

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 383 OF 2003

1. Pandit Ranba Shirame
Age 52 years, Occ. Agri.

2. Kishan Ranba Shirame
Age 45 years, Occ. Agri.

Both r/o. Hadoli (Jahagir),
Tq. Loha, District Nanded

...Appellants
(Ori. Claimants)

versus

1. The State of Maharashtra
through the Collector, Nanded
District Nanded

2. The Special Land Acquisition
Officer, P.T. & M.I.W. No.1
Collectorate Nanded
District Nanded

...Respondents
(Ori. Respondents)

.....
Mr. B. G. Deshmukh, advocate for the appellants
Mr. P. N. Kutti, A.G.P. for respondents
.....

CORAM : SANDIPKUMAR. C. MORE, J.

**Date of Reserving
the Judgment : 18.08.2022**

**Date of pronouncing
the Judgment : 16.09.2022**

JUDGMENT:-

1. The appellants-original claimants have challenged the judgment and award passed by the learned IInd Civil Judge, Senior

Division, Nanded (hereinafter for the sake of brevity referred to as “the Reference Court”) in L.A.R. No. 339 of 1995 on 12.08.2002. Under the impugned judgment, the reference court has dismissed the Land Acquisition Reference of the present appellants by upholding the award passed by the Special Land Acquisition Officer, P.T. & MIW No.1, Nanded.

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

The appellants were owners and possessors of land bearing survey No. 159/2 admeasuring 15 Are and 28 Are, situated at village Hadoli (Jahagir). The respondents then acquired the aforesaid land for construction of percolation tank at village Hadoli and issued notification under Section 4 of Land Acquisition Act, which was published in the village on 19.8.1991. At the relevant time, the appellants had demanded rate of Rs.75000/- per hectare in respect of their acquired lands. However, respondent No.2 fixed the market price of the acquired land only at the rate of Rs.20,000/- per hectare. According to the appellants, their land was well developed and capable of earning agricultural income at the rate of Rs.10,000/- per year. They had also claimed that the village Hadoli was at a distance of 5 kilometers from Kandhar city and several facilities, such as, Gram Panchayat, post office, bank, dairy societies and high school were available there. However, the learned Reference Court dismissed the reference of the appellants. Hence, this appeal.

3. Learned counsel for the appellants, during the course of arguments, submitted that the appeal is filed challenging the impugned judgment and award only because the learned Reference Court failed to consider higher sale instances as observed by the S.L.A.O. in his original award. He further submitted that the learned S.L.A.O. had scrutinized the sale instances regarding the lands situated nearby to the acquired land and found that the sale instances were ranging from Rs.3478/- per hectare to Rs.83,333/- per hectare, during the period from 1986 to 1993. Thus, learned counsel for the appellants submitted that learned Reference Court should have considered the average market price of the acquired land to the tune of Rs.50,000/- per hectare.

4. On the contrary, learned A.G.P. submitted that the appellants-claimants, despite giving sufficient opportunity, did not lead any evidence before the learned Reference Court and therefore, the learned Reference Court had decided the reference of the appellants on merits by referring the award passed by the S.L.A.O. Nanded. He submitted that at the most the matter can be remanded back if it is held that the appellants were denied opportunity of hearing.

5. Heard rival submissions. This court has also gone through the entire record and proceedings and the impugned judgment with the assistance of learned A.G.P. as well as learned counsel for the

appellants.

6. It is significant to note that the appeal is based only on the issue that learned Reference Court ought to have considered the highest sale instance as observed by the learned S.L.A.O. while determining the market price of acquired land, which was made available to him for the period from 1986 to 1993 in respect of the lands situated adjacently. It is also significant to note that learned Reference Court has observed in the impugned judgment that despite the sufficient opportunity, the appellants could not lead evidence and therefore, he decided the reference on its own merits since as per the observations of the Supreme Court, it could not have been dismissed in default.

7. Since there is only one ground for challenge to the impugned judgment and award as mentioned above, this Court has carefully gone through the award passed by the S.L.A.O. Nanded and especially page 4 of the said award, wherein the sale instances were considered by the S.L.A.O. On perusal of page 4 of the said award, it is evident that the S.L.A.O. had considered the sale instances in respect of the land situated in the vicinity of village where the acquired lands are situated. It appears that the sale instances are for the period from 1986 to 1993, ranging from Rs.3478/- per hectare to Rs.83,333/- per hectare. Though the learned counsel for the appellants vehemently argued that the learned Reference Court

should have considered the highest sale instances of Rs.83,000/- per hectare in respect of similarly situated land but on perusal of observations of the S.L.A.O., it appears that he has specifically mentioned in the award that higher sale instances were exceptional and normally the transactions were being made at the rate of Rs.20,000/- per hectare. There appears the sale instance dated 24.3.1986 for Rs.20,000/- per hectare but there is another sale instance dated 1.1.1988 which shows the price of land at the rate of Rs.10,000/- per hectare. Moreover, just beyond survey number of the acquired land, the land survey No.148 appears to be sold on 10.6.1991 at the rate of Rs.20,714/- per hectare and the same was prior to issuance of notification under Section 4 sub-section (2) of the Land Acquisition Act. Thus, it appears that the learned S.L.A.O. has rightly considered the sale instances by keeping aside the exceptional sale instances at the higher rate. Even otherwise also, the average rate of sale comes to around Rs.25,000/- per hectare if all the sale instances are considered.

8. Thus, considering the rate of nearest land bearing survey No.148 in the year 1991 of Rs.20,714/- per hectare, the determination of price of Rs.20,000/- per hectare in respect of acquired land by the S.L.A.O. appears quite reasonable. As such, the findings recorded by the learned Reference Court by upholding the market rate determined by the S.L.A.O. does not seem to be perverse.

9. Under such circumstances, I do not find any merit in the present appeal and the same is hereby dismissed. No order as to costs.

(SANDIPKUMAR. C. MORE, J.)

rlj/