

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.984 OF 2015

Shri Shripat Ramchandra Desai
(Desai) deceased & Ors.

a) Smt.Leelabai Shripatrao Desai and Ors. .. Appellants

vs.

The Special Land Acquisition Officer and Ors. .. Respondents

Mr.S.M.Kamble for the appellants

Mr.A.R.Patil, A.G.P. for the State

**CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.
DATE : FEBRUARY 5, 2018**

P.C.:

1. Heard the learned counsel for the parties.
2. By this First Appeal, appellants' original claimants' challenges the judgment and award dated 24.4.2008 passed by Reference Court in Land Acquisition Reference No.158 of 1997 rejecting appellants Application under section 18 of the Land Acquisition Act for enhanced compensation.
3. In the present proceeding, Special Land Acquisition Officer issued notification under section 4 of the Land Acquisition Act dated

13.07.1990 for acquiring the appellants' land from Village Pataye, Taluka Sawantwadi, District-Sindhudurg for submergence area of Tillary Irrigation Project. Special Land Acquisition Officer issued notification under section 6 of the said Act dated 20.7.1991. After following due process of law Special Land Acquisition Officer passed award dated 20.1.1994 and awarded compensation in respect of acquired land admeasuring 175.45 Hectares @ Rs.8,000/- per hectare i.e. Rs.6,86,528.43 towards compensation.

4. Being aggrieved by the said award, the claimants preferred reference under section 18 of the said Act and claimed compensation of Rs.5 crores. The Reference Court on the basis of pleading, framed following issues for determination:

ISSUES

FINDINGS

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| 1. Do claimants prove that the compensation awarded to them by the Special Land Acquisition Officer, is inadequate and does not reflect correct market price of the lands? | ..Negative |
| 2. Are claimants entitled for the additional compensation as prayed? | ..Negative |
| 3. Is reference within limitation? | ..Affirmative |
| 4. What order and award? | ..Reference is dismissed with costs. |

5. It is to be noted that after filing Reference, neither claimants nor Special Land Acquisition Officer entered into witness box for proving their case in respect of market value of the acquired land. It is to be noted that Reference Court observed in the impugned judgment that

Land Acquisition Officer relied on sale transactions dated 19.6.1978 and 19.7.1978. One Mahadeo Thakur has sold away 15 R land out of Survey No.14-1/7 in favour of Chandrakant Thakur for consideration of Rs.200/- on 19.6.1978. In the second transaction one Ghabru Deyas purchased 78 R land from Vishnu Shete out of Survey No.33/2 and 3314 for Rs.2000 on 19.7.1978. The Reference Court declined to consider both the sale instances on the ground that those transactions were of 12 years pre-notification period. It is to be noted that for want of any evidence on record either from the claimants or from the State of Maharashtra, respondent, Reference Court dismissed the reference preferred by the claimants.

6. The learned counsel for the claimants submits that it remained on the part of claimants to place on record additional evidence to prove his case for additional compensation. He submits that it is the duty of the Reference court to decide the market value on its own. In support of this contention, he relies on the judgment of this High Court in the matter of *State of Maharashtra vs. Trimbak Joma Thakur and Others, (2007) LAC 4 (BOM)*. He submits that Division Bench of this court held that Reference Court have to decide market value of acquired land on the basis of adjacent area, if any, acquired for the same project. In support of this contention, he relies on paragraph 9 of the said authority. It is to be noted that in the matter of *State of Maharashtra vs. Trimbak Joma Thakur and Others* (Supra) our High Court held that if some documentary proof is placed on record by the claimant then only court can consider the same in deciding the market value of the acquired land. That is not the case in hand. In the case in

hand, it is clear that neither the claimants entered into the witness box nor placed on record any documentary proof that he is entitled additional compensation in respect of acquired land.

7. The learned counsel for the claimants also relied on judgment of Apex Court in the matter of ***Special Deputy Collector and Another vs. Kurra Sambasiva Rao and Others, (1997) 6 SCC 41***. He submits that in this authority, Apex Court held that duty of court to scrutinise and objectively assess the evidence tendered by the parties at the time of awarding market value of acquired land. He relies on paragraph 6 of the said judgment which reads thus:

“6. On the basis of the above factual material collected, the Land Acquisition Officer passed his award. The question arises : whether the acquired lands possessed of potential value for being used as building sites? The High Court has found, as pointed out by the Shri Sudhir Chandra, learned senior counsel for the claimants, that the lands are possessed of potential value for being used for building purpose. It is well settled legal position that the claimants stand in the position of plaintiffs. Burden of proof is always on the claimants to prove by adduction of cogent and acceptable evidence that the lands are capable of fetching higher compensation than what is determined by the Land Acquisition Officer, which is only an offer. If the award is accepted without protest, it binds the parties. It is the bounden duty of the court to evaluate the evidence on the basis of the human conduct, even if no rebuttal evidence is produced by the Land Acquisition Officer, to assess the market value applying the relevant tests laid down by this Court in bead role of decisions. In Periyar and Pareekanni Rubbers Ltd. v. State of Kerala: AIR 1990 SC 2192 , this Court considered the entire case law as on that date, on the principle of determination of market value and the relevant test laid in

that behalf. The burden of proof that the amount awarded by the Land Acquisition Officer/Collector is not adequate is always on the claimant. The burden is to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value than the amount awarded by the Land Acquisition Officer/Collector or that the Land Acquisition Officer/Collector proceeded on a wrong premise or applied a wrong principle of law. The object of the enquiry in a reference under Section 18 of the Act is to bring on record the price which the land under acquisition was capable of fetching in the open market as on the date of the notification. The relative situation of the acquired land which is the subject of the sale transaction, the nature of the land, its suitability, nature of the use to which the lands are put to on the date of the notification, income derived or derivable from or any other special distinctive feature which the land is possessed of and the sale transactions in respect of lands covered by the same notification, are all relevant factors to be taken into consideration in determining the market value. It is, therefore, the paramount duty of the courts of facts to subject the evidence to very close scrutiny, objectively assess the evidence tendered by the parties on proper consideration thereof in correct perspective to arrive at adequate and reasonable market value. The attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands. It is equally relevant to consider the neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special circumstances available in each case. The Court is required to take into account all the relevant considerations. The Court is required to keep at the back of its mind that the object of assessment is to arrive at reasonable and adequate market value of the lands. In that process, though some guess work is involved, feats of imagination should be eschewed and mechanical assessment of the evidence should be avoided. Even in the absence of oral evidence adduced by the Land Acquisition Officer or the beneficiaries the judges are to draw from their experience the normal human conduct of the parties and bona fide and genuine sale transactions are guiding star in evaluating the evidence. Misplaced sympathies or undue

emphasis solely on the claimants' right to compensation would place very heavy burden on the public exchequer to which other everyone contributes by direct or indirect taxes.”

8. It is to be noted that in this authority Apex Court held that claimants stand in the position of plaintiffs. Burden of proof is always on the claimants to prove by adduction of cogent and acceptable evidence that the lands are capable of fetching higher compensation than what is determined by the Land Acquisition Officer, which is only an offer. The Apex Court further held that the burden of proof that the amount awarded by the Land Acquisition Officer is not adequate is always on the claimant. It is to be noted that this authority of the Apex Court is supporting the case of Respondent and not the claimants.

9. Considering the above mentioned facts and as claimants failed and neglected to place on record any documentary evidence to show that they are entitled for enhanced compensation, we are of the opinion that appellants have failed to make out any case to interfere with the well reasoned order passed by Reference Court dated 24.4.2008. Hence, following order is passed:

- a) *First Appeal No.984 of 2015 stands dismissed.*
- b) *No order as to costs.*

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)