IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 870 OF 2007

1] Sadashiv s/o Kachru Gaikwad,
age 45 years, occ. Agril.,
R/o Daregaon, Post Padali,
Tq. Khultabad, Dist. Aurangabad,

2] Madhukar s/o Kachru Gaikwad,
age 40 years, occ. and
r/o as above,

3] Subhash s/o Kachru Gaikwad,
age 32 years, occ. & r/o
as above ...Appellants
[Orig. Petitioners]

VERSUS

1] The State of Maharashtra,
through Special Land
Acquisition Officer,
Collectorate, Aurangabad,

2] The Executive Engineer,
Minor Irrigation, Local Sector,
Aurangabad ...Respondents
[Orig.Respondents]

...

Shri S.K.Adkine, advocate for appellants
Shri S.P.Deshmukh, AGP for Respondents

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 25.10.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 01.11.2018

J U D G M E N T :

Original claimants in Land Acquisition Reference No. 172 of 1999 have filed this appeal against the judgment and award, passed by the learned Adhoc District Judge-3, Aurangabad, awarding compensation for the acquired land at the rate of Rs.768/- per Are for irrigated land and Rs.350/- per Are for dry crop land.

2. Respondent no.1 is the State of Maharashtra and Respondent no.2 is the acquiring body.

3. Undisputedly, the claimants are owners of land Gat No. 54, admeasuring 3 Hectare 70 Are, situated at village Padali, Taluka Khultabad, District Aurangabad. This entire land was acquired by the respondents.

4. Notification under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as, 'the Act') was published in official gazette

on 3.3.1994. Award was declared under Section 11 of the Act on 13.5.1997. According to the claimants, possession of the acquired land was taken by respondents before the date of notification under Section 4 (1) of the Act. However, possession receipt shows that possession of the acquired land was obtained by the acquiring body on 1.8.1994. Under the award, dated 13.5.1997, the Land Acquisition Officer offered compensation at the rate of Rs.480/- per Are for irrigated land and Rs.320/- per Are for dry crop land. Being dissatisfied with this offer, the claimants submitted the protest application to the Collector and demanded higher compensation for the acquired land. Therefore, Land Reference was referred to the Reference Court.

5. After considering the evidence placed on record, the Reference Court awarded compensation at the rate of Rs.768/- per Are for irrigated land and Rs.350/- per Are for dry crop land. Hence, this appeal.

6. Heard Shri S.K.Adkine, learned counsel for the appellants and Shri S.P.Deshmukh, learned AGP for respondent nos. 1 and 2.

7. Learned counsel for the appellants submits that the record of right of the acquired land shows that one well is situated in the acquired land and even the crop statement shows that irrigated crops like sugarcane, chilli, cotton are taken from the acquired land. He submits that the acquired land is irrigated land with the help of well water.

His next submission is that the appellant placed on record two sale instances being sale deed, dated 24.6.1993 (Exh.22) and sale deed, dated 30.4.1993 (Exh.23). Contention of the learned counsel for the appellants is that, these both sale instances are one year preceding the date of notification under Section 4 of the Act. However, the Reference Court did not consider ten per cent escalation in market value of the acquired land at the time of determining market value on the date of notification under Section 4 of the Act.

He submits that sale instance (Exh.22) shows that land under that sale deed (Exh.22) was sold out at the rate of Rs.854/- per Are and land under sale deed (Exh.23) was sold out at the rate of Rs.931/- per Are. Lands under these both sale instances, situated at village Padali are dry crop lands. However, the acquired land, being irrigated, would fetch higher market value than the land under the sale instances. He submits that the Reference Court, relying on contents of the award, held that half portion of the acquired land is dry land. He prays for enhancement of the compensation.

8. Learned AGP for the respondents submits that the lands under sale instances are at long distance from the acquired land and, therefore, those sale instances are not comparable sale instances. He submits that statutory benefit under Sections 23(1A) and 23(2) of the Act was erroneously awarded by the Reference Court. According to the learned AGP, even the interest under Section 28 of the Act should have been granted from the date of possession i.e. from

1.8.1994 till deposit of compensation amount. However, the Reference Court awarded interest under Section 28 of the Act from the date of notification under Section 4(1) of the Act, which is not in accordance with law.

Learned AGP submits that even the market rate of the land under sale instances is not properly calculated by the learned counsel for the appellant

9. After going through the judgment and award, passed by the Reference Court, it reveals that the Reference Court has considered the observations of the Land Acquisition Officer for holding that half portion of the acquired land is irrigated and half portion is dry crop land. However, the Apex Court in "**Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona and Anr" (AIR 1988 SC 1652)**, has laid down following guidelines which are to be followed while determining the fair market price of the acquired land on the date of notification under Section 4

(1) of the Act : -

> “ (1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition officer in his Award unless the same material is produced and proved before the Court.
>
> (2) So also the Award of the Land Acquisition officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before 535 it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition officer, as if it were an appellate court.
>
> (3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.
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> (4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.
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> (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.

(10) 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.	1. largeness of area.
2.proximity to a road.	2. situation in the interior at a distances from the Road.
3.frontage on a road.	3. narrow strip of land with very small frontage compared to death.
4.nearness to developed	4.lower level area requiring the depressed portion to be filled up.
5. regular shape.	5. remoteness from developed locality.
6. level vis-a-vis land under acquisition.	6. some special 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. “	

10. Thus, for determining the market value of acquired land, on the date of notification under Section 4 (1) of the Act, the Court has to consider market value of the land under “comparable sale instance”. The comparable sale instance is to be identified on the basis of proximity in between execution of the sale instance and date of publication of notification under Section 4 (1) of the Act. So also, there shall be proximity in between land under sale instance and acquired land regarding location advantages and quality of those lands. As far as possible, the sale instance shall be prior to the date of publication of notification under Section 4 (1) of the Act and it shall be genuine document.

11. In the case at hand, the claimants have placed reliance on two sale instances Exh. 22 and Exh.23. The sale instance (Exh.22) is executed on 26.4.1993 and under this sale deed, out of Gat No.5, situated at village Padali, 62 Are irrigated land was sold out for the price of Rs.53000/-. Thus, on 26.4.1993, market value under sale

instance (Exh.22) was 854/- per Are.

The second sale instance (Exh.23) was executed on 30.4.1993 and under that sale deed, out of Gat No.23, situated at village Padali, 1 Hectare 50 Are land was sold out for the total consideration of Rs.1,19,190/-. The sale instance shows that the said land was alienated along with share in the well water and two aana share in one mango tree. Thus, the market value of this land of sale instance (Exh.23) on 30.4.1993 is Rs.794/- per are.

12. It is to be noted that even land under sale instance (Exh.22) was also sold out along with four aana share in the well water. In other words, the lands under both the sale instances are seasonally irrigated land with the help of well water.

13. To determine the nature and quality of the acquired land, I have to consider the record of right and crop statement (Exh.24) of the acquired land. The record of right shows that in the share

of claimant one new well is sunk. Regarding this well, claimant Madhukar Gaikwad (PW 1) was cross-examined at length by the learned counsel for the respondent. It was suggested to the claimant Madhukar that the well was sunk after the acquisition of that land. However, that suggestion was specifically denied by the claimant. He has only admitted that the well was sunk by borrowing bank loan. Thus, though claimant was available for cross-examination, the respondents could not bring on record that the well, shown in the acquired land in the record of right, was sunk after the acquisition.

14. Even the crop statement from the year 1990 onward shows that irrigated crops like, sugarcane, wheat, cotton and chilli are taken from the acquired land. Even source of irrigation is shown as tank. Thus, on the basis of this record of right and oral version of claimant Madhukar (PW 1), the claimants can establish that the acquired land is also seasonally irrigated land with the help of well water as well as tank water.

Thus, obviously, the quality of the land under both the sale instances and quality of the acquired land is identical, as these all lands are seasonally irrigated land with the help of well water.

15. Though, learned AGP submitted that the lands under the sale instance are at the long distance from the acquired land, in the entire cross-examination of Madhukar Gaikwad (PW 1) even single suggestion is not given by learned AGP that the land under sale instance is at the long distance from the acquired land. The version of Madhukar (PW 1) that lands under sale instance are at the distance of 4 to 5 Gat numbers from the acquired land remained unchallenged. These all lands are situated in one and the same village Padali.

16. Therefore, considering unchallenged version of Madhukar (PW 1) regarding location of acquired land and land under sale instance, I have no hesitation to hold that even locationwise the lands under sale instances are proximate with the

acquired land. The lands under sale instances were sold out on 26.4.1993 and 30.4.1993. Thus, both sale instances are one year preceding the date of publication of notification under Section 4 (1) of the Act. Thus, there is certainly proximity in between the date of notification and date of execution of these both the sale instances. As both the sale instances are executed one year before the date of notification under Section 4 (1) of the Act, the genuineness of these both sale instances cannot be doubted.

17. Accordingly, I have no hesitation to hold that sale instance (Exh. 22) and sale instance (Exh. 23) are genuine and comparable sale instances to determine the market value of the acquired land on the date of notification under Section 4(1) of the Act. The lands under both the sale instances are sold out in one and the same month and year.

18. Therefore, to determine the market value of the acquired land, average of the market value of the land under both sale instances can be

considered. The market value under sale instance (Exh.22) is Rs.854/- per Are and land under sale instance (Exh. 23) is Rs.794/- per Are. Thus, average market value of these lands is Rs.854+794x½=824/- per Are. These sale instances are one year preceding the date of notification under Section 4(1) of the Act i.e. 3.3.1994. There shall be escalation of ten per cent in the market value of the land under sale instance to determine the market value of the acquired land on the date of notification i.e. 3.3.1994. Thus, fair market value of the acquired land is determined as Rs.824+82=906/- per Are.

19. Thus, by allowing this appeal, compensation for acquired land is to be awarded at the enhanced rate of Rs.906/- per Are i.e. Rs.36,240/- per Acre.

In addition to this, the claimants are entitled to component under Section 23 (1A) of the Act at the rate of 12 per cent per annum on the market value from the date of notification i.e. 3.3.1994 till the date of taking possession on

1.8.1994, which is earlier than the date of publication of award under Section 11 of the Act.

Claimants are also entitled to 30 per cent solatium on market value of the acquired land under Section 23 (2) of the Act.

In addition to this, under Section 28 of the Act, the claimants are entitled to interest on enhanced compensation and solatium, at the rate of nine per cent per annum from the date of taking possession by acquiring body i.e. 1.8.1994 for the period of one year and from 2.8.1995 the claimants are entitled to interest at the rate of fifteen per cent per annum till the date of deposit of entire compensation amount by the Collector.

20. In view of this discussion, the appeal deserves to be allowed. The award, passed by the Reference Court in Land Acquisition Reference No. 172 of 1999 deserves to be modified.

21. Accordingly, First Appeal No. 870 of 2007 is allowed. The award passed by the learned Adhoc District Judge-3, Aurangabad in Land

Acquisition Reference No. 172 of 1999 is modified as under :-

" (i) Land Acquisition Reference No. 172 of 1999 is partly allowed with proportionate costs.

(ii) Respondents do pay enhanced compensation for acquired Gat No. 54, area 3 Hectare 70 Are land, situated at village Padali at the rate of Rs.906/- per Are i.e. Rs.36,240/- per Acre, along with the amount of component under Section 23 (1A) of the Act at the rate of twelve per cent per annum of market value of acquired land from 3.3.1994 to 1.8.1994 and 30 per cent solatium of the market value of the acquired land under Section 23 (2) of the Act.

(iii) Respondents do pay interest, on aggregate amount of 'enhanced compensation' including 'solatium amount', at the rate of nine per cent per annum for one year i.e. from 1.8.1994 to 1.8.1995 and thereafter at the rate of fifteen per cent per annum till the date of deposit of entire compensation amount by the Collector. Deficit Court fee, if any, be recovered from claimants.

(iv) Award be drawn accordingly. “

22. Parties to bear their respective costs of the appeal.

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

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