

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

FIRST APPEAL No. 311/2017

1. Executive Engineer,
Public Works Department No.2, Nagpur.
2. State of Maharashtra,
Through Collector, Nagpur.
3. Special Land Acquisition Officer General, Nagpur.

PETITIONERS

.....VERSUS.....

Sarosh S/o Ramanlal Chandak,
Aged about 49 years, Occupation: Business,
R/o 109-A, Sadhana Kutir, Raman Chandak
Nagar, Katol, District Nagpur.

RESPONDENT

Shri M.A. Kadu, Assistant Government Pleader for the appellants.

CORAM : A.S. CHANDURKAR AND N.B. SURYAWANSHI, JJ.

DATE : 7TH DECEMBER, 2020

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

This appeal under under Section 54 of the Land Acquisition Act, 1894 (for short, 'the said Act') takes exception to the judgment of the reference Court dated 11.03.2015. By the said judgment, the reference Court was pleased to partly allow the prayer made by the respondent for enhancement in the amount of compensation as awarded by the Land Acquisition Officer.

2. Land admeasuring 0.4790 R from Survey no.488 was the subject matter of acquisition for extension of the State Highway Ring

Road. Notification under Section 4 of the said Act was published on 22.06.2006 and the Land Acquisition Officer passed his award on 15.10.2008. As the claimant was not satisfied with the amount of compensation granted by the Land Acquisition Officer, he preferred reference under Section 18 of the said Act. The reference Court was pleased to grant compensation at the rate of Rs.125 per square foot for the acquired land. Hence this appeal.

3. Shri M.A. Kadu, learned Assistant Government Pleader for the appellants submitted that the compensation enhanced by the reference Court was on a higher side. According to him, the evidence on record was insufficient to justified grant of such compensation. The acquired land was situated at some distance from main town and absence of non-agricultural potentiality could be gathered from the material on record. The sale instances relied upon by the reference Court was of the land which was situated at a distance and hence that piece of evidence was of no assistance to the claimant. On an overall consideration of the material on record, it was evident that the claimant had been awarded higher compensation and the same was therefore liable to be reduced. It was also submitted that the actual area acquired was 51544 square feet and not 52690 square feet as held by the reference Court.

There was no appearance on behalf of the respondent.

4. After considering the submissions as urged on behalf of the appellants, following point arises for consideration:-

Whether the judgment of the reference Court deserves to be interfered with?

5. We have heard the learned counsel for the appellants and we have also perused the records of the case. The claimant in support of his prayer for grant of compensation at the rate of Rs.1,000/- per square foot examined himself at Exhibit 8. He placed on record two sale-deeds at Exhibits 10 and 11 as well as award at Exhibit 12. The appellants examined the Land Acquisition Officer and also the Deputy Collector. Perusal of the evidence of the parties indicates that the witness examined by the appellants admitted that the acquired land was surrounded by the school, petrol pump as well as hospital. The same were within a short vicinity. The fact that the acquired land was acquired for the State Highway Project itself indicates its proximity to the existing road. The reference Court has taken into consideration the ready reckoner for the year 2006 which indicates value of the land adjoining State Highway to be between Rs.1500 and Rs.2600 per square meter. It has also referred to the lease-deed dated 28.04.1994 entered between the Municipal Council and one Vijay Paliwal indicating that area admeasuring 540 square feet was give on lease for thirty years at Rs.4,45,000/- in a public auction. It is after considering this evidence that the reference Court

determined the market value of the market value of the land at Rs.125/- per square foot. This was against the claim as made at Rs.1,000/- per square foot. We find on a re-appreciation of the evidence on record that the amount of compensation as awarded is reasonable and just. The same has been determined after taking into consideration all relevant aspects and the same does not deserve to be reduced. It is to be noted that though there was a prayer for grant of compensation for the trees, the same was not granted by the reference Court. We therefore find that the enhancement as granted by the reference Court does not deserve to be interfered with.

6. It is however seen that the reference Court has proceeded to grant compensation for the acquired land admeasuring 0.4790 R treating it to be 52690 square feet. It is however to be noted that 0.4790 R land comes to 51544 square feet. This is the only modification that is required to be made in the judgment of the reference Court. The point as framed is answered accordingly.

7. Hence, for the reasons aforesaid the only modification in the judgment of the reference Court is that the claimant would be entitled to receive the compensation for 0.4790 R which comes to 51,544 square feet and not 52690 square feet as adjudicated by the reference Court. Rest of the judgment stands confirmed. The first appeal is partly allowed

to that limited extent with no order as to costs. The claimant is at liberty to withdraw the balance amount of compensation with interest accrued thereon.

(N.B. SURYAWANSHI, J.)

(A.S. CHANDURKAR, J.)

APTE

**Rohit
Apte** Digitally signed
by Rohit Apte
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