

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

FIRST APPEAL NO.2374 OF 2010

1. Saw. Sunanda W/o Wamanrao Pande
Age : 54 years, Occu : Agriculture,
R/o. Sambhaji Nagar, Parbhani
2. Anuradha d/o Wamanrao Pande
(Now Saw. Anuradha w/o Shirish Joshi)
Age : 32 years, Occu : Agriculture,
R/o. Sambhaji Nagar, Parbhani
3. Rakhi d/o Wamanrao Pande
Age : 25 years, Occu : Legal Prof.
R/o. Sambhaji Nagar, Parbhani

..Appellants
(Orig. Owners of land
Acquired / Claimants)

Versus

1. The State of Maharashtra
Through District Collector,
Parbhani
2. The Special Land Acquisition Officer,
M.K.V. Parbhani
3. The Executive Engineer,
Zilla Parishad (Minor Irrigation),
Parbhani

.. Respondents
(Orig. Respondents)

...

Advocate for Appellants : Shri Rahul P. Dhase
AGP for Respondent Nos.1 & 2 : Shri S.J. Salgare
Advocate for Respondent No.3 : Shri S.R. Bagal

...

CORAM : P.R. BORA, J.

Dated: February 14, 2019

ORAL JUDGMENT :

1. The claimants in LAR No.2 of 2006 decided by the Court of Civil Judge, Senior Division, Parbhani (hereinafter referred to as the 'Reference Court') on 29.11.2007 has preferred the present appeal seeking further enhancement in the amount of compensation as awarded by the said Court. The appellants are hereinafter referred to as the 'claimants'.

2. The land admeasuring 1 Hec., 35 Are was acquired for the purpose of construction of percolation tank situated at village Tandulwadi, Tal. Sailu, Dist. Parbhani. Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as the 'Act') was published in the Official Gazette in that regard on 07.08.1997 and the Award under Section 11 of the Act came to be passed on 01.03.2000. The SLAO had offered the compensation to the claimants at the rate of Rs.50,000/- per hectare. Dissatisfied with the amount of compensation so offered, the claimants preferred an application under Section 18 of the Act, which was adjudicated by the Reference Court.

3. In the reference application, the claimants had demanded the compensation for their acquired lands at the rate of Rs.1,00,000/- per acre i.e. Rs.2,50,000/- per hectare. In order to substantiate the claim so raised, one of the claimants testified before the Court and three sale instances were brought on record by the claimants to substantiate their claim.

4. It was the contention of the claimants that, since there was a quarry in the acquired land and the claimants used to sell the stones worth Rs.500/- to Rs.600/- per day, the compensation was liable to be granted in their favour much more than awarded by the SLAO.

5. Three sale instances were placed on record, which were marked at **Exhs.31 to 33** pertaining to the lands situated at village Tandulwadi. No evidence was adduced on behalf of the respondents. The learned Reference Court, after having assessed the oral and documentary evidence brought on record before it, determined the market value of the acquired land at the rate of Rs.75,000/- per hectare and accordingly enhanced

the amount of compensation. The Reference Court has also held the appellants entitled for the statutory benefits as well as the interest under the provisions of the Act. Since according to the claimants the compensation as has been enhanced by the Reference Court is also unjust and inadequate, they are constrained to prefer the present appeal.

6. Learned Counsel Shri Dhase assailed the impugned Judgment mainly on the ground that, the Reference Court has failed in appreciating that, in the acquired land there was a stone quarry and from the said stone quarry, every day the claimants used to sell the stones worth Rs.500/- to Rs.600/-. The learned Counsel submitted that, since this aspect has been ignored by the Reference Court that has resulted in awarding such a less amount of compensation even by the Reference Court. The learned Counsel submitted that, the licence for selling the stones from the subject land was placed on record at Exh.28, but that has also not been appreciated by the Court. The learned Counsel further submitted that, in her evidence before the Court PW No.1 Rakhi stated that, there was a quarry

in the land, however, the said statement has also been not considered by the Reference Court. The learned Counsel submitted that, having regard to the sale instances placed on record coupled with the fact that in the subject land there was a quarry, in no case the market value of the acquired land could have been determined by the Reference Court less than Rs.2,50,000/- per hectare. The learned Counsel, in the circumstances, prayed for adequate enhancement in the amount of compensation.

7. Learned Counsel Shri Bagal submitted that, the Tribunal has passed a well reasoned order considering the evidence on record and no interference is required in the order so passed. The learned Counsel submitted that, the claimants have failed in bringing on record any evidence as about the income allegedly received to them through the stone quarry and as such, there was no reason for the Tribunal to consider the said aspect. The learned Counsel further submitted that, all the sale instances placed on record by the claimants were of the period post Section 4 notification and were of the small pieces of

land and as such, they have been rightly discarded by the Reference Court. The learned Counsel, in the circumstances, prayed for dismissal of the appeal.

8. Learned AGP Shri Salgare supported the argument advanced on behalf of the learned Counsel appearing for the Acquiring Body and prayed for dismissal of the appeal.

9. I have given due consideration to the submissions made by the learned Counsel appearing for the parties. I have perused the impugned Judgment as well as the entire evidence and the other material available on record of the trial Court. After having gone through the record and the evidence, apparently, it does not appear to me that, any case is made out by the present appellants for any enhancement in the amount of compensation as has been awarded by the Reference Court. Though it was sought to contend that, in the acquired land, there was a stone quarry and a sumptuous income was being received to the claimants by selling stones out of the said quarry worth Rs.500/- to Rs.600/- per day, there is absolutely no

evidence brought on record in that regard by the appellants – claimants. The learned Counsel much emphasized on the document at Exh.28 in order to urge that, there was the stone quarry in the acquired land. However, the said document does not contain any information or particular to the effect that it was pertaining to the acquired land. It was not impossible for the claimants to bring on record sufficient evidence proving the fact that, there was a stone quarry in the acquired land and the value of the acquired land was much more than determined by the Reference Court. During course of the argument, it was informed that, the land in question was purchased by the present appellants few days prior to its acquisition. If this was the case, the best evidence the appellants could have produced on record was their own sale-deed in respect of the said land so as to bring on record the market value of the said land and to further bring on record that the said land was containing a stone quarry in the said land. Even the said evidence has not been produced on record. In the circumstances, it does not appear to me that, the Reference Court has committed any error in determining the market value of the acquired land at the rate of

Rs.75,000/- per hectare. The appeal being devoid of any substance, deserves to be dismissed and is accordingly dismissed.

10. Pending Civil Application, if any, stands disposed of.

(**P.R. BORA, J.**)