

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

FIRST APPEAL NO. 95 OF 1995

Islam Ali son of Khwaja Ali,
aged about 61 years, Occ. Agriculturist,
R/o Hiwarkhed, Tq. Telhara, District Akola.

...APPELLANT

Versus

The State of Maharashtra,
through the Collector, Akola.

...RESPONDENT

WITH

FIRST APPEAL NO. 593 OF 1995

The State of Maharashtra
through Collector, Akola.

...APPELLANT

Versus

Islam Ali s/o Khwaja Ali Meersaheb,
aged about 60 years, agriculturist,
r/o Hiwarkhed, Tq. Telhara, distt. Akola.

...RESPONDENT

Shri A.J. Thakkar, Advocate for the appellant in First Appeal No.
95/1995 and for respondent in First Appeal No. 593/1995.
Shri M.A. Kadu, A.G.P. for State.

CORAM : PUSHPA V. GANEDIWALA, J.
DATED : JULY 30, 2021.

JUDGMENT :

In these appeals, the State and the owner of the
land, bearing Gat No. 97 to the extent of 1 hectare 43 R,

situated at Village, Soundala, Tq. Telhara, District Akola, both have challenged the judgment and award dated 29/04/1994 passed by the 4th Joint Civil Judge, Senior Division, Akola in L.A.C. No. 13/1993 whereby the Reference Court fixed the market value of the land acquired @ Rs.25,000/- per acre.

2. The State challenges the aforesaid judgment and award on the ground of exorbitant compensation, while the owner/ claimant challenges the same for enhancement of the compensation.

The facts, necessary to decide the present appeals, may be stated as under :

3. A notification under Section 4 of the Land Acquisition Act, 1894 (“**the said Act**”) was published on 26/04/1989 followed by the notification under Section 6 on 17/04/1990, and thereafter, notices under Section 9 were issued on 11/06/1990. Thereafter, further proceedings were completed, and considering the claim of the claimant and

different sale instances, the Land Acquisition Officer (“**LAO**”) passed the award. The LAO awarded the price of the acquired land @ Rs.17,500/- per hectare. The total compensation awarded to the claimant is Rs.41,041/- including solatium and interest. The award was passed on 02/05/1994.

4. Feeling dissatisfied with the meagre amount of compensation, the claimant preferred reference proceedings under Section 18 of the said Act and claimed compensation @ Rs.1,25,000/- per hectare. The learned Reference Court, on the basis of pleadings between the parties, framed necessary issues and recorded evidence as adduced by the parties. The claimant examined himself at Exh.21 and brought on record 7/12 extract of the land of the claimant at Exh.26 which shows situation of one well in the said land. The claimant had also brought on record one sale instance of the adjoining land at Exh. 28.

5. The Reference Court fixed the market value @ Rs.25,000/- per acre mainly by relying on the judgment of the

Reference Court delivered in L.A.C. No. 40/1990, wherein the Reference Court, in that case, had fixed the price of the land @ Rs.20,000/- per acre. The Reference Court, in the case in hand, observed that rate of Rs.20,000/- was fixed for dry land, and in the case in hand, a 'well' is situated in the subject land, therefore, the Reference Court fixed the rate of the land @ Rs.25,000/- per acre. This judgment is impugned in these appeals.

6. I have heard Shri Thakkar, learned counsel for the claimant, and Shri Kadu, learned A.G.P for the State.

7. Shri Thakkar, learned counsel for the claimant, submitted that the trial Court ought to have granted compensation @ Rs.50,000/- per acre. That the Reference Court has not considered the evidence of the claimant for fixing the market value of the subject land. It is further submitted that the Reference Court has failed to consider the sale instance (Exh.28) for the adjoining land.

8. On the other hand, Shri M. A. Kadu, learned A.G.P for the State, fairly submits for passing appropriate order on merits of the case.

9. I have considered the submissions put forth on behalf of both the sides. The following point arose for determination of this Court :

Whether the market value, as fixed by the Reference Court @ Rs.25,000/- per acre, indicates true market value of the property?

10. At the outset, there is absolutely nothing on record to determine the true market value of the subject land barring one sale instance at Exh. 28, which was two years post Section 4 notification. The Reference Court has rightly not considered the same for determining the market value of the subject land. In this sale instance, the purchase value of the land is shown as Rs.23,000/- per hectare. However, the purchaser in his testimony before the Court stated that he had purchased the said land for Rs.40,000/-. This type of oral evidence which is

contrary to the documentary evidence cannot be considered without further proof for the same in accordance with the principles of the Evidence Act. Secondly, with regard to proximity of time angle, the said sale instance is of post two years of issuance of notification under Section 4 of the said Act, which would again not reflect the true market rate. Moreover, there would be doubt about the authenticity of the transaction.

11. For fixing the market value of the acquired land, the Reference Court considered the judgment delivered in the case of L.A.C. No. 40/1990 wherein the Reference Court fixed the market value of the similarly situated dry land @ Rs.20,000/- per acre. In this case, the Reference Court fixed the market value @ Rs.25,000/- per acre having regard to the fact that a 'well' is situated in the subject land.

12. Neither the learned counsel for the claimant nor the learned A.G.P. could point out as to how the market value which is adjudicated for the similarly situated land in the case of L.A.C. No. 40/1990 would not be applicable to the land in

question.

13. For the reasons aforesaid, I am not inclined to disturb the well-reasoned judgment passed by the Reference Court. I answer the point in the affirmative.

14. Given the aforesaid facts and circumstances of the case, this Court does not find any merit in both of these appeals. The same deserve to be dismissed and are accordingly dismissed. No costs.

JUDGE

Sumit