IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2037 OF 2015

1. Baliram Shankar Ghuge
Age : 65 years, occu.: agri.,
R/o Eklahara, Taluka and
District Aurangabad.

2. Mahadeo Shankar Ghuge
Age : 50 years, occu.: agri.,
R/o Eklahara, Taluka and
District Aurangabad.

3. Shahadeo Shankar Ghuge
Age : 45 years, occu.: agri.,
R/o Eklahara, Taluka and
District Aurangabad. **Appellants**.

Versus

1. The State of Maharashtra
Through Collector, Aurangabad.
Through Land Acquisition
Officer, Aurangabad.

2. Executive Engineer,
Minor Irrigation, Local Sector,
Aurangabad. **Respondents**.

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Mr. S.R. Andhale, 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 : 12th October 2018.
Judgment pronounced on : 22nd October 2018.

JUDGMENT.

1. This appeal is directed by the original claimants in L.A.R. No.123/2002 against the judgment and award passed by the Civil Judge, Senior Division, Aurangabad thereby refusing to enhance the compensation of the acquired land admeasuring 1 Hectare 27 Aar out of Gut No.27, situated at village Ekalhara. The Reference Court confirmed the rate of acquired land which was awarded by the Land Acquisition Officer at the rate of Rs.495/- per Aar. Even the Reference Court refused to enhance compensation for three old trees and 43 fruit bearing mango trees standing in the acquired land. The Reference Court only awarded compensation of Rs. 4300/- for the mango trees which were cut prior to publication of notification under Section 4 (1) of the Land Acquisition Act (hereinafter referred to as "the Act").

2. The facts in nutshell are that, the claimants are the owners of 4 Hectare 94 Aar area out of Gut No.27 situated at village Ekalhara. Out of this land, 1 Hectare 27 Aar land was acquired by the Government for percolation tank No.2. The

notification under Section 4 (1) of the Act was published on 27.11.1997. Before the publication of notification, possession of the acquired land was taken on 12.04.1996. The award was passed on 05.11.2000 and the Collector awarded compensation for the acquired land at the rate of Rs. 495/- per Aar. For 30 years two ld mango trees compensation of Rs. 32,936/- was awarded and for one 50 years old mango tree compensation of Rs.12,397/- was awarded. No compensation was awarded for 43 mango trees planted in the year 1991 under Employment Guarantee Scheme, which were cut after taking possession of the land on 12.04.1996.

3. Being dis-satisfied with the rate offered under the award, the claimants submitted an application, and therefore, Land Reference was forwarded to the Civil Judge, Senior Division, Aurangabad.

4. The Reference Court refused to enhance compensation for the acquired land, so also for three old mango trees. For 43 cut mango trees the compensation of Rs. 4300/- was awarded.

5. Heard Mr. S.R. Andhale, learned Counsel for the

appellants and learned Additional Government Pleader for the respondents.

6. Learned Counsel for the appellants submits that the claimants placed on record comparable sale deed dated 08.08.1995 (Exh.26) under which 6 Aar agricultural land was sold out for the consideration of Rs.15,000/-. This land was situated in village Ekalhara. However, this sale instance was not considered by the Reference Court only on the ground that it is a small piece of land. Learned Counsel for the appellants submits that subject to certain deductions in the market value, sale instance of the small area can also be considered in view of the judgment of Division Bench of this Court in the case of **"State of Maharashtra Vs. Fulyabai Kisan Govardhane and others" [2008 (1) Bom.C.R. 386]**. Learned Counsel for the appellants prays for enhancement of the compensation for the acquired land

7. His next submission is that, for the three old mango trees more compensation should have been awarded. He submits that even 43 mango trees which were cut in the year 1996, were fruit bearing trees, and therefore, compensation awarded by Reference Court at the rate of Rs.100/- per tree is highly

inadequate.

8. Learned Additional Government Pleader for the respondents submits that the sale instance (Exh.26) is in respect of small piece of land, and therefore, it is not comparable sale instance. According to learned A.G.P., even the market value of the three old trees standing in the acquired land, is properly ascertained on the basis of the report of Sub Divisional Agricultural and Horticulture Officer.

9. Regarding 43 mango trees cut in the year 1996, the learned A.G.P. submits that as those trees were planted in the year 1991 and cut in the year 1996, those trees cannot be fruit bearing mango trees. Therefore, the timber value awarded by the Reference Court is adequate value of those trees.

10. Initially I proceed to consider whether the compensation for the acquired land awarded by the Collector, which is confirmed by the Reference Court at the rate of Rs. 495/- per Aar, is adequate or not. For that purpose market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act is to be determined on the basis of comparable sale instance. There shall be proximity in between

the date of comparable sale instance and date of publication of notification under Section 4 (1) of the Act. Post notification sale instance generally cannot be considered as comparable sale instance unless it is too proximate to notification under Section 4 (1) of the Act and genuine. So also, the land under the sale instance should be somewhat identical regarding the quality of the acquired land.

11. In the case at hand, the acquired land is dry crop land. Even the record of right (Exh.24) of the acquired land shows that dry crop like Jowar is taken from the acquired land and there is no source of irrigation. The sale deed (Exh.26) dated 08.08.1995 shows that out of Gut No.45, 6 Aar land was purchased by one Gunabai Eknath Khade from Limba Bhavrao Avhad and Narayan Bhavrao Avhad for the consideration of Rs.15,000/-. The land which is subject-matter of this sale deed (Exh.26) is also not an irrigated land and it is situated in the village Eklahara. Therefore, it appears that the land under this sale deed is identical with the acquired land so far as the quality and location is considered. This sale instance (Exh.26) is two years prior to publication of notification under Section 4(1) of the

Act. Therefore, genuineness of this sale deed cannot be doubted. The only question to be determined whether the sale deed dated 08.08.1995 (Exh.26) of 6 Aar area can be considered for determining the market value of the acquired land admeasuring 1 Hectare 27 Aar. However, the Division Bench of this Court in the case of **"State of Maharashtra Vs. Fulyabai"** (supra) held that some discount is to be made on account of sale instance relating to small pieces of land in case of acquisition of large chunk of the land. In that case 25% deduction was made while determining the market value of the acquired land. Thus, there is no legal impediment to consider the sale deed (Exh.26) as comparable sale instance.

12. Under comparable sale instance (Exh.26), 6 Aar land was sold out for the consideration of Rs. 15,000/-. Thus, on 08.08.1995 the market value of that land was Rs.2500/- per Aar. As this sale instance (Exh.26) was before two years from the date of publication of notification under Section 4 (1) of the Act i.e. 27.11.1997, there shall be escalation of market value at the rate of 10% per year. Therefore, on the date of notification the market value of the acquired land can be assessed as Rs. 3,000/- per Aar.

As the sale instance is of small chunk of land in comparison to the area of the acquired land, deduction of 25% is made. Therefore, the market value of the acquired land on the date of notification can be assessed as Rs. 2250/- per Aar. Thus, for the acquired land compensation shall be given at the enhanced rate of Rs. 2250/- per Aar i.e. Rs. 90,000/- (Rupees Ninety Thousand) per Acre.

13. In addition to this, the claimants are also entitled to statutory benefits under Section 23 (1A) of the Act i.e. 12% per annum on such market value commencing from the date of publication of notification under Section 4 (1) of the Act i.e. 27.11.1997 till the date of passing of award and solatium of 30% on such market value under Section 23 (2) of the Act. The claimants are also entitled to interest under Section 28 of the Act on enhanced compensation and solatium at the rate of Rs.9% per annum from the date of passing award for the period of one year and and thereafter at the rate of Rs. 15% per annum till the date of depositing of compensation.

14. Now the question arises regarding compensation for three old mango trees and 43 mango trees alleged to be cut in the

year 1996, after taking possession of the acquired land. After going through the judgment passed by the Reference Court, it reveals that for many times the Reference Court considered the contents of the award specially the documents considered by the Land Acquisition Officer. However, in view of guideline principles laid down by Apex Court in the case of **"Chimanlal Hargovind Das Vs. Special Land Acquisition Officer, Puna and another" (AIR 1988 SC 1652)**, the award of Land Acquisition Officer is not to be treated as judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by Land Acquisition Officer and the material utilized by him for making his valuation cannot be utilized by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against award, approve or disapprove its reasoning or correct its error or affirm or modify or reverse the conclusion reached by Land Acquisition Officer as if it were an Appellate Court. The Court has to treat the Reference as an original proceeding before it and determine the market value afresh on the basis of material produced before it.

15. In view of these clear guidelines laid down by Apex Court, the Reference Court shall refrain from referring the material considered by Land Acquisition Officer while determining the compensation for acquired land or trees. The Reference Court cannot hold that the compensation awarded by Land Acquisition Officer is appropriate or not. On the basis of evidence placed on record, the Reference Court has to reach to his own conclusion regarding market value of land or trees on the date of notification under Section 4 (1) of the Act.

16. In the Reference Application, the claimants claimed compensation of Rs. 63,890/- as compensation for three old mango trees. However, neither valuation report of these three old mango trees is placed on record by claimants nor it is proved by them. Even the record of right of acquired land (Exh.24) does not show the existence of three old mango trees and 43 newly planted but fruit bearing mango trees. Thus, except bare oral allegation of claimants regarding existence and valuation of three old mango trees and 43 newly planted fruit bearing trees, no substance is available on record to award compensation for these trees as claimed by the claimants. Therefore, I have no

hesitation to hold that the claimants are not entitled to enhanced compensation for these three old and 43 newly planted fruit bearing mango trees.

16. Accordingly, I have come to the conclusion that this appeal deserves to be partly allowed only to enhance the compensation regarding the acquired land.

17. In the result, First Appeal No.2037 of 2015 is partly allowed. The award passed by the Reference Court in L.A.R. No.123/2002 is modified to enhance the compensation of 1 Hectare 27 Aar acquired land out of Gut No.27 situated at village Ekalhara, at the rate of Rs. 90,000/- (Rupees Ninety Thousand) per Acre i.e. Rs.2250/- per Aar. The claimants are also entitled to statutory benefits under Section 23 (1A) of the Act i.e. 12% per annum on such market value commencing from the date of publication of notification under Section 4 (1) of the Act i.e. 27.11.1997 till the date of passing of award and solatium of 30% on such market value under Section 23 (2) of the Act. The claimants are also entitled to interest under Section 28 of the Act on enhanced compensation and solatium at the rate of Rs.9% per

annum from the date of passing award for the period of one year and and thereafter at the rate of Rs. 15% per annum till the date of depositing of compensation.

18. The other prayers are rejected.

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

(SUNIL K. KOTWAL)
JUDGE

vdd/