

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

FIRST APPEAL NO.2195 OF 2013

1. The State of Maharashtra **...APPELLANTS**
Through Collector, Osmanabad
2. The Special Land Acquisition Officer,
Paranda, Tq. Paranda, Dist. Osmanabad
3. The Executive Engineer,
Minor Irrigation, Local Sector Division,
Osmanabad, Tal. & Dist. Osmanabad

VERSUS

Dnyaneshwar Raosaheb Patil, **...RESPONDENT**
Age-42 years, Occu-Agricultural & Biss,
R/o. Mangalwarpeth Paranda, Tq. Paranda,
Dist. Osmanabad

Mr.S.S.Dande, AGP for the appellant
Mr.Abhijeet More, Advocate for respondent

**WITH
FIRST APPEAL NO. 2196 OF 2013**

1. The State of Maharashtra **...APPELLANTS**
Through Collector, Osmanabad
2. The Special Land Acquisition Officer,
Paranda, Tq. Paranda, Dist. Osmanabad
3. The Executive Engineer,
Minor Irrigation, Local Sector Division,
Osmanabad, Tal. & Dist. Osmanabad

VERSUS

Sidheshwar Raosaheb Patil, **...RESPONDENT**
Age-42 years, Occu-Agricultural & Biss,
R/o. Mangalwarpeth Paranda, Tq. Paranda,
Dist. Osmanabad

Mr.S.S.Dande, AGP for the appellant
Mr.Abhijeet More, Advocate for respondent

**CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.**

DATE : 04-07-2019

ORAL JUDGMENT [PER: SUNIL P. DESHMUKH, J.]

. These first appeals under section 54 of the Land Acquisition Act, 1894 challenge award passed by Civil Judge, Senior Division, Osmanabad in Land Acquisition References bearing No. 40 of 2007 and 39 of 2007 whereunder compensation has been granted for acquired land at the rate of Rs. 20,300/- per *guntha* and consequential benefits pursuant to provisions of said Act. In the award passed by the Special Land Acquisition Officer compensation had been paid at the rate of Rs. 1630/- per *guntha*.

2. The first appeals respectively concern lands admeasuring 2 *Hectare* 65 *Are* in Survey No. 170 and admeasuring 1 *Hectare* 85 *Are* in Survey No. 175 situated at Bothra (Kasba-Paranda Gramin), Tq. Paranda, Dist. Osmanabad. Aforesaid portions of land are acquired for rehabilitation of village Paranda gram in and for water facility.

3. Notification for acquisition of aforesaid lands under section 4 of the Land Acquisition Act had been published in the government gazette on 06-06-2002 and award had been passed on 23-01-2006 by the Special Land Acquisition Officer. Notice pursuant to Section 12(2) of the Act had been served on the claimants on 03-04-2006 and compensation had been accepted by the claimants under protest. They had filed land acquisition references bearing No. 39 and 40 of 2007 against aforesaid award on 02-05-2006. Endorsement by concerned officer shows that references had been filed with the concerned office well within the period of limitation.

4. The claimants in reference have stated that the land acquisition officer had decided upon market value on unreasonable basis. No proper method had been applied. The acquired lands were situated within the limits of Municipal Council, Paranda. Distance between the central Paranda to the acquired land is only 1-km. The land has permanent sources of water by well and tube-well. Roads, water, electricity, telephone, education facilities are available in vicinity of the land. Its potentiality had not been considered by the Land Acquisition Officer while considering the market value. There were standing fruit bearing trees in the acquired land. The claimants had demanded, price of land at the rate of Rs. 1,00,000/- per *guntha* and total compensation to the tune of Rs. 2,67,24,000/- and Rs.1,85,35,000/- in land references No. 39 and 40 of 2007 respectfully.

5. The appellants had denied all adverse allegations in

their written statements. It had been submitted that no documentary proof had been given by the claimants in respect of market price. Claimants were present during land acquisition proceedings. Land value has been determined by the Land Acquisition Officer by inspecting quality of the land and had awarded just compensation. It has also been contended that references were not within limitation.

6. Reference court had framed relevant issues. Evidence had been led on behalf of the claimants. The appellants had not examined any witness. The Reference court had referred to the evidence adduced in paragraphs No.8 and 9 of the impugned order.

7. During the course of submissions, Mr. Dande, learned AGP has vehemently submitted that rate of compensation enhanced is too steep to be realistic. From Rs. 1630/- to Rs. 20,300/- per *guntha* is a jump of about 15 to 20 times. It would not be said that the claimants could justify rate granted on the basis of any relevant evidence. He submits that Reference court had rightly declined to accept the evidence of valuer and consulting engineer. Yet, according to him the Reference court has committed error in taking into account only a solitary sale deed in respect of a small piece of land. He submits that it is not the case that evidence led is corroborated.

8. Mr. Dande, submits that even deduction of 65% amount towards development charges of the lands as considered by

Reference court is on reduced side. According to him the deduction, looking at the proximity of lands to centre of city as claimed by the claimants, ought to have been in the region of 80% rather than 65% as considered. He submits perusal of the decision by Reference court would reveal that sale deed dated 15-01-2002 in respect of 1 *Guntha* of land has been filed. He submits that it would not be appropriate to rely on one sale deed of small piece of land for determination of compensation in land acquisition cases.

9. Mr. Abhijeet More, learned counsel for claimants, on the other hand, submits that the Reference court had directed compensation at a rate far below realistic market value of acquired lands. He submits market rate in the area was @ Rs. 1,00,000/- per *guntha* at the relevant time, Reference court had erroneously deducted 65% of amount towards development charges of the lands. He submits that development charges in the area could not have been levied at a rate more than 30%. Deduction ought to have been made at the most of 30%. However, the Reference court had directed 65% deduction from the market rate of the land. He draws attention to following citations referred to in the decision by the reference court :

a] Comunidade of Nagoa Vs Deputy Collector (L.A.) & Anr. Reported in 2011 (2) ALL MR 204.

b] State of Maharashtra Vs Santram Mahadu Pingle & Ors. Reported in 2008 (3) Bom.C.R. 715.

c] Deputy Collector (L.A.) and Land Acquisition Officer, Panaji & Anr. Vs Smt. Victoria Fernandes

reported in 2011 (3) ALL MR 259.

10. He submits that although reference to the citations has been made, the court has erred to consider that price of the land has to be determined by some guesswork and as such has considered deduction of 65% would be proper. He submits that it would not have been necessary to have some guesswork since the rate of lands as demanded by the appellants had been supported by evidence. A sale instance of land having close proximity to the acquired land had been produced. Evidence in respect of same had also been led and sale deed had been proved. Deductions at the rate of 65% amount directed by the Court is far more than deserved in the area for development.

11. After going through relevant documents, it appears that while the notification under Section 4 of the Land Acquisition Act had been issued on 02-02-2002, the claimants have produced sale instance (Exh.21) dated 15-01-2002 showing price of one *guntha* of land to be Rs. 58,000/-. The same is obviously before the date of notification under Section 4 of the said Act. Apart from aforesaid, the claimants have also produced several sale instances which were in respect of lands in close proximity to acquired land and close to the date of notification under Section 4. Sale instance of 02-05-2002 (Exh.23) in respect of piece of 1 *guntha* of land has also been produced showing price of land at the rate of Rs. 60,000/- per *guntha*. Reference court has, however, ignored the same for it being subsequent to the date of notification under Section 4. Apart from

aforesaid (Exh.21 & 23), several sale instances had been produced on behalf of the claimants.

12. Reference court has also in detail considered evidence in respect of sale deed Exh.21 dated 15-01-2002. There is no dispute on that the land is close to Paranda town. Its distance from the hub of the town is stated to be only 1 km. The claims about various civil amenities like road, water, electricity, telephone, education by the claimants to be close to the acquired lands have gone unchallenged.

13. Reference court has elaborately discussed evidence adduced by claimants, of the government approved valuer and has discarded the same. Whereas, the appellant had not produced any material or given any evidence contrary to the evidence adduced on behalf of the claimants.

14. It also appears that Reference court had considered, may not be entire land had been put to use for non-agricultural use, but some portions of the acquired lands from the concerned land survey numbers had been granted non-agricultural use permission and accordingly plots were led and were sold and the certified copies of the sale deeds had been placed on record.

15. In such a case, the consideration which weighed with the Reference court that there had been non-agricultural potential to the acquired the land would not be said to be not justifiable.

Looking at aforesaid and the evidence as had been led on behalf of the claimants particularly Exh.21 which has gone unchallenged, the rate determined by the Reference court with deduction of 65% with reference to the Supreme Court judgment as had been considered does not appear to be improper and would not be said to be arbitrary at all. It does not appear to be a case wherein decision given by the Reference court in respect of rate of compensation is based on no evidence, for that matter, there is cogent evidence in respect of rate of the lands. There is no contra evidence adduced at all by the appellant.

16. One may have to give regard to that no contra evidence in respect of limitation nor any material has been adduced beyond an averment in the written statement.

17. In the circumstances, the first appeals fail and are dismissed.

18. In view of dismissal of the first appeals, civil application No. 8471 of 2014 does not survive and is disposed of.

[S.M.GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]