



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

19 FIRST APPEAL NO.950 OF 2018

Nandkishor s/o Vishwanath Chaudhari Died
Through his L.Rs.

- 1) Sangeeta w/o Nandkishor Chaudhari,
Age; 44 years, Occ; Household,
- 2) Sneha D/o Nandkishor Chaudhari,
Age; 34 years, Occ; Education,
- 3) Nikhil s/o Nandkishor Chaudhari,
Age; 22 years, Occ; Education,

All R/o; Jamgaon, Tq. Ashti,
District ; Beed.

...APPELLANTS
(Orig. Claimants)

VERSUS

- 1) The State of Maharashtra,
- 2) The Executive Engineer,
Minor Irrigation Division,
Zilla Parishad, Beed.
District; Beed.

...RESPONDENTS
(Orig. Respds.)

...
Advocate for Appellants : Mr. Shubham Jaybhar h/f
Mr.Jayabhar Dattatraya R.
AGP for Respondents/State : Mr.S.K.Shirse
Advocate for Respondent No. 2 : Ms. G.N. Chincholkar
...

CORAM : KISHORE C. SANT, J.

DATE : 30.11.2023.

PER COURT :

1. By consent taken up for final disposal. Perused the Record and Proceedings. An appeal is by the Original Claimants for enhancement in the amount of compensation towards acquisition of their land. The land of the appellants were acquired for percolation tank No. 5, at village Jamgaon, Tq. Ashti, District; Beed. The land of the appellants came to be acquired to the extent of 1 Hector 29 Are i.e. 25.5 Are from Survey No. 104 i.e. Gut No. 558 and 1 Hector 3.5 Are from the land Gut No. 127 I.e. Gut No. 566 from the same village. The learned SLAO determined the value of the land @ Rs. 734/R. The claimants, therefore, filed the Reference claiming the rate @ Rs. 1970/-R.

2. In the reference, the claimants produced two sale instances on record. First one is dated 26.08.1997 at Exh. 13, wherein the land of 20R was sold for an amount of Rs. 48,000/- i.e. @ Rs. 3600/R. The another sale instance was produced at

Exh. 14, wherein, the land ad-measuring 18 R was sold for Rs. 50,000/- i.e. @ 2777/-. He submits that thus, by giving an enhancement of 10% per year in the year 2002 when notification under Section 4 published which comes to Rs. 4165/-. Considering just instance at Exh. 14. As there would be the value addition of 10% per R and they prays that on the basis of judgment of the Apex Court reported in **AIR 2014 SC 793** in the case of Pehlad Ram Vs. Haryana Urban Development Aurhotiry and Ors. He further submitted that though the claimants had claimed only Rs.1950/R, it was for the Court to award the just and fair compensation at the prevailing market rate. He relied upon the judgment **AIR 2011 SCW 5749** in the case of Ambya Kalya Mhatra (D) by L.Rs. and Ors. Vs. State of Maharashtra.

3. He submitted that the land of some other land owners also came to be acquired from the same village and they had also filed the references. In the said references the Court had granted Rs. 2,000/R for dry land. The said award was opposed by the Government by letter dated 21.02.2012. It is seen from the said letter that in LAR No. 198 of 2007, the Government has opposed the said rate. He submits that

considering this position the learned reference Court has enhanced compensation and granted rise of Rs. 1250/- and therefore, he is required to file an appeal. He thus prays that an amount be enhanced and be paid @ Rs. 4165/- considering the sale instances at Exh. 14.

4. The learned Advocate for respondent No. 2, the Acquiring Body vehemently opposed the appeal. She submits that infact the learned SLAO had rightly determined the value of the land by considering the market rate. Thereafter, in the Reference the said is enhanced to Rs. 1250/-. The Acquiring Body however, did not prefer any appeal considering the small area of land under acquisition. She further submits that the sale instances at Exh. 13 and 14 are in respect of seasonally irrigated land, whereas, the land of the claimant was a dry land. The claimant could not produce on record anything to show that his land was seasonally irrigated land. So far as, the acquiescence is concerned, she submits that since the area and the amount of compensation was not huge and in that view the same awards were not challenged. She submits that the proper valuation would be of Rs. 2,000/R. She further submits that

the judgment in the case of *Ambya Kalya Mhatra (supra)* was in the facts of that case. Hon'ble Court had considered that many a time the persons whose lands are acquired may not know exact value of land and it is in that case it was held that the Court can award more compensation than claimed by the claimants. So far as the judgment in **AIR 2012 SC (Supp) 616** in the case of *Spl. L.A.O. City Improvement Trust Board Vs. S.G. Channabasavana Gowds and Anr. Etc.* She submits that the said cannot be applied. Not in every land there is value addition @ 10% per year.

5. The learned AGP adopted the arguments of learned Advocate for Respondent No. 4.

6. This court finds that so far as the factual aspect is concerned the claimants had rightly proved Exh. 13 and 14 and there is no dispute about the said. The rate at which those lands are shown needs to be taken as market value. It is not the case of the respondent, Acquiring Body that those sale deeds were executed on getting knowledge of acquisition of land. Considering the dates as it is, there is difference of 5 years

between the sale deed executed and the date of Section 4 notification which is published on 11.04.2004. As there is not even remote possibility of execution of sale deeds with knowledge of the acquisition in future. This Court, thus, holds that the said sale instances need to be relied upon for the purpose of determining the value of land by adding 10% per year towards value addition and the same comes to Rs. 4,165/-.

7. The question now before this Court is, as to whether the claimant has proved that the land was also seasonally irrigated land. From the record there is nothing to show that the land of the claimants was also seasonally irrigated land. Said land is therefore rightly treated as dry land. Thus, considering this aspect, this Court finds that from the amount of Rs. 4165/R, 25% amount needs to be deducted to come to conclusion to determine the value of the dry land. If the 25% amount is deducted the rate would come to Rs. 3123/R. This Court finds that the Reference therefore needs to be allowed considering the just and fair rate to be of Rs. 3123/-. In view of the same, following order :

ORDER

- a) The appeal is partly allowed.
- b) The award is modified. The rate of Rs. 3123/- per R and the amount of difference be paid to the Claimants within a period of six months from today, along with interest as applicable, as per the judgment in the case of **2016 (4) All M.R. 513** - State of Maharashtra Vs. Kailash Shiva Rangari.
- c) Award be drawn up accordingly.
- d) Needless to say that the claimants/appellants shall not be entitled to interest part for a period of delay i.e. 3183 days.

**(KISHORE C. SANT)
JUDGE**

mahajansb/