

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

FIRST APPEAL NO. 1114 OF 2008

Namdeo s/o. Anandrao Mohite,
Age 21 years, Occu. Agril.,
R/o. Nagapur, Taluka Kannad,
District Aurangabad.

Appellant
(Original
Petitioner)
..

VERSUS

The Collector, Aurangabad
Through Special Land Acquisition Officer,
Jayakwadi, Project No.2, Aurangabad.

The Executive Engineer (Civil),
Civil Construction Department, M.S.E.B.,
Aurangabad Office at Osmanpura,
Aurangabad.

Respondents
(Original
Respondents)
..

...
Mr. S. K. Adkine, Advocate for Appellant.
Mr. S. P. Deshmukh, Advocate for Respondent No.1.
Mr. U. S. Malte, Advocate for Respondent No.2.
...

CORAM : K.K. SONAWANE, J.

DATED : 09th JANUARY, 2020.

JUDGMENT :-

This appeal is directed against the impugned Judgment and Award rendered by the learned Ad-hoc Additional District Judge, Aurangabad, in Land Acquisition Reference No. 301 of 2002, dated 06-04-2005, dismissing the reference petition filed by the appellant, under Section 18 of the Land Acquisition Act, 1894 (In short, "LA Act").

2] The appellant was owner of the land Gat No. 12 admeasuring 7

Hector 21 R. located at village Nagapur, Taluka Kannad, District Aurangabad. The respondent No.2 Acquiring Body i.e. MSEB acquired the portion of 1 H. 21 R. land from the aforesaid land Gat No.12 of the appellant-claimant for the purpose of construction of 33 K.V. Sub-Station, Nagapur. The notification under Section 4(1) of LA Act was published on 14-01-1999. The concerned Land Acquisition Officer (LAO), after completion of procedural formalities, declared the Award under Section 11 of LA Act, on 27-03-2001. The market value of the acquired land was determined by LAO @ Rs.610/- per R. Accordingly, the notice under Section 12(2) of the Act was issued to the appellant-claimant. The compensation of Rs.1,16,411/- was awarded to the appellant-claimant. But, he was not agreed with the market value calculated by the LAO. Therefore, the appellant-claimant accepted the compensation amount under protest and filed the reference petition under Section 18 of LA Act, seeking enhancement of compensation awarded to him. The appellant claimed the compensation for his acquired land @ Rs.12,500/- per R. The respondent No.2 Acquiring Body i.e. MSEB appeared in the reference petition and raised the objection to the contentions propounded on behalf of claimant. According to respondent, the market value of acquired land determined by the LAO was just, proper and fair price as per market rate prevailing in the area during the period of notification under Section 4(1) of LA Act published in the year 1999. In order to prove the claim, the appellant-petitioner adduced his evidence on record. He has also examined one witness by name Shabbir Khan Kadar Khan and produced relevant documents on record. In refutation, the respondent No.2 MSEB adduced evidence of Sub-Engineer - Shri. Krushna Rahatgoankar. The learned Reference Court appreciated the entire evidence adduced on record

and arrived at the conclusion that there was no infirmity in the impugned Award of the LAO. The market value of the acquired land was correctly determined and there is no substance in the claim of the claimant-appellant. Accordingly, the learned Reference Court dismissed the reference petition and passed the impugned Judgment and Award, which is the subject matter of present appeal.

3] The learned counsel for the appellant vehemently submits that the learned Reference Court did not appreciate the evidence on record in its proper perspective and committed error in dismissing the revision petitions. The LAO awarded very meager amount of compensation for the acquired land of the appellant. The sale instances produced on record are sufficient to point out that the market value of the acquired land was more than Rs. 12,500/-, at the relevant time. The learned counsel Shri Adkine gave much more emphasis on the documents of village map produced on record and asserted that the acquired land was located near the Gaothan land of village Nagapur. It has same potentiality at par with the land situated in the Gaothan area. But, the Reference Court did not appreciate the sale instances produced on record in proper manner and discarded the same without any reasonable cause. The learned counsel explained the circumstances of potentiality to calculate the market value under acquisition @ Rs. 12,500/- per R.

4] The learned AGP and learned counsel appearing for the respondent raised objection and submits that the appellant did not produce cogent and reliable evidence on record to show that the market value of the acquired land was more than Rs. 12500/- per R.

According to learned counsel appearing for respondent MSEB, the sale instances produced on record on behalf of appellant/claimant are the sale instances of small piece of land and it cannot be considered as a guiding factor for determination of market value of the Acquired land. Moreover, these lands were sold for commercial purpose. Therefore, the learned Reference Court rightly discarded the sale instances produced on behalf of claimant. According to learned counsel for respondent - Acquiring Body, the sale instances (Exh.31) produced on record on behalf of respondent executed on 14.1.2000 just after publication of notification under Section 4 of Act 1894 dated 14.1.1999 demonstrate that the price of the land under sale was Rs. 681 per R. According to learned counsel for Acquiring Body, the market value determined by the LAO was just, proper and reasonable one, which would be fair and appropriate market value prevailing over in the area during the period of Notification under Section 4 published in January 1999.

5] I have given anxious consideration to the arguments advanced on behalf of both sides. I have also delved into the evidence adduced on record on behalf of appellant/original client as well as respondent - Acquiring Body. It is not in dispute that the respondent MSEB acquired the portion of land Gat No. 12 of the appellant/claimant admeasuring 1 Hectare 21 R out of the total area of land admeasuring 7 Hectare 21 R for construction of 33KV sub-station at Nagapur, Taluka Kannad, District Aurangabad. The notification under Section 4 was published on 14.1.1999. The LAO declared award under Section 11 on 27.3.2001 and determined the market value of the acquired land @ Rs. 610/- per R. The appellant/original claimant put into controversy the

quantum of market value @ 610 per R calculated by the LAO and claimed price of his acquired land @ Rs. 12,500/- per R and preferred to file Reference Petitions under Section 18 of the Act 1894 for enhancement of compensation amount awarded by the LAO.

6] In order to establish the claim for enhancement of compensation amount for acquired land @ Rs. 12500 per R, the appellant/claimant stepped into the witness box and deposed that the market value of his land under acquisition at the relevant time was Rs. 2000 to 2500 per R. His land was nearer to the Gaothan area of village Nagapur and, therefore, it would fetch more price than awarded by SLAO. He has produced the certified copies of the sale instances (Exhibits 11 to 14) on record, to fortify his claim for enhancement of compensation for his acquired land.

7] The close scrutiny of the sale instance produced on record on behalf of appellant/claimant reveals that the appellant/claimant produced the sale instances of Gat No.6 admeasuring 0.02 R, for consideration of lump-sum amount of Rs. 25,000/- from village Nagapur and another sale instance is of 0.11 R. area for lump sum price of Rs. 15,000/- of village Nagapur executed on 14.10.1993. These sale instances are at (Exh.10 and 11). Admittedly, these sale instances are for the small piece of land of 0.02 and 0.11 R. only and cannot be considered as comparable sale instances to determine market value of acquired land. Moreover, the village map produced on record at (Exh.15) demonstrate that the land Gat No. 6 were located abutting to the Gaothan area of village Nagapur. The land under acquisition was located at a distance of one and half to two Kilometer from the

Gaothan area of village Nagapur. It was situated on Zilla Parishad road leading from Kannad to Chalisgaon. In such circumstances, the sale instances (Exh.11 to 14) being sale deed of small piece of land could not be taken into consideration to determine the market value of the acquired land, admeasuring 1 Hectare 21 R. Moreover, the sale deed (Exh.11) came to be executed in the year 1993. The land under sale instances (Exh.10) was shown utilized being an thrashing floor and land under sale instance (Exh.11) was purchased by the Educational Institution for commercial purpose. Therefore, learned Reference Court has rightly discarded these sale instances being sale instances not compatible for determining the market value of the acquired land. The claimant also relied upon the sale instances (Exh.13 and 14), which were seen executed for small piece of land admeasuring 0.04 R and 0.7 R from Gat No.11 from village Nagapur, for lump sum price of Rs. 50,000/- and 85,000/- respectively. These lands were also found located within the close vicinity of village Nagapur. These sale deeds came to be executed after about 4 months of the publication of notification under Section 4 dated 14.1.1999. Being the sale instance of small piece of land for commercial purpose, executed after Notification U/Sec. 4(1) of Act, 1894, these instances could not be taken into consideration to determine the fair and correct market value of the acquired land. The claimant further produced the sale instance (Exh.12) of land Gat No. 698 admeasuring 0.1 and $\frac{1}{2}$ R located in adjoining village at Karanjkheda. The land under sale was situated far away from the village Nagapur. Therefore, it could not be considered as comparable sale-instance for determining the market value of the acquired land. The overall assessment of the sale instances produced on record on behalf of appellant, reflects that there was no comparable sale instance

available on record for appreciation to arrive at the conclusion that the market value of the acquired land was more than Rs. 610/- Per R awarded by SLAO during the relevant period of January 1999. All the aforesaid sale instances relied upon on behalf of the appellant/claimant are of small pieces of lands. Moreover, they all were located within the Gaothan area of village Nagapur or its close vicinity having commercial potentiality and, therefore, these sale instances cannot be taken into consideration to calculate the fair market value of the acquired land, which a willing purchaser would pay a willing vendor.

8] In contrast, the respondent - acquiring body i.e. MSEB adduced evidence of Sub-Engineer Shri Krishna Rahatgaonkar. He produced the document of sale instance (Exh. 31 to 33) on record. But, these sale instances all are executed in the year 2000, 2002 and 2004 i.e. after publication of notification under Section 4 dated 14.1.1999. However, sale deed (Exh.31) shows that the land admeasuring 1 H 20 R from Gat No.52 was sold for a lump sum amount of Rs. 75,000/- on 14.1.2000 i.e. just one year after publication of notification under Section 4 of the Land Acquisition Act in this case. This document of sale instances indicate that in the month of January, 2000, the land located nearby the acquired land was sold @ Rs. 681 per R. Therefore, reasonable inference can be drawn that the market value @ Rs. 610 determined by the LAO prevailing over during the period of January, 1999 would be a reasonable and fair market value.

9] In the above premises, I do not come across with any perversity or infirmity in the findings expressed by the learned Reference Court while calculating fair and appropriate market value of

the acquired land of the claimants. In contrast, the market rate @ Rs. 610 per R. calculated by the LAO appears to be reasonable and fair market value for the land under acquisition . Therefore, there is no propriety to cause any interference in the findings expressed by the LAO resulting into dismissal of the Reference Petitions filed on behalf of appellant/claimant. Therefore, there is no alternative, but to dismiss the appeal being devoid of merit. In the result, appeal fails and dismissed. No orders as to costs.

[K. K. SONAWANE]
JUDGE

GRT