

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

FIRST APPEAL NO.1651 OF 2016

Shakuntala Pralhad Shinde,
Age 85 yrs., Occ. Agri.,
R/o At Post Bavi, Tq. Washi,
Dist. Osmanabad.

... **Appellant.**

... **Versus** ...

- 1 The State of Maharashtra
 Through The Collector, Osmanabad.
- 2 The Special Land Acquisition Officer,
 Medium Project No.2, Osmanabad.
- 3 The Executive Engineer,
 Minor Irrigation Division,
 (Local Sector), Osmanabad.

... **Respondents.**

...

Mr. Mukul S. Kulkarni, Advocate for the appellant

Mr. R.B. Bagul, AGP for the respondent Nos.1 to 3

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 18th JULY, 2019

PRONOUNCED ON : 20th AUGUST, 2019

JUDGMENT :

1 Present appeal has been filed by the original claimant claiming enhancement in the compensation awarded to her in Land Acquisition Reference No.316 of 2014 by learned Civil Judge Senior Division, Bhoom, Dist. Osmanabad dated 11.02.2015.

2 It is not in dispute that the present appellant was the owner of 03 H 20 R land out of Gat No.175 situated at village Bavi, Tq. Washi, Dist. Osmanabad and the said land was acquired for percolation tank. The Notification under Section 4(1) of the Land Acquisition Act was published on 05.04.2005 and under Section 6 of the Act was published on 16.05.2006. She did not receive notice under Section 9 (3) & (4) of the Act, however, she came to know about the passing of Award by Special Land Acquisition Officer, when notice under Section 12(2) of the Act was received by her on 04.08.2008. It is stated that she has not taken the amount of compensation but filed reference under Section 18 of the Act. The claimant has contended that on the date of the Notification under Section 4(1) of the Act, the market value of the acquired land was Rs.2,50,000/- per acre. The land was fertile and of high quality and she was getting irrigated crops, thereby giving her income of Rs.25,000/- per acre per annum. Therefore, she has demanded the compensation @ Rs.2,50,000/- per acre and also claimed compensation for three boundaries (bandh).

3 The claim petition was resisted by filing written statement by the State Government. It is stated that the LAO had given full opportunity to the claimant before pronouncing the Award to lead evidence. It is denied that sale instances were not considered by the LAO while passing the Award on 27.12.2007.

4 Taking into consideration the rival contentions, issues came to be framed. The claimant has examined her Power of Attorney CW 1 Bhausahab Shinde and submitted certain documentary evidence. The respondent did not lead any evidence. Taking into consideration the evidence on record and after hearing both sides the learned Reference Court has enhanced the amount of compensation by Rs.80,000/- per acre. Now, the present appeal has been filed for enhancement in the said rate.

5 Heard learned Advocate Mr. Mukul Kulkarni for appellant and learned AGP Mr. R.B. Bagul for State.

6 It has been vehemently submitted on behalf of the appellant that the learned Reference Court erred in not considering the sale instance, on the ground that the sale instance is of the date subsequent to the Notification under Section 4(1) of the Land Acquisition Act. Certain so called admissions have been relied, rather than relying on the sale instance. There was no

criteria applied by the learned reference Court for fixing the market value or at least arriving at proper market value, on the basis of the evidence. Merely because initially the claimant had contended that the market value of their land was Rs.1,00,000/- per acre, the calculation has been made without considering the amendment, that was carried out in the pleadings, by the claimant, contending that on the date of the Notification under Section 4 of the Act, the market price was Rs.2,50,000/- per acre. Some guess work has been done, which cannot be said to be proper and therefore the said compensation deserves to be enhanced.

7 Learned AGP submitted that the sale instance, on which the claimant intends to rely, is dated 16.05.2005, whereas the Notification under Section 4 was published in the Gazette on 04.05.2005. It has been rightly observed by the learned reference Court that in order to get more compensation the said rate might have been enhanced. Admission has been given by the witness of the claimant, that since all the activities of acquisition had started since 2003, the prices of the lands got escalation and therefore, whatever enhancement has been made is proper.

8 At the outset, it can be said that when amount of compensation is to be granted either in Land Acquisition Act or under Motor Vehicles Act,

there is always a room for some guess work, when fixed and accurate evidence is not available. In order to ascertain the market price on the date of notification, we are guided by catena of Judgments of the Hon'ble Supreme Court and this Court. The Reference Court is required to take into consideration the method applied in determination of compensation by SLAO, but the Reference Court cannot sit as an Appellate Court over the Award passed by SLAO. The market price then will have to be determined by the reference Court on the basis of the evidence adduced before it. Section 23 of the Land Acquisition Act provides, that in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall take into consideration the market value of the land on the date of publication of Notification under Section 4 of the Act, the circumstances, that the person interested is compelled to change his residence or place of business in consequence of the acquisition, etc. At the same time, we must also consider Section 24 of the Act, which provides that the Court while determining the amount of compensation should not take into consideration aspects like disinclination of the person interested to part with the land acquired, any increase in the value of the land accrued, likely to accrue from the use to which it will be put when acquired, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired, will be put amongst other matters. Generally, the SLAO and

Reference Courts consider the sale instances produced on record to determine or to have an idea, as to what could have been the market value of the acquired land, on the date of the Notification under Section 4 of the Act. No doubt, only genuine sale instances are required to be considered, however, while saying so, it can be stated that if there is no evidence on record to show that the sale instance was with some motive, then presumption cannot be drawn that merely because it is after the acquisition proceedings have started it would have been at more rate. The proximity of the land to the acquired land and similarities in the land are also required to be considered.

9 Here in this case, the sale instance has been proved by producing certified copy of the sale deed. In **Cement Corporation of India vs. Purva and others, 2004 (8) SCC 270** it was held that the certified copies of sale deeds can be admitted in evidence for the purposes of determination of market value of the land in Land Acquisition References even without examination of either vendor or the vendee. But as regards the contents of those sale deeds are concerned, it can be said that a discretion has been given to the Reference Court to consider the contents thereof. This Court at Principal Seat (Hon'ble Shri. Justice M.S. Sonak on 29th of March 2017) in group of First Appeals in First Appeal No.1464 of 2005 has observed that -

“A discretion has been conferred upon the Court in this regard which is to be examined judiciously, i.e. upon taking into consideration all relevant facts. The provisions of Section 51-A of the said Act are enabling in nature. The certified copies of the sale deeds, which may be admitted in evidence in terms of Section 51-A of the said Act, do not give rise to any mandatory or conclusive presumption. Only because a document is admissible in evidence, it would not mean that the contents thereof stand proved.”

Under such circumstance, as regards the genuineness of the sale deed is concerned, it will have to be considered on the basis of evidence i.e. mainly the cross of the witness of the claimant, who has relied on the said instance.

10 Here, it is to be noted that the claimant-cum-owner of the land being the old lady had not entered the witness box, however, her grand son appears to have entered. He has given admission that since his grandmother had claimed Rs.1,00,000/- per acre and it was not approved by him, he has carried out the amendment and claimed compensation @ Rs.2,50,000/- per acre. It appears that when the petition was filed, no sale instance was attached to it, rather there was absolutely no documentary evidence attached to the petition which could have been used for enhancing the compensation. The certified copy of the sale instance, which has been produced at Exh.17,

has been obtained in 2014. The reference was presented before the SLAO and then he had forwarded it to District Judge, Osmanabad on 31.07.2010. That means, after much considerable time, the evidence regarding sale instance has been collected and then it appears that the amendment has been carried out. Under the said circumstance, the learned Reference Court has stated that if the claimant was aware about the said sale instance, then she would not have claimed enhancement @ Rs.1,00,000/- per acre. CW Bhausahab in his cross-examination has admitted that after 2003 the price of the land in his village got escalation. That means, after the acquisition process started, it had escalated. He was not aware that in the year 2003 the rate of the lands in his village were @ Rs.50,000/- per acre. The sale instance, which has been produced on record, is admittedly after the publication of Notification under Section 4 of the Act and in that instance 14 R non-irrigated land has been sold for Rs.75,000/- i.e. Rs.2,14,285/- per acre. Here, it is to be noted that the rate, that was awarded to the claimant, was for non irrigated land, but the 7/12 extract, which is produced on record, shows that there was a well in the land and therefore, in the year 2001-02 she had taken sugarcane crop in some of the portion. The rest of the crops appeared to be non-irrigated. In fact, the said 7/12 extract is of the entire land i.e. 12 H 04 R and then remark column shows that there was a separate well in the portion of the present claimant. Therefore, at least the

reference Court ought to have taken note of this fact and ought to have awarded the amount for semi irrigated land, much less irrigated as it has not come on record that there used to be water in the well throughout the year.

11 Another fact which the learned Reference Court did not consider was that the claimant was an old illiterate lady and therefore, she would have been depending on the information supplied by others. Therefore, her demand @ Rs.1,00,000/- per acre ought not to have been strictly construed. Naturally, when the amendment was allowed by the reference Court; falling back on the original pleading of the party by the Court was uncalled for. Further, there is absolutely no reason, as to why 20% of the amount has been deducted and by such deduction rate has been arrived @ Rs.80,000/- per acre. Thus, it can be seen that though we cannot strictly rely on the sale instance Exh.17, since it is of a subsequent date and that too taking into consideration the admissions, the possibility could not have been denied, that it would have been at higher rate. Yet, what can be seen, taking into consideration the same sale instance is that the evidence has not come on record that the said rate was ever objected by the Sub Registrar, who had registered the said sale deed. That means, when the sub Registrar was duty bound to see, whether the rate mentioned in the sale deed is as per the ready reckoner or near to that figure and then adequate stamp duty has been paid,

he has registered that instrument. Respondent-State could have adduced the evidence by bringing the ready reckoner on record or any other such document, which can be said to be a public document also to disprove the contents of the said sale deed Exh.17. Under such circumstance, there is no hurdle in presuming that on the date of the Notification under Section 4 of the Act, the market price of the acquired land might have been Rs.1,25,000/- per acre. It cannot be said that this figure is arrived at, is a guess work only, on the count that Exh.17 sale instance was not objected by the Sub Registrar, who registered the said instrument. While arriving this figure, note is also taken of the fact that some portion of land was irrigated or potential to take irrigated crop, escalation in price was after acquisition proceedings had started. When these factors were not considered by the learned Reference Court, the Award passed by the Reference Court deserves to be set aside and modified by allowing the appeal partly. The interest under Section 28 and 34 of the Act will have to be awarded from the date of award passed by SLAO in view of decisions by this Court in *State of Maharashtra v/s Kailas Shiva Rangari* [2016 (3) Mh. L. J. 457]. Hence, following order.

ORDER

1 The appeal is hereby partly allowed.

2 The Judgment and Award passed in L.A.R. No.316/2014 by learned Civil Judge Senior Division, Bhoom, Dist. Osmanabad dated 11.02.2015 is hereby set aside and modified to the extent of quantum only, as follows -

“Respondents are directed to pay compensation @ Rs.1,25,000/- per acre to the claimant.”

3 It is clarified that the amount paid already, if any, be adjusted towards the amount now awarded and the further interest under Section 23(i-a), 28 and 34 of the Act would be calculated at the given rate on the enhanced amount. Interest under Section 28 and 34 of the Act be given from the date of award by SLAO and not from any earlier date.

(Smt. Vibha Kankanwadi, J.)

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