

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

FIRST APPEAL NO.159 OF 2004

1. Narsing S/o Hullapa Shinde,
Age 51. Yrs., Occu: Agril.
r/o Toopdal (Bk.) Tq. Mukhed,
District Nanded.

2. Sanjay Narsing Shinde,
Age. 18 Yrs., Occu:Nil,
R/o as above.

= **Appellants**
(Orig. Claimants)

VERSUS

1. The State of Maharashtra,
Through Collector, Nanded.

2. The Special Land Acquisition
Officer, PT & MIW, Nanded.

= **RESPONDENTS.**

Mr.MM Patil-Beedkar, Advocate for Appellant/s;
Mr.AM Phule, AGP for Respondents.

CORAM : P.R.BORA, J.
DATE : 15th January, 2019

ORAL JUDGMENT

1. Aggrieved by the judgment and Award in LAR No.109/1991 decided by Civil Judge, Senior Division, Biloli on 3rd July, 1993, the claimant/s therein have preferred the present appeal.

2. The appellants had preferred the aforesaid Reference application under section 18 of the Land Acquisition Act, 1894 (herein after

referred to as the Act), seeking enhancement in the amount of compensation, as was awarded by Special Land Acquisition Officer. The land owned by the appellants was acquired for the purpose of Jamkhed Medium Project. The land is situated at village Tupdal.

3. A notification under section 4 of the Act in that regard was published in the official Gazette on 25th December, 1985 and the Award under section 11 of the Act came to be passed on 12th December, 1988. The Special Land Acquisition Officer offered the compensation at the rate ranging between Rs.8,000/- to Rs.9,000/- per acre. Dissatisfied with the amount of compensation so offered, the appellants preferred the application under section 18 of the Act, and as noted herein above, the same was adjudicated by the Reference court.

4. Before the Reference Court, the claimants had claimed enhancement in the amount of compensation @ Rs.50,000/- per hectare. In order to substantiate the claim, the appellants claimants had testified before the Reference Court and have also placed on record two sale instances (Exhibit

25 and Exhibit 26). It was the contention of the appellants claimants that the land, which was the subject matter of Exhibit-25, was in all respect, comparable with the subject land, and as such, the compensation was liable to be enhanced at the said rate, i.e. @ Rs.500/- per Are. The learned Reference Court, however, after having considered the oral and documentary evidence on record, dismissed the Reference Application, observing that the claimants have failed to prove the market value of the subject land and have further failed in bringing on record any such circumstances so as to hold that the SLAO had not awarded just and fair compensation.

5. Shri Milind Patil-Beedkar, learned counsel appearing for the appellants claimants, submitted that the Reference Court has grossly erred in ignoring the sale instance at Exh.25. The learned counsel submitted that the land, which was the subject matter of said sale instance, was from village Hasnal, which is adjacent to village Tupdal and the sale instance was of the period prior to issuance of notification under section 4 of the Act, and as such, the Reference Court was

under obligation to consider the sale instance for determining the market value of the acquired land. The learned Counsel further submitted that the Court may have carried out some guess work having regard to the fact that the sale instance was of a small piece of land, but could not have outrightly rejected the said sale instance and kept out of consideration while determining the market value of the acquired land. The learned Counsel further submitted that in view of the sale instance brought on record, the amount of compensation needs to be adequately enhanced.

6. The learned counsel tendered across the Bar a copy of the judgment delivered by this Court (Coram: T.V.Nalawade,J.) on 11.2.2016 in FA No. 938/2007 with FA No.939/2007 arising out of the same acquisition proceedings and from the same village Tupdal. The learned counsel pointed out that in the said matter, this Court has enhanced the amount of compensation by determining the market value of the acquired land @ Rs.200/- per Are. The learned counsel has, therefore, prayed for enhancement in the amount of compensation accordingly.

7. Opposing the submissions made by Shri Milind Patil-Beedkar, learned AGP Shri Phule, appearing for the Respondent-State pointed out that the SLAO had offered the compensation in the present matter @ Rs.200/- per Are, and as such, there seems no reason to cause interference in the impugned judgment and award whereby the Reference Court has dismissed the Reference application. The learned AGP submitted that since in the present matter, the SLAO had offered the compensation at the rate which has been determined by this Court while deciding FA No.938/2007 and 939/2007, no further enhancement is required and he, therefore, prayed for dismissal of the appeal.

8. After having considered the submissions made by the learned counsel appearing for the appellant and learned AGP for State and after having gone through the impugned judgment and the judgment delivered by this Court in FA No. 938/2007, it does not appear to me that any interference may be required in the impugned judgment and award. As was pointed out by learned AGP Shri Phule, the SLAO in the present matter has already awarded the compensation @ Rs.200/- per

Are, in view of the position as above, it does not appear to me that any case is made out by the appellant claimant for any enhancement in the amount of compensation. I see no infirmity in the judgment and award passed by the Reference Court.

9. In the result, following order is passed,

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ORDER

. The appeal is dismissed, however, without any order as to costs.

(P . R . BORA)
JUDGE

bdv/