IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.509/2002

Bhagwat Rama Bangar,
age 41 yrs., occu.agri.,
r/o Taradgavan Tq.Georai Dist.Beed.
...Appellant..
(Org.claimant)

Versus

1] The State of Maharashtra,
through the Collector, Beed.

2] The Executive Engineer,
Minor Irrigation, Zilla Parishad,
Beed.
...Respondents...

.....

Shri D.R. Jayabhar, Advocate for appellant.
Shri A.D. Namde, AGP for respondent no.1.
Shri P.D. Suryawanshi, Advocate for respondent no.2.

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CORAM: M.S. SONAK, J.

DATE: 30.01.2018

ORAL JUDGMENT :

1] Heard learned counsel for the parties.

2] The appellant, dissatisfied with the compensation determined by the Reference Court, questions the judgment and award dated 20.8.2001 on several grounds urged by learned counsel for the appellant.

3] Learned counsel for the appellant submits that sale deeds at Exhibits 18 and 20 were in respect of comparable lands from the same village. As per the sale instances, the rate was Rs.2555=55 per Are in the year 1992 i.e. atleast two years prior to the date of issuance of Section 4 notification dated 4.8.1994. He submits that there was absolutely no reason to make deductions to the extent of almost 70% whilst accepting that the sale instances were in respect of comparable lands. He submits that the escalation atleast should have been 10% p.a. He submits that the appellant's land was a seasonal irrigated land and this is evident from the fact that there was a well in the acquired land. For all these reasons, he submits that compensation of atleast Rs.2,000/- per Are was required to be determined by the Reference Court.

4] Learned counsel for the respondent no.2 submits that the two sale deeds were in respect of small plots i.e. 9 Ares and 10 Ares when the appellant's acquired land admeasured 3 Hectare 75 Ares. He submits that the lands in the sale deed were on the bank of the stream and, therefore, were of much superior quality. He submits that the sale deed lands are very close to village Shekta and, therefore, not comparable to the acquired land. For all these reasons, he submits that the deductions made by the Reference Court were most appropriate and the impugned judgment and award warrants no interference. He submits that this appeal be, therefore, dismissed.

5] In order to evaluate the rival contentions, records were perused. The Reference Court has accepted in evidence the sale instances at Exhibits 18 and 20. Both the sale instances are of the year 1992 i.e. atleast two years prior to the issuance of Section 4 notification. The vendor in case of Exhibit 18 and the purchaser in case of Exhibit 20 came to be examined. The Reference Court was, therefore, quite right in relying upon the sale instances at Exhibits 18 and 20 as useful pieces of evidence for determination of the rate of compensation payable in respect of the acquired land. The Reference Court has held that since the sale instances relate to the small area and acquired area was substantially large, deduction of 25% is warranted. This is quite correct and to that extent, the submission of learned counsel for the respondent no.2 will have to be accepted. The Reference Court has also held that the sale instances of concerned lands, which were on the bank of the stream and in that sense had ready availability of water supply. For this factor, the Reference Court has ordered deduction of further 20%. This is also correct and to that extent, the submission of learned counsel for the respondent no.2 will have to be accepted.

6] The Reference Court has, however, deducted further 25% on the ground that the lands, which formed the subject matter of Exhibits 18 and 20, were closer to the village Shekta as compared to the acquired land. This deduction is entirely unjustified. The village Shekta is itself a small village. There is no dispute that the sale instances at Exhibits 18 and 20 are from the village Shekta so also the acquired lands are in the village Shekta. In these circumstances, deduction of further 25% on the ground of proximity to the village is entirely unjustified. At the highest, the deduction of 5% could be tolerated.

7] This means that from out of the rate of Rs.2555=55 per Are, as determined by the two sale instances, maximum deduction of 50% could have been made for the purpose of determining market rate in respect of the acquired land. However, before such deduction is made, escalation of atleast 10% p.a. was required to be granted because the sale instances relate to the year 1992, whereas Section 4 notification in the present case was issued only on 4.8.1994. The rate as on the date of issuance of Section 4 notification in respect of the two sale instances would, therefore, have to be taken at Rs.3,000/- per Are. By making 50% deduction, the rate in respect of the acquired land will have to be determined at Rs.1500/- per Are.

8] The appeal is, therefore, partly allowed. The compensation amount is enhanced from Rs.720/- per Are to Rs.1500/- per Are. The appellant is entitled to proportionate statutory benefits and interest on the enhanced compensation. The respondents are directed to compute the compensation, statutory benefits and interest, and thereafter deposit the same in this Court within a period of eight weeks from today. Upon deposit, the appellant is permitted to withdraw the same unconditionally. The appeal is disposed of accordingly. There shall be no order as to costs.

(M.S. SONAK, J.)