

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

FIRST APPEAL NO.1385 OF 2007

Sevak S/o Banshi Pawar,
Age: 35 years, Occu. Agri.,
R/o Nandgaon Tanda,
Tq. Kinwat, Dist. Nanded.

...Appellant

Versus

1. The State of Maharashtra,
Through District Collector,
Nanded.
 2. The Special Land Acquisition Officer,
Parculation Tank Minor Irrigation,
Works No.2, Nanded,
Dist. Nanded.
 3. The Executive Engineer,
M.I.W. (Medium) Project,
Division Nanded,
Dist. Nanded.
- ...Respondents

...

Mr. V.P. Kadam, Advocate for Appellant.
Mr. P.M. Kulkarni, AGP for Respondents/State.

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CORAM : P.R. BORA, J.
DATED : 07th March, 2019.

ORAL JUDGMENT:-

1. The claimant in L.A.R. No. 195 of 2004 has filed the present appeal against the order passed by the Court of Civil Judge, Senior Division at Nanded on 15.04.2006 whereby the reference application has been dismissed.

2. The land ad-measuring 1H 75R owned by the present appellant situated at village Nandgaon Tanda out of gut no.68/17 was acquired for the purpose of construction of percolation tank at village Jaldhara Taluka Kinwat, District Nanded. The notification under Section 4 of the Land Acquisition Act, 1894 in that regard was published in the official gazette on 28.01.1993 and award under Section 11 came to be passed on 09.04.1996. The SLAO had offered the compensation at the rate of Rs.24,000/- per hectare. Dissatisfied with the amount of compensation so offered, the appellant filed the reference application under Section 18 of the Act which was adjudicated by the Court of Civil Judge, Senior Division, Nanded. The said Court is hereinafter referred to as the 'Reference Court'. The Reference Court has dismissed the reference application on the ground that the appellant-claimant could not bring on record any cogent and sufficient evidence in order to support his claim for enhancement. Aggrieved by, the present appeal is being filed.

3. Shri V.P. Kadam, the learned counsel appearing for the appellant submitted that the Reference Court must have considered the contentions raised by the present appellant in his application for enhancement in the amount

of compensation. The learned counsel submitted that even from the record it was pointed out that the SLAO has not appropriately considered the sale instances of the area and has awarded the inappropriate amount of compensation. The learned counsel further submitted that in L.A.R. No.148 of 1998 arising out of the same acquisition proceedings, the Reference Court which decided the said reference application has enhanced the market value of the land which was the subject matter in said L.A.R. at the rate of Rs.34,000/- per hectare. The learned counsel submitted that to the knowledge of the present appellant, no appeal has been filed by the government or by the acquiring body against the said judgment and award. The learned counsel submitted that the land which was the subject matter of L.A.R. No.148 of 1998 was acquired for the same project vide the same notification from the same village and in such circumstances, the enhancement awarded in the said matter for the said land needs to be awarded to the land which is the subject matter of the present appeal. The learned counsel, therefore, prayed for allowing the appeal and to hold the appellant entitled for the enhancement compensation at the rate of Rs.10,000/- per hectare for his acquired land with all statutory benefits.

4. Shri Kulkarni, the learned AGP appearing for the respondent-State supported the impugned judgment and award. The learned AGP submitted that the burden was on the claimant to bring on record sufficient evidence in order to substantiate his claim. The learned counsel taking me through the discussion made by the Reference Court submitted that despite due opportunities given to the appellant-claimant, he did not bring on record any evidence in support of his claim and as such the Reference Court has rightly dismissed his claim for enhancement in the amount of compensation. The learned AGP, therefore, prayed for dismissal of the appeal.

5. I have carefully considered the submissions advanced by the learned counsel appearing for the appellant-claimant and the learned AGP appearing for the respondent-State. I have perused the evidence on record, the award passed in the matter and the other material placed on record. The copy of the judgment delivered in L.A.R. No.148 of 1998 is also placed on record. After having considered the submissions, it appears to me that the Reference Court has rejected the claim of the present appellant by adopting a hyper technical approach. The law is

well settled that even if the claimant fails in bringing on record any evidence, the Reference Court on its own is supposed to examine the correctness of the award and if it is noticed that some case for enhancement is made out, must award the due enhancement in the amount of compensation. It appears that the said course was not adopted by the Reference Court in the present matter.

6. It further appears to me that award passed in L.A.R. No.148 of 1998, which was also arising out of the same acquisition proceeding was available on record and the Reference Court could have certainly considered the same. The Reference Court which decided the said reference application had awarded the compensation at the rate of Rs.34,000/- per hectare; thus, had enhanced the compensation at the rate of Rs. 10,000/- per hectare. On perusal of the record it is revealed that the land which was subject matter in L.A.R. No.148 of 1998 and the land which was the subject matter of the present appeal, both are from village Nandgaon Tanda, both were acquired for the same project. The notification under Section 4 of the Act was published on the same date and award under Section 11 of the Act was also passed on the same date.

7. It appears to me that since the land involved in the present matter stands at par with the land which was the subject matter in L.A.R. No.148 of 1998, the present appellant needs to be given the benefit of the enhancement in the amount of compensation at the similar rate.

8. In fact, when the reference application was dismissed by the Reference Court for want of evidence, the normal course would have been adopted to remit the matter to the Reference Court and to decide it afresh in light of the decision rendered in L.A.R. No.148 of 1998. However, in the peculiar facts of the present case, I am not resorting to the said practice for the reason that the land which was the subject matter of the present appeal has been acquired in the year 1993. I am, therefore, not inclined to remit the said matter to the Reference Court; instead, I deem it appropriate to extend the same benefit to the present appellant relying on the decision rendered in L.A.R. No.148 of 1998 which has not been challenged by the State. For the reasons stated above, the following order is passed:

ORDER

i) The appellant is held entitled for the additional compensation of Rs.10,000/- per hectare in addition to the compensation awarded by the SLAO at the rate of

(7)

Rs.24,000/- per hectare with all statutory benefits and the interest in accordance with the provisions under the Land Acquisition Act.

- ii) The appeal stands allowed in the aforesaid terms.
- iii) The award be modified accordingly.

(P.R. BORA, J.)

Mujaheed//