

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

FIRST APPEAL NO.1586 OF 2009

1. Prakash w/o Manikrao Borade
(Died) Through LRs.
- 1-A. Premal w/o Prakash Borade
Age : 50 years, occu.: agri.,
R/o Patoda, Taluka Mantha,
District Jalna.
- 1-B. Mohan s/o Prakash Borade
Age : 20 years, occu.: agri.,
R/o Patoda, Taluka Mantha,
District Jalna.
- 1-C. Kumodini w/o Prakash Borade
Age : 22 years, occu.: agri.,
R/o Patoda, Taluka Mantha,
District Jalna.

Appellants.

Versus

1. State of Maharashtra
Through Collector, Jalna.
2. Special Land Acquisition Officer,
Partur.
3. The Executive Engineer
Lower Dudhna Project Sailu.
4. Special Land Acquisition Officer,
Krishna Khore, Jalna.

Respondents.

Mr. D.M. Kakade, Advocate for the appellants.
Mr. R.B.Bagul, A.G.P. for respondent Nos.1 and 2.
Mr. Ruturaj Patil, Advocate for respondent No.3.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 5th December 2018.

Judgment pronounced on : 7th January 2019.

JUDGMENT.

1. This appeal is directed by original claimant in L.A.R. No.324/1997, against the judgment and award passed by *Ad hoc* Additional District Judge, Jalna awarding compensation for the acquired land Gut No.136 situated at Patoda Budruk at the rate of Rs. 531/- per Aar. The land was acquired for the purpose of rehabilitation of Kedar Wakdi.

2. The facts leading to institution of this appeal are that, for acquisition of land at village Patoda Budruk for the purpose of rehabilitation of village, notification under Section 4 (1) of the Land Acquisition Act (hereinafter referred to as “the Act”) was published in Official Gazette on 23.01.1996 and the award was passed on 19.08.1996. Being dis-satisfied with the rate awarded by Land Acquisition Officer of Rs. 425/- per Aar, the claimant filed Land Reference No.324/1997. The Reference Court partly allowed the Land Reference and enhanced compensation to the extent of Rs. 531/- per Aar. Against that judgment and award the present appeal is preferred by original claimant.

3. Heard Mr. D.M. Kakade, learned Counsel for the appellants, Mr. R.C. Patil, learned Counsel for Acquiring Body and learned Addl. Government Pleader for the State.

4. Learned Counsel for the appellants submits that the acquired land is perennially irrigated with the help of well water, which is shown in the record of right of the acquired land. He submits that even the crop statement shows yield of irrigated crop like sugarcane from the acquired land. He submits that at the time of publication of notification the, market rate of the acquired land was not less than Rs. 2,000/- per Aar. Relying on single sale instance dated 10.02.1993 (Exh.31) and various judgments passed by this Court regarding acquisition of lands of adjoining villages, he prays for enhancement of compensation. He placed reliance on the case of of **“Ali Mohammad Baig and others Vs. State of Jammu and Kashmir”** (AIR 2017 SC 1518) wherein the Apex Court held that when the lands are acquired at the same time and for the same purpose and the land is similar land, it would be unfair to discriminate between the land owners and other reference.

5. Learned Counsel for the Acquiring Body submits that the sale instance relied on by the appellants is of the land situated at Mantha, which is a Taluka place and commercial town. His next objection is that the land under sale instance is 23 ½ Guntha's small piece of area and the acquired land is 6 Hectare 46 Aar. Therefore, the sale instance relied on by the claimant cannot be accepted as a comparable sale instance.

6. The next objection of learned Counsel for the Acquiring Body is that, only one well is situated in the land of claimant which admeasures more than 10 Hectares. Therefore, it is hard to accept that it can be perennially irrigated with the help of well water. He has pointed out that even in the crop statement, the sugarcane is cultivated in small area out of 10 Hectare area. He submits that as more area of Gut No.136 is utilized for dry crop yield, the acquired land cannot be treated as perennially or seasonally irrigated land. He submits that even otherwise no material is placed on record by the claimant to show that prior to publication of notification under Section 4 (1) of the Act, there was ban for alienation of the land at village Patoda Budruk.

7. Regarding other judgments of this Court relied on by the claimant, the learned Counsel for the Acquiring Body has pointed out that the purpose of acquisition and quality of land, which was the subject-matter before the High Court in other first appeals, is not identical. Therefore, on the basis of the rate awarded in those judgments, the market rate of the acquired land on the date of notification cannot be determined.

8. I have gone through the judgment passed by this Court in First Appeal No.2740 of 2016 in which the date of notification is 14.07.1995 and the land was acquired from village Devla for Dudhna Project. The rate awarded is Rs.1500/- per Aar for dry land, Rs. 2250/- per Aar for seasonally irrigated land and Rs.3,000/- per Aar for semi-irrigated land. In First Appeal No.2733 of 2013 the land was acquired from village Kedar Wakdi for Dudhna Project and notification under Section 4(1) of the Act was published on 15th September 1994. In this matter the compensation was awarded at the rate of Rs.1500/- per Aar for dry land and Rs. 2250/- per Aar for semi-irrigated land. In First Appeal No.2733 of 2013 the acquired land was from the village Mangrul and notification under Section 4 (1) of the Act was

published on 18.12.1997. In First Appeal No.452 of 2017 the land was acquired from village Kedar Wakadi for Dudhna Project and notification was published on 14th September 1994. In that appeal the rate was awarded at Rs.1500/- per Aar for dry land and Rs. 2250/- per Aar for perennially irrigated land. In first Appeal No.2561 of 2015, heavily relied by the appellant, the date of notification is 13.07.1995 and the land acquired was at village Wanjola. The rate awarded is Rs.1550/- per Aar for dry land, Rs.1800/- per Aar for semi-irrigated and Rs. 2100/- per Aar for perennially irrigated land.

9. Regarding the judgments passed by this Court in various first appeals, it is suffice to say that the land before this Court in other appeals, cannot be compared with the acquired land due to distance, as well as for the reason that no concrete evidence is on record to show that those lands are of identical quality of the acquired land. The date of notification under Section 4 (1) of the Act in those appeals is absolutely different than the date of notification in the case at hand. Therefore, on the basis of the rate awarded by this Court in above-referred appeals, compensation of the acquired land cannot be

determined.

10. The appellant has also placed reliance on the awards passed by District Court in other Land References. It is suffice to say that it is not certain whether the awards passed by Reference Court in those matters have reached to finality or any appeals are pending against those awards. Therefore, those awards cannot be considered to determine the market price of the acquired land on the date of notification under Section 4 (1) of the Act.

11. In the circumstances, I have to consider the single sale instance dated 10.02.1993 (Exh.31) relied by the claimant. No doubt, the land which is subject of this sale instance is situated at Mantha Taluka, which is not just adjoining to Patoda Budruk. So also, Taluka Mantha being a Taluka place, is certainly a developed city. Even the area of the land under sale instance is smaller than the area of acquired land. However, on this count alone the sale instance cannot be rejected. As per the guidelines issued by the Apex Court in the case of **“Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona” [1988 (3) SCC 751]**, these plus – minus factors can be

adjusted by making certain additions and deductions from the market price of the land.

12. After going through the sale instance (Exh.31), it becomes clear that on 10.02.1993 out of Gut No.79, 23 ½ Aar land was sold out to one Ramchandra Fakirba Khandagale for the consideration of Rs. 40,000/-. It is not mentioned in the sale deed that it is a irrigated or semi-irrigated land. Therefore, the land under sale instance is treated as dry crop land. The land under sale instance is sold at the rate of Rs.1702/- per Aar. However, the sale deed under sale instance is executed approximately three years preceding the date of publication of notification under Section 4 (1) of the Act i.e. 23.01.1996. Therefore, for every year, there shall be escalation of 10% in the market price of this land. Thus, on 23.01.1996 the market price of the land under sale instance is assessed as Rs.2215/- per Aar.

13. After going through the crop statement of the acquired land, it becomes clear that only one well is situated in Gut No.136 and the total area of this land is 10 Hectare 46 Aar. Therefore, contention of the learned Counsel is absolutely correct that with the help of one well, 10 Hectare 46 Aar land cannot be

perennially irrigated. Even the pattern of crop statement shows that meager area of this gut number was utilized for taking irrigated crop like sugarcane on few occasions. Therefore, the acquired land cannot be treated as perennially irrigated land. At the most it can be treated as seasonally irrigated land with inadequate water supply, as the major portion of the land is utilized for taking dry crops like Jowar, Moog, Cotton, Safflower, etc. Thus, at the most there can be escalation of 1.25% in the market price of the acquired land, which comes to Rs.2768/- per Aar.

14. As area of the land under sale instance is only 23 ½ Aar, for this small area 25% value is to be deducted from the market price of the acquired land. So also, for the distance in between Mantha and Patoda Budruk as well as for development in Mantha, total 10% value is to be deducted from the market value of the acquired land. Thus, after deducting 35% value from Rs.2768/-, the true market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act comes to Rs.1800/- per Aar.

15. Accordingly, I hold that the appellants are entitled to

compensation at the rate of Rs. 1800/- per Aar.

16. In addition to this the appellants are entitled to statutory benefits under Sections 23 (1A) and 23 (2) of the Act, as awarded by the Reference Court. However, the Reference Court erroneously awarded interest under Section 28 of the Act from the date of notification under Section 4 (1) of the Act. The interest under Section 28 is to be awarded either from the date of taking possession or from the date of award. In the case at hand, the award does not show that possession of the land was to be taken after passing of the award. Therefore, interest under Section 28 is to be awarded from the date of award i.e. from 19.08.1996.

17. Accordingly, First Appeal No.1586 of 2009 is partly allowed. The compensation for land Gut no.136 area 6 Hectare 46 Aar situated at Patoda Budruk is enhanced to the extent of Rs.1800/- per Aar. Statutory benefits under Sections 23 (1A) and 23 (2) of the Act are confirmed as awarded by Reference Court. Interest under Section 28 of the Act shall be awarded from the date of award i.e. 19.08.1996 at the rate of 9 % per annum for the first year and from 20.08.1997 the interest shall be awarded at

the rate of 15% per annum till the date of deposit of compensation in the Court by the Collector.

18. The award be modified accordingly.

19. Parties to bear their respective costs of the appeal.

Appeal is disposed of in above-said terms.

(SUNIL K. KOTWAL)
JUDGE

vdd/