

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1146 OF 2005

1. Deorao Dadaba Misal
occ. agril
r/o Dongargaon, Tq. Ashti
Dist. Beed.

2. Janardhan s/o Dadaba Misal
occ. agril.
r/o as above.

3. Maroti s/o Dadaba Misal
occ. agril.
r/o as bove.

Appellants

Versus

1. The State of Maharashtra
Through the Collector,
Beed.

2. The Executive Engineer
M.I.d. (L & S), Beed

Respondents

Mr. Chaitanya Deshpande, advocate holding for Mr. C.R. Deshpande, advocate for appellants.
Mr. A.M. Phule, AGP for respondents.

CORAM : M.S. SONAK, J.

DATE : 16th FEBRUARY, 2018

ORAL JUDGMENT :

1. Heard Mr. Chaitanya Deshpande, learned counsel for appellants and Mr. A.M. Phule, learned AGP for respondents.

2. The appeal is directed against judgment and award dated

04.07.2005 by which, the reference Court has rejected appellants' reference seeking enhancement of compensation.

3. Mr. Deshpande, learned counsel for appellants submits that the reference Court was not at all justified in refusing to consider the certified copies of the sale-deeds as evidence merely because, the vendor, vendee or the attesting witness had not been examined. Mr. Deshpande submits that in any case, other sale-deeds were produced which could not have been rejected only on the ground that the area sold vide those sale-deeds was small. He submits that infact, the area was not at all that small. He submits that in any case, some deductions could have been made but, there was no reason to reject even consideration of these sale-deeds as being incomparable instances.

4. Mr. Phule, learned AGP submits that at the relevant time, there were decisions which precluded the reference Court considering certified copies of the sale-deeds, unless the vendor, vendee or attesting witnesses have been examined. He submits that even otherwise, there is no evidence on record on the basis of which, any enhancement was warranted.

5. On perusal of the impugned judgment and order, the record and, upon due consideration of the rival contentions, this is a fit case where the impugned judgment and award is liable to be set aside and the matter is remanded to the reference Court for determination of compensation in accordance with law.

6. The sale-deeds at Exh. 26 and 27 have been rejected on the

sole ground of non-examination of vendor, vendee or the attesting witnesses. In terms of section 51A of the Land Acquisition Act, 1894, as interpreted by the Hon'ble Supreme Court, the certified copies were admissible in evidence. In the circumstances, the ground on which, the reference Court has refused to take such sale-deeds into consideration, is not correct.

7. Infact, the Supreme Court in the case of **Cement Corporation of India Ltd. Vs. Purya**, (2004) 8 SCC 270, upon due consideration of the earlier judgments, has held that there is no bar to admissibility of the certified copies of the sale-deed in evidence, in view of provisions of section 51A of the Land Acquisition Act, 1894.

8. The reference Court, in the context of the sale-deed at Exh. 25, which was produced by PW 2 has held that this sale-deed was in respect of an area of 10 Are whereas, the Government, in the present case, has acquired lands which admeasure minimum of 12 Are and maximum of 1 Hectare and 56 Are. On this ground, the reference Court has held that even this sale-deed cannot be considered as comparable instance.

9. Again, the approach of the reference Court cannot be said to be correct. In the first place, it is not as if, the sale instance is in respect of land which is not at all comparable either in size or in quality to the acquired land. In any case, when no other sale-instances are available, it is always permissible to rely upon such sale-instance but, make some suitable deductions taking into consideration the positive and the negative factors as illustrated by

the Hon'ble Supreme Court in the case of **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer & another**, AIR 1988 SC 1652. Since, this exercise has not been undertaken by the reference Court, it is only appropriate that the impugned judgment and award is set aside and the matter is remanded to the reference Court for fresh adjudication.

10. At the request of learned counsel for the parties, now that the matter is being remanded to the reference Court for fresh adjudication, both the parties are granted leave to lead additional evidence.

11. The reference Court to decide this reference in accordance with law and on the basis of evidence already led by the parties and the evidence which the parties may now lead before it, as expeditiously as possible and, in any case, within a period of one year from the date of production of authenticated copy of this order.

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

13. Parties to appear before the reference Court on 12th March, 2018 at 11.00 am and produce authenticated copy of this order.

14. All concerned to act upon authenticated copy of this order.

(**M.S. SONAK, J.**)