IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1850 OF 2009

1. Laxmibai w/o Bhanudas Deokate
Age : 45 years, occu.: agri.,
R/o Osmanabad, Deokate Galli,
Osmanabad

2. Ram s/o Bhanudas Deokate
Age : minor.

3. Laxman s/o Bhanudas Deokate
Age : minor.

Appellant Nos. 2 and 3 are under
Guardianship of their mother
Appellant No.1. **Appellants.**

Versus

1. The State of Maharashtra
Through Collector, Osmanabad.

2. The Executive Engineer,
Minor Irrigation Division,
Osmanabad.

3. Special Land Acquisition Officer,
(P.T. & M.I.) Office No.1,
Osmanabad. **Respondents**.

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Mr. P.S. Chavan, Advocate for the appellants.
Mr. R.B. Bagul, A.G.P. for the respondents.

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CORAM : SUNIL K.KOTWAL,J.

Judgment reserved on : 11th October 2018.
Judgment pronounced on : 17th October 2018.

JUDGMENT.

1. The original claimants in L.A.R.N o.440/2003 have filed this appeal against the judgment and award dated 30.04.2009 passed by 2nd Joint Civil Judge, Senior Division, Osmanabad awarding enhanced compensation at the rate of Rs. 50,000/- (Rupees Fifty Thousand) per Acre for their following acquired land.

Sr. No.	Gut Number	Area of acquired land	Village
1	685	2 Hectare 80 Aar	Osmanabad
2	684	14 Aar	Osmanabad
3	683	98 Aar	Osmanabad

2. Respondent No.1 is the State of Maharashtra, respondent No.2 is Executive Engineer, Minor Irrigation and respondent No.3 is Special Land Acquisition Officer.

3. The facts in nutshell are that, notification under Section 4 (1) of the Land Acquisition Act (hereinafter referred to as “the Act”) was published on 22.09.1994. Possession of the acquired land was taken on 02.06.1993. The award was declared on 14.03.1997. The Land Acquisition Officer offered compensation at the rate of Rs.56,500/- Per Hectare. This rate

was not acceptable to the appellants. Therefore, after service of notice under Section 12 (2) of the Act, the appellants made Reference. Accordingly, L.A.R. No.440/2003 was registered in the Court of Civil Judge, Senior Division, Osmanabad. After considering the evidence placed on record by original claimants and the sale instance (Exh.23), the trial Court awarded compensation at the rate of Rs.50,000/- per Acre i.e. Rs. 1,25,000/- per Hectare. Being dis-satisfied with that judgment and award, this appeal is preferred by the appellants.

4. Heard Mr. Chavan, learned Counsel for the appellants and learned Additional Government Pleader for the respondents.

5. Learned Counsel for the appellants submits that the acquired land is situated at the outskirts of Osmanabad City. Barshi to Bidar State Highway passes through some portion of the land of appellants. The locational advantage is annexed to the acquired land. In addition to this, the adjacent agricultural land have been already converted for non agricultural purpose and even layouts are sanctioned. Therefore, market value of the land in the vicinity is Rs. 2,00,000/- per Acre.

6. The next submission of the learned Counsel for the appellants is that the appellants have filed certified copy of the sale deed dated 06.11.1992 (Exh.23) of the land situated at Osmanabad. Under this sale deed 40 Aar land was sold out at the rate of Rs. 91,000/-. He submits that this sale instance is prior to 1 ½ year before the date of publication of notification. Therefore, there shall be escalation of market value of the acquired land at the rate of 15 %. Therefore, the market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act can be assessed at the rate of Rs. 1,04,650/-.

7. Learned Counsel for the appellants points out that instead of enhancing compensation at the above rate, the learned trial Court deducted 50% of the market value as the purchaser of the land under sale instance had another land adjacent to the land purchased under the sale instance. He submits that deduction of 50% market value by trial Court is unreasonable, because in the cross-examination of claimants no question was asked regarding location of such land of the purchaser of the land under sale instance. For escalation of market value, the learned

Counsel for the appellants has placed reliance on the judgment in the case of **"Haryana State Industrial Development Corporation Limited Vs. Udal and others"** (**AIR 2013 SC 3111)**, wherein the escalation of 12% to 15% market value was granted by the Apex Court.

8. Learned Additional Government Pleader for the respondents submits that the acquired land is dry crop land and no substance is placed on record to show that any State Highway passes through any other portion of the acquired land. Learned A.G.P. submits that rate of the land sold under sale instance (Exh.23) is on higher side, because land of the wife of one of the purchaser is adjacent to the said purchased land. He submits that therefore deduction of 50% market value of the land under sale instance by the trial Court was appropriate.

9. His next objection is that the sale instance is of only 40 Aar area which is small piece of land, and therefore, it is not comparable sale instance. In other words, the learned A.G.P. submits that reasonable enhancement has been awarded by the trial Court.

10. In the backdrop of the above discussed rival contentions of the parties, the points arise for my determination are – (1) whether the rate awarded by the trial Court for the acquired land is appropriate and (2) if not, what is the true market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act.

11. In the case at hand, the claimants have placed on record only the oral evidence of Laxmibai Deokate (PW-1) and sale instance dated 06.11.1992 (Exh.23). On behalf of the respondents, no oral or documentary evidence has been placed on record to rebut the testimony of Laxmibai Deokate (PW-1). The records of right of the acquired land (Exhs. 25 and 31) show that only dry crops are taken from the entire land and it is not an irrigated land. Therefore, while determining the market value of the acquired land on the date of notification under Section 4(1) of the Act, the sale instance of dry crop land situated at Osmanabad can be considered, which will be of identical quality so far as the yield and locational advantages are concerned. It is also settled position of law that the market value of the acquired land on the date of notification can be determined by safest mode of the use

of comparable sale instance. Only the advantages and dis-advantages annexed to the concerned land need to be considered.

12. In the case at hand, Laxmibai Deokate (PW-1) deposed on oath that Barshi to Bidar State Highway passes through some portion of her land. In support of this contention she has not filed any survey map or city map to show the location of such State Highway. However, it is surprising to note that in entire cross-examination by the learned A.G.P., her version regarding passing Barshi to Bidar State Highway through some portion of her land, is not at all disputed by the State. Thus, in the locational advantage, this factor needs to be considered that the acquired land is adjacent to the State Highway and naturally it fetches good market value.

13. In addition to this, the claimants have placed on record certified copy of sale deed dated 06.11.1992 (Exh.23) which shows that on the date of sale instance 40 Aar area out of Survey No.106 was purchased by Ashok Ramniwas Bora and Yogesh Ramniwas Bora for the consideration of Rs. 91,000/- from vendor Annasaheb Manikrao Nimbalkar. The land under sale instance (Exh.23) is situated beyond the municipal boundary of

Osmanabad City and it is dry crop land. Thus, the land under sale instance and the acquired land being identical by quality and locational advantage, the said sale instance can be safely accepted as comparable sale instance. This sale deed is executed prior to more than 1 ½ year before the date of publication of notification under Section 4 (1) of the Act. Therefore, it is a genuine sale instance. So far as area of the land under sale instance is concerned, it is comparable because piece of land of 1 Acre area cannot be treated as a small piece of land. I hold that this sale instance is proper sale instance to determine the market value of the acquired land on the date of publication of notification.

14. Taking into consideration the law settled by the Apex Court in the case of **"Haryana State Industrial Development Corporation Vs. Udal and others"** (supra), 10% escalation can be granted for every year from the date of sale deed till the date of notification under Section 4 (1) of the Act, in the market price of the land under sale instance to determine true market value of the acquired land on the date of notification. In the case at hand, the date of sale instance is 06.11.1992 and the date of publication

of notification under Section 4 (1) of the Act is 22.09.1994. Thus, the sale instance is prior to more than 1 ½ years from the date of publication of notification under Section 4 (1) of the Act. Therefore, there shall be escalation of value of the acquired land by 15% than the value of land under sale instance. The value of the land under sale instance is Rs. 91,000/- per Acre. After adding 15 % escalation i.e. Rs. 13,650/-, the market value of the acquired land on the date of notification under Section 4 (1) of the Act is assessed as Rs.1,04,650/- (In round figure, Rs. 1,05,000/-) per Acre.

15. The learned trial Court deducted 50% value of the acquired land on the ground of location of the land of purchaser under sale instance adjacent to the purchased land. However, the purchaser Yogesh Ramniwas Bora (PW-2) examined by the claimants deposes before the Court that the land under sale instance is of inferior quality than the quality of the acquired land. He nowhere deposed regarding location of his land adjacent to the land purchased under the sale instance. Even in his cross-examination the learned A.G.P. has not brought on record this factor. Even the boundaries given under the sale

instance (Exh.23) clearly show that on the western side of the land under sale instance, the land of Sau. Meena Shamsundar Bora and Lata Ashok Bora are situated. On the basis of these names, conclusion cannot be drawn that Lata Ashok Bora is the wife of purchaser Ashok Ramniwas Bora, when the co-purchaser Yogesh Ramniwas Bora (PW-2) nowhere deposes before the Court that the land of his sister-in-law is adjacent to the purchased land. The learned A.G.P. had every opportunity to make clear that Lata Ashok Bora is the wife of purchaser Ashok Ramniwas Bora. However, learned A.G.P. has not taken pains to bring this factor on record. Therefore, on imagination the Court cannot hold that Lata Ashok Bora is the wife of purchaser Ashok Ramniwas Bora. Therefore, deduction of 50% market value done by the trial Court is absolutely erroneous. In the circumstances, true market value of the acquired land can be easily determined at the rate of Rs. 1,05,000/- (Rupees One Lakh Five Thousand) per Acre.

16. Therefore, the judgment and award passed by the trial Court deserves to be modified to enhance the rate of compensation. Other statutory benefits awarded by the trial

Court under Sections 23 and 28 of the Act, deserves to be confirmed as it is.

17. I hold that this appeal deserves to be allowed. Accordingly, First Appeal No.1850 of 2009 is allowed. The judgment and award dated 30.04.2009 passed by 2nd Joint Civil Judge, Senior Division, Osmanabad in L.A.R. No.400/2003 is modified and rate of compensation of the acquired land is enhanced to the extent of Rs. 1,05,000/- (Rupees One Lakh Five Thousand) per Acre. The amount of compensation already received by claimants from Land Acquisition Officer be deducted from the compensation. The other statutory benefits and interest awarded by the trial Court is confirmed as it is. Deficit Court-fees, if any, be recovered from the appellants.

18. The Award be modified in the above-said terms.

19. The appeal is disposed of in the above-said terms. Parties to bear their respective costs of the appeal.

(SUNIL K. KOTWAL)
JUDGE

vdd/