

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 22 OF 2003

Rajaram s/o Rama Chavan
age 57 years, occ. agriculture
r/o Bhosa, Tq. & Dist. Latur

Appellant

Versus

1. The State of Maharashtra
through the Collector, Latur.
2. The Executive Engineer,
Minor Irrigation Zilla Parishad,
Latur.

Respondents

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

CORAM : M.S. SONAK, J.
DATE : 5th JANUARY, 2018

JUDGMENT :

1. None for appellant. Learned AGP Mr. Phule appears for respondents.
2. The challenge in this appeal is to the impugned judgment and award dated 4th February, 2002 to the extent that the award has not granted to the appellant compensation at the rate of Rs.71,000/- per Hectare in respect of the acquired land.
3. Learned AGP submits that the reference Court has only enhanced compensation from Rs. 22,000/- per Hectare to Rs.50,000/- per Hectare. He submits that compensation of Rs.50,000/- per Hectare is quite adequate and there is no case

made out to order any further enhancement. He points out that the land which is subject matter of sale-instance at Exh.16 was superior to the acquired land. He points out that the reference Court has rightly held that the acquired land was not Bagayat land but only dry land. On this basis, learned AGP submits that this appeal may be dismissed.

4. Since, neither the appellant nor his advocate were present, this Court, with the assistance of learned AGP, has examined oral as well as documentary evidence on record. In the light of such evidence, the question which arises is whether the reference Court was right in restraining the compensation to Rs.50,000/- per Hectare or whether some additional compensation is due to appellant-claimant ?

5. In this case, on behalf of appellant-claimant, three witnesses, including the claimant himself came to be examined. The first witness is Abbas Abdul Karim who has signed as a witness on the sale-deed at exh. 16 by which, the vendor Girjabai sold her property in the vicinity. As per this sale-deed dated 08.04.1991, the rate comes to Rs. 71,000/- per Hectare. The sale-deed is admitted in evidence and marked as Exh.16 since, the attesting witness has deposed to the same. In the cross examination, a suggestion was put to this witness that the quality and fertility of the land of Girjabai is similar to the acquired land. The claimant has examined himself in which he has stated that the acquired land as well as the land which is subject matter of sale-deed were Bagayat lands. The claimant has deposed that the quality and fertility of the acquired land was quite good and was

used to raise crops like jawar, sugarcane, wheat etc. In the cross examination, no serious challenge is raised to such deposition. The third witness is Yuvraj Baburo Nilendgekar who is a Draftsman in Zilla Parishad, Latur. This witness has deposed to the date of delivery of possession of the land and therefore, his evidence is not very useful for the purpose of determining the rate of compensation.

6. On behalf of respondents, no evidence has been led. Documentary evidence has been produced on behalf of appellant. In fact, this documentary evidence has been considered by the reference Court in paragraph no. 15 of the impugned award. This documentary evidence is in the form of 7/12 extracts and, the reference Court has held that, on the basis of same, it is clear that the acquired lands were used to raise crops like jawar, sunflower, wheat etc. Further, reference Court, on the basis of such document, has held that the quality and fertility of the acquired land was quite good. The discussion in paragraph no. 15 of the impugned award is infact, entirely in favour of the appellant.

7. In paragraph no. 16 of the impugned award however, the reference Court has refused to rely completely on the sale-instance at Exh.16, for reasons, which do not commend acceptance. In paragraph no. 16 of the impugned award, the reference Court has held that the sale-instance dated 08.04.1991 being within one year from the date of publication of notification under section 4 of the Land Acquisition Act, 1894, the vendee must have paid more consideration to the vendor and purchased the said land with an intention that said sale-instance can be used as a guide in order to

fix compensation to the acquired lands by the Land Acquisition Officer. This reason is quite unsustainable and is in the nature of surmises and conjectures.

8. It is settled position in law that the sale-deed prior to issuance of section 4 notification constitutes good and proper evidence. In this case, the sale-instance is dated 08.04.1991. Section 4 notification was published on 22.11.1992. There is no evidence led on behalf of respondents that the factum of acquisition in 1992 was publicized in the locality. Besides, this is a sale between two unrelated parties having no direct nexus with the appellant-claimant. In these circumstances, there was absolutely no justification to discard or in any case, to refuse to give adequate consideration to the sale-instance at Exh.16.

9. In paragraph no. 17 of the impugned award, the reference Court has held that the quality and fertility of the land under the sale-instance is better than the quality and fertility of the acquired land. However, it is held that the land, which is subject matter of sale-instance is Bagayat land but the acquired lands were not Bagayat lands. Now, if evidence on record, both oral as well as documentary, is perused, then, there is absolutely no basis to sustain such findings. Infact, in paragraph no. 15 of the impugned award, the reference Court has itself held that the quality and fertility of the acquired land was good and that the land was used to raise crops like Jawar, Sunflower, Wheat etc. From perusal of the sale-deed, it cannot be said that the quality and fertility of the land, which is subject matter of sale-deed, was better than the quality and fertility of the acquired land. Infact, the witnesses

have deposed to the issue of comparability and such evidence has not been shaken during the course of cross-examination. Accordingly, there was no reason to discard or in any case, deny evidence in the form of sale-instance at Exh.16.

10. Therefore, taking into consideration sale instance at Exh. 16 as the basis and, by making appropriate deductions, mainly towards minor variations in the quality and fertility relating to two lands, it will be appropriate that the compensation is determined at Rs.65,000/- per Hectare instead of Rs.50,000/- per Hectare as determined in the impugned award.

11. The impugned award is accordingly modified. Compensation is now directed to be determined at the rate of Rs.65,000/- per Hectare instead of Rs.50,000/- per Hectare. In respect of other aspects, the impugned award is left undisturbed. Needless to add that the appellant will be entitled not only to the enhanced compensation at the rate of Rs.65,000/- per Hectare but also all consequential benefits arising therefrom.

12. Respondent are directed to deposit the difference between compensation awarded by the reference Court and the compensation now determined, within a period of three months from today. This is on the basis that respondents have already paid compensation as awarded by the reference Court. If, the same has not been paid, respondents are directed to deposit the same within three months from today. Upon such deposit, appellant shall be at liberty to withdraw the same.

13. Appeal is allowed to the aforesaid extent. There shall be no order as to costs.

(M.S. SONAK, J.)

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