

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

FIRST APPEAL NO. 337 OF 2016

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

...APPELLANT

VERSUS

1. Abdul Rashid Abdul Sattar,
 Aged about 73 years,
 Occ. Farmer, R/o Ward No.2,
 in-front of Police Station, Ner,
 District Yavatmal.
2. State of Maharashtra,
 Collector, Yavatmal.
3. Sub-Divisional Officer and
 Special Land Acquisition Officer,
 Darvha, Dist. Yavatmal.

...RESPONDENTS

WITH

FIRST APPEAL NO. 965 OF 2016

1. The State of Maharashtra
 Represented by the Collector,
 Yavatmal, Tq. And Distt. Yavatmal.
2. The Sub-Divisional Officer and
 Land Acquisition Officer,

Darwha, District Yavatmal.

...APPELLANTS

VERSUS

1. Abdul Rashid Abdul Sattar,
Aged about 66 years,
Occu. Agriculturist,
R/o. Ward No.2, in front of
Police Station, Ner, Tq. Ner,
District Yavatmal.
2. The Executive Engineer,
Medium Project Division,
Yavatmal.

...RESPONDENTS

Shri J.S. Malnas, Advocate with Shri P.S. Kshirsagar, Advocate
for respondent no.1 in FA No.337/2016.
Shri M.A. Kadu, A.G.P. for Respondent Nos. 2 & 3 in FA
No.337/2016.
Shri N.R. Patil, A.G.P. for Appellants in FA No.965/2016.
Shri J.S. Malnas, Advocate for Respondent No.1 in FA
No.965/2016.
Shri M.A. Kadu, Advocate for Respondent No.2 in FA
965/2016.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 03/02/2022

ORAL JUDGMENT :

. Heard. With consent appeals 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 by the Acquiring Body and State challenging the judgment and award dated 10/01/2014 in Land Acquisition Case No.238/2008. 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 Rs.24,70,000/- per hectare in respect of 2.02 hectares from Gat No.157/1 of village Ner.

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

The Respondent No.1, who shall be hereinafter referred to as the Claimant was the owner of land admeasuring 2.02 hectare in Gat No.157/1 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 Rs.2,29,000/- per hectare. Not being satisfied with the said compensation, the Claimant filed reference under Section 18 of the Land Acquisition Act. The Reference Court relying upon the sale-deed dated 27/12/2002 (Exhibit 40) and sale-dead dated 10/03/2005

(Exhibit 43) and enhanced the compensation to Rs.24,47,000/- per hectare. Being aggrieved by this judgment and award, the State and Acquiring Body have filed these appeals.

4. Shri Kadu, learned Counsel for the Acquiring Body submitted that the case is covered by judgment dated 13/10/2020 passed by the Division Bench of this Court in First Appeal No.1026/2014 with other group of matters. He submits that the Division Bench of this Court has determined the compensation at Rs.22,54,000/- for 1H 61R of the land.

5. The Counsel for the Claimants submits that the Claimants in the said case 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 Rs.40/- per Square feet. He submits that in the instant case, the Claimants 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 Claimants are 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 Claimants had claimed enhanced compensation of Rs.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 Rs.6,00,000/- per acre which is equivalent to Rs.15,00,000/- per hectare.

ii) Sale-deed dated 07/09/2004 (Exhibit 41) in respect of agricultural land admeasuring 1 hectare 61 R from Gat No.157/4, which was sold at the rate of Rs.12,54,658/- per hectare.

iii) Sale-deed dated 07/04/2004 in respect of NA plot admeasuring 278. 70 per square meter, Survey No.100/2 which was sold @ Rs.64,50,000/- per hectare and

iv) Sale-deed dated 10/03/2005 in respect of NA plot 270.5 per square meter from Gat No.153/3 which was sold at Rs.539/- per sq.mtr. equivalent to Rs.53,90,000/- per hectare.

7. The Reference Court has not relied upon the sale-deeds at Exhibits 41 and 42 and has valued the land on the basis of sale-deeds at

Exhibits 42 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 land under Gat No.153/3 and the acquired land. There is also no evidence to prove that the acquired land had similar advantages possessed by the land Gat No.153/3. Under the circumstances, the sale-deeds at Exhibit 42 and 43 which pertain to small develop plots cannot be held to be comparable instances and consequently cannot be relied upon to determine the market rate of the acquired land, particularly when sale instance of the adjoining land of similar size and nature or the sale instance in respect of the same property is available.

8. The land under Survey No.156 is NA land, which is adjoining the acquired land, was sold in the year 2002 vide sale-deed at Exhibit 40 at the rate of Rs.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 NA land as on the date of Notification would work out to Rs.21,00,000/- per hectare. There is no evidence to prove that the acquired land had NA potentiality.

9. The sale-deed dated 07/09/2004, Exhibit 41 is in respect of Gat No.157/4. The said agricultural 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 Rs.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 Rs.14,74,223/-.

10. It is to be noted that in the First Appeal No.1026/2014, the Division Bench of this Court has valued the land under Survey No. 157/4 admeasuring 1H 61R land at the rate of Rs.22,54,000/- which works out to Rs.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. It was under these circumstances that this Court, relying upon the agreements and considering other circumstances had valued the land under Survey No. 157/4 at Rs.14,00,000/- per hectare. In the instant case, the claimants have relied upon the sale-deed in respect of the very same property, on the basis of which the market rate of the acquired land is determined at Rs.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 2.02 HR from Survey No.157/1 of village Ner is determined at Rs.14,74,223/- per hectare with all other statutory benefits. The balance amount be refunded to the acquiring body. Award be modified accordingly.

JUDGE

R.S. Sahare