

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

FIRST APPEAL NO.2584 OF 2007

Harihar Ganesh Dhere

.. Appellant

vs.

Special Land Acquisition Officer, No.14, Pune

.. Respondent

Mr.Mandar Limaye for the appellant

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

**CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.**

DATE : JANUARY 23, 2018

P.C.:

1. Heard the learned counsel for the parties.
2. By this First Appeal, claimant is challenging the judgment and award dated 26.4.2007 passed by Adhoc District Judge-14, Pune in L.A.R.No.20 of 1992 awarding the compensation in respect of acquired land @ Rs.2,48,500/- per hectare instead of Rs.40,00,000/- per hectare as claimed by him in Reference application under section 18 of the Land Acquisition Act.
3. In the present proceeding, Special Land Acquisition Officer issued notification under section 4 of the Land Acquisition Act dated 4.2.1988 for acquiring the claimants land bearing Survey No.140/1 situated at Kothrud, Taluka Haweli, District Pune admeasuring 14 Hectare H 77 R.

After following due process of law, Special Land Acquisition Officer declared award dated 23.5.1991 and awarded compensation for acquired land @ Rs.40,000 per hectare.

4. Being aggrieved by the said award, appellant claimant preferred Reference under section 18 of the Land Acquisition Act dated 5.8.1991 and claimed compensation for acquired land @ Rs.40,00,000/- per hectare. In that reference, the Respondent filed their written statement dated 23.7.1998 and opposed the enhancement.

5. The claimant in support of his contention for enhancement of compensation filed affidavit in examination in chief at Exhibit-53 and relied on the copy of Index II register at Exhibit-67, certified copy of sale instance dated 18.8.1970 at Exhibit-68, certified copy of sale deed of land survey no.104 dated 15.4.1983 at Exhibit-69, certified copy of mutation entry no.8716 effected on 8.11.1983 on the basis of sale deed dated 15.4.1983 at Exhibit-70 and at Exhibit-57, he also examined valuer Mr.R.N.Gohad. Valuation report Exhibit-60. Claimant also examined photographer Ganesh Kanhere at Exhibit-61 and produced the sale instances dated 12.9.1968 Exhibit-75, sale deed dated 9.12.1985 at Exhibit-76. Against this, the respondent has not adduced any oral or documentary evidence.

6. On the basis of evidence on record the Reference Court by its impugned judgment and award dated 26.4.2007 held that appellant claimant is entitled compensation for acquired land @ 2,48,500/- per Hectare. Hence, the claimant preferred the present First Appeal.

7. The learned Counsel for the appellant submits that Special Land Acquisition Officer by notification dated 4.2.1988 under section 4 of the Land Acquisition Act decided to acquire the entire Survey No.104/1 situated at Kothrud, Taluka Haweli, District Pune and passed the award dated 23.5.1991. He submits that the appellant claimant was owner of 50% of the said acquired land whereas 50% was belonging to his brother Prabhakar P. Dhere. He submits that his brother preferred First Appeal No.1319 of 2008 before this court for additional compensation. He submits that this court by the judgment dated 28.10.2013 allowed the First Appeal No.1319 of 2008 partly and awarded compensation in respect of acquired land in that matter @ Rs.147.50 per sq.mtr. after deducting maximum deduction of 75%. He submits that as this Hon'ble Court already decided the market value of survey no.104/1 which was acquired by the said notification dated 9.2.1988, for the same purpose, this Hon'ble Court be pleased to allow the present First Appeal granting same compensation as awarded in First Appeal No.1319 of 2008. He placed on record copy of the order dated 28.10.2013. Same is taken on record and marked 'X' for identification.

8. After considering the evidence on record and judgement dated 28.10.2013 in First Appeal No.1319 of 2008, following point arise for our consideration.

“Whether the appellant original claimant has made out a case for interference in the impugned judgment and award passed by Reference Court for additional compensation.”

9. It is to be noted that in the present proceeding, Division Bench of

this court by the judgment dated 28.10.2013 in First Appeal No.1319 of 2008 arising from the acquisition of land by same notification u/s.4 of the Land Acquisition Act dated 4.2.1988, acquired for the same project i.e. for establishing a Defence project known as Armament Research and Development Establishment, held the market value of the acquired land @ 147.50 per sq.mtr. Considering the Apex Court Judgment in the matters of *Union of India vs. Bal Ram and Anr.*, AIR 2004 SC 3981, *Fida Hussain and Ors. vs. Moradabad Development Authority and Anr.*, JT 2011 (8) SC 333, *Bayaji Tatya KaJunge vs. State of Maharashtra*, 2007(2) All MR 316 and *Bhim Singh and Ors. vs. State of Haryana and Anr.*, (2003) 10 SCC 529 where it is held that if lands situated in same village, acquired for same purpose under same notification, claimants are entitled to compensation at the said rate on ground of parity. We are of the opinion that the claimants has made out a case for allowing the present First Appeal partly for fixing market value of acquired land @ Rs.147.50 per sq.mtr. Hence, for the reasons recorded by this court in judgment dated 28.10.2013 in First Appeal No.1319 of 2008, First Appeal is partly allowed. Hence, following order is passed:

(a) Impugned judgment and award dated 26.4.2007 passed by Adhoc District Judge-14, Pune in L.A.R.No.20 of 1992 is modified and the total market value of acquired land in respect of $\frac{1}{2}$ share of the appellant in the acquired land is fixed @ 147.50 per sq.mt.

(b) In addition to market value, the appellant shall be

entitled to statutory benefits under section 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894.

(c) We make it clear that the market value fixed as above shall be inclusive of market value offered by Special Land Acquisition Officer.

(d) The Appellant shall be entitled to proportionate cost throughout.

(e) The Appeal is partly allowed on the above terms.

(f) The exercise of determination of the compensation amount payable in terms of modified award shall be made by the Reference Court within a period of three months from the date of receipt of this judgment by the said Court. It is obvious that Trial Court shall give an opportunity to both the parties of being heard. The compensation amount shall be deposited by the respondent with Trial Court, within a period of three months from the date of determination of the compensation.

(g) Writ and record to be sent to the Reference Court as early as possible.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)