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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**FIRST APPEAL NO.4256/2016
WITH
CIVIL APPLICATION NO.14555/2010**

The State of Maharashtra & others.
...Appellants..

Versus

Pratapsing Jainarayan Thakur,
died, through L.Rs. Vijaybai Pratapsing
Thakur & others.
...Respondents...

.....
Shri A.M. Phule, AGP for appellants.
Smt.Varsha Vyavhare, Advocate h/f Shri V.I. Thole,
Advocate for respondent nos.1A to 1E and 2.
.....

CORAM: M.S. SONAK, J.

DATE: 12.02.2018

ORDER :

- 1] Heard learned counsel appearing for the parties.
- 2] This appeal challenges the judgment and award dated 13.2.2008 by which the Reference Court has enhanced the compensation from Rs.300/- per Are to Rs.600/- per Are.
- 3] In this case, point is quite clear that the enhancement granted by the Reference Court is well within

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the limits prescribed in the Government resolution dated 3.11.2016, as amended from time to time, which records the policy decision of the State Government that the State Government and acquiring bodies will not institute or pursue appeals in which enhanced compensation is less than four times the ready reckoner rate prevalent on the date of issue of Section 4 notification. Normally, the compensation awarded by the Land Acquisition Officer is commensurate to the ready reckoner rate prevalent on the date of issuance of Section 4 notification. Ordinarily, therefore, the State should not have either instituted this appeal or having instituted such appeal prior to the issuance of the aforesaid Government resolution, should have not pursued this appeal. However, the learned AGP submits that in absence of express written instructions, he cannot withdraw this appeal.

4] Learned AGP has made the submissions on merits to the effect that the Reference Court has relied upon sale instances, which could not be said to be comparable sale instances. He submits that there is no evidence as regards comparability and in any case, the evidence on record makes it clear that these sale instances were in

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respect of parcels of small area. He submits that in the present case, the acquisition was in respect of land admeasuring 56 Ares and, therefore, there was no justification in relying upon sale instances in respect of small areas. On this ground, the learned AGP submits that the impugned award warrants interference.

5] From the perusal of the material on record, it cannot be said that the sale instances are not in respect of the lands, which are similar to the acquired lands. Accordingly, there is no infirmity on the part of the Reference Court in treating the sale deeds as comparable instances. Besides, as was rightly pointed out by Smt.Varsha Vyavhare, learned counsel for the respondent nos.1A to 1E and 2, that in this case, the Reference Court, by taking into consideration the smallness of area, has already made a deduction of 40%. She submits that in fact this deduction is also on the higher side. Since the Reference Court has already made a deduction upto 40% on account of smallness of area, there is really no case made out to interfere with the impugned award.

6] Upon cumulative consideration of the aforesaid aspects, this appeal is dismissed. There shall be no

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order as to costs. Pending Civil Application No.14555/2010 does not survive and is also disposed of.

7] In case any amount is deposited by the appellants in pursuance to the interim orders, the respondents – claimants are permitted to withdraw the same unconditionally. If no amount is deposited, the respondents – claimants are at liberty to execute the impugned judgment and award.

(M.S. SONAK, J.)