

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

FIRST APPEAL NO. 330 OF 2009

Shankar s/o Murlidhar Sharma,
aged about 52 years, Agriculturist,
Resident and Post Eranda, Tq. Barshitakli,
District Akola.

...APPELLANT

Versus

State of Maharashtra,
through Special Land Acquisition Officer,
Punjabrao Krushi Vidyapeeth, Akola.

...RESPONDENT

Shri S.V. Sohoni, Advocate for the appellant.
Ms. Shamsi Haider, A.G.P for the respondent.

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CORAM : PUSHPA V. GANEDIWALA, J.
DATED : SEPTEMBER 28, 2021.

ORAL JUDGMENT :

Heard.

2. Present is an Appeal filed by the appellant/
claimant challenging the judgment and award dated
07/02/2004 passed by the 3rd Ad-hoc Additional District Judge,
Akola in Land Acquisition Case No. 108/1996, whereby the
Reference Court has awarded compensation to the appellant/
claimant @ Rs.25,000/- per hectare for his land bearing Survey

No.118, situated at Village Anjani Bk., admeasuring 1.75 hectare (**“the subject property”**), which was acquired for the purpose of construction of village tank.

3. The facts, necessary to decide the present Appeal, may be stated as under :

i. The subject property was acquired by the Land Acquisition Officer (**“LAO”**) by issuing notification under Section 4 of the Land Acquisition Act, 1894 (**“the Act”**), which was published in the Government gazette on 26/05/1994. The further notification, under Section 6 of the Act, was published on 15/06/1995, and the award came to be passed on 16/11/1995. The LAO fixed the amount of compensation for the suit property @ Rs.21,000/- per hectare.

ii. Being dissatisfied with the amount of compensation, as has been awarded by the LAO, the appellant/claimant preferred proceedings under Section 18 of the Act, and claimed compensation @ Rs.50,000/- per acre. The

appellant/ claimant states that the land is fertile and aakhar land. He used to get net income @ Rs.7,000 – Rs.8,000/- per acre, and the land was his only source of income. The LAO has not considered the fertile quality of the land.

iii. The claimant examined himself below Exh.13, wherein he deposed that his land is fertile and aakhar land. That he was getting Rs.7,000/- - Rs.8000/- per acre per year. The land was his only source of income and he lost his permanent income. That he was taking Kharip crop of cotton and tur and Rabi crop of Harbhara from his land. He has brought on record receipt for the said crops. After taking possession of the acquired land, he harvested crop of cotton of 24 quintals and 64 kilograms from his remaining 4 acres of land. The receipt of the said crop, issued by cotton federation, is also placed on record. He further states that he has also taken crop of tur of about 5 quintals from his remaining land. The receipt of the same dated 24/01/1994 is placed on record. He has also filed on record 7/12 extract of his land. He has also placed on record certificate of Talathi of Village Anjani Bk.

indicating the rate of the land, as per the Government record, at more than Rs.26,000/- per acre. The appellant/ claimant claimed enhanced amount of compensation at least @ Rs.40,000/- per acre.

iv. The respondent/ State neither filed written statement nor cross-examined the claimant witness.

v. The Reference Court, on the basis of material on record, granted compensation @ Rs.25,000/- per hectare along with other statutory benefits. For reaching this valuation, the Reference Court relied on the certificate issued by the Talathi of Village Anjani Bk. This judgment is impugned in this Appeal.

4. I have heard Shri Sohoni, learned counsel for the appellant/ claimant, and Ms. Shamsi Haider, learned A.G.P for the respondent/ State.

5. Shri Sohoni, learned counsel, brought to the notice of this Court a mistake committed by the Reference Court or it

may be a typographical mistake that in the discussion part of the judgment, while referring to the certificate of Talathi of Village Anjani Bk., the Reference Court, in para 9, has recorded as under :

“9. XXXX As per said certificate, the valuation of his total 3 hectare 4 R land is Rs.2,25,000/-. So relying on these documents, Adv. Deshpande for the applicant submitted that the market price of the acquired land in 1994 was more than Rs.1/- per hect.XXXX”

The learned counsel submits that considering the aforesaid part of the submissions of the learned counsel, recorded by the Reference Court in the impugned judgment, the Reference Court ought to have granted compensation @ Rs.25,000/- per acre instead of Rs.25,000/- per hectare.

The learned counsel further referred to the judgment delivered by the Reference Court in LAC No. 109/1996, wherein for the adjoining land, which was acquired out of the same notification and for the same purpose, the Reference Court has awarded compensation @ Rs.25,000/- per

acre.

6. Ms. Haider, learned A.G.P., verified quantum of enhancement in the aforecited judgment, and made a submission that the State has not filed any Appeal against the said judgment, and the rate for the land adjacent to the subject land @ Rs.25,000/- per acre has been accepted by the State.

7. I have considered the submissions put forth on behalf of both the sides, and perused the record.

8. At the outset, a perusal of the impugned judgment would indicate that although the Reference Court has adjudicated the market value of the subject land @ Rs.25,000/- per hectare, relying on the certificate issued by the Talathi of Village Anjani Bk., however, at the same time, the Reference Court has failed to consider the valuation as per the said certificate of his total land ad measuring 3 hectare 45 R valued at Rs.2,25,000/-, and therefore, after calculation, it would come to Rs.65,217/- per hectare and Rs.26,000/- per acre.

9. Considering the inconsistency between the discussion in the judgment and directions in the operative part of the impugned judgment, coupled with the fact that the Reference Court, for the adjoining land, which came to be acquired out of the same notification, has granted compensation @ Rs.25,000/- per acre, in the considered opinion of this Court, on the ground of parity, the appellant/ claimant is also entitled to receive compensation @ Rs.25,000/- per acre.

10. In the light of the above discussion, the impugned judgment of the Reference Court needs modification. Hence, I pass the following order :

ORDER

- i. The Appeal is allowed in part.
- ii. The respondent/ State shall pay compensation @ Rs.25,000/- per acre to the appellant/ claimant for the subject land along with statutory benefits and interest.

iii. Needless to say that the compensation already paid to the appellant/ claimant shall be deducted from the aforesaid amount of compensation.

iv. The respondent/ State shall deposit the enhanced amount of compensation in terms of the order of this Court with the Registry of this Court within a period of twelve weeks. Thereafter, the appellant/ claimant is permitted to withdraw the same.

11. The Appeal stands disposed of. No costs.

JUDGE

Sumit