

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

FIRST APPEAL NO. 735 OF 2002

The Special Land Acquisition Officer
U.T.P.H. No.1, Jalgaon ..Appellant

Versus

Kashinath Somu Shimpi (Deceased)
Heir's

- a) Prakash Kashinath Khairnar,
Age 40 yrs,
- b) Yamunabai Kashinath Khairnar,
Age 80 yrs,
- c) Sushilabai Raman Jagatap,
Age 57 yrs,
- d) Kalavati Devidas Bagul,
Age 49 yrs,
- e) Shalini Vasant Kapure,
Age 46 yrs,
- f) Sunanda Madhukar Baviskar,
Age 44 yrs.,

All R/o Pune Dist. Pune ..Respondents

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Mr. A.M. Phule, AGP for Appellant.

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**CORAM : P.R. BORA, J.
DATE : 08th OCTOBER, 2018.**

ORAL JUDGMENT:-

. The State has preferred the present
appeal against the judgment and award passed in

L.A.R. No.351 of 1991 decided on 01.04.2000 by the Court of Civil Judge Senior Division, Jalgaon.

2. 1 Hectare 31 Are land of the respondents was acquired for the purpose of Minor Irrigation Tank at Borkhede, Taluka Chalisgaon, District Jalgaon. Notification under Section 4 of the Land Acquisition Act in that regard was published in the official gazette on 26.06.1986 whereas, the award under Section 11 came to be passed on 12.07.1989. The SLAO had offered the compensation at the rate of Rs. 11,000/- per Hectare for Jirayat land and Rs.200 per Hectare for Pot-Kharab land. Dissatisfied with the amount of compensation so offered, the respondents (hereinafter referred to as the 'claimants') had preferred an application under Section 18 of the act seeking enhancement in the amount of compensation. Before the Reference Court the claimants had claimed the compensation at the rate of Rs. 50,000/- per Acre. In order to substantiate the claim raised by them, the claimants had relied upon certain sale instances. No evidence was adduced on behalf of the respondent-State.

3. The learned Reference Court after having considered the oral and documentary evidence on record, determined the market value of the acquired lands at the rate of Rs. 60,000/- per Hectare for the land ad-measuring 1 Hectare 31 Are and at the rate of Rs.300 per Are for the 10 Are Pot-Kharab land. Aggrieved by, the State has preferred the present appeal.

4. Shri Phule, the learned AGP criticizes the impugned judgment mainly on the ground the Reference Court has not at all made any discussion justifying his reliance on the sale instances placed on record by the claimants. From the judgment, the learned AGP submitted that it is difficult to understand as to what was the basis of the said Court to determine the market value of the acquired lands at the rate of Rs. 60,000/- per Hectare. The learned AGP has, therefore, prayed for setting aside the impugned judgment and award. No one has appeared for the respondents-claimants.

5. I have perused the impugned judgment in light of the argument made by the learned AGP Shri

Phule. Apparently, it is revealed that the market value as has been determined by the Reference Court and the compensation enhanced, accordingly may not require any indulgence in the present appeal. Perusal of the judgment shows that in Para-5 of the impugned judgment, the Reference Court has elaborately discussed about the sale instance brought on record by the claimants in support of their claim. The discussion made in the judgment reveals that the sale instance at Exhibit-27 was relied upon by the Reference Court. The land which was the subject matter of Exhibit-27 was ad-measuring 0.97 Are hailing from the same Village Borkhede. It was sold by registered sale deed on 16.07.1979 for the consideration of Rs. 40,000/-. The land which is subject matter in the present appeal was admittedly acquired in the year 1986.

6. In the circumstances, it appears that the Reference Court has considered or taken into account the yearly increase in the market value of the acquired land at the rate of 10% on the basis of the sale deed at Exhibit-27. Having considered the fact as aforesaid, it is difficult to accept the contention of the learned AGP that the

Reference Court has arbitrarily enhanced the amount of compensation. Merely because it appears that the enhancement is many times more, it cannot be ignored that some times the SLAO may commit a mistake in determining the market value on a unreasonably lower side.

7. After having considered the evidence on record and the finding recorded by the learned Reference Court, I do not see any reason for causing any interference in the impugned judgment and award. The appeal, therefore, fails and is accordingly dismissed, however without any order as to costs.

8. Pending civil applications, if any, also stands disposed of.

(P.R. BORA, J.)

Mujaheed//