

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

FIRST APPEAL NO.1063 OF 2015

Ramesh s/o Ramgopalji Sakone,
 Aged about 68 years,
 Occupation-Cultivator,
 R/o. Civil Lines, Nagpur. .. Appellant

.. Versus ..

1. State of Maharashtra,
 through Collector, Amravati,
 Tq & Distt. Amravati (Ori. Non-Applicant)
2. Land Acquisition Officer,
 Amravati, Tq & Distt. Amravati.
 (Ori. Non-Applicant)
3. District Re-settlement Officer,
 Amravati. .. Respondents

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Mr S.V. Sohoni, Advocate for Appellant,
 Ms Shamsi Haider, AGP for the Respondents.

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CORAM : M.S. SONAK, J.
DATED : 07.12.2021.

JUDGMENT

Heard Mr S.V. Sohoni, learned counsel for the
 appellant and Ms Shamsi Haider, learned Assistant
 Government Pleader for the respondents-State.

2. This appeal is directed against the judgment and award dated 16.5.2015 made by the reference court to the extent the reference court declined to enhance the compensation in respect of the acquired land to approximate to Rs.5/-per sq. ft., but restricted the enhancement to only Rs.50,000/- per hectare.

3. This case concerns acquisition of the appellant's land ad-measuring 4 H 55 R in pursuance of Notification under Section 4 of the Land Acquisition Act, 1894 (the said Act) issued on 27.10.1991. The Land Acquisition Officer (LAO) made his award on 31.1.1992 determining the compensation at the rate of Rs.33,000/- per hectare. The appellant dissatisfied with such determination applied for reference and the reference court, vide award dated 27.9.1996, enhanced this compensation to Rs.50,000/- per hectare.

4. The appellant as well as the State instituted appeals to challenge the reference court award dated 27.9.1996. Vide judgment and order dated 8.1.2015, First Appeal No.180/1997 instituted by the State was

allowed and the reference court award dated 27.9.1996 was set aside, because this court found that the basis for enhancement of compensation from Rs.33,000/- to Rs.50,000/- per hectare was not at all made clear in the impugned award. The matter was remanded to the reference court to once again decide the reference and dispose of the same by giving cogent reasons for the conclusion.

5. Upon remand, the reference court has made the impugned award dated 16.5.2015 once again determining the compensation of Rs.50,000/- per hectare. Hence, the present appeal.

6. Mr Sohoni, learned counsel for the appellant, submits that even this time, the reference court has not indicated any clear and cogent reasons for enhancing the compensation to only Rs.50,000/- per hectare. He submits that the appellant had produced evidence on record, vide sale deed dated 7.3.1990 (Exh.40) by which a plot ad-measuring 102 square meters was sold for Rs.5,000/- per sq. ft. He submitted that this plot was

almost adjacent to acquired land. He submitted that this is a case of acquisition of gaathan and therefore, in terms of law laid down by the Hon'ble Supreme Court in **Digamber and others .vs. State of Maharashtra, AIR 2013 SC 3532**, compensation was required to be awarded based on the premise that this was not an agricultural property. He submits that even the valuation report were not properly considered by the reference court. He submits that for all these reasons, this is a fit case to enhance the compensation quietly to Rs.2,50,000/-.

7. Ms Haider, the learned Assistant Government Pleader for the respondents-State, defended the impugned award based on the reasoning reflected therein. She pointed out that in this case LAO was examined and the LAO had referred to not less than 18 sale instances in his award. She submitted that based on this evidence, even the reference court concluded that the correct compensation would Rs.33,000/- per hectare, but thereafter, without assigning any reason, he has simply enhanced the compensation to Rs.50,000/- per

hectare. She submits that it is the State that should have been aggrieved by the compensation awarded and not the present appellant. For all these reasons, she submitted that this appeal may be dismissed.

8. The rival contentions now call for determination.

9. In this case, the reference court has discussed the evidence of the appellant in the form of sale deed dated 7.3.1990 (Exh.40). The reference court has quite correctly noted that this was not a case of sale of 102 sq.meters for Rs.5,000/-, but rather this was a case where two plots total ad-measuring 102.36 sq. meters were sold for Rs.5,000/-. Based on this, the reference court concluded that the rate of the plot sold comes to Rs.2/- per sq. ft. and not Rs.5/- per sq.ft. as urged by the appellant. The reference court also noted that the sale instance at Exh.40 was not comparable instance. This is because the sale instance concerned with the plot which was surrounded by several houses. In contrast the acquired land ad-measuring 4 H 55 R and no sale

instance in respect of comparable areas were produced by the appellant. The evidence on record indicates that the acquisition in this case was for gaothan. The land acquired completely abut the village and the distance between the plot which formed the subject matter of sale deed Exh.40. Therefore, it cannot be said that Exh.40 is altogether irrelevant or totally in comparable. No doubt, if Exh.40 is to be relied upon, several deductions will have to be made from the rate reflected therein. Primarily because Exh.40 concerned with a small plot ad-measuring 207.40 sq. meter. The valuation report relied upon by the appellant deserves no much credence. Firstly, the valuer has visited the site almost 3 to 4 years after the issuance of Section 4 Notification, secondly, the valuer has determined the compensation on a hypothetical basis about the acquired land being developed as a lay down. In doing so, the valuer has completely ignored several relevant aspects like whether the appellant had the financial capacity to not only invest in such development but also the waiting capacity for their investment and therefore, the reference court can correctly rejected the valuation report.

10. The sale instance reflects the rate of Rs.2,50,000/-. Since the sale instance is in respect of a very small plot as compared to the acquired land, a deduction of minimum 75% is due, but there is evidence that the acquired land was just adjoining the village. The acquisition of land was acquired for the purpose of gaathan. There was facility of drinking water, kirana shops, electricity, some factories in the nearby vicinity. This evidence shows that the acquired land was abutting Amravati-Nagpur road. Therefore, if all these aspects are taken into account, the compensation at the rate of Rs.50,000/- per hectare appears to be on the lower side. At the same time, the claim of the appellant for compensation at the rate of Rs.2,50,000/- also appears to be exaggerated.

11. Having regard to positive and negative factors, affecting the acquired land and the law laid down by the Hon'ble Supreme Court in *Digamber (supra)*, in my judgment compensation at the rate of Rs.75,000/- per hectare will be appropriate in the facts of the present case.

12. Accordingly, this appeal is partly allowed. The compensation amount is enhanced from Rs.50,000/- per hectare to Rs.75,000/- per hectare. The rest of the award is left undisturbed. There shall be no order for costs.

[M.S. Sonak, J.]

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