

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

First Appeal No. 2223 of 2018

District : Aurangabad

Kachru s/o. Nathu Magar,
Died through his legal heirs :

1. Indubai w/o. Kachru Magar,
Age : 77 years,
Occupation : Agriculture,
R/o. Chikatgaon,
Taluka Vaijapur,
Dist. Aurangabad.
 2. Kakasaheb Kachru Magar,
Age : 54 years,
Occupation : Agriculture,
R/o. as above.
 3. Lahanbai Madhukar Sonawane,
Age : 47 years,
Occupation : Household
and Agriculture,
R/o. Wakala,
Taluka Vaijapur,
Dist. Aurangabad.
 4. Kantabai w/o. Ramesh Nalawade,
Age : 44 years,
Occupation : Household and
Agriculture,
R/o. Kanadgaon, Post Vita,
Taluka Kannad,
Dist. Aurangabad.
 5. Abasaheb s/o. Kachru Magar,
Age : 41 years,
Occupation : Agriculture,
R/o. Chikatgaon,
Taluka Vaijapur,
Dist. Aurangabad.
- .. Appellants
(Original
claimants)

versus

1. The State of Maharashtra,
Through the Special Land
Acquisition Officer,
Aurangabad.

2. The Executive Engineer
(Irrigation),
Zilla Parishad,
Aurangabad.

.. Respondents.

.....

*Mr. Prashant D. Suryawanshi, Advocate, for the
appellants.*

*Mr. S.P. Deshmukh, Assistant Government Pleader,
for respondent no.01.*

Mr. A.A. Jagatkar, Advocate, for respondent no.02.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02ND JULY 2019

ORDER :

01. Present appeal has been filed by the original claimants for enhancement in the compensation granted by the reference Court i.e. Civil Judge (Senior Division), Vaijapur, District Aurangabad, in L.A.R. No.449 of 2010, dated 25-09-2017.

02. Claimants are owners of land Gut No. 49 admeasuring 01 hectare 22 R of village Chikatgaon, Taluka Vaijapur, District Aurangabad. The said land was acquired by respondent no.02 in land acquisition

case No.2005/SLAO/J.P-2/AR-22/2002 by award dated 20-01-2005. Respondent no.02 granted compensation at the rate of Rs.720/- per R.

03. Challenging the said award, the claimants filed reference under Section 18 of the Land Acquisition Act, 1894 [**For short, "the Act"**], contending that while awarding the compensation, fertility and productivity of the land were not considered. So also, prevailing market rate in the adjoining area as well as village was not considered. They claimed compensation at the rate of Rs.5000/- per R.

04. Respondent no.01 filed written statement. Respondent no.01 denied all the averments in respect of allegations for not considering the fertility, productivity of the land and supported the reasons and the award passed by the SLAO. Respondent no.02 also filed separate written statement and it was contended that the reference is time barred. Other averments were the same as that of State.

05. Issues were framed. Claimants led evidence in the form of documentary as well as oral. Taking into consideration the evidence on record, the reference was partly allowed. The respondents were directed to pay enhanced compensation at the rate of Rs. 2243/- per R for the suit land. Other statutory

benefits were also given.

06. Heard both sides. Learned Advocate appearing for the appellants submitted that the evidence was not properly considered. The sale instance though produced by the claimants, its value has been considered at a very low price. It was not considered that there is well in the land and due to the well, the land is irrigated. Merely because the valuer was not examined, the compensation that has been awarded is on a lesser side.

07. Per contra, learned Assistant Government Pleader as well as learned Advocate appearing for the acquiring body supported the reasons given by the learned reference Court and it is stated that already sufficient enhancement has been granted in the compensation.

08. It is to be noted that apart from their oral evidence, the claimants have produced only a sale instance in the form of sale deed Exhibit 30 which was in respect of the land situated in the same village. It was dated 04-03-2003 whereby 78 R land was sold for Rs. 1,70,000/-. It was considered that the notification in this case under Section 4 of the Act was published on 02nd October 2003 and, therefore, when sale instance was of the earlier period, the sale instance has been considered in this

matter. Taking into consideration the time span between the sale deed and the notification, in fact, the rate that has been awarded is as mentioned in the sale deed itself. There was ample opportunity to lead evidence to the claimants stating that their land is irrigated. The valuer was not examined and there was nothing on record to show that there was well in their land. It was also not produced on record, that the claimants were getting water from the land of which sale instance has been quoted. Under such circumstance, the learned reference Court has rightly awarded the rate. In other words, the enhancement in the compensation has been rightly made which does not require further enhancement.

09. No fault can be found in respect of other parts of the award i.e. as regards interest.

10. There appears to be an attempt on the part of the claimants to rely on the decision in L.A.R. No.583 of 2010, dated 21-09-2017 by the same Court wherein for the land which was acquired from Gut no.49, enhancement was granted at the rate of Rs. 4,486/-. Though in this case also, the gut number is 49, as aforesaid, there was no evidence adduced by the claimants that the claimants in L.A.R. No.583 of 2010 were providing water to the claimants. When evidence, though required to have been adduced, has not been adduced, inference cannot be drawn.

Therefore, no fault is found in respect of the rate of the compensation at which the enhancement is granted and no case is made out for further enhancement.

11. There is no merit in the present appeal. It deserves to be dismissed. Hence, the appeal is hereby dismissed. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

.....