

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

FIRST APPEAL NO. 3057 OF 2016

1. The State of Maharashtra
Through the Collector,
Jalna.
2. The Special Land Acquisition
Officer, Collector Office,
Jalna.
3. The Executive Engineer,
Minor Project, Jalna.

Appellants.

Versus

Shivdas Hemla Rathod
Age : 50 years, occu.: agri.,
R/o Pangri Gosavi, Tq. Mantha,
District Jalna.

Respondents.

Mr. A.M. Phule, A.G.P. for the appellants.
Mr. S.R. Shirsat, Advocate for the respondent.

CORAM : SUNIL K.KOTWAL, J.

DATED : 27 March 2019.

ORAL JUDGMENT.

1. This appeal is preferred by the State and Acquiring Body against the judgment and award passed by 3rd Joint Civil Judge, Senior Division, Jalna in Land Acquisition Reference No.58/2010 (Old L.A.R. No.1277/2007). Respondent is the original claimants.

2. The facts leading to the institution of this appeal are that Gut No.377 admeasuring 1 Hectare 9 Aar situated at village Pangri Gosavi, Taluka Mantha, District Jalna was acquired by the appellants for Minor Project. The Special Land Acquisition Officer offered compensation at the rate of Rs. 570/- per Aar. Being aggrieved with the said rate, the claimant preferred Land Reference which was ultimately decided by the Reference Court on 04.04.2012. The Reference Court awarded compensation at the enhanced rate of Rs. 2,000/- per Aar. Against that judgment and award, present appeal arises.

3. Heard learned Additional Government Pleader for the appellants and Mr. S.R. Shirsath, learned Counsel for the respondent/claimant.

4. Learned A.G.P. points out that under Government Resolution dated 03.11.2016 read with Corrigendum dated 23.02.2017 and 13.08.2018, the State has taken policy decision to withdraw the appeals where the Reference Court has enhanced compensation less than four times awarded by the Special Land Acquisition Officer. He submits that in view of this policy decision, this appeal can be disposed of.

5. Learned Counsel for the claimant submits that the Reference Court has considered the sale instance dated 30.05.2001 under which 20 Aar land situated in the same village was sold out for the consideration of Rs. 40,000/- and the said land was also dry crop land alike the acquired land. He submits that therefore the compensation awarded by the learned Reference Court at the rate of Rs. 2,000/- per Aar is correct and needs no interference.

6. Undisputedly, notification under Section 4 (1) of the Land Acquisition Act (hereinafter referred to as the "Act") was published in Official Gazette on 04.09.2003. The award was passed on 03.09.2005. Therefore, I have to determine the fair market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act i.e. 04.09.2003.

7. Out of the two sale instances, the learned Reference Court has rightly considered the sale instance dated 30.05.2001 which is proximate with the date of notification under Section 4 (1) of the Act as well as quality of the acquired land and the land under sale instance was also identical as both the lands were dry crop lands. Under sale instance dated 30.05.2001, 20 Aar land

was sold out for a consideration of Rs. 40,000/-. Thus, the market rate of the acquired land comes to Rs. 2,000/- per Aar. The same rate is also applicable to the acquired land as both the lands are dry crop lands and situated at village Pangri Gosavi. In fact, as the date of execution of sale instance is more than two years preceding the date of notification under Section 4(1) of the Act, the Reference Court ought to have given 20% escalation in the in the market price of the land. However, in absence of cross-objection of the claimant, in this appeal I cannot give escalation of 20% to the market value of the acquired land.

8. In the circumstances, I have no hesitation to hold that the enhancement awarded by the Reference Court at the rate of Rs. 2,000/- per Aar for the acquired land is correct, proper and needs no interference. The said enhancement is less than four times than the compensation awarded by Special Land Acquisition Officer. Therefore, otherwise also, in view of the Government Resolution dated 03.11.2016 read with Corrigendum dated 23.02.2017 and 13.08.2018, the State ought to have withdrawn the appeal. Considering this additional circumstance, I hold that the impugned award passed by the learned 3rd Joint

Civil Judge, Senior Division, Jalna cannot be interfered in the present appeal. Accordingly First Appeal No. 3057 of 2016 is dismissed. Parties to bear their respective costs of the appeal.

9. The claimant has already withdrawn compensation amount after furnishing bank guarantee for 25% amount. After disposal of the appeal, the bank guarantee is not necessary and the same be released. The claimant to take necessary steps to that effect.

(SUNIL K. KOTWAL)
JUDGE

vdd/