

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

982 FIRST APPEAL NO.2080 OF 2010

- . Udhav s/o Gurunath Malwade
since died through LRs.
1. Sunil Udhav Malwade
Age: 43 years, Occu.: Agri.,
R/o. Sakat (Khurd), Tq.Paranda,
Dist.Osmanabad.
 2. Samadhan Udhav Malwade
Age: 40 years, Occu.: Agri.,
R/o. Sakat (Khurd), Tq.Paranda,
Dist.Osmanabad.
 3. Sow.Sanjivani Prabhakar Shete
Age: 46 years, Occu.: Agri.,
R/o.Bhoom, Tq.Bhoom,
Dist.Osmanabad. ..Appellants.

VERSUS

1. The State of Maharashtra
Through the Collector, Osmanabad.
2. The Executive Engineer,
Medium Project Division,
Osmanabad.
Dist.Osmanabad. ..Respondents
(Orig. Respondents)

...
Advocate for Appellant : Shri Shrikishan S. Shinde
AGP for Respondent – State : Shri A.M. Phule
Advocate for Respondent No.2 : Shri Gulab B. Rajale

...
CORAM : P.R.BORA, J.
DATE: 6th March, 2019

ORAL JUDGMENT:-

1. The claimant in Land Acquisition Reference No.861 of 1997
decided by the Court of Civil Judge, Senior Division, Osmanabad,

vide common Judgment and award delivered on 23.10.2009, has preferred the present appeal, seeking enhancement in the amount of compensation awarded by the said Court.

2. The lands at Gut No.242 ad-measuring 4 Hectares 93 Are, Gut No.54 ad-measuring 2 Hectares 30 Are and Gut No.52 ad-measuring 1 H 22 Are, owned by the present appellant, were acquired for the State Medium Project at village Sakat Tq.Paranda Dist.Osmanabad. The Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) in that regard was published in the official Gazette on 09.04.1990 and the award under Section 11 of the Act, came to be passed on 24.12.1995. The Special Land Acquisition Officer (hereinafter referred to as the SLAO) had offered the compensation @ Rs.24,947/- per Hectare, which comes approximately @ Rs.9,000/- per Acre. Dissatisfied with the amount of compensation so offered, the appellant, who is herein after referred to as the claimant, had filed the Application under Section 18 of the Act, which was adjudicated by the Court of Civil Judge, Senior Division, Osmanabad (hereinafter referred to as the Reference Court). In the Reference Application the claimant had claimed the compensation @ Rs.80,000/- per Acre. In order to substantiate the claim raised by him, the claimant himself deposed before the Reference Court and also examined some

witnesses. He had also placed on record certain sale instances to buttress his contentions. The Reference Court, after having assessed oral and documentary evidence brought on record before it, determined the market value of the acquired land @ Rs.54,000/- per acre and granted enhancement in the amount of compensation payable to the appellant. According to the original claimant the Reference Court also did not award adequate compensation. Claimant has therefore preferred present appeal, seeking enhancement in the amount of compensation.

3. Shri S.S.Shinde, learned Counsel appearing for the claimants assailed the impugned Judgment on various grounds. The learned Counsel submitted that the Reference Court has failed in appreciating that the lands acquired of the present appellants were perennially irrigated and ought to have been given market value of perennially irrigated land. The learned Counsel submitted that the Reference Court has manifestly erred in holding the lands to be semi-irrigated lands and accordingly failed in determining the market value of the acquired land @ Rs.54,000/- per Acre. The learned Counsel taking me through the evidence of original claimant and the witnesses examined by him and also bringing to my notice the report of the valuer submitted that in the premise of the evidence so adduced by the appellant, the Reference Court must have held the acquired

lands to be perennially irrigated lands. The learned Counsel, in the circumstances, prayed for determining the market value of the acquired lands holding them to be perennially irrigated lands. The learned Counsel further submitted that the market value as has been determined by the Reference Court is also on lower side. The learned Counsel submitted that in the connected matters, the market value was determined of the adjacent lands @ Rs.73,000/- per Acre. The learned Counsel submitted that in the circumstances, the claim made by the appellants claiming compensation @ Rs.80,000/- per Acre was just and fair and was liable to be granted in toto. The learned Counsel, in the circumstances, prayed for adequate enhancement in the amount of compensation.

4. Shri G.B.Rajale, learned Counsel appearing for the Acquiring Body supported the impugned judgment and award. The learned Counsel pointed out that the Reference Court has determined the market value of the acquired lands on the basis of the sale instance, which was relied upon by the claimant himself. The learned Counsel submitted that the Reference Court has elaborately discussed that the acquired lands belonging to the appellants cannot be held to be perennially irrigated lands. The learned Counsel submitted that in fact there was no sufficient evidence even to hold the subject lands as semi-

irrigated lands, however, the Court held the lands as semi-irrigated lands. The learned Counsel, in the circumstances, prayed for maintaining the order as it is.

5. I have given due consideration to the submissions made by learned Counsel appearing for the parties. I have perused the impugned Judgment and the evidence on record as well as other material placed on record. The material on record reveals that the claimant has relied upon the sale instance at Exh.36. The land, which was subject matter of Exh.36, was ad-measuring 80 Are situated at village Walvad and was sold vide registered sale deed executed on 22.02.1990 for the consideration of Rs.73,000/-. Another sale instance was also there on record, which was at Exh.37 wherein 60 Are land situated at Wala was sold on 13.05.1999 for the consideration of Rs.18,000/-. From the discussion made by the learned Reference Court, it appears that the Reference Court has discarded the sale instance, which was at lower side and has considered the sale instance wherein higher price was received. In fact another sale instance, which was at Exh.37 was of the same village Wala and as such reliance could have been placed by the Reference Court on the said sale instance. However, the sale instance of higher amount is taken into consideration by the Reference Court for determining the market value of the acquired land. It is quite evident that the

land, which was subject matter of Exh.36, was sold in February, 1990 and Section 4 Notification whereby the subject lands were acquired, was published in official Gazette in April, 1992. The sale deed relied upon was thus proximate in time. It is also revealed from the record that village Walvad and Wala are adjacent to each other and as such, the learned Reference Court has determined the market value relying upon the said sale instance. The learned Reference Court has determined the market value of the acquired lands @ Rs.54,000/- per Acre.

6. After having considered the evidence on record and analysis made of it by the Reference Court, it does not appear to me that any error has been committed by the Reference Court in determining the market value of the acquired land @ Rs.54,000/- per Acre. The discussions made by the Reference Court further reveals that the Reference Court has held the subject land owned by the present appellant to be semi-irrigated land. The discussion made in this regard shows that the Reference Court has considered the averments in the application as well as in testimony of the claimant before the Reference Court. Further having regard to the crop statements, which were filed on record and considering that no other evidence was adduced by the claimant evidencing that which crop was taken in the said land using well water to term the lands as perennially irrigated lands.

The Reference Court has rightly held the lands to be semi-irrigated lands.

7. It was vehemently argued by Shri Shinde, learned Counsel for the claimant that, the existence of well itself was sufficient to hold the subject lands to be perennially irrigated land. The contention so raised by Shri Shinde, is not liable to be accepted. It is not sufficient to categorize the said land to be perennially irrigated land. In this regard, further evidence was brought on record that well was containing water for whole of the year and that well water was being effectively used throughout the year for taking crops in the said land. After having gone through the record, it appears to me that the Reference Court has recorded correct finding that the appellant has failed in establishing that the acquired lands were perennially irrigated lands.

8. After having considered the evidence on record, no case is made out by the appellant for any further enhancement in the amount of compensation. The appeal being devoid of merits deserves to be dismissed and is accordingly dismissed. Pending civil application stands disposed of.

(P.R.BORA)
JUDGE

SPT