

First Appeal No.152/2019

.... Appellant
(On R.A.)
(Ori.N.A. No.3)

1]	Buddhu Moti Bhokru (Korku) Dead through Legal Heir's :-	(Ori. Applicant)
1-a.	Rupchand Kishirao Bhokare, Age 30 years, Occ.-Labour.	
1-b.	Chhaya w/o Naresh Kasdekar, Age 40 years, Occ.-Household, R/o.-Ozzar, Post Mathara, Tah. Achalpur, District Amravati.	
1-c.	Chanda w/o Ramdas Kasdekar, Age 30 years, Occ.- Labour, R/o.-Karajagaon, Tq. Chandur Bazar, Dist. Amravati.	
1-d.	Fulwanti Kashirao Bhokare, Age 60 years, Occ.-Household,	
1-e.	Laxmi w/o Bhagwantrao Tote, Age 60 years, Occ.-Household,	
1-f.	Shanta w/o Fulchand Lokhande, Age 55 years, Occ.-Household, Respondent nos. 1-a, 1-d to 1-f R/o Vishroli, Tah Chandur Bazar, Dist- Amravati.	
2.	The State of Maharashtra through the Collector, Amravati.	(Ori. N.A. No.1)
3]	Special Land Acquisition Officer, Minor Irrigation Works, Amravati, Tah and Dist. Amravati.	(Ori.N.A. No.2) Respondents (On R.A.)

Shri P.B. Patil, Adv with Shri Bhushan Dafle, Adv for appellant.
Shri Raju Kadu, Adv for resp. no.1.
Shri M.A. Kadu, AGP for resp. nos. 2 and 3.

CORAM : S.M. MODAK, J.

DATE : 04-01-2021.

ORAL JUDGMENT

Heard learned Advocate Shri P.B. Patil for the appellant-V.I.D.C., learned Advocate Shri Raju Kadu for respondent nos. 1-a to 1-f and learned AGP Shri M.A. Kadu for respondent nos. 2 and 3.

2. There is an application for withdrawal of the amount deposited towards compensation. The Reference Court has decided the amount of compensation at the rate of Rs. 1,10,000/- per hectare. Considering the area of the claimants, it comes to Rs. 44,000/-. Considering the amount of compensation on the last date this Court has expressed a wish to avail of the possibility of settlement.

3. Today learned Advocate Shri Patil has expressed a difficulty that if the matter is compromised and if they will agree for certain rate, the farmers may come with a similar proposal by taking recourse to the provisions of Section 28A of the Land Acquisition Act, 1894. In view of that, it was decided to hear the matter on merits.

4. Learned Advocate Shri Raju Kadu, relied upon the observations of this Court in First Appeal No.1268/2008 dated 20-01-2020. Wherein, there was a land acquired for Purna Medium Project and Section 4 Notification was issued on 15-10-1996 and the land involved in that appeal was from village Vishroli, Tq-Chandur Bazar, District Amravati. That is from the similar village in which the land involved in this appeal is situated. With their assistance, I have perused the record. On reading the judgment under challenge, it reveals that the Reference Court has considered the sale instance in all five numbers. Out of that two sales are from the same village Vishroli whereas, the three

other sale instances are from same Chandur Bazar Taluka but from 3 different villages. The Reference Court has taken average of the consideration of all these five sale instances. Accordingly, on that basis, the Reference Court has decided the compensation at the rate of Rs. 1,10,000/- per hectare.

5. According to the learned Advocate Shri Patil for the appellant, when the sale instance from the said village is available, the learned Reference Court ought not to have considered the sale instances from the other villages. So also the Reference Court has considered the two sale instances of the same village but they are of the year 1999 that is post Section 4 Notification. Whereas sale instance from village Gaurkheda was also of post Section 4 Notification i.e. of the year 1999. It is contended that the learned Reference Court ought to have given a deduction when it considered post Section 4 Notification sale instances. Accordingly, on these grounds there is a challenge to the quantum fixed by the Reference Court.

6. As against this, learned Advocate for the claimants supported the method adopted by the Reference Court. My attention is brought to the observations that the respondents therein have not adduced any evidence. In addition to that, alternatively, it is submitted that if this Court finds that excessive amount has been fixed by the reference Court then in that eventuality this Court may consider the amount of compensation fixed by this Court in First Appeal No.1268/2008. Therein, this Court has fixed compensation at the rate of Rs. 80,000/- per hectare in respect of lands acquired from the same village Vishroli.

7. It is important to consider certain dates. In case of appeal before us Section 4 Notification was issued on 15-08-1996, whereas in disposed of First Appeal No.1268/2008 Section 4 Notification was issued on 15-10-1996

that is the same date. In both these matters land was acquired for Purna Medium Project. It is also true that in both these appeals the land is from the same village Vishroli. It is true that the awards were declared on different dates in the disposed of appeal and in the present appeal.

8. I agree to the contention of learned Advocate for the appellant, that when the sale instances from the same village Vishroli were available, it was not necessary for the Reference Court to consider the sale instances from different villages. It is true that the valuation of the land changes from village to village. So I am inclined to consider only the two sale instances from the same village Vishroli which are described at serial nos. 2 and 3 from the table reproduced in para 16 of the judgment of the reference Court. It is also true that the Reference Court has not given any special reason for considering the sale instances from other three villages. No doubt, it is true that the two of the sale instances from the other villages they are in the proximity in time. But the fact that they are from different villages is sufficient not to consider them.

9. So if we concentrate on two sale instances from the same village, their dates are 23-04-1999 and 01-06-1999. It means they are approximately three years after Section 4 Notification dated 15-08-1996. If the sale instances prior to Section 4 Notification are not available the Court can in the limited situation considered the post notification sale instances. However, in that eventuality, the Court has to reduce the price. In a given case, it can be 10%. So, following calculations can be done by considering the following details-

S.N	Date of Sale instance	Block/ S.No.	Village	Area sold	Consideration
1	23.04.1999	255	Vishroli, Tal. Chandur Br.	93 R	Rs.1,88,172/- p.h.
2	01.06.1999	295	Vishroli, Tal Chandur Br.	81 R	Rs. 86,419/- p.h.
				Total	Rs.2,74,591/- p.h.

10. So we take average of these two sale considerations, it comes to Rs.1,37,295.50/- rounder up to Rs. 1,37,296/-per hectare and if we considered deduction at the rate of 10% for one year and calculated for four years (because notification is of the year 1996 and the sales are of the year 1999) it comes to Rs 54,920/- (Rs. 13,729.55/- rounded up to Rs.13,730/- per year x 4 years). So this amount has to be deducted from the average consideration of Rs. 1,37,296/-. So it comes to Rs. 82,376/- per hectare. The land of contesting respondents is 40 R, so per acre consideration comes to Rs.32,950/-. (Calculation referred above is on the basis of calculation given and mutually accepted by both the sides.)

11. Now it will be material to see whether this consideration can be accepted or whether the rate fixed by this Court in First Appeal No.1268/2008 is to be accepted. The claimants heavily relied upon the rate of Rs.80,000/- per hectare fixed in that disposed of appeal. It is true that in that appeal the lands are from the same village. So also it is true that this Court has also considered the sale instances from the same village (reproduced in para 8). It is important to consider that those sale instances are prior to Section 4 Notification dated 15-08-1996 in that appeal. Whereas in the appeal before us sale instances are post Section 4 Notification. So I think the rate fixed in disposed of appeal by this Court appears to be more rational. It is for the reason that sale instances are prior to Section 4 Notification in that case. So I think that Rs. 80,000/- per hectare will be the proper compensation in the present appeal also. So I am inclined to allow the appeal partly. So the compensation needs to be recalculated. Hence, the following directions -

ORDER

(a) Appeal is partly allowed.

- (b) The respondent no.1-a to 1-f are entitled to receive compensation at the rate of Rs. 80,000/-per hectare for their area that is 40 R.
- (c) The respondent no.1-a to 1-f are entitled to receive similar statutory benefit and the interest as granted by the Reference Court only on the amount fixed by this Court as mentioned above.
- (d) The appellant is directed to pay that compensation to the respondents within the period of three months.
- (e) The compensation already paid, if any, is to be deducted from the above amount of compensation.
- (f) Once the amount is deposited respondent no.1-a to 1-f are entitled to get that amount in equal proportionate.
- (g) All civil applications are disposed of.
- (h) The parties to bear their own costs.
- (i) Claimants to do the calculation of Court fee on the rate fixed above and either to pay/entitle to refund of Court fee subject to verification by the office.

(S.M. Modak, J.)