

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

FIRST APPEAL NO.1003 OF 2014

The Executive Engineer,
M.I.W. Division Jalna,
Jalna.

...Appellant

Versus

1. Rangrao Digambar Bhakare,
Age- 75 yrs, Occu: Retd. Govt. Service & Agri,
R/o: Kailash Apartment, New SBH Colony,
Jyoti Nagar, Aurangabad.
2. Dasrao Digambar Bhakare
Age: 72 yrs, Occu: Retd. Govt. Service & Agri,
R/o: 49, Shambhu Mahadeo Nagar,
Near Sahakar Nagar, Osmanpura,
Aurangabad.
3. Smt. Premabai w/o. Dasrao Bhakare
Age: 65 yrs, Occu: household & Agri,
R/o: 49, Shambhu Mahadeo Nagar,
Near Sahakar Nagar, Osmanpura,
Aurangabad.
4. Chandrakant Digambarrao Bhakare
Age: 60 yrs., Occu: Service & Agri.,
R/o: Andha Complex, in front of town hall,
Kacheri road, old Jalna,
Tq. & Dist. Jalna.
5. The State of Maharashtra
Through the Collector,
Jalna.
6. The Special Land Acquisition Officer,
(B & C), Dist. Jalna, Collectorate of Jalna.
(Copy to be served on Govt. Pleader
High Court, bench at Aurangabad)...Respondents

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Mr. Mr. Ruturaj C. Patil, Advocate for Appellant.
Mr. P.R. Patil, Advocate for Respondent Nos.1, 2 &
4.

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CORAM : P.R. BORA, J.

DATED : 22nd JANUARY, 2019.

ORAL JUDGMENT:-

. Heard Shri Ruturaj Patil, the learned counsel appearing for the appellant and Shri P.R. Patil, the learned counsel appearing for the respondents i.e. original claimants.

2. The appellant has preferred the present appeal against the judgment and order passed in L.A.R. No.39 of 2002 decided by the Adhoc District Judge-I, Jalna on 19.08.2009. The land which is the subject matter of the present appeal was acquired for Minor Irrigation Project at Mandala, Taluka Ghansawangi, District Jalna. Notification under Section 4 of the Land Acquisition Act, 1894 in that regard was published on 11.06.1998 and the award under Section 11 came to be passed on 20.02.2000. The SLAO had offered the compensation at the rate of Rs.420/- per R for the dry land. Dissatisfied with the amount of compensation so offered, the claimants filed application under Section 18 of the Act which was adjudicated by the Adhoc District Judge-I at Jalna. The said Court is hereinafter referred to as the Reference Court. The

Reference Court after having assessed the oral and documentary evidence brought on record determined the market value of the acquired land at the rate of Rs.900 per R and accordingly enhanced the amount of compensation. Aggrieved by, the acquiring body has preferred the present appeal.

3. Shri Ruturaj Patil, the learned counsel appearing for the appellant submitted that the sale instances at Exhibit-12 and 13 which are relied upon by the Reference Court while determining the market value of the acquired land could not have been relied upon by the said Court for the reason that they cannot be held to be the sale instances of the comparable lands. The learned counsel submitted that thus the market value as has been enhanced by the Reference Court is without any evidence. The learned counsel in the circumstances, prayed for setting aside the judgment and award so passed.

4. Opposing the submissions so made on behalf of the appellant, the learned counsel appearing for the respondents i.e. original claimants invited my attention to the discussions made by the Reference

Court in Para-13 to 15 of the impugned judgment. The learned counsel pointed out that the Reference Court has relied upon sale instance at Exhibit-13 which was pertaining to the land ad-measuring 80 R situated at the same village and was sold for the consideration of Rs.1,08,000/- on 23.09.1997. The learned counsel submitted that according to the said sale instance, the market value of the subject land must have been determined at higher side however, the Reference Court has conservatively enhanced the market value and has determined at the rate of Rs.900 per R. The learned counsel supported the impugned judgment and award and submitted for dismissing the appeal filed by the acquiring body.

5. I have given due consideration to the submissions made by the learned counsel for the parties. I have perused the impugned judgment. The Reference Court in Para-13 onwards of the impugned judgment has elaborately discussed the evidence on record and the sale instances brought on record. From the discussion made by the Reference Court, it does not appear to me that there is any scope for causing any interference in

the judgment so passed. The Reference Court has relied upon the sale instance at Exhibit-13 which was pertaining to a dry land ad-measuring 80 R and it was sold at the rate of Rs.1,08,000/- i.e. at the rate of Rs. 500 per R. The Reference Court also relied upon the decision rendered in L.A.R. No.120 of 2001 dated 25.11.2008 copy of which was placed at Exhibit-15. The learned Reference Court after having discussed the entire evidence on record in Para-18 of the said judgment has recorded the following conclusions. I deem it appropriate to reproduce the entire said para here-in-below which reads thus:

"18. The notification under Section 4 was issued on 11.6.1998 whereas, both the sale deeds are dated 23.9.1997. It is admitted fact that the land of the said village was being acquired from the difference purchased since prior to starting procedure of this Award. It is no where brought on record when the measurement was done. On the other hand, the possession of the land under private negotiations was obtained. It means the persons from the locality were aware that the purchase is being done in the vicinity and therefore, the price definitely may have taken jerk. The sale deeds further show that (1) Bharat

(6)

Nivrutti Thorat and (2) Jagannath Nivrutti Thorat have purchased 70 R land and 80 R land out of G.No. 144 form Jabarchand Nemichand Dungarwal vide sale deeds Ex.12 & 13 respectively. In sale deed Ex.13 it is shown to the south there was a cart road. These benefits are the extra benefits which are not shown regarding the acquired land. Therefore, price shown in the sale deed cannot be accepted or taken as prevailing market rate of all the lands of that locality. So also there is no evidence that the land sale deed was adjacent to acquired land".

6. In para 21 of the judgment the Reference court has made the following observations:

"21. It is also brought to my notice that previously this Court has decided Land Reference No.120/01 which was under same Award. In which the claim was partly allowed, by determining the market value of the land @ R.50,000/- per acre which comes to Rs.1,25,000/- per hector i.e. 1250/- per R. But, in the present claim the petitioners have claimed market price of their land @ Rs.1,000/- per R only.

It is to be noted that name of petitioner no.3 Premabai w/o Dasrao Bhakare is not appearing in award Statement 'E'. She is wife of petitioner no.2. No doubt she is not claiming her any separate area of land

(7)

under acquisition. But she is stepping into the shoes of petitioner no.2. Therefore, compensation cannot be granted in her favour separately, as submitted by the petitioners in their petition.

7. Considering the market value determined in L.A.R. No.120 of 2001 which was arising out of the same award, the value of the subject land could have been determined at the rate of Rs.50,000/- per acre i.e. Rs.1,250/- per R. However, the Court has conservatively determined the market value at the rate of Rs.900 per R. After having considered the entire material on record, it does not appear to me that the Reference Court has committed any error in determining the market value. It is further noticed that though separate compensation was claimed by the claimants for trees etc., the said request has been rejected by the Court for want of evidence.

8. It was further pointed out by the learned counsel appearing for the respondents-claimants that the acquiring body cannot prosecute this appeal further in view of the policy adopted by the State vide Government Resolution dated 03rd November, 2016 with Corrigendum dated 23rd

February, 2017 and 13th August, 2018. The learned counsel pointed out that the market value as was determined by the Reference Court was less than four times than the market value as was determined by the SLAO. There is a substance in the objection so raised. Acquired land admittedly falls in Rural Area. The G.R. Which is referred by the learned counsel would therefore apply to the present matter. Thus, even otherwise the present appeal could not have been prosecuted further by the acquiring body. For the aforesaid reasons, I see no merit in the appeal so filed. The appeal, therefore, deserves to be dismissed and is accordingly dismissed.

9. The amount of compensation deposited by the acquiring body in this Court is permitted to be withdrawn by the original claimants, if already not withdrawn.

10. Civil applications, if any, stand disposed of.

(P.R. BORA, J.)