

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 1084 OF 2015

1. State of Maharashtra
Through Collector,
Yavatmal.
2. The Sub Divisional Officer & Land
Acquisition Officer, Tq. Darwha,
District Yavatmal
3. The Executive Engineer,
Medium Project Division, Yavatmal,
Tq. & District Yavatmal.

...APPELLANTS

VERSUS

Sau. Latabai W/o Narendra Bhagat,
Aged About 66 years,
Occupation : Household,
R/o Vani Pura, Ner, Tq. Ner,
District Yavatmal

...RESPONDENTS

WITH

FIRST APPEAL NO.1223 OF 2017

The Executive Engineer,
Medium Project Division, Yavatmal,
Tq. & District Yavatmal.

...APPELLANTS

VERSUS

1. Sau. Latabai W/o Narendra Bhagat,
Aged About 66 years,
Occupation : Household,
R/o Vani Pura, Ner, Tq. Ner,
District Yavatmal

2. State of Maharashtra
Through Collector,
Yavatmal.

2. The Sub Divisional Officer & Land
Acquisition Officer, Tq. Darwha,
District Yavatmal

...RESPONDENTS

WITH
CROSS OBJECTION NO.07 OF 2021

Sau. Latabai W/o Narendra Bhagat,
Aged About 66 years,
Occupation : Household,
R/o Vani Pura, Ner, Tq. Ner,
District Yavatmal

...CROSS-OBJECTOR

VERSUS

1. State of Maharashtra
Through Collector,
Yavatmal.

2. The Sub Divisional Officer & Land
Acquisition Officer, Tq. Darwha,
District Yavatmal

3. The Executive Engineer,
Medium Project Division, Yavatmal,
Tq. & District Yavatmal.

...RESPONDENTS

Shri A.M. Kadukar, A.G.P. for State.
Shri M.A. Kadu, Advocate for Acquiring Body.
Shri J.A. Malnas, Advocate for Claimant.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 14th FEBRUARY, 2022

ORAL JUDGMENT :

. Heard. With consent appeals and cross objection are taken up for final hearing, mainly in view of the narrow controversy involved in the matter.

2. These appeals are filed under Section 54 of the Land Acquisition Act, 1894 (for short “the said Act”) by the Acquiring Body and State challenging the judgment and award dated 07.04.2014 in Land Acquisition Case No.237 of 2008. By the impugned judgment, the Reference Court has partly allowed the Reference under Section 18 and enhanced the compensation awarded by the Land Acquisition Officer to ₹24,70,000/- per hectare in respect of 1.41 hectare from Gat No.157/3 of village Ner.

3. The brief facts necessary to decide these appeals are as under:

The Respondent – Sau. Latabai W/o Narendra Bhagat, who shall be hereinafter referred to as the Claimant, was the owner of land admeasuring 1.41 hectare under Gat No.157/3 of village Ner. The said land was acquired for Resettlement of Project Affected Persons, Kolha Ner. The Notification under Section 4 was published

on 15.06.2006. The award was declared on 09.04.2008. The Land Acquisition Officer awarded compensation at the rate of ₹2,29,000/- per hectare. Not being satisfied with the quantum of compensation, the Claimant filed a reference under Section 18 of the said Act. The Reference Court relying upon the sale-deeds dated 27.12.2002 (Exhibit 38) and 10.03.2005 (Exhibit 41), enhanced the compensation to ₹24,70,000/- per hectare. Being aggrieved by the said judgment, the State and the Acquiring Body have filed these appeals and the Claimant has filed cross-objection under Order XLI Rule 22 of the Code of Civil Procedure.

4. Shri M.A. Kadu, learned Counsel for the Acquiring Body and Shri A.M. Kadukar, learned A.G.P for the State submit that the matter is covered by the judgment dated 13.10.2020 passed by the Division Bench of this Court in First Appeal No.1026 of 2014 with other group of matters. They submit that the Division Bench of this Court has determined compensation at ₹22,54,000/- for land admeasuring 1H 61R.

5. Learned counsel for the claimant submits that the Claimants in First Appeal No.1026 of 2014 had not produced the sale-deeds in respect of the same property and as such the Division Bench of this Court had determined the compensation at ₹40/- per square feet. He submits that in the instant case, the Claimant had relied upon the sale-deeds in respect of the lands in the vicinity. He, therefore, submits that the decision of the Division Bench would not be applicable to the facts of the present case and the Claimant is entitled for compensation as awarded by the Reference Court.

6. I have perused the record and considered the submissions advanced by the Counsel for the respective parties. It is not in dispute that the acquired land was a dry crop land situated in village Ner. The Claimant had claimed enhanced compensation of ₹40,00,000/- per hectare and in support of this contention, had relied upon four sale-deeds i.e. :

i) Sale-deed dated 27.12.2002 (Exhibit 38) in respect of Agricultural Land admeasuring 1 acre under Gat No.156 which was sold at the rate of ₹6,00,000/- per acre which is equivalent to ₹15,00,000/- per hectare.

ii) Sale-deed dated 08.09.2004 (Exhibit 39) in respect of agricultural land admeasuring 1 hectare 61 R from Gat No.157/4, which was sold at the rate of ₹12,54,658/- per hectare.

iii) Sale-deed dated 07.04.2004 (Exhibit 40) in respect of NA plot admeasuring 278. 70 per square meter, Survey No.100/2 which was sold at the rate of ₹64,50,000/- per hectare and

iv) Sale-deed dated 10.03.2005 (Exhibit 41) in respect of NA plot 270.5 per square meter from Gat No.153/3 which was sold at the rate of ₹539/- per sq.mtr. equivalent to ₹53,90,000/- per hectare.

7. The Reference Court has not relied upon the sale-deed at Exhibit 39, which is in respect of survey no.157/4, but has valued the land on the basis of sale-deed at Exhibits 38 and 41. It is to be noted that the sale-deed at Exhibit 41 is in respect of small developed plot admeasuring 270.5 sq.mtr. The evidence of AW.1- Anil Kamble, as well as the expert witness AW.2 -Suresh Thakare does not indicate the distance between the said sale deed land Gat No.155/3 and the

acquired land. There is also no evidence to prove that the acquired land had similar advantages possessed by the land Gat No.155/3. Under the circumstances, the sale-deed at Exhibit 41, which pertains to a small develop plot cannot be held to be comparable instance and consequently cannot be relied upon to determine the market rate of the acquired land, particularly when the sale-deed of a plot of similar size from the same survey number is available for determining the market rate of the acquired land.

8. The land under Survey No.156, which is adjoining the acquired land, was sold in the year 2002 under sale deed at Exhibit 38 at the rate of ₹15,00,000/- per hectare and not at the rate of ₹24,00,000/- per hectare as observed by the reference Court. Considering the fact that Section 4 Notification was issued on 15.06.2006 and considering increase in price of NA land 10% per annum and upon adding 40%, the rate of the NA land as on the date of Notification would work out to ₹21,00,000/- per hectare and not ₹33,60,000/-. Be that as it may, this land had NA potentiality. There is no evidence to prove that the acquired land had NA potentiality. Hence,

the acquired land would not have fetched the same price as the sale deed land under survey no. 156.

9. The sale-deed dated 07.09.2004, Exhibit 39 is in respect of Gat No.157/4. The said land forms part of the same property and is the best evidence to determine the market value of the acquired land. This land which is of similar nature was sold at the rate of ₹12,64,658/- per hectare. The said sale-deed was executed 21 months prior to the date of Notification and upon adding 20% i.e.10% per annum towards increase in price of the land, the value of the land as on the date of the Notification works out to ₹14,74,223/-.

10. It is to be noted that in the First Appeal No.1026 of 2014, the Division Bench of this Court has valued the land under Survey No.157/4 admeasuring 1H 61R land at the rate of ₹22,54,000/- which works out to ₹14,00,000/- per hectare. It may be mentioned that the sale-deed at Exhibit 39 which pertains to the property Survey No.154/4 was not relied upon in the said reference. It was under these circumstances, this Court relying upon the agreements and considering other circumstances had valued the land under Survey No.157/4 at

₹14,00,000/- per hectare. In the instance case, the claimant has relied upon the sale-deed in respect of the very same property, on the basis of which the market rate of acquired land is determined at ₹14,74,223/- per hectare.

11. Considering the circumstances and in view of the discussion supra, the appeals are allowed. The market rate of the acquired land admeasuring 1.41 HR from Survey No.157/3 of village Ner is determined at ₹14,74,223/- per hectare with all other statutory benefits. The balance amount, if any, be refunded to the Acquiring Body. Award be modified accordingly.

12. The cross objection is dismissed.

13. Pending Civil Application, if any, shall also stand disposed of. No order as to costs.

JUDGE

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