

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

FIRST APPEAL NO.236 OF 2012

1. The State of Maharashtra
Through – The Collector, Osmanabad
 2. The Executive Engineer,
Irrigation Department (Medium Project),
Osmanabad
- ...Appellants

Versus

Bhujang s/o. Eknath Deshmukh
Age : Major, Occu. Agri.,
R/o. Ieet, Tq. Bhoom,
Dist. Osmanabad.

...Respondent

...

Mr. A.A. Jagatkar, AGP for the appellants.
Mr. P.C. Mayure, Advocate for respondent.

...

CORAM : S.G. MEHARE, J.

DATED : 07th JUNE, 2022.

ORAL JUDGMENT :-

1. Heard the appeal at the admission stage. The state has preferred this appeal against the award passed by the learned Civil Judge Senior Division, Osmanabad in Land Acquisition Reference No.87/1995 dated 17.03.2008.

2. The dispute that has been raised by the appellant is exorbitant enhancement of the compensation by the reference court. As against the price determined by the Land Acquisition Officer, the learned Judge of reference Court enhanced the price and quantified it @ Rs. 60,000/- (Sixty thousand) per acre. However, there is no

dispute about the ownership, and the area of the land acquired.

3. Being dissatisfied with the award passed by the Land Acquisition Officer, the respondent had moved an application under Section 18 of the Land Acquisition Act, 1894. The reference was accordingly referred to the Land Reference Court at Osmanabad.

4. The land owner claimant/respondent has pleaded that the acquired lands were rich black soil up to 30 feet in depth and fertile one. He also claimed that the acquired land was irrigated with the well and river water. He was getting an income of Rs.30,000/- per acre. The respondent claimed the compensation @ Rs. 1,50,000/- per acre along with the compensation for the fruit trees and sandal trees. He claimed total compensation of Rs.2,47,620/-.

5. To support the claim, the respondent had produced the sale deed of the nearby field and examined PW-2 Ambadas Wamanrao Deshmukh, who has produced sale deed Exhibit-36. It is not in dispute that the said sale deed was of the date before the notification under Section 4 of the Land Acquisition Act. Relying upon the evidence led by the respondent, the Land Reference Court was pleased to award the compensation @ Rs.60,000/- per acre after deducting the amount of compensation received from the Land Acquisition Officer.

6. Heard the learned AGP for the State and learned counsel for the respondent at length.

7. The following points arise for the determination of this Court and findings thereon are recorded for the reasons to follow,

- 1) Does appellant prove that the reference Court has not properly appreciated the evidence led by the applicant and exorbitantly enhanced the compensation?
- 2) What order?

REASONS

As to point no.1

8. The learned AGP would submit that the learned Land Acquisition Reference Court has not properly appreciated the evidence of PW-2 Ambadas, who has produced and proved the sale deed dated 10.03.1989. He has taken this Court to para 7 and 16 of the impugned award. He further argued that barely producing the sale deed is not suffice to receive the document in evidence. The cross-examination of the AGP has not been considered by the Land Acquisition Reference Court. There is apparent mistake in appreciation of the evidence.

9. Per contra, learned counsel for the respondent would argue that the claimant has produced the reliable evidence. The witness Ambadas has specifically deposed that he had a land nearby the acquired land and he sold 8 Are of land to one Shivaji Deshmukh for Rs. 12,000/-. Considering the rate and the area of the land sold that comes to Rs.60,000/ Acre. He has vehemently argued that

there is absolutely no material brought by the prosecution against the evidence led by the claimant. He has referred to the observations recorded by the learned Land Reference Court and again referred to the findings recorded in para 16 of the impugned judgment. He would submit that the learned Land Acquisition Reference Court has properly and correctly appreciated the evidence produced on record. Since the evidence was cogent and reliable, it has been correctly received in evidence by the Land Reference Court.

10. Section 23 of the Land Acquisition Act provides for the factors to be considered while determining the compensation under the Land Acquisition Act. Sale deeds more particularly prior to the Notification under Section 4 of the Land Acquisition Act are the best comparable evidence to be considered by the Court. The sale deeds are produced for comparison. The sale deed placed on record is admittedly before the notification under Section 4 of the Land Acquisition Act. PW-2 has categorically deposed before the Court that he had sold 8 R of land out of Survey No.10/D of village Iet to one Shivaji Utamrao Deshmukh for Rs.12,000/- on 10.03.1989. He knows the land of the claimant. In cross-examination, the learned AGP for the State put him a bare suggestion that his land was of higher quality than that of the claimant. The suggestion was also given to him that he was deposing for the benefit of the claimant. The learned Land Reference Court has specifically observed in para 7 that it appears

that the State has not produced any evidence inspite of the chances. While appreciating this evidence, the learned Reference Court has observed that the witness has categorically deposed that his land and the land of the claimant is near to each other and he has denied the suggestion that his land was of higher quality than the land of the claimant. Appreciating the evidence it appears that, the evidence led by the claimant was of the sale transaction which was before the notification under Section 4 of the Land Acquisition Act and the sale transaction was of the land near to the land of the claimant. The sale transaction was not challenged as not genuine. No material was produced by the State to rebut the evidence of this PW-2.

11. After having gone through the evidence produced by the claimant, this Court is of the view that the sale transaction produced by him dated 10.03.1989 was relevant, proper and cogent. The claimant had proved by producing the evidence of PW-2 that the price of the land at the time of the acquisition as provided under the Land Acquisition Act was Rs.60,000/- per acre. There appears no any mistake committed by the learned Reference Court while appreciating the evidence produced before it.

12. After having gone through the entire record and documents, this Court do not find any error committed by the Reference Court in appreciating the evidence as discussed above. The claimant has proved that he is entitled to claim the compensation of

Rs.60,000/- per acre. Hence point no.1 is answered in negative.

As to Point no.2:

13. This Court has gone through the entire record and impugned award and came to the conclusion that the claimant has proved that he is entitled to the compensation @ Rs.60,000/- per acre. The Land Acquisition Reference Court had not committed any error of law in appreciating the evidence produced by the appellant. Hence, there are no reasons to interfere with the impugned award. This Court find no substance in the appeal. Hence, the appeal deserves to be dismissed, therefore, the following order is passed :

ORDER

- I) The appeal stands dismissed. No order as to costs.
- II) The award be drawn up accordingly.
- III) Record and proceedings be returned back to the Land Acquisition Reference Court.

(S.G. MEHARE, J.)