

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

FIRST APPEAL NO. 129 OF 2013

1. Dhirajbhai Premjibhai Patel,
Aged about 61 years, Occ. Business
2. Smt. Damayanti w/o Bhagwandas Patel,
aged about 50 years, Occ. Household,
Both residents of near Police Station,
Lakadganj, Nagpur,

.... **APPELLANTS**

// VERSUS //

- 1.The Collector, Nagpur,
District Nagpur
- 2.The Executive Engineer,
Road Project Division, Nagpur.

.... **RESPONDENTS**

Shri S.P. Bhandarkar, Advocate a/w Ms. Nidhi Dayani, Advocate for appellants.

Ms. T. Udeshi, A.G.P. for respondent no. 1.

Respondent no. 2 is served.

CORAM :SMT. ANUJA PRABHUDESSAI, J.

DATED : 14/01/2021.

JUDGMENT :

1. The appellants herein have challenged the judgment and award dated 21.06.2012 passed by the District Judge-5, Nagpur in

Land Acquisition Case No. 393 of 2002. By the impugned judgment, the Reference Court has partly allowed the application filed by the appellants herein under Section 18 of the Land Acquisition Act, 1894 (for short “the Act of 1894”) and enhanced the compensation from Rs.63,250/- per hector to Rs.1,00,000/- per hector.

2. The brief facts leading to this appeal are as under :

(i) The government has acquired the land of the appellants under Gat No. 72, Village Tarodi (Bk), admeasuring 80 R for outer ring road. Section 4 notification dated 04.10.1999 was published on 26.10.1999 followed by Section 6 declaration dated 15.11.2000. Award under Section 11 came to be passed on 30.12.2001. The Land Acquisition Officer determined the compensation at the rate of Rs.63,250/- per hector. Being dissatisfied with the quantum of compensation offered by the Land Acquisition Officer, the appellants filed an application under Section 18 of the Land Acquisition Act claiming enhanced compensation at the rate of Rs.28,00,000/- per hector. By the judgment and award dated 21.06.2012, the Reference Court, after considering the evidence adduced by the appellant as well as by the acquiring body, partly allowed the Reference and as stated above, awarded enhanced compensation of Rs.1,00,000/- per hector.

This judgment is under challenge in this appeal filed under Section 54 of the Land Acquisition Act, 1894.

3. Learned Counsel Shri S.P. Bhandarkar appearing for the appellants submits that the acquired land was situated in a well developed locality and had construction potentiality. Learned Counsel for the appellants states that the appellant had purchased the said land by Sale-Deed dated 03.08.1998 (Exhibit 17). He submits that the Reference Court has grossly erred in doubting the genuineness of the sale-deed and discarding the said Sale-Deed, on an assumption that the sale-deed was entered into after the Authority had taken joint measurements of the acquired land.

4. Per contra, learned Assistant Government Pleader Ms. T. Udeshi submits that, the appellants were well aware that the land was likely to be acquired and this is evident from the fact that the reference application refers to the correspondence between the Executive Engineering and the Collector regarding the proposal of acquisition. It is submitted that, the said Sale-Deed was executed only to create evidence and that not being a genuine transaction, the Reference Court was justified in discarding the same.

5. It is not in dispute that the acquired land is a part of the

land purchased by these appellants by Sale-Deed dated 03.08.1998 at Exhibit 17. The only question for consideration is whether the Reference Court was justified in rejecting the said sale-deed at Exhibit 17 relating to the same land. Before adverting to the facts it would be apposite to refer to the decision in ***Special Land Acquisition Officer v. Sidappa Omanna Tumari reported in 1995 Supp (2) SCC 168*** wherein the Apex Court has held thus :

“9. The best evidence of the market value of the acquired land is afforded by a transaction of sale in respect of the very acquired land provided, of course, there is nothing to doubt the authenticity of such transaction, as is held by this Court in *Bangaru Narasingha Rao Naidu v. RDO*. The best evidence of market value of the acquired land could equally be afforded by a transaction of agreement to sell relating to the very acquired land, provided, of course, there arises absolutely no room for doubting the authenticity of such transaction. If such transaction of agreement to sell relating to the very acquired land or a portion of it could be the best evidence of the market value of the acquired land, can such evidence furnished by the award made by the Collector under sub Section (2) or similar provisions in any other Act determining the amount of compensation payable to a claimant for a portion of the acquired land as agreed to by him with the Collector be ignored by the court in

determining the market value of the remaining portion of the acquired land, is the point which arises for consideration.”

6. In the instant case, the Sale transaction at Exhibit 17 was executed more than a year prior to the publication of Section 4 notification. Nothing has been elucidated in the cross-examination to suggest that the joint measurements were taken prior to publication of Section 4 notification or that the internal correspondence between the Executive Engineer and the Collector was within the public domain. There is absolutely no material on record to indicate that the appellants had knowledge about the acquisition process and that they had entered into the said transaction only with an intention of creating evidence as to claim higher compensation. As seen from the evidence before the Reference Court, the respondent had not challenged the genuineness of the said sale transaction. The Reference Court was therefore not justified in doubting the genuineness of the sale transaction at Exhibit 17 and discarding the best available evidence to assess the market value of the acquired land.

7. The said Sale-Deed reveals that the market rate of the acquired land under Gat No. 72 was Rs.1,00,000/- per hector as on August, 1998. Section 4 notification was published in October 1999 i.e.

about a year after the said sale transaction. The evidence on record indicates that the acquired land is in a well developed locality and that it had the construction potentiality. Considering the rising trend of land price, and considering increase in the price of the land at 10% per annum, the value of the land can be fixed at the rate of Rs.1,10,000/- per hector as on the date of the notification. Hence, the following order:

- (a) The Appeal is partly allowed.
- (b) The market rate of the acquired land is fixed at the rate of Rs.1,10,000/- per hector with all statutory benefits. The judgment and award dated 21.06.2012 stands modified accordingly.

JUDGE

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