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

**FIRST APPEAL NO.349 OF 2012**

1. Mohan s/o Maluramji Agrawal,  
Aged about 60 years, occupation cultivation,  
business.

2. Santosh s/o Rameshwarji Agrawal,  
Aged about 55 years, occupation cultivation  
and business.

Both r/o Arvi, tahsil Arvi, district Wardha. .... **Appellants.**

**:: V E R S U S ::**

1. The State of Maharashtra (through  
its Collector) Wardha.

2. The Special Land Acquisition  
Officer, (General), Wardha.

3. The Rehabilitation Officer, Wardha.

4. The Executive Engineer, Lower  
Wardha Project Division, Wardha. .... **Respondents.**

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Shri P.P.Pendke, Counsel for Appellants.

Shri U.A.Gosavi, Counsel for Respondent No.4.

Shri T.A.Mirza, Assistant Public Prosecutor for Respondent Nos.1 to 3.

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**CORAM** : **ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.**

**DATE** : **09/12/2022**

**ORAL JUDGMENT (Per : Urmila Joshi-Phalke, J.)**

1. Heard learned counsel for respective parties.

2. By this appeal filed under Section 54 of the Land  
Acquisition Act, 1894 (for short, "the said Act"), appellants challenge  
judgment and award dated 28.9.2011 passed by learned 3<sup>rd</sup> Joint

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Civil Judge Senior Division, Wardha in Land Acquisition Case No.286/2001 whereby learned Judge of the Reference Court enhanced compensation.

3. Appellants/claimants filed the appeal for enhancement of compensation awarded by learned Judge of the Reference Court.

4. The Executive Engineer, Lower Wardha Project Division, Wardha also filed First Appeal No.832/2015 challenging the same award which is impugned in the present appeal passed by learned Judge of the Reference Court. During pendency of appeals, the appellant in First Appeal No.832/2015 decided to withdraw the said appeal as compensation awarded by learned Judge of the Reference Court is within four times in view of Government Notification dated 3.11.2016 and learned counsel Shri U.A.Gosavi for the appellant in the said appeal made a statement to that effect. Hence, today i.e. 9.12.2022 First Appeal No.832/2015 is disposed of as withdrawn.

5. The land bearing survey No.79 admeasuring 7H 97R situated at mouza Jam, M.No.54, P.H. No.1 at Arvi Tahsil, Arvi, district Wardha was the subject matter of acquisition by virtue of Notification under Section 4 of the said Act dated 25.3.1996. The acquisition was for construction of houses and delivery of plots to the displaced persons. The Land Acquisition Officer has passed the

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award on 14.6.1999 and claimants received the notice under Section 12 (2) of the Said Act on 27.10.1989. By the said award, the Land Acquisition Officer has determined the market price of land only at the rate of Rs.3,83,527/-. The claimants filed reference proceedings seeking enhancement in the amount of compensation. Learned Judge of the Reference Court by its award enhanced the amount of compensation at the rate of Rs.5,75,408/- per hectare to the claimants for their acquired land survey No.79 admeasuring 7H52R at mouza Jam, mouza No.54, PH No.8 at Arvi, Tahsil Arvi, district Wardha along with 30% solatium and 12% additional compensation after deducting the actual amount paid to them. The claimants being dissatisfied and aggrieved with the said amount of compensation filed First Appeal No.349/2012 before this Court.

6. As per contention of learned counsel Shri P.P.Pendke for appellants/claimants that learned Judge of the Reference Court erred in partly allowing the reference filed by them. As per contention of claimants, learned Judge of the Reference Court ought to have awarded compensation at the rate of Rs.7,50,000/- per hectare. The claimants have filed on record the agreement of sale and the facts and evidence produced on record which show the quality, location and potentiality of the land which were not considered by learned Judge of the Reference Court. It is further contention of the

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claimants that the agreement dated 5.12.1995 wherein the land was valued @ Rs.7,50,000/- per hectare was pressed on record and the said transaction was genuine transaction. Thus, there was sufficient material relating to location of land and the high quality of land, but learned Judge of the Reference Court had not considered the same and wrongly determined the compensation at the rate of Rs.5,75,408/-. By First Appeal No.349/2012, the claimants prayed for modification of the judgment and award by awarding compensation at the rate of Rs.7,50,000/- per hectare for land admeasuring 7H97R from survey No.79 situated at mouza Jam, tahsil Arvi, district Wardha.

7. In case, where claimant seeking enhancement of compensation, it is necessary for him to lead necessary evidence regarding the location, size, shape, tenure, user, and potentiality of the land sold to be compared with the acquired land.

8. Learned counsel Shri P.P.Pendke for appellants/claimants submitted that learned Judge of the Reference Court ought to have considered the agreement relied upon by claimants which shows that at the relevant time the land was valued at the rate of Rs.7,50,000/- per hectare. The claimants have also adduced the evidence of Vinaychand Manikchand Lunawat who entered into an agreement with claimants and agreed to sale the said land. They decided the

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consideration amount at the rate of Rs.3,00,000/- per acre and claimant Mohan Agrawal accepted Rs.25,000/- as earnest amount. Thus, the evidence of said Vinaychand sufficiently shows that at the relevant time the acquired land was valued at the rate of Rs.3,00,000/- per acre which is not considered by learned Judge of the Reference Court and wrongly came to the conclusion and awarded the compensation at the rate of Rs.5,75,408/- per hectare. Thus, the award passed by learned Judge of the Reference Court deserves to be modified by awarding the compensation at the rate of Rs.7,50,000/- per hectare.

9. On the other hand, learned Assistant Government Pleader Shri T.A.Mirza for the State supported the judgment and award by learned Judge of the Reference Court.

10. Learned counsel Shri U.A.Gosavi for respondent No.4 - The Executive Engineer, Lower Wardha Project Division, Wardha submitted that claimants failed to adduce any evidence in support of their claim to show that the valuation at the time of acquisition of the acquired land was at the rate of Rs.7,50,000 per hectare. Except the evidence of one Vinaychand Manikchand Lunawat, no other evidence is placed on record to support the claim of enhanced compensation. No sale instance is placed on record to support the said contention. In absence of the evidence, learned Judge of the Reference Court has

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considered the judgment passed in LAC No.280/2001 wherein survey No.103 situated at mouza Jam was under consideration and the land was acquired in view of the same award which is in question in the present matter bearing No.20/LAQ-47/1995-1996 in which the compensation was enhanced to the said land at the rate of Rs.5,75,408/-. As the land of the claimants is also from village Jam and acquired by the same award, learned Judge of the Reference Court considered the judgment passed in LAC No.280/2001 and awarded the compensation. He submitted that as learned Judge of the Reference Court has rightly considered the earlier judgment, in which the land from the same village was considered for grant of compensation, there is no merit in the appeal and the appeal is liable to be dismissed.

11. In view of the rival submissions, the following points arise for determination :

(1) Whether the compensation as awarded by learned Judge of the Reference Court is liable to be enhanced?

(2) Whether the judgment and award by learned Judge of the Reference Court deserves to be modified?

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12. Having heard learned counsel for respective parties at length, we have perused the record of the case with their able assistance.

13. It can be seen that Notification under Section 4 of the said Act dated 25.3.1996 was published in the Government Gazette on 11.4.1996. The same was also published in Local Newspaper and a public notice was also published on 15.6.1996. The acquisition of the land was for construction of houses and delivery of plots to the displaced persons. As regards the location of the land and to substantiate the claim, the claimants have examined as many as 3 witnesses. Out of them, claimant Mohan s/o Maluramji Agrawal is examined as PW1 (Exhibit-36), Vinaychand Manikchand Lunawat is examined as PW2 (Exhibit-47), and Vijay Ambadas Ingle is examined as PW3 (Exhibit-87). The claimants have also placed on record documentary evidence that is copy of award Exhibit-3, claim statement Exhibit-4, exchange deed without consideration Exhibit-44, Issar Patra Exhibit-45, the agreement of cancellation of agreement of sale Exhibit-46, notice Exhibit-45 sent to the claimants by Vinay, reply Exhibit-51 sent by claimant No.1 to Vinay, 7/12 extracts (Exhibits-65 to 69) of survey Nos.79/1, 79/2, 98/1, 98/2, and 102 and Exh.65 to 69. Map Exhibit-70 of mouza Chandni, maps Exhibits-71 and 72 of mouza Jam, copies Exhibits 73 and 74 of order

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of SDO, Arvi, mutation extract Exhibit-75, extracts Exhibits-76 and 77 of 8A, copy of objection to the notice under Section (4) (1) Exhibit-78 sent to the counsel for claimants, copy of reply to the notice Exhibit-79, copy of claim statement in view of receipt of notice under Sec 9(3) is at Exhibit-80, postal receipt and acknowledgement are at Exhibits-81 and 82. On the other hand, respondent the Executive Engineer, Lower Wardha Project Division, Wardha examined Shri Shailendra Meshram vide Exhibit-98.

14. By this appeal, the claimants claimed the enhancement of the compensation. The Honourable Apex Court in the case of Viluben Jhalejar Contractor (Dead) By Lrs vs. State of Gujarat [2005(5) ALL MR 449 (SC)] held that the amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from the time angle as well as proximity from situation angle for determining the market value of the land under acquisition, suitable adjustment having regard to the various positive and and negative factors. Paras 18 to 20 of the judgment read thus:

*"18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is*

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*in possession and enjoyment of the property and in the cases where he is not.*

*19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.*

*20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:*

Positive factors

- (i) smallness of size
- (ii) proximity to a road
- (iii) frontage on a road
- (iv) nearness to developed area

Negative Factors

- (i) largeness of area
- (ii) situation in the interior at a distance from the road
- (iii) narrow strip of land with very small frontage compared to depth
- (v) lower level requiring the depressed portion to be filled up

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|                                                                                                             |                                                                          |
|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| (v) regular shape                                                                                           | (v) remoteness from developed locality                                   |
| (vi) level vis-s-vis land under acquisition                                                                 | (vi) some special disadvantageous factors which would deter a purchaser. |
| (vii) special value for an owner of an adjoining property to whom it may have some very special advantage." |                                                                          |

15. Needless to mention that that the claimants have to produce reliable evidence on record that at the relevant time the market value of the property was at the rate of Rs.7,50,000/- per hectare. The evidence of claimant Mohan shows that he reiterated the contentions as per his application for reference. The claimants have also examined PW2 Vinaychand Manikchand Lunawant who deposed in support of agreement of sale dated 5.12.1995 and the evidence of PW3 Vijay is to the extent regarding the business of claimant Mohan and regarding agreement of sale. The first objection of the claimants regarding the area of acquired land as per claimants, the compensation for 0.45R was not given by the Special Land Acquisition Officer at the time of passing award and they are entitled for compensation to the extent of 0.45R. The claimants relied upon certified copy of award dated 14.6.1999 which reflects that at the time of enquiry under Section 4(a) by the Special Land

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Acquisition Officer claimants Mohan and Santosh filed an application mentioning that area of 5H 54R of survey No.79/2 was mentioned as 2H42R. Though they are given sufficient opportunity for production of extract of gaon namuna, they have not produced the same. During the cross-examination of Mohan he admitted that he has not taken any action for correction of the area though the acquired areas is shown incorrectly. The claimants produced maps Exhibits-71 and 72 which show that acquired land from survey No.79 is adjacent to the road and the acquired land is acquired for rehabilitation purpose. Admittedly, while determining the compensation, various factors like location, size, shape, tenure, user, and potentiality of the land is to be considered and, therefore, claimants are under obligation to lead necessary evidence for that purpose. In a reference under Section 18 of the said Act on the question of adequacy of compensation determined by the Collector, the burden to prove that the Collector's award does not correctly determine the amount of compensation payable to the landowner is upon the owner concerned. It is for the claimant to prove that the amount awarded by the Reference Court needs enhancement and if so, to what extent. The claimant can do so by adducing the evidence whether oral or documentary on the basis of which the compensation payable to the owners is to be determined. Therefore, the claimants intend to seek higher compensation to the acquired land. The burden is on them to

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establish by proof that the compensation granted by the Land Acquisition Officer or learned Judge of the Reference Court is inadequate and they are entitled to higher compensation. That could be established only by adducing of evidence of the comparable sale transactions of the land acquired or the lands in the neighbourhood possessed of similar potentiality or advantages.

16. It is not in dispute that the claimants before us did not led any evidence in support of their claim before learned Judge of the Reference Court to prove that the market value of the land acquired from the ownership was more than what was awarded by the Land Acquisition Officer. The order passed by learned Judge of the Reference Court nowhere makes any reference to such evidence. Absence of any such evidence was, therefore, bound to go against the claimants. So long as the claimants fail to discharge the burden casted on them, there was no question of granting any enhancement. Learned Judge of the Reference Court had considered the earlier judgment wherein the lands situated of the same village and acquired by the same award was considered. Learned Judge of the Reference Court had observed that in LAC 280/2001 survey No.103 situated at mouza Jam and of the same award in which the compensation is enhanced at the rate of Rs.5,75,408/- per hectare and accordingly awarded the compensation at the same rate.

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17. It was submitted by the learned counsel for claimants that learned Judge of the Reference Court had not considered the agreement dated 5.12.1995 and also the evidence of PW2 Vinaychand Manikchand Lunawant who agreed to purchase the said land and agreement to sale was executed between them. It is pertinent to note that the date of agreement to sale is of 5.12.1995 and it reveals from Exhibit-3 that date of award of the Land Acquisition Officer is 1.1.1996. There is only difference of 25 days. The said agreement to sale is not supported by any sale instance to show that the market value of the property at the relevant time was Rs.7,50,000/-. Merely on the basis of agreement to sale, regarding which the question whether the real transaction was entered into or not arises, the claim of the claimants cannot be accepted. Though the claimants contended that the acquired land is best suitable land for non agricultural purpose, having its high quality, no evidence is adduced in support of the same. In absence of the evidence, learned Judge of the Reference Court came to the conclusion that in absence of any affirmative evidence the market value ascertained in another land by learned Judge of the Reference Court is to be taken into consideration and learned Judge of the Reference Court had taken it into consideration and awarded the compensation.

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18. Suffice it to say that in facts and circumstances of the present case, as no evidence, having been adduced by the claimants, either documentary or oral, no question of enhancing the compensation arises. The failure or the omission to lead evidence to prove the claim would result into the dismissal of the appeal as the claimants failed to adduce any evidence in support of their contentions. The appeal deserves to be dismissed. Hence, we proceed to pass following order:

**ORDER**

(1) The First Appeal is **dismissed**.

(2) The appellants/claimants are at liberty to withdraw the amounts Rs.47,55,965/- along with accrued interest deposited in the Court of Civil Judge Senior Division, Wardha on 10.3.2011 and amount of Rs.34,99,906/- along with accrued interest deposited in this Court on 22.10.2012, on due verification and identification.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

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