

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 279 OF 2022

IN FA NO. 2939 OF 2021

The Executive Engineer

Applicant

versus

Ankitabai Damodhar Honde
(Died) through LRs

Respondents

WITH

REVIEW APPLICATION NO. 280 OF 2022

IN FA NO. 2939 OF 2021

The Executive Engineer

Applicant

versus

Babasaheb Dattu Honde
(Died) through LRs

Respondents

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Mr. Shyam C. Arora, Advocate for the applicant.

Mr. S.R. Yadav-Lonikar, A.G.P. for respondent – State.

Mr. D.M. Kakade, Advocate for respondents – claimants.

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CORAM : SANDIPKUMAR C. MORE, J.

Order Reserved on : 22.11.2022.

Order pronounced on : 12.12.2022.

ORDER :-

1. The applicant – Acquiring Body, who was the original respondent No.3 in First Appeal No. 2939 of 2021 and First Appeal No.2940 of 2021, has filed these two review applications in respect of the common order in the aforesaid appeals dated 14.07.2022 for modification of rate granted by this Court in the aforesaid appeals from Rs. 2250/- per R to Rs. 1500/- per R.

2. Learned Counsel for the applicant - Acquiring Body submits that while deciding the aforesaid appeals, which are filed by the present respondent No.1 – claimants, this Court did not consider the earlier judgments passed by this Court arising out of the same project. According to him, this Court while dealing with the acquisition of land from other villages forming the part of the same project, had granted rate of Rs. 1500/- per R, but in subsequent judgments, this Court, in the aforesaid appeals granted excessive rate i.e. Rs. 2250/- per R being dry land. He pointed out that in the earlier judgments, this Court had granted rate of Rs.1500/- per R in respect of the lands from village Kedarwakdi in First Appeal (St.) No. 1409 of 2013 and First Appeal No. 436 of 2019 and also in First Appeal No. 438 of 2019 for the dry land. He further submits that while deciding the aforesaid appeals, this Court did not dispose of the same on merits, but based on earlier judgment, the rate of Rs. 2250/- was determined which is contrary to the earlier observation of this Court. As such, on the ground of parity, the Acquiring Body is seeking modification of the rate of compensation from Rs. 2250/- per R to Rs. 1500/- per R.

3. On the contrary, the respective respondents – claimants by filing reply in both these review applications, strongly opposed the same on the ground that this Court has properly determined the rate of Rs. 2250/- per R and that too after hearing both the

parties. They pointed out that the rate applicable in respect of the lands of Kedarwakdi cannot be equated with the rate given for the lands at Hondegaon. They pointed out that all the village lands from village Satona (Bk.), Raniwahegaon and Deola were acquired at same time and for same purpose and these villages are adjacent to the village Hondegaon. Learned Counsel for the respondents – claimants pointed out that this Court had granted rate of Rs.2500/- per R for the dry land in respect of the lands at village Satona (Bk.) and Raniwahegaon. Since these villages are situated adjacent to the village Hondegaon, this Court granted the rate at par with the rate granted for these villages, by slightly reducing it to Rs. 2250/- per R. Learned counsel for the respondents – claimants strongly submitted that village Kedarwakadi is situated far away from the village Hondegaon and therefore, the rate applied for lands in village Kedarwakdi cannot be considered for modification under the ground of parity.

4. Heard rival submissions. Perused the documents on record alongwith the judgment under review. Also perused the original record of the aforesaid appeals.

5. Admittedly, it is observed by the Hon'ble Supreme Court in the case of *Ali Mohammad Beigh and others vs. State of J & K* reported in *AIR 2017 SC 1518* as follows :

“When the lands are more or less situated nearby and when the acquired lands are identical and similar and the acquisition is for the same purpose, it would not be proper to discriminate between the land owners unless there are strong reasons. In Union of India vs. Bal Ram and Another (2010) 5 SCC 747, this Court held that if the purpose of acquisition is same and when the lands are identical and similar though lying in different villages, there is no justification to make any discrimination between the land owners to pay more to some of the land owners and less compensation to others”.

6. Though it is contended by the learned Counsel for the applicant Acquiring Body that rate of Rs. 1500/- per R was given earlier by this Court in the judgments as mentioned above, but it appears that the Acquiring Body is relying upon the rates given in respect of the lands at village Kedarwakdi which is of Rs. 1500/- per R. However, the geographical situation in the map available in the record and proceedings of these appeals is somewhat different and it is clearly evident from the said map that village Kedarwakdi is far away from the village Hondegaon. Moreover, on perusal of the said map it is evident that village Satona and village Raniwahegaon appear to be adjacent to village Hondegaon. Therefore, the lands at village Satona and Raniwahegaon being nearer to the land of Hondegaon, there cannot be any discrimination in the rates awarded for those lands and the present lands. On the contrary,

the rate awarded for the land at village Kedarwakdi cannot be equated with the rate awarded for present lands since these lands are situated far away from each other.

7. Further, it has been settled that the potential of the land is to be seen while determining its market value considering the prevailing rate of land in the nearby area. Therefore, I am not in agreement with the submissions of the learned Counsel for the Acquiring Body that there is a need of certain modification by decreasing the rate of present lands from Rs 2250/- per R to Rs. 1500/- per R on the ground of parity. Resultantly, both the review petitions stand dismissed.

(SANDIPKUMAR C. MORE, J.)