

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 2900 OF 2013

Sarvottam s/o Bappaji Kolapkar
Age: 75 years, Occu. Agriculture,
r/o Khamgaon, Tq. Georai,
Dist. Beed

... Appellant

Versus

1. The State of Maharashtra
Through the Collector, Beed
2. The Executive Engineer,
Jayakwadi Project Stage-2,
Division Georai Dist. Beed

... Respondents

....

Mr. Avinash S. Londhe, Advocate for appellant
Mr. K. S. Patil, AGP for respondent No.1
Smt. Ranjana Reddy, Advocate for respondent No.2

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 10th AUGUST, 2021

PRONOUNCED ON : 27th JANUARY, 2022

J U D G M E N T :-

. This is an appeal under Section 54 of the Land Acquisition Act, 1894. The challenge herein is to the judgment and award dated 29.04.2005, passed by the 8th Ad-hoc Additional District Judge, Beed, in Land Acquisition Reference No.198 of 1999.

2. Facts giving rise to the present appeal are as follows:-

Agricultural land admeasuring 2 Acres (80 *Ares*) in Survey No.42/Gut No.25, belonging to the appellant herein came to be acquired for the purpose of construction of distributory canal. Notification under Section 4 of the Land Acquisition Act was published in the Government Gazette on 29th August, 1991. The award came to be passed in December, 1996. The Land Acquisition Officer (Collector), offered the appellant herein compensation at the rate of Rs.200/- per *Are* (Rs.8,000/- per Acre). The appellant accepted the said compensation under protest and filed Land Acquisition Reference No. 198 of 1999 for enhancement of compensation. The Reference Court, vide impugned judgment and award, enhanced the amount of compensation to Rs.900/- per *Are* i.e. Rs. 36,000/- per Acre with all consequential benefits, such as, 30% solatium, 12% additional component, besides interest @ 9% p.a. for the first year and @ 15% p.a. for onward period until payment of entire amount of compensation. Being dissatisfied with the quantum of enhancement in the amount of compensation, the present appeal has been preferred.

3. Heard.

Learned Advocate for the appellant would submit that the land acquired was perennially irrigated. It was situated on the bank of Godawari river. The appellant had been using the river water for irrigating his field with the permission of the Collector. He would raise cash-crops therein. According to the learned Advocate, the Collector and the Reference Court as well, ought to have granted compensation at the rate Rs.80,000/- per Acre. The learned Advocate relied on the sale instances (Exhibits 35 to 37 and 43). He also relied on the following judgments.

- (i) Ahmed Yar Jung vs. Collector, Land Acquisition, Hyderabad – 1974 0 AIR (SC) 787;
- (ii) Land Acquisition Officer and Mandal Revenue Officer vs. V. Narasaiah – 20010 AIR (SC) 1117;
- (iii) L. Y. Lagoo vs Special Land Acquisition Officer (2) Pune – 1982 0 AIR (Bom) 440.

The learned Advocate, ultimately, urged for allowing the appeal granting compensation at the rate Rs.80,000/- per Acre.

4. The learned AGP and the learned Advocate for the Acquiring Body would, on the other hand, submit that the sale-deeds

relied on by the learned Advocate for the appellant herein could not be termed to be comparable sale-deeds, particularly, sale-deed Exh.35. According to them, the Reference Court has enhanced the compensation from Rs.200/- per Are to Rs.900/- per Are. The amount of compensation, thus awarded, is reasonable and just one. They, therefore, urged for dismissal of the appeal.

5. Considered the submissions advanced. Perused the evidence relied on. Gone through the citations. In the case of ***Bhagwathula Samanna Vs Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam – LAWS (SC) 1991 9 47***, it has been observed thus:

“13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the large tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available

and it did not require any further development. We, are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs. 10/- per sq. yard to Rs. 6.50 paise per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases. The appellants, therefore, succeed.”

6. There can be no dispute over what has been observed in the citations relied on. Each case has to be decided on facts and circumstances obtaining therein. No doubt, propositions of law have to be kept on mind while appreciating the evidence in case. In the case in hand, 2 Acres of land of the appellant herein has been acquired for public purpose. Section 4 notification was published in the official gazette on 29.08.1991. The award has been passed in December, 1996. The appellant (land owner) would be entitled to compensation as per the market rate prevailing on the date of publication of the notification under Section 4 of the Land Acquisition Act. The Reference Court held, the land to be irrigated land. It is, however, the fact that the land was irrigated by availing water of Godawari river.

7. The appellant relied on four sale-deeds. Exh-35 is the sale-deed executed on 08.02.1991 i.e. six months prior to the

publication of notification under Section 4 of the Act. Under the said sale-deed, a land admeasuring 6 Ares was sold for Rs.15,000/-. From the Description given of the land sold, it does appear that the land belonging to the purchaser was adjacent to the land purchased under the said sale-deed. Same is the case about the sale-deed Exh.36 dated 08.04.1988. Thereunder, only 5 Ares land was sold for Rs.3,500/-. On two sides of the land sold, there were public roads. In view of this Court, both the sale-deeds (Exh. 35 and 36) would by no stage of imagination be said to be comparable sale-deeds for the reason that land not more than 6 *Are* has been sold thereunder. Whereas the land acquired admeasures 80 *Are* (2 Acres). Sale-deed Exh.37 is in respect of 20 *Are* land, sold for Rs.14,000/-. This sale-deed has been relied on by the appellant himself. As per the purchase price, the rate per Acre of the land sold thereunder would be Rs.28,000/-. In the case in hand, the appellant has been granted compensation at the rate Rs.36,000/- per Acre. So far as regards sale-deed Exh.43 is concerned, land admeasuring 50 *Are* has been sold for Rs.55,000/- in October, 1991. The sale-deed took place four months after the publication of the notification. Even if we accepts the sale-deeds to be comparable one, the rate per Acre would be

little over Rs.40,000/-. From the recitals of the said sale-deed, it does indicate that the vendor accepted Rs.35,000/- in cash long before the sale-deed was executed and only a sum of Rs.20,000/- was paid before the Sub-Registrar, towards the consideration amount.

8. Relying on the sale-deeds (Exh.37 and 43) placed on record by the appellant himself, the amount of compensation awarded by the Reference Court at the rate Rs.900/- per *Are* (Rs.36,000/- per Acre) is found to be adequate and reasonable one warranting no interference with the impugned judgment and award.

9. In the result, the appeal fails. The same is thus, dismissed.

[R. G. AVACHAT, J.]

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