considered the oral and documentary evidence on record, determined the market value of the subject lands at the rate of Rs.12,000/- per hectare and accordingly enhanced the amount of compensation. The Reference Court also held the appellant entitled for the statutory benefits and the interest under the provisions of the Land Acquisition Act. According to the appellant, the Reference Court also has not granted the adequate compensation. The appellant has, therefore,

preferred the present appeal seeking enhancement in the amount of compensation so awarded by the Reference Court.

5. The learned counsel for the appellant has criticized the impugned judgment and award on various grounds. The learned counsel for the appellant submitted that though three sale instances were brought on record by the appellant respectively at Exhibit-24, 25 and 26 and though the lands involved in all the three sale instances were of similar quality and nature and were in the vicinity of the acquired lands, the Reference Court has for wrong reasons discarded the said evidence. The learned counsel submitted that in spite of there being sufficient evidence on record showing that the subject lands were being irrigated on well water, the learned Reference Court has wrongly held the subject lands to be non-irrigated lands. The learned counsel further submitted that the Reference Court has also not awarded any compensation for the fruit bearing trees existing in the acquired land. The learned counsel has, therefore, prayed for adequate enhancement in the amount of compensation with all statutory benefits

thereon.

6. The learned AGP resisted the submissions made on behalf of the appellant and supported the impugned judgment and award. The learned AGP submitted that though three sale instances were brought on record by the claimant, the lands involved in said two sale instances respectively at Exhibit-25 and 26 were the small pieces of land and on the basis of the said sale instances, the market value of the acquired lands could not have been determined by the Reference Court. The learned AGP further submitted that the sale instance at Exhibit-24 which was much emphasized by the claimant was admittedly of the period post issuance of Section 4 notification and as such could not have been the basis for determining the market value of the acquired lands on the date of acquisition i.e. on the date of issuance of Section 4 notification on 15.04.1886. The learned AGP submitted that despite the latches on part of the appellant in bringing on record the cogent and sufficient evidence, the Reference Court has awarded the fair amount of compensation. The learned AGP, therefore, prayed for rejecting the

application.

7. I have given due consideration to the arguments advanced by the learned counsel appearing for the appellant, the learned counsel appearing for the acquiring body and the learned AGP appearing for the State. I have also perused the impugned judgment and the evidence on record.

8. The material on record reveals that the claimant had placed on record three sale instances in order to support the claim made by her in the reference application. The said sale instances are at Exhibit-24, 25 and 26. In order to prove the sale instance at Exhibit-24, the claimant had examined AW-2 Sanjay Sudhakar Nimdeo. The Reference Court has declined to rely upon any of the said sale instances. In so far as the sale instances at Exhibit-25 and 26 are concerned, it does not appear to me that the Reference Court has committed any error in discarding the said sale instances. The sale deed at Exhibit-25 pertains to the sale of 11 R land whereas, the land which was the subject matter of the sale deed at Exhibit-26 was admeasuring only 1 R. Both the sale deeds could

not have been relied upon by the Reference Court since they were pertaining to the small pieces of land whereas, the acquired lands were quite large. However, it appears to me that the sale deed at Exhibit-24 could not have been outrightly discarded by the learned Reference Court only on the ground that it was executed after the issuance of the notification under Section 4 of the Act whereby, the subject lands were acquired. Admittedly, the respondents did not adduce any oral or documentary evidence in the circumstances, the only evidence which was before the Reference Court for its consideration was the oral testimony of the present appellant and the sale instance produced on record by her at Exhibit-24.

9. The land which was the subject matter of Exhibit-24 was admeasuring 93 R and was situated at village Bhingi and was sold for the consideration of Rs. 35,000/- on 26.04.1989. The said land had thus earned the price at the rate of Rs.37,600/- per hectare. In absence of any contrary evidence there was no difficulty for the Reference Court to determine the market value of the acquired lands on the date of their acquisition on the basis of the

said sale instance by making some guess work and by proportionately reducing the value received to the the land which was the subject matter of Exhibit-24 considering the fact that the same was sold after about three years of acquisition of the subject lands.

10. As I noted here-in-above the claimant had examined AW-2 Sanjay Sudhakar Nimdeo who had purchased the said land which is the subject matter of Exhibit-24. In his cross-examination nothing has been brought on record by the respondents-defendants that the value of the said land had increased as because the construction of the Hadgaon Minor Tank. In the circumstances, by applying the same criteria that the prices of the lands increase ordinarily at the rate 10% every year, the market value of the acquired lands could have been determined by the Reference Court on the basis of the sale deed at Exhibit-24. By applying the said criteria, the market value of the acquired lands comes to Rs.26,320/- per hectare. Having regard to the further fact that the said land was not from the same village Bhingi but was of village

Ghuli, some more deductions can be made. Even by making such deductions, the market value of the acquired lands could not have been determined at the rate less than Rs.22,000/- per hectare.

11. The land which was the subject matter of Exhibit-24 was admittedly jirayat land. Though, it is the contention of the present appellant that the subject lands were having well therein and two crops used to be taken in the said lands and as such the said lands must be held to be irrigated lands and the market value thereof shall be held double of the jirayat land, the same contention is difficult to be accepted. As has been observed by the Reference Court, the appellant-claimant has not brought on record sufficient evidence to show that diesel engine was being used and two crops used to be taken from the acquired lands. The acquired lands, therefore, are to be held non-irrigated lands. I, therefore, determine the market value of the said lands on the date of their acquisition as Rs.22,000/- per hectare. The compensation therefore needs to be accordingly enhanced. I also held the appellant-claimant entitled for the statutory

benefits under Section 23(1A) and 23(2) of the Act. The appellant-claimant is also entitled to receive the interest on the enhanced amount of compensation under Sections 28 and 34 of the Act from the date of passing of the award under Section 11 of the Act i.e. from 03.06.1989. For the reasons stated above, the following order is passed:

ORDER

(i) The appellant-claimant is held entitled to receive the compensation at the rate of Rs.22,000/- per hectare. The enhanced amount of compensation be accordingly determined.

(ii) Respondent Nos.1 to 3 shall jointly or severally pay the enhanced amount of compensation to the appellant – claimant along with the statutory benefits thereon under Sections 23 (1A) and 23(2) of the Land Acquisition Act as well as the interest under Sections 28 and 34 of the Land Acquisition Act in accordance with law.

(iii) The modified award be prepared accordingly.

(iv) The appeal stands partly allowed in the aforesaid terms.

(P.R. BORA, J.)