

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

FIRST APPEAL NO. 625 OF 2017

- 1] Sharad s/o. Mansukhlal Mutha,
Age 66 years, Occu. Business and
Agriculture
 - 2] Nirmal s/o. Sharad Mutha,
Age 39 years, Occu. Business and
Agriculture
 - 3] Sau. Pramila w/o. Ashok Mutha,
Age 66 years, Occu. Household and
Agriculture
- .. **APPELLANTS**

VERSUS

- 1] The State of Maharashtra
[Through Collector, Ahmednagar-414001]
 - 2] The Special Land Acquisition Officer
No.10, Collector Office, Ahmednagar,
District Ahmednagar 414001.
 - 3] Executive Engineer,
Rozgar Hami Yojana Nagar -
Aurangabad Road, Ahmednagar,
District Ahmednagar 414001.
- .. **RESPONDENTS**

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Mr. D. K. Kulkarni, Advocate for Appellants.
Mr. A. P. Basarkar, Assistant Government Pleader for Respondents No.1 and 2.
Respondent No.3 – Served.

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CORAM : SUNIL K. KOTWAL, J.

**DATE OF THE
RESERVING JUDGMENT : 03-10-2018**

**DATE OF PRONOUNCEMENT
OF JUDGMENT : 15-10-2018**

J U D G M E N T :-

This appeal is preferred by the appellants-original claimants against the Judgment and Award passed by the 4th Joint Civil Judge,

Senior Division, Ahmednagar, in Land Acquisition Reference (LAR) No. 70 of 2012 dated 03-05-2016, awarding enhanced compensation for Gat Nos. 167, 172 and 227/2 at the rate of Rs.11,164/- per R. for the acquired seasonally irrigated lands and Rs.7,743/- per R for dry lands. Respondent No.1 is the State of Maharashtra, respondent No.2 is the Special Land Acquisition Officer (SLAO) and respondent No.3 Executive Engineer, Rozgar Hami Yojana, Ahmednagar (Acquiring Body).

2. The claimants were owners of following lands from village Nimblak, Taluka and District Ahmednagar -

Details of Acquired lands			
Gat No.	Area	Classification	Name of claimant/s (i.e. owner)
167	2 H. 73 R.	N.A.Potential	Shri. Nirmal Sharad Mutha
172	0 H. 74 R.	N.A.Potential	Shri. Sharad Mansukhlal Mutha
227/2	0 H. 85 R.	Non Agriculture	Shri. Nirmal Sharad Mutha

3. Undisputedly, the above said lands are acquired by respondent No.1 State for respondent No.3 - Acquiring Body for construction of Ring Road of Ahmednagar city. The date of notification under Section 4(1) of the Land Acquisition Act, 1894 (here-in-after, be referred as 'L.A.Act', for short) is 30-03-2008. Award is declared on 30-04-2010. Possession of the land was taken on 02-11-2005.

4. Heard Mr. D. K. Kulkarni, learned counsel for the appellants and Mr. A. P. Basarkar, learned AGP for respondents No. 1 and 2. Nobody appears for respondent No.3 Acquiring Body.

5. Mr. Kulkarni, learned counsel for the appellants submits that learned trial Court under valued the acquired lands by ignoring two sale instances (Exhibit-33 and Exhibit-34) of the lands in vicinity. He

submits that first sale instance (Exhibit-33) of dated 20-11-2006 is in respect of 23.22 R. dry area and 50 R seasonally irrigated land sold out for consideration of Rs.24,50,000/-. Thus, the rate of land under first sale instance (Exhibit-33) is assessed @ Rs.33,460/- per R. He has drawn my attention towards second sale instance (Exhibit-34) of dated 25-07-2006, wherein 20 R irrigated and 20 R dry area was sold out for consideration of Rs.16,00,000/-. Thus, the rate of land under second sale instance (Exhibit-34) is assessed @ Rs.40,000/- per R.

Next submission of learned counsel for appellants is that the rate under sale instance is one year prior to the notification under Section 4(1) of the L.A.Act, therefore, there shall be 10 % escalation in the market value. He points out that the map (Exhibit-37) indicates that the acquired lands are adjoining to the road. He submits that the Reference Court did not consider that the acquired lands have any potentiality as nearby the lands are converted in non-agriculture purpose. Therefore, the acquired land having N.A. (non-agricultural) potentiality fetches higher value than the land under sale instances.

6. Mr. Basarkar, learned AGP for the respondents No.1 and 2 submits that above sale instances (Exhibits-33 and 34) are ignored by the trial Court and the rate of the acquired land was enhanced on the basis of decision of that Reference Court in LAR No. 62 of 2015 decided on the same day. Next submission of learned AGP is that the land under sale instance (Exhibit-33) is adjoining to land of purchaser and it was purchased for the purpose of petrol pump as well as the land under sale instance (Exhibit-34) is purchased for the purpose of hotel; and therefore, lands under both sale instances (Exhibits-33 and 34) were

sold at higher price than the market rate. Learned AGP submits that both sale instances (Exhibit-33 and 34) can not be considered as comparable sale instance.

7. After going through the Judgment of Reference Court, it emerges that the learned Reference Court has refused to consider both sale instances (Exhibit-33 and 34), because lands mentioned under said sale instances were mixed type of land i.e. some portion is agriculture land and other non-agriculture. However, consideration was paid for entire land, and therefore, the market value of agricultural land and non-agricultural land can not be bifurcated. I have carefully gone through the sale instance (Exhibit-33), which shows that vendors No.1 and 2 sold out 50 R. agricultural land and area 23.22 R. non-agricultural converted land out of Gat No. 170/2 situated at village Nimblak, Taluka and Dist. Ahmednagar, for total consideration of Rs.24,50,000/-. However, in the sale instance (Exhibit-33), separate rate of non-agricultural land and agricultural land is not specified. Therefore, on the basis of this sale instance, market value of agricultural land as well as market value of non-agricultural land can not be determined. Even, from the market value of land sold under second sale instance (Exhibit-34) dated 25-07-2006, the exact market rate of non-agricultural land and agricultural land can not be bifurcated. Under the sale instance, 20 R irrigated agricultural land and 20 R. non-irrigated agricultural land was sold out for total consideration of Rs.16,00,000/-. Thus, both sale instances are of no use to the Court for determining the correct market value of acquired lands on the date of publication of notification under Section 4(1) of the L.A.Act.

8. Learned Reference Court rightly ignored these both sale instances (Exhibits-33, 34) for determining the market value of the acquired land. However, learned Reference Court committed error by determining the market value of the land only on the basis of Award passed by that Reference Court in LAR No. 62 of 2015. It is to be noted that while blindly accepting the rate for acquired land under LAR No.62 of 2015, the Reference Court did not consider as to whether the quality of land acquired under LAR No. 62 of 2015 and quality of land acquired under present LAR No. 70 of 2012, is identical or not. Even, the copy of Judgment and Award passed in LAR No. 62 of 2015 is not produced on record for perusal to ascertain whether the nature of land under subject matter of LAR No. 62 of 2015 was irrigated or seasonally-irrigated or dry. Even, it is not clear, whether topographically the land under LAR No.62 of 2015 and land under LAR No. 70 of 2012 is identically situated. Therefore, acceptance of rate awarded for acquired land in LAR No. 62 of 2015 without consideration the above discussed factors, is absolutely incorrect.

9. Under above circumstances, I have no hesitation to hold that the market value of acquired land in LAR No. 70 of 2012 is not properly determined by the Reference Court. At this stage, no other additional material is placed on record either by the appellants or the respondents to determine the market value of the acquired land on the date of publication of notification under Section 4(1) of the L.A.Act. Therefore, I have no other alternative but to set-aside the Judgment and Award passed by the Reference Court in LAR No. 70 of 2012 and to remand the matter to the trial Court for reconsideration of entire matter afresh

after awarding an opportunity to the claimants and respondents to place on record additional comparable sale instances to determine the correct market value of the acquired land on the date of notification under Section 4(1) of the L.A.Act. The Reference Court is also expected to give an opportunity to the both parties to cross-examine respective witnesses of rival parties on additional material placed before the trial Court.

10. Hence, the following order :-

ORDER

1. The Judgment and Award dated 03-05-2016 passed by the 4th Civil Judge, Senior Division, Ahmednagar, in Land Acquisition Reference No. 70 of 2012 is set aside and it is remanded to the Court of 4th Joint Civil Judge, Senior Division, Ahmednagar, for re-trial after giving sufficient opportunity to the both parties to place on record additional documentary or oral evidence in support of their contentions.
2. The Reference Court shall award sufficient opportunity to both the parties to cross-examine the witnesses of rival parties.
3. The Reference Court shall decide Land Acquisition Reference No.70 of 2012 within six (6) months from the date of receipt of the record and proceedings.
4. Learned Registrar (Judicial) of this Court to send back the record and proceedings of Land Acquisition Reference No.70 of 2012 to the Reference Court concerned within 15 days from the date of passing of this Judgment.

5. Both parties are directed to appear before the Reference Court on 4th January, 2019, for receiving further requisite directions of the Reference Court.
6. Parties to bear their respect costs of the appeal.
7. First Appeal No. 625 of 2017 is allowed and disposed of in above terms.

[SUNIL K. KOTWAL]
JUDGE

rrd.