

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

FIRST APPEAL NO. 627 OF 2017

The Executive Engineer,
 Medium Project Division,
 Vidarbha Irrigation Development Corporation
 Yavatmal

...APPELLANT

VERSUS

1. Nikhil Narendra Bhagat,
 Aged About 49 years, Occ :Farmer,
 R/o Vanipura, Ner, Tq. Ner,
 District Yavatmal
2. State of Maharashtra
 Through Collector, Yavatmal.
3. The Sub Divisional Officer & Special
 Land Acquisition Officer, Tq. Darvha,
 District Yavatmal

...RESPONDENTS

WITH

CROSS OBJECTION NO. 29 OF 2020

Nikhil Narendra Bhagat,
 Aged About 49 years, Occ.: Farmer,
 R/o Vanipura, Ner, Tq. Ner,
 District Yavatmal

...CROSS-OBJECTOR

VERSUS

1. State of Maharashtra
 Through Collector,
 Yavatmal.
2. The Sub Divisional Officer & Land
 Acquisition Officer, Tq. Darvha,
 District Yavatmal

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

...RESPONDENTS

Shri M.A. Kadu, Advocate for appellant.
Shri J.A. Malnas, Advocate for respondent no.1.
Shri A.M. Kadukar, A.G.P. for respondent nos.2 and 3.

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

ORAL JUDGMENT :

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

2. This appeal is filed under Section 54 of the Land Acquisition Act (for short “the said Act”) by the Acquiring Body challenging the judgment and award dated 10.01.2014 in Land Acquisition Case No.235 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 1.61 hectares from Gat No.157/5 of village Ner.

3. The brief facts necessary to decide this appeal are as under:

The respondent no.1 – Nikhil Narendra Bhagat, who shall be hereinafter referred to as the claimant, was the owner of land admeasuring 1.61 hectare in Gat No.157/5 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 said quantum of compensation, the Claimant filed reference under Section 18 of the said Act. The Reference Court relying upon the sale-deed dated 27.12.2002 (Exhibit 38) and sale-deed dated 10.03.2005 (Exhibit 40) and enhanced the compensation to ₹24,70,000/- per hectare. Being aggrieved by this judgment and award, Acquiring Body has filed this appeal and claimant has filed cross-objection under Order XLI and 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 State submit that the case 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 the compensation at ₹22,54,000/- for 1H 61R of the land.

5. Shri J.A. Malnas, learned counsel for the claimant submits that the appeal filed by the acquiring body is not maintainable since the appeal with delay condonation application filed by the State challenging the very same judgment has been dismissed by the Division Bench of this Court. He has relied upon the order dated 26.04.2017, whereby this Court (Coram: N.W. Sambre,J.) had rejected to condone of delay in connected matter in view of the order of the Division Bench.

6. Learned counsel submits that the claimants in the 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 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.

7. I have perused the record and considered the submissions advanced by the counsel for the respective parties.

8. The record indicates that the State had also challenged the impugned judgment in First Appeal Stamp No.21169 of 2014, which was filed with delay condonation application i.e. Civil Application (CAF) No.59 of 2015. The said delay condonation application was dismissed by the Division Bench of this Court on 23.03.2015. The review application filed by the State has also been dismissed. It is to be noted that the respondent had contested the delay condonation application i.e. Civil Application (CAF) No.2072 of 2015 filed in First Appeal Stamp No.11887 of 2015 (First Appeal No.876 of 2016) on the same ground. Order dated 26.04.2017 in Civil Application (CAF) No.2072 of 2015 records that the claimant had opposed the application on the basis of the order dated 23.03.2015 in Civil Application (CAF) No.59 of 2015 in First Appeal Stamp No.21169 of 2014. This Court (Coram: N.W. Sambre, J.) rejected the said contention and condoned the delay and subsequently by order dated 26.04.2017 passed on the same day admitted the said appeal. Similar objections raised by the claimant have already been considered and rejected by this Court (Coram : N.W. Sambre, J.) in Civil Application (CAF) No.740 of 2017 in First Appeal Stamp no.19052 of 2016 (First Appeal No.877 of 2017). Furthermore, the delay in the present case has also been condoned after hearing the party. Hence, the maintainability cannot be challenged on the same ground.

9. 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 40) in respect of NA 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 41) 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 42) 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 43) 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.

10. The Reference Court has not relied upon the sale-deed at Exhibits 41, which is in respect of Survey No.157/4 but has valued the land on the basis of sale-deed at Exhibits 40 and 43. It is to be noted that the sale-deed at Exhibit 43 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 and the acquired land. There is also no evidence to prove that the acquired land had similar advantages possessed by the siad land. Under the circumstances, the sale-deed at Exhibit 43, which pertains to small develop plot cannot be held to be comparable instances and consequently cannot be relied upon to determine the market rate of the acquired land, particularly, when the sale deed of a plot as similar size from the same survey number is available to determine the market rate of the acquired land.

11. The land under Survey No.156, which is adjoining the acquired land, was sold in the year 2002, vide sale deed at Exhibit 40 at ₹15,00,000/- per hectare. 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 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 has NA potentiality. There is no evidence to prove that the acquired land also had NA potentiality. Hence, acquired land would not have fetched the same price as the land under Survey No.156.

12. The sale-deed dated 08.09.2004, Exhibit 41 is in respect of Gat No.157/4. The said land forms part of the same property and is an agricultural land. This land which is of similar nature was sold at the rate of ₹12,64,658/- per hectare. Considering the nature and location of this land, the sale deed at Exhibit 42 can be considered to be a comparable instance to determine the market rate of acquired land. 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/-.

13. It is to be noted that in the First Appeal No.1026 of 2014, this Court has determined the rate of the said land under survey No.157/4 at ₹22,54,000/-. 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 41 which pertains to the

property 154/4 was not relied upon in the said reference. Considering the fact that the claimant in this case has relied upon the sale deed in respect of the same property, on the basis of which the market rate of the acquired land is determined at ₹14,74,223/- per hectare.

14. Considering the circumstances and in view of the discussion supra, the appeal is allowed. The market rate of the acquired land admeasuring 1.61 HR from Survey No.157/5 of village Ner is determined at ₹14,74,223/- per hectare with all other statutory benefits. The balance amount be refunded to the Acquiring Body. Award be modified accordingly.

15. The cross objection is dismissed.

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

JUDGE

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