

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.761 OF 2004

Shahu s/o Babu Anandgaonkar
Age : 22 years, occu. Agriculture,
R/o Bhatagali, Tq. Omerga,
Dist. Osmanabad

... APPELLANT

VERSUS

1. The State of Maharashtra,
Through Collector, Osmanbad,
2. The Tahsildar,
Omerga, Tq. Omerga,
Dist.Osmanbad

...RESPONDENTS

...
WITH

FIRST APPEAL NO. 762 OF 2004

1. Shankar s/o Mahadeo Patil (died)
His Legal heirs -
1. Surekha w/o Shankar Patil,
Age : 36 years, occu.: Household,
R/o Bhatagali, Tq. Omerga,
Dist. Osmanabad.
2. Prashant s/o Shankar Patil,
Age : 11 years, occu.: Minor,
3. Varun s/o Shankar Patil
Age : 10 years, occu.: Minor,
Claimant No.1 and 2 are the minors
U/g. of their real mother No.1
Surekha Shankar Patil.
4. Sarika w/o Shahuraj Anandgaonkar
Age : 19 years, occu.: Household,
R/o As above.

... APPELLANTS /

(Orig. Claimants)

VERSUS

1. The State of Maharashtra,
Through – Collector, Osmanabad.
2. The Tahsildar,
Omerga, Tq. Omerga, Dist. Osmanabad.

...RESPONDENTS

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Advocate for the Appellants : Mr. V. V. Ingale
AGP for Respondents : Mr. B. V. Virdhe
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CORAM : SANDIPKUMAR C. MORE, J.**RESERVED ON : 30.01.2023****PRONOUNCED ON : 02.02.2023****JUDGMENT :**

The appellants in both these appeals have challenged the common judgment and award dtd. 24.04.2003 passed by the learned Civil Judge, Senior Division, Osmanabad (hereinafter referred to as the 'learned Reference Court'), in their respective L.A.R. Nos. 288/1990 and 92/1992.

2. The appellants are the original claimants and by way of these appeals, they are claiming enhancement of the compensation granted by the learned Reference Court.

3. It appears that respective lands of applicants -claimants were acquired for the resettlement of village Bhatagali affected by Lower Terna Project, Makani Project. Under the award passed by the Special Land Acquisition Officer dtd.24.11.1987 compensation was granted to the appellants for their respective lands at the rate of Rs. 12,000/- per hector. Since it was claimed by the appellants that market value of their lands was Rs. 25,000/- per acre, they claimed compensation of Rs. 20,000/- per acre. However, the learned Reference Court awarded compensation at the rate of Rs. 16,000/- per acre.

4. The learned counsel for the appellants submits that the learned Reference Court failed to appreciate the evidence on record and granted meager amount of compensation. He pointed out that the appellants had relied upon the sale instance of 1982 of Mangrul village wherein the market price of the lands was around Rs. 22,000/- per acre, but still the said sale instance was ignored by the learned Reference Court. He also pointed out that this Court in another matter had in fact relied upon the same sale instance and granted rate of Rs. 22,000/- per acre in First Appeal No. 326/1999.

5. The learned counsel for the appellants also placed his reliance on the judgment of the Hon'ble Apex Court in the case of *Chandrashekar and others vs. Additional Special Land Acquisition Officer*, reported in *AIR 2009 Supreme Court 3012*, wherein it has been discussed as to how the previous judgment of same Court is admissible in the subsequent matters.

6. On the contrary, the learned AGP strongly opposed the submissions made on behalf of the appellants and pointed out that the sale instance which the appellants had relied, was in respect of land at village Mangrul which is situated at a distance of 2.5 kms. from the lands of appellants at village Bhatagali. He also pointed out that the learned Reference Court had in fact found that the land at Mangrul was sold along with well, pipeline and other facilities, but the lands of present appellants were not having such facilities. He pointed out that witness Vyankat of the appellants, who had sold the land at village Mangrul, also admitted that distance between the land at Mangrul and the lands of present appellants was of 2 kms. Further, he also admitted that there were sale transactions took place in respect of the lands in village Bhatagali. Even, the Special Land Acquisition Officer had

considered the sale instances of village Bhatagali for passing the award under Section 11 of the Land Acquisition Act. The appellants have failed to bring any such sale instance from village Bhatagali on record before the learned Reference Court. Thus, he prayed for dismissal of the appeal.

7. With the assistance of rival counsel, I have gone through the impugned judgments and awards and also the record and proceedings of First Appeal No. 761 of 2004.

8. Admittedly, the lands under acquisition of the appellants belonged to village Bhatagali. Though the learned counsel for the appellants placed reliance the judgments of this Court in First Appeal No. 326/1999, wherein the same sale instance of village Mangrul was relied upon to grant compensation of Rs. 22,000/- per acre, but in the judgment relied upon by him in the case of *Chandrasekar and Ors. V. Addl. Special Land Acquisition Officer (supra)*, the Hon'ble Apex Court has given certain tests as to how the previous judgments of the same Court is admissible in subsequent cases. It has been specifically observed by the Honourable Apex Court as follows :

''(B) Land Acquisition Act (1 of 1894), S. 23, S. 54 –

Determination of market value – Previous judgment of same Court – Admissibility – Important Test.

For a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of that same Court case. However, the requirement is that it must have been proved by the person relying upon such judgment by adducing evidence aliunde and that due regard being given to all other attendant facts and circumstances it could furnish the basis for determining the market value of the acquired land, is the more important test for admission of such previous decision of the High Court for determination of the market value of the land acquired in the present case."

On going through the aforesaid observations, it is clearly evident that the previous judgment of the same Court cannot be relied upon blindly to arrive at particular conclusion in respect of the compensation, but Court has to consider other attendant facts also. Here, admittedly, the sale instance of village Mangrul which is at Exhibit 52 is relied upon by this

Court to enhance the compensation in the First Appeal No.326/1999, but on going through the impugned judgments, it is clearly evident that the learned Reference Court has given sufficient reasons as to why the said sale instance cannot be applied here as a comparable sale instance. The contents of said sale-deed itself show that the vendor i.e. the witness of appellants by name Vyankat had sold the land along with well, electric pump and 500 ft. pipeline. Moreover, a judicial note was also taken by the learned Reference Court that there was distance of around 2 kms. between the land at Mangrul for which the aforesaid sale transaction was done and village Bhatagali. It is extremely important to note that nothing has been brought on record by the appellants -claimants to show that there were wells, pipelines and electric pump in their lands under acquisition.

9. Moreover, it is clearly evident that the seller of aforesaid land at Mangrul has been examined by the appellants, but he has specifically admitted in the cross-examination that there were also sale instances in respect of lands at village Bhatagali. It is also important to note that the S.L.A.O. had in fact considered the sale instances from village Bhatagali while passing the award under Section 11 of the Act. However, the

appellants did not care to bring on record such sale instances to show what was the market value of the lands at village Bhatagali. Therefore, in view of the observations made by the Honourable Apex Court in the judgment relied upon by the appellants, the sale instance at Exhibit 52 in respect of the land at village Mangrul cannot be a sole basis for enhancement of the compensation. Other attendant facts and circumstances are also required to be considered.

10. The learned AGP strongly placed his reliance on the judgment of the Honourable Apex Court in the case of *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona*, reported in *1988 AIR (Supreme Court) 1652*, wherein various modes and factors which are to be considered for determining the market value of the lands, are given. It is clearly held by the Honourable Apex Court in the said judgment that award by Land Acquisition Officer cannot be treated as judgment of Land Acquisition Officer, it is merely an order and material used by the Land Acquisition Officer and therefore cannot be utilized by the Court unless proved before it. It is also held that Court has to treat the reference as an original proceeding and determine the market value afresh on the basis of material produced before it. In the instant matter,

the appellants have produced before the learned Reference Court only the aforesaid sale instance of village Mangrul which cannot be considered as a comparable sale instances, since the sale instances were also available from village Bhatagali but not produced. Moreover, the land at village Mangrul was sold along with well, pipeline and electric pump, but the appellants have not brought any evidence on record that their lands were also having the same facilities. Even otherwise also the learned Reference Court has enhanced the compensation at the rate of Rs. 16,000/- per acre from the compensation granted by S.L.A.O. at the rate of Rs. 12,000/- per hector. Thus, it appears that the learned Reference Court despite their being any satisfactory evidence on record has enhanced the compensation amount substantially and therefore, no substance appears in these appeals. Resultantly, I pass the following order :

ORDER

- (i) Both the appeals stand dismissed.
- (ii) Parties to bear their own costs.

(SANDIPKUMAR C. MORE)
JUDGE

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