

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

First Appeal No. 0908 of 2017

District : Jalna

Vitthal s/o. Nanabhau Nivral,
Age : 56 years,
Occupation : Agriculture,
R/o. Nansi, Taluka Mantha,
Dist. Jalna.

.. Appellant
(Original
claimant)

versus

1. The State of Maharashtra,
Through the Collector,
Jalna.
2. The Special Land Acquisition
Officer,
M.I.W., Jalna.
3. The Executive Engineer,
Nimna Dudhana Project,
Selu, Dist. Parbhani.

.. Respondents
(Original
respondents)

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Smt. Asha D. Rakh, Advocate, for the appellant.

*Mr. A.M. Phule, Assistant Government Pleader,
for respondents no.01 and 02.*

Mr. Mahadeo Gude, Advocate, for respondent no.03.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05TH AUGUST 2019

ORAL ORDER :

01. Present appeal has been filed by the

original claimant seeking enhancement in the compensation granted by the reference Court i.e. 04th Joint Civil Judge (Senior Division), Jalna, in L.A.R. No. 222 of 2010 [Old L.A.R. No. 708 of 2007], dated 13-10-2015.

02. It is not in dispute, that land admeasuring 06 hectares 52 R from Gut no.49 situated at village Nansi, Taluka Mantha, District Jalna, was acquired for Nimna Dudhana Project, Selu, District Parbhani. The notification under Section 4(1) of the Land Acquisition Act, 1894 [**For short, "the Act"**] was issued on 20th September 1997 and the award under Section 11 of the Act was passed by the Special Land Acquisition Officer (**hereinafter referred to as "SLAO"**) on 20th December 2001. The claimant was dissatisfied with the said award but had accepted the amount under protest and then he filed reference under Section 18 of the Act for enhancement.

03. In the petition, the claimant had contended that at the time of acquisition of the land, the market rate was Rs. 4,000/- per R and then he claimed different amounts for fruit bearing trees and in all, compensation was claimed at Rs. 19,11,375/-.

04. The acquiring body filed written statement and challenged the averments by supporting the award that was passed by the SLAO. Respondents no.01 and

02 failed to appear and therefore, the matter proceeded *ex parte*.

05. After the issues were framed, claimant led evidence. Taking into consideration the evidence led by the claimant, the learned reference Court partly decreed the proceedings; compensation was enhanced to Rs. 9,50,952/- and other statutory benefits were given.

06. The claimant still dissatisfied with the enhancement in the award, filed the present appeal.

07. Heard learned Advocate Smt. A.D. Rakh for the appellant. Heard learned AGP Mr. A.M. Phule for respondents no.01 and 02. So also, heard learned Advocate Mr. Gude for respondent no.03.

08. The main contention on behalf of the appellant is that, the learned reference Court had not taken into consideration the sale instance at Exhibit 32 and the reference Court ought to have granted Rs. 5,000/- per R.

09. Per contra, learned Advocate representing respondent no.03 supported the reasons given by the reference Court. Learned Assistant Government Pleader also supported the reasons.

10. At the outset, from para 11 of the trial Court's judgment, it can be seen that in all five sale instances were relied in order to support the contention that the market rate at the time of acquisition of the property was Rs. 4,000/- per R. Out of those five sale instances, only one sale instance dated 09-07-1998 is of subsequent period to the notification under Section 4 of the Act and amongst rest of the four, the last was dated 14-06-1995 which has been, in fact, produced at Exhibit 32. While hearing the submissions on behalf of the claimant, reliance was placed on the decision in L.A.R. No. 1094 of 2010, dated 12-05-2015 by the same Court, in which the same sale deed dated 14-06-1995 was relied and then the market value in respect of non-irrigated land was fixed at Rs. 1,200/- per R. The learned Advocate who was representing the claimant before the reference Court, in fact, relied on the said decision in L.A.R. No. 1094 of 2010 and claimed rule of parity and then for irrigated land it was prayed that double the amount of non-irrigated land should be awarded. It appears that the said argument on behalf of the claimant was accepted and the rate has been given at Rs. 2,400/- per R. When the claimant himself had relied on certain decision and then rule of parity was claimed and then it was granted, in fact, present appeal itself ought not to have been filed.

11. Taking into consideration the stand that was taken by the claimant before the reference Court and the reference Court accepted that stand, it is not necessary for this Court to consider other points, as it appears that in some mistaken fact, it was tried to be contended that the reference Court had not considered sale instance Exhibit 32. In fact, Exhibit 32 is same sale deed dated 14-06-1995 on the basis of which the market price was arrived at in L.A.R. No.1094 of 2010 and then the same is relied in this Court. Under such circumstance, there is no merit in the present appeal. It deserves to be dismissed.

12. In the light of above, the second appeal is hereby dismissed. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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