

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

FIRST APPEAL NO. 4106 OF 2017

1. Jaitanbai w/o Madanlal Kankariya
(Deceased),
Sajjanbai W/o Pannalal Kankariya
(Deceased),

L.Rs.

- 1-1. Dhanraj S/o Pannalal Kankariya,
Age; 55 years, Occ; Agri. & Service,
- 1-2. Siddharth S/o Pannalal Kankariya,
Age; 57 years, Occ; Agri & Business,
- 1-3. Sunil S/o; Pannalal Kankariya,
Age; 51 years, Occ; Agri & Business,
- 1-4 Anita D/o Pannalal Kankariya,
Age; 49 years, Occ; Housewife,

All R/o; Shivaji Chowk,
Parbhani, District Parbhani.

**...Appellants
(Orig. Claimants)**

VERSUS

1. The State of Maharashtra,
Through District Collector,
Parbhani.
2. The Special Land Acquisition Officer,
M.K.V. Parbhani.
3. The Executive Engineer,
Majhalgav Canal Department No. 7,
Gangakhed, District Parbhani.

**...Respondents
(Orig.
Respondents)**

...
Advocate for Appellants : Mr. Gajendra D. Jain
APP for Respondent Nos. 1 & 2-State : Mr. B.V. Virdhe
Advocate for Respondent No. 3 : Mrs. Sunita D. Shelke
...

CORAM : VINAY JOSHI, J.

DATE : 15.02.2022.

JUDGMENT :

1. Being aggrieved and dis-satisfied by the judgment and award dated 20.12.2011 passed by the Civil Judge, Senior Division, Gangakhed, District; Parbhani, in L.A.R. No. 2 of 2004, the original claimants preferred this appeal seeking enhancement.
2. The appellant owns agricultural land bearing Survey No. 16/1 having Gut No. 47, ad-measuring 8-H and 93-R, situated at village Jawala (Rumna), Taluka Gangakhed, District Parbhani. Out of said land an area ad-measuring 1-H 48-R was acquired by the Government for the purpose of main Canal of Jaikwadi project for Dhondi Minor.
3. The Government has issued notification under Section 4 of the Land Acquisition Act on 10.05.1984 and thereby expressed their desire to acquire the land. The actual possession was alleged to have been taken by the Government prior to the notification issued

under Section 4 of the Act. The Special Land Acquisition Officer after making inquiry into the matter and considering market value of the acquired land granted total compensation to the tune of Rs. 13,320/-. The claimants have preferred the aforesaid Land Acquisition Reference for enhancement of compensation. The learned Civil Judge Senior Division, by passing impugned judgment was pleased to dismiss the reference by holding that the claimants have failed to adduce evidence to support the case for enhancement.

4. The learned counsel appearing for the appellants/original claimants submitted that the reference Court has erred in assessing the market value of the acquired land. He would submit that there are many sale instances in the periphery of the village Jawala, showing excess market value, however, those were not considered. The distance of village Jawala is 2 k.m. from sub urban place i.e. village Daithana. The reference Court has not considered the oral and documentary evidence adduced before it. It is submitted that it was irrigated land, from which the claimants were taking Jawar, Cotton, etc. crops and getting income of Rs. 2,000/- to 2,500/- per acre per annum. Moreover, there was transport facilities, however, the same were not considered.

5. Per contra, the learned counsel appearing for respondent

supported the impugned judgment by contending that the claimants have not adduced any evidence before the reference Court in support of their case. They took me through the impugned judgment, wherein, the reference Court has specifically taken a note that despite opportunity the claimants have failed to adduce evidence. It is submitted that the S.L.O. has considered all relevant factors including the potentiality of land, its location, transport facilities and other relevant material. Moreover, the learned Assistant Government Pleader relied on the decision in **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona- 1088 AIR (SC) 1652** to contend that it is for the claimants to establish that the prices offered for their land were inadequate by placing material on record.

6. Perused the order passed by the S.L.O., as well as impugned order of the reference Court. It is evident that the land acquisition officer has considered variety of relevant factors, while assessing the compensation amount. It reveals that the Land Acquisition Officer has taken into account one old sale instance of Survey No. 182 dated 28.04.1983 while arriving to the conclusion. The market value of the land in acquisition has to be determined on the crucial date of the publication of notification under Section 4 of the Act. The Court has to assess the market value reflected in the comparable sale instance. Certainly the price reflected in the

comparable sale instance in proximity to the crucial date can be considered. In case at hand, though the reference was pending for 7 years, besides oral statements the claimants have not lead any evidence. Particularly the reference Court took a note that despite opportunity the evidence is not adduced to show comparable sale instances. Needless to say that it is for the claimants to establish their case, however, they failed to do so. In the circumstances, the impugned judgment passed by the reference Court cannot be faulted with, hence the appeal being devoid of merits, stands dismissed.

(VINAY JOSHI)
JUDGE

mahajansb/