

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

902 FIRST APPEAL NO.714 OF 2005

1. Suryabhan s/o Laxman Digrase
Age: 72 years, Occu.: Agri.
2. Swarup s/o Suryabhan Digrase
Age: 52 years, Occu.: Agri.
3. Mohan s/o Suryabhan Digrase
Age: 47 years, Occu.: Agri.
4. Jeevan s/o Suryabhan Digrase
Age: 42 years, Occu.: Agri.
All R/o. Lodaga, Taluka AUSA,
Dist.Latur.

..Appellants
(Orig. Claimants)

VERSUS

1. The State of Maharashtra
Through The Collector, Latur.
2. The Executive Engineer,
Irrigation Division, (Z.P.), Latur.

..Respondents
(Orig. Respondents)

...
Advocate for Appellants : Shri S.S.Manale
AGP for Respondent No.1 – State : Shri A.M.Phule
Respondent No.2 Served
...

CORAM : P.R.BORA, J.

DATE: 6th February, 2019

ORAL JUDGMENT:-

1. The claimants in Land Acquisition Reference (LAR) No.96 of 1988 have preferred the present appeal being aggrieved by the Judgment passed in the said Reference Application by 2nd Ad-hoc

Additional District Judge, Latur on 12.01.2005 thereby dismissing the Reference Application.

2. The land, which is involved in the present appeal was acquired for the construction of Left Bank Canal of Lower Terana Project. Total 80 Are land was acquired from Survey No.92 situated at village Lodaga, Tq.Ausa, Dist.Latur. 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 05.11.1984 and the award under Section 11 came to be passed on 21.11.1986. The Special Land Acquisition Officer (SLAO) had offered the compensation to the appellants - claimants @ Rs.115/- per Are. Dis-satisfied with the amount of compensation so offered, the claimants had preferred the application under Section 18 of the Act, which was adjudicated by the Court of 2nd Ad-hoc Additional District Judge, Latur (hereinafter referred to as the Reference Court). The appellants (hereinafter referred to as the claimants) had claimed the compensation @ Rs.25,000/- per Acre before the Reference Court. In order to substantiate claim so raised by them, in addition to the testimony of one of the claimants, the reliance was also placed by the claimants on one sale instance pertaining to 48 Are land situated at village Holi. It was the contention of

the claimants that the sale instance brought on record was of the comparable land and as such the enhancement of the compensation was claimed on the basis of the said sale instance. No evidence was adduced on behalf of the respondents. The learned Reference Court though has discussed the evidence as about sale instance brought on record by the claimants, eventually dismissed the Reference Application on the ground that the claimants did not place on record the copy of the award and the copy of the "E" statement. Aggrieved thereby, the original claimants have preferred the present appeal.

3. Shri S.S.Manale, learned Counsel appearing for the appellants - claimants submitted that though ample information was placed on record of the Reference Court evidencing that the claimants had applied for the certified copy of the award as well as "E" statement, the same were not supplied to them, the Reference Court, by putting the entire blame on the claimants for not filing certified copy of the award, has erroneously dismissed the Reference Application. The learned Counsel submitted that though copy of the award was not available on record, the notice served upon the claimants under Section 12(2) of the Act, was placed on record by the claimants, from which it was discernible as to how much compensation was paid to the claimants and at

what rate. The learned Counsel submitted that in not filing the certified copy of the award and the "E" statement, no blame could have been attributed on the part of the appellants and Reference Application could not have been dismissed on that ground. The learned Counsel submitted that based on the evidence, which was available on record, the Reference Court could have adjudicated and decided the Reference Application and could have passed the order instead of dismissing the Reference Application on the said ground. The learned Counsel pointed out that the sale instance, which was placed on record could have been considered as a base for determining the market value of the acquired land and the compensation was liable to be enhanced on the basis of the said sale instance. The learned Counsel, in the circumstances, has prayed for setting aside the impugned Judgment and to allow the Reference Application filed by the present appellants and adequately enhance the amount of compensation.

4. Shri A.M.Phule, learned AGP has supported the impugned Judgment and award. The learned AGP submitted that the claimants were under an obligation to place on record certified copy of the award as well as "E" statement without which the Reference Court could not have considered the request made by

the appellants – claimants for enhancement in the amount of compensation. The learned AGP, therefore, prayed for dismissal of the appeal.

5. I have given due consideration to the submissions made by Shri Manale, learned Counsel appearing for the appellants and Shri Phule, learned AGP appearing for the State. I have perused the impugned Judgment and the record of the case.

6. Perusal of the impugned Judgment reveals that the Reference Court has rejected the Reference Application filed by the present appellants on the ground that the claimants did not place on record the certified copy of the award and “E” statement. The material on record shows that the appellants – claimants had preferred an application seeking certified copy of the award as well as “E” statement, however, the same were not made available to them. My attention was invited by learned Counsel Shri Manale to the communication received to Suryabhan Laxman Digraze - one of the claimants from District Collector, Latur dated 23.08.2004. The communication reveals that the claimants were informed by the Collector, Latur that in the concerned file pertaining to the acquisition of the land in question, the copy of the award as well as “E” statement were

not available and as such it could not be provided to the appellants – claimants. The record further shows that the aforesaid fact was brought to the notice of the Reference Court. Moreover, the aforesaid document was available in the record of the Reference Court and the same was also brought to the notice of the Reference Court. Having considered the fact as aforesaid the dismissal of the Reference Application by the Reference Court on the ground that the appellants – claimants did not file the certified copy of the award cannot be sustained.

7. It has to be further stated that there are clear provisions in the Act as to who has to place on record the copy of the award and with what particulars. The reference can be made to Sections 18 and 19 of the Act. Non-filing of the copy of the award by the claimants for the reason beyond their control cannot be a reason for rejecting the Reference Application. The Reference Court could have certainly called upon the respondent State or Acquiring Body to place on record the copy of the award. From the material on record, it appears that no such endeavour was made. Moreover, the communication on record from the Collector, Latur i.e. Acquiring Body itself shows that the copy of the award was not available in the relevant file pertaining to the said acquisition. It is also not in dispute that the notice was

served upon the claimants under Section 12(2) of the Act. I have perused the contents of the said notice from which it can be gathered as to how much amount was offered and paid to the claimants for acquisition of the their land. The said communication contains necessary particulars. The Reference Court must have in absence of copy of the award, could have relied upon the said communication and could have considered the request of the claimants for enhancement in the amount of compensation. The impugned Judgment, therefore, cannot be sustained and deserves to be set aside. It is accordingly set aside.

8. In view of the fact that the Judgment and order dismissing the Reference Application has been set aside by this Court, the ordinary course would have been to remit the matter to the Reference Court to decide it afresh and consider the claim of the appellants - claimants for enhancement in the amount of compensation. However, during the course of argument, it was revealed that such evidence was placed on record and the same has been discussed by the Reference Court in the impugned Judgment, however, the ultimate conclusion as about the market value is not recorded by the Reference Court since the copy of the award was not placed on record and the Reference

Application was dismissed on that count. In the circumstances and having regard to the fact that the acquisition was of the year 1984, and the Reference Application was filed in the year 1988, I see no propriety in remitting the matter to the Reference Court. Instead with the assistance of the learned Counsel appearing for the claimants and learned AGP appearing for the State, I deem it appropriate to consider the claim of the appellants - claimants on the basis of evidence on record.

9. The learned Counsel for the appellants - claimants brought to my notice that no evidence was adduced on behalf of the respondents and the only evidence, which was before the Reference Court was the oral testimony of one of the claimants and one sale instance brought on record by the claimants. In his testimony, the said claimant has reiterated the contentions raised in the Reference Application as about the quality and fertility of the land etc. The sale instance which has been brought on record by the claimants pertains to the land ad-measuring 48 Are situated at village Holi which was sold vide the registered sale deed executed on 05.04.1978 for the consideration of Rs.30,000/- i.e. @ Rs.625/- per Are. The learned Counsel submitted that the material on record reveals that village Holi and village Lodaga are adjacent to each other and in

absence of any sale instance from village Lodaga, there was no hurdle in considering the sale instance from adjoining village. The learned Counsel submitted that in absence of any material evidence on record, the market value of the acquired land can be determined on the basis of the said sale instance.

10. The learned AGP appearing for the State has however, opposed the request so made. The learned AGP contended that the land, which was the subject matter of sale instance placed on record was irrigated land. It was from different village and the distance between the acquired land and the said land was more than two miles. According to the learned AGP, the said sale instance cannot be a base for determining the market value of the acquired land.

11. I have carefully gone through the contents of the sale deed, which is at Exh.40. Admittedly, the land which was the subject matter of Exh.40 was irrigated land. Though, it was sought to be contended by learned Counsel for the claimants that the land, which is the subject matter of the present appeal was semi-irrigated land and reliance was attempted to place on crop statement, I am not convinced with the said submission. From the evidence on record, it is difficult to hold that the land,

which is subject matter of the present appeal was either semi-irrigated or irrigated. In the circumstances, the same has to be held as non-irrigated land.

12. The question arises whether the market value as on the date of issuance of Section 4 Notification of the present land can be determined on the basis of sale instance brought on record by the claimants. As I noted herein above, that was the only evidence before the Reference Court, it appears to me that the Reference Court wrongly kept the said sale instance out of consideration. The Reference Court could have worked out plus and minus factors attached to the said land and by giving plus and minus allowances, the market value of the land, which is subject matter of the present appeal, could have been determined by the Reference Court. As I noted herein above, village Lodaga and village Holi are adjacent villages. The distance of two miles cannot be said to be a very long distance. It has come in the evidence of Devidas Baliram Bajulge (PW-2), that the land, which is subject matter of the present appeal and the land acquired, which was subject matter of Exh.40, are equal quality lands. There is no contrary evidence on record. In the circumstances, I deem it appropriate to determine the market value of the acquired land in the present matter by considering

the relevant factors pertaining to the quality and the nature of the acquired land, which is the subject matter of Exh.40. The land, which is the subject matter of Exh.40 had received the compensation @ Rs.625/- per Are in the year 1978. The acquired land in the present matter being non-irrigated land, the market value of the acquired land can safely be determined at half of the rate, which was received to the land, which was subject matter of Exh.40. The learned Counsel for the claimants submitted that since the land, which is subject matter of Exh.40 was sold in the year 1978 and the land in the present matter was acquired in 1984, the increase in price at the ordinary rate may be given. However, I am not inclined to consider his request in absence of further particulars in respect of the subject land. As I noted herein above the land in present matter was acquired in the year 1984, I deem it appropriate to decide the market value of the acquired land @ Rs.300/- per Are. The said rate comes to less than half of the rate, which was received to the land which was subject matter of Exh.40. The appellants are thus held entitled to receive the enhanced compensation at the aforesaid rate. After having considered the entire evidence on record, it appears to me that Rs.300/- per Are would be the just and fair amount of compensation payable to the appellants in the present case.

13. For the reasons stated above, the following order is passed:-

ORDER

I) The Judgment and order passed by the Reference Court in LAR No.96 of 1988 on 12.01.2005, is set aside.

II) LAR No.96 of 1988 is allowed in the following terms:-

a) The appellants - claimants are held entitled for the enhanced compensation @ Rs.185/- per Are in addition to the compensation offered by SLAO.

b) The appellants - claimants are held entitled for the statutory benefits under Sections 23(1A) and 23(2) of the Act, on the enhanced amount of compensation.

c) The appellants - claimants are also held entitled for the interest under Sections 28 and 34 of the Act, from the date of declaration of the award under Section 11 of the Act, i.e. 21.11.1986, on the enhanced amount of compensation.

d) Award be prepared accordingly.

III) The appeal stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

SPT