

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

FIRST APPEAL NO.111 OF 2017

Yadavrao S/o Sambhaji (Died)
Through his Legal Heirs.

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| <ol style="list-style-type: none"> 1. Smt. Jinyanbai W/o Yadavrao Kothare,
Age: 65 years, Occu.: Agriculture, 2. Madhavrao S/o Yadavrao Kothare,
Age 40 years, Occu.: Agriculture, 3. Nirmalabai W/o. Dadarao Kothare,
Age 35 years, Occu.: Agriculture, 4. Venkat S/o Yadavrao Kothare,
Age 34 years, Occu.: Agriculture,
All R/o. Itgyal, Taluka Mukhed, ..
District Nanded. | Appellants
(Original claimants) |
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Versus

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| <ol style="list-style-type: none"> 1. The State of Maharashtra
Through District Collector,
Nanded. 2. The Executive Engineer,
Vishnupuri Prakalp,
Division No.1, Nanded. 3. The Special L.A.O. ..
M.I.W. Nanded. | Respondents |
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Mr. Darshan D. Pokharkar, Advocate for Appellants.
Mr. S. N. Morampalle, AGP for Respondents No.1 and 3.
Mr. S. P. Sonpawale, Advocate for Respondent No.2.

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CORAM : A.M. DHAVAL, J.

DATED : 30th JULY, 2018.

ORAL JUDGMENT :-

Admit. Heard finally with consent of learned counsel
for the parties at the admission stage.

2. The original claimants not satisfied with enhancement granted vide Judgment and Award passed by the learned Civil Judge, Senior Division, Mukhed, District Nanded (Reference Court), in Land Acquisition Reference (LAR) No. 175 of 2008, dated 28-07-2016, have preferred this appeal.

3. It is not disputed that three dry lands of the claimants situated at village Itgyal, Taluka Mukhed, District Nanded, were acquired by the State / Godavari Marathwada Irrigation Development Corporation (GMIDC) / Vishnupuri Project, Division No.1, Nanded, for water storage of the Lendi Major Project; the details of acquired lands, its area and market price granted by SLAO and Reference Court are as follows :-

Sr.No.	Acquired Lands		Market rate (in Rupees) per R granted by the	
	Gut No.	Area	S.L.A.O.	Reference Court
1	377	0 H - 1 R	1330	1729
2	41B	0 H - 19 R	1530	1989
3	5A	2 H 50 R	973	1265

4. The Reference Court, in LAR, enhanced the compensation awarded by the Special Land Acquisition Officer (SLAO) to the extent of 30% with consequential benefits. Aggrieved by said Judgment and Award, this appeal is preferred.

5. Mr. Pokharkar, learned Advocate for the appellants submits that Reference Court has not followed the principles well settled in respect of granting compensation for the acquired

lands. There is no provision of granting only 30% increase over and above the compensation granted by the SLAO. The SLAO has not considered properly the market value of the lands acquired. He claims that the claimants had filed three sale deeds (at Exhibits 24, 25 and 26). The sale deed dated 07-05-1995 (Exhibit-25) of village Bhendgaon Khurd shows that the land admeasuring 10 R was sold for consideration of Rs.37,500/-. Thus, market value at the relevant time was Rs.3,750/- per R. The Reference Court should have considered the sale deed giving highest rate. Besides there should have been increase of 10% per annum for a period of two years over and above of Rs.3,750/- per R. Accordingly, he prayed to allow the appeal and compensation awarded by the Reference Court be enhanced.

6. Per contra, Mr. Sonpawale, learned Advocate for respondent No.2- Acquiring Body submits that two sale deeds produced by the claimants were small pieces of lands admeasuring 7 R and 10 R. However, in the present case, the acquired land is admeasuring 2 Hectar 50 R. The said land is dry. The Reference Court has awarded 30% over and above of the market rate given by SLAO. There is no necessity to interfere with the same.

7. The learned AGP for respondents No.1 and 3 adopted the arguments advanced by Mr. Sonpawale, learned Advocate for respondent No.2.

8. The questions that arise for my determination and findings thereon are as follows :-

Nos.	Question		Findings
I	Whether the learned Reference Court has awarded proper compensation for the acquired lands ?	..	Partly in the affirmative.
II	What order ?	..	As per final order.

9. The SLAO has shown some sale instances in the Award and considered three of them at Serial No. 16, 18 and 19 in the Chart (Page No.24) of Award (Exhibit-21), but held that lands from Group No. V were of market value @ Rs.76,500/- per Hecter i.e. Rs.765/- per R. He has differentiated the lands as per land revenue. It is well settled that this is not proper system for determining the market value. The SLAO has not produced sale deeds of similarly situated lands of the same period before the Reference Court for comparison.

10. To substantiate the claim, the claimants examined three witnesses and produced sale deeds (Exhibits-24, 25 and 26). The learned Reference Court discussed three sale deeds in paragraph No. 18 of the Judgment and considered the market value as per three sale deeds. He discarded the sale deed (Exhibit-25) showing rate @ Rs. 2750/- per R on the ground that it was from different village. The Reference Court considered the

sale deed (Exhibit-24) from the same village showing market value of land at Rs. 1,19,047/- per hectare (i.e. Rs.1190/- per R). This sale deed is of year 1998.

11. The learned Reference Court has rightly held that notification under section 4 of the Land Acquisition Act, 1894 (for short "Act of 1894") was lastly published on the office of Village Panchayat on 27-04-2000. As per notification under sections 4 of the Act of 1894, this date will be considered for two years increase value @ 10% p.a. over and above value given by SLAO and awarded compensation at the market rate of Rs. 1729/- for land of 1R from Gut No. 377 and Rs. 1989/- per R for 19 R from land Gut No. 41B and Rs. 1265/- per R for land admeasuring 2 Hectare 50 R from land Gut No. 5A.

12. It is well settled principle that the market value of land is determined on the basis of comparative sale instances. In the present case, the Acquiring Body did not produce any sale deed, nor even contested the claim before the Reference Court. The claimants filed three sale deeds showing different rates as follows :-

Exhibit Nos.	Sale deeds			Consideration amount	
	Date	Village	Area H = R	Total	Per R
24	23-07-1998	Itgyal	00-42	50,000/-	1190/-
25	.07-05-1997	Bhendgaon	00-10	37,500/-	3750/-
26	19-04-1997	Bhaswadi	00-11	22,500/-	2045/-

13. Thus, there is vast difference in the prices of these three lands, which are from the villages in nearby vicinity. In the light of these facts, it would be proper to consider the sale-deed (Exhibit-24) of land from the village Itgyal. As per sale-deed (Exhibit-24), the market rate of land was Rs 1190/- per R. The date of notification is almost two years subsequent to the date of sale deed, and therefore, there should be increase by 20% it comes to assume value of Rs. 60,000/-, it is equivalent to Rs. 1429/- per R. Unlike sale deeds (Exhibits-25 and 26), this sale deed is for bigger land of 42 R.

14. There is no dispute that all three lands are dry lands from the same village and acquired for the same purpose i.e. for construction of storage tank. There was no reason to differently value the three lands. The market value of the lands should have been presumed as on the date of notification at Rs. 1429/- per R.

15. So far as area admeasuring 01 R from land Gut No. 377 and area admeasuring 19 R from land Gut No. 41B are concerned, the Reference Court has, though, wrongly awarded the compensation at higher rate, the State Government has not challenged the said Award. In the appeal preferred by the claimants for enhancement before this Court either enhancement of amount can be granted or rejected. It can't be reduced. In respect of these two lands, prayer for enhancement cannot be

allowed as compensation awarded is more than reasonable market value of Rs. 1,429/-.

16. So far as bigger piece of land from Gut No. 5A is concerned, the learned Reference Court considered the rate of Rs. 973/- per R. awarded by the SLAO and arbitrarily increased it by 30% to award compensation @ Rs. 1,265/- per R. As per market rate disclosed in the sale deed (Exhibit-24), the learned Reference Court should have awarded compensation @ Rs. 1,429/- per R. Therefore, the appeal deserves to be partly allowed. Hence, the order :-

ORDER

(1) The appeal is partly allowed as under :-

(a) In respect of claim of enhancement of land Gut No. 5A admeasuring 2 Hector 50 R, the market value of the said land awarded at Rs.1,265/- per R. is hereby set aside and modified as Rs.1,429/- per R. There shall be proportionate increase in other statutory benefits viz. solatium and third component.

(b) Respondents shall pay compensation to the claimants calculated as per market value of Rs.1,429/- per R. The compensation due and payable be paid along with interest @ 9% p.a. for the first year and @ 15% p.a. for the subsequent period from the date of award till realization of the compensation amount.

- (c) Interest shall be calculated upto the date of part payment on the whole amount and on remaining amount, subsequent to the date of payment.
- (2) The claim of enhancement of compensation in respect of land Gut No. 377 admeasuring 01 R and land Gut No. 41B admeasuring 19 R are hereby rejected.
- (3) The respondents shall pay proportionate costs of the appeal.
- (4) An award amounting to decree be drawn up accordingly.

[A.M. DHAVAL]
JUDGE

MTK.