

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

FIRST APPEAL NO. 883 OF 2011

- 1] The State of Maharashtra,
through its Collector, Buldana,
District – Buldana.

- 2] The Executive Engineer,
Minor Irrigation Chikhali,
Dist. Buldhana.

..... **APPELLANTS**
[Orig. Non-Applicant]
[On R.A.]

...V E R S U S...

Dipak s/o Jagdeo Garkal,
Aged Major, Occu: Agriculturist,
R/o Gundha, Tq. Lonar,
District – Buldhana

Correct Address of Respondent sole

Amendment as
per Courts
order dated
19.04.11
Sd/-
Sr. Cl to GP
18.06.11

Shri Dipak Jagdeo Garkal,
Plot No. 71/A, Sector S-1,
N-4 CIDCO Aurangabad,
Tq. and Dist. Aurangabad.

... **RESPONDENTS**
Ori. Applicant (On R.A.)

 Shri M.A. Kadu, learned A.G.P for State.
 Shri R.G. Kavimandan, Advocate for Respondent-Sole.

CORAM : **S.M. MODAK, J.**
RESERVED ON : **18.06.2021**
PRONOUNCED ON : **01.07.2021**

ORAL JUDGMENT

1] The Special Land Acquisition Officer offered the compensation at the rate of Rs. 16,000/- per hectare for cultivable land to the claimant/respondent. It was not as per his expectation. When he filed reference, the Reference Court enhanced the compensation to Rs. 35,000/- per hectare for cultivable land and Rs. 5000/- per hectare for non-cultivable land. This decision was given by the Civil Judge, Senior Division, Buldana on 16.10.2008. The appellant-acquiring body found that the enhanced compensation was excessive and that is why present appeal has been filed.

2] I have heard learned Advocate Shri M.A. Kadu for the appellant and learned Advocate Shri R.G. Kavimandan for the respondent/claimant. I have also perused the record. I find that the claimant has adduced bulky evidence in support of his claim for enhancement. He filed various Index-II extracts, Crops statement and 7/12 extract and examined two more witnesses. On going through that evidence, I do not think that the enhancement is excessive.

3] The Reference Court has referred to all these documents, but has not discussed the rates at which the lands were sold for different consideration, which is depicted in Index-II extracts. Even though it may not find a place in the body of the judgment, it must have weighed the mind of the Reference Court while making enhancement. The Reference Court ought to have discussed how the lands covered under the sale-deeds [for which Index-II extracts were filed] are comparable to the land under acquisition. It ought to have discussed the common factors. I find only reference of Index-II extracts, Crop statement in the judgment. However, it does not convince me to allow the appeal. Because the Appellate Court can certainly go through the documents.

4] On going through the evidence and record, what I find is there are in all five Index-II Extracts. Those lands are situated at different villages of Gaikhed, Antri, Palaskhed, Veni, Hirdav, Mohatkhed and Ardav of Lonar Talukas District Buldhana. The claimant through his power of attorney holder/father had given the distance in between all these villages and village Gunda where the acquired land is

situated. The notification under Section 4 of the Land Acquisition Act was issued on 03.01.1991, it was for Minor Irrigation Project, Chikhali whereas the lands under sale-deed were sold on 25.04.1989, 15.06.1989, 20.02.1989, 24.05.1988, 16.01.1989, 22.02.1988 and 28.03.1989. It means all the sale transactions were prior to issuance of Section 4 notification. It is also true that some of the lands under those sale-deeds were dry land, whereas the land under acquisition was irrigated land. The witness has explained how he has made arrangement of river water. He has also explained the Rabi and Kharip Crops taken by him. There is a Crop Statement and 7/12 extract in support of his claim.

05] There is also evidence of Manirao Narayan Jaybhaye a neighbouring farmer. He has purchased the land at the rate of Rs. 12,000/- per acre on 24.05.1988. The Index copy is at Exhibit-71. Whereas the witness Ramdas Laxman Devare is resident of Mohankhed, Tah. Lonar. He purchased the land at village Mohankhed at Rs. 25,000/- per acre.

06] If I consider the sale-deeds as referred above, the enhancement granted by the reference Court cannot be said to be excessive. In fact, the reference Court was careful enough in granting separate rates for irrigated land and non-irrigated land. As the oral evidence does not support the yield from the trees, the reference Court was pleased not to grant any compensation for the trees. We can find the Reference Court in Para-16 of the impugned judgment.

For the above discussion, I do not find any interference is warranted. Hence, the appeal stands **dismissed**. Parties to bear their own costs. The amount deposited, if any, be paid to respondent after transferring to his bank account. Appellants to deposit remaining amount, if any, within the period of three months from today. The said amount be also paid to respondent by transfer to his bank account. Pending applications, if any be stand disposed of.

(S.M.MODAK, J)