

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**FIRST APPEAL NO. 510 OF 2003**

Madhavrao Hanmantrao Patil  
Age : 44 years, occ : agri.,  
R/o Khirsamunder, Tal. Degloor,  
District Nanded.

Appellant  
(original claimant)

Versus

1. The State of Maharashtra  
Through Collector, Nanded  
District Nanded.

2. The Sub Divisional Officer  
And Land Acquisition Officer,  
Degloor, District nanded.

Respondents  
(original respondents)

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Mr. V.D. Gunale, Advocate for the appellant.  
Mr. P.M. Kulkarni, A.G.P. for respondents.

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**CORAM : SANDIPKUMAR C. MORE, J.**

Judgment Reserved on : 03.07.2023.  
Judgment pronounced on : 13.07.2023.

**Judgment :**

1. The present appellant i.e. the original claimant has challenged the judgment and award dated 26.09.2022 passed by the learned Civil Judge (Senior Division), Biloli (hereinafter referred to as the "learned Reference Court") in

L.A.R. No. 114/1998, in this appeal for further enhancement of compensation in respect of acquisition of his land bearing Survey No.10/A, admeasuring 25 Aar situated at Khirsamunder, Taluka Degloor, District Nanded (hereinafter referred to as the “acquired land”).

2. The background facts are as under :

. The appellant – claimant was the owner and possessor of the acquired land which was acquired by the Special Land Acquisition Officer (SLAO) for the purpose of extension of Abbadi area. Notice under Section 4 of the Land Acquisition Act, 1894 (for short, “the Act”) was issued on 22.02.1990 and earlier to that, it was also published in daily newspapers “Godatir Times” and “Satyaprabha” on 02.04.1989 and on 29.03.1989 respectively. Accordingly the SLAO passed award and granted compensation of Rs. 9,545/- to the appellant for the acquired land. The appellant accepted the amount of compensation under protest and filed the aforesaid land reference. The appellant had claimed compensation at the rate of Rs. 4,000/- per Aar, but the learned Reference Court, vide the impugned judgment and award, granted compensation in respect of the acquired land at the rate of Rs. 531.80/- per Aar. Feeling aggrieved by the said rate, the appellant has filed this appeal for further

enhancement of the compensation.

3. The learned Counsel for the appellant submits that since there was demand in the aforesaid village for construction of house since 1980, the appellant had already converted the acquired land for non agricultural use and he had in fact sold 1 Aar land from the same for Rs. 2,500/- in the year 1986 itself. He further submits that the learned trial Court wrongly ignored the comparative sale instances to that effect which were duly proved by the claimant. According to him, the learned Reference Court also did not consider the N.A. permission granted by the Revenue Authority in the year 1983 itself. Therefore, he claims that compensation awarded by the learned Reference Court is too meager and it needs to be enhanced at the rate of Rs. 4,000/- per Aar.

4. On the contrary, learned A.G.P. supported the impugned judgment and pointed out that the learned Reference Court has justified its finding in proper manner by considering every aspect. According to him, the compensation is within four times, and therefore, the Acquiring Body did not file appeal. He submits that the sale instances relied upon by the appellant – claimant are not in fact comparable sale instances, since those are outcome of loan transaction. Thus, he claimed that the appeal needs to

be dismissed as sufficient amount is already granted to the appellant – claimant.

5. Heard rival submissions. Also perused the entire documentary and oral evidence on record.

6. It is significant to note that the purpose of acquisition was to extend the Abbadi area of village Khirsamunder, and therefore, obviously the acquired land was adjacent to Gavthan area. From perusal of the impugned judgment, it appears that the learned Reference Court though discussed the comparable sale instances of the same area wherein price of the land is shown as Rs. 2,500/- per Aar in the year 1986, but refused to rely upon them, since the market price of the acquired land as calculated under the said rate, was exorbitant i.e. Rs. 1,00,000/- per Acre, and therefore, increased the compensation granted by SLAO twice. However, there is no proper justification reflected in the judgment for granting such increase.

7. On perusal of the comparable sale deeds at Exhs.33 and 34, it is evident that both the sale deeds are executed on the same date and same time i.e. on 01.12.1986 at about 3.00 to 4.00 p.m. Moreover, consideration in both the sale deeds i.e. Rs. 2,500/- per Aar is also similar. Further, both the sale deeds appear to be executed in view of

earlier loan transaction and they are only in respect of smaller portion of 1 Aar. Under such circumstances and in the light of the observation of Hon'ble Apex Court in number of judgments that the sale deed for smaller portion cannot be taken as comparable sale instance in case of acquisition of larger land, the same appear doubtful.

8. However, even though the aforesaid sale deeds are kept aside, but the fact cannot be ignored that the acquired land was converted by the appellant claimant for N.A. purpose in the year 1983 itself. N.A. permission to that effect is also filed on record by the appellant before the learned Reference Court at Exh.31. Moreover, the Challan for N.A. tax is also on record at Exh.32. Thus, it appears that the appellant had already converted the acquired land for non agricultural use much prior, i.e. almost 7 years, before the date of notification under Section 4 of the Act. The learned Reference Court, though referred the order at Exh.31 in respect of non agricultural use of the acquired land, but did not discuss anything on this aspect. On the contrary, it appears that the learned Reference Court marginally increased the amount of compensation by relying upon certain judgments and that too by ignoring the documentary evidence on record which has been proved. It is significant to

note that the learned Apex Court in the case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and another*** reported in ***AIR 1988 SC 1652*** has already opined that the Reference Court must treat the land reference proceedings independently irrespective of the award passed by the learned SLAO and must decide the same on the basis of material produced before it and proved by the appellant – claimant.

9. As such, considering the documentary evidence on record and considering the fact that the sale instances were in respect of smaller plots for which rate of Rs. 2,500/- per Aar was determined, the learned Reference Court should have at least granted half rate as that of mentioned in those sale deeds to the land under acquisition. There is no justification by the learned Reference Court as to why it came to conclusion to award compensation at the rate of around Rs. 531.80 per Aar. Thus, considering the important fact that the acquired land was already converted for the purpose of non agricultural use, I find it proper to award compensation in respect of the acquired land at the rate of Rs. 1250/- per Aar alongwith statutory benefits which are already granted by the learned Reference Court. Thus, considering all these aspects I find it proper to enhance the compensation by Rs.720/- per

Aar in addition to what is granted by the learned Reference Court in respect of the acquired land alongwith all the statutory benefits thereon. As such, the following order is passed

### **ORDER**

- (i) The appeal is partly allowed.
- (ii) The appellant is entitled for additional enhanced compensation at the rate of Rs.720/- per Aar for the acquired land i.e. Survey No.10/A, admeasuring 25 Aar, situated at village Khirsamunder, Taluka Degloor, District Nanded alongwith all the similar statutory benefits thereon as granted by the learned Reference Court.
- (iii) The respondents shall deposit the aforesaid amount of additional compensation after carrying out the necessary calculations and on deposit of such amount, the appellant – claimant is permitted to withdraw the same.
- (iv) The award be modified accordingly.
- (v) The appeal is accordingly disposed of.

**(SANDIPKUMAR C. MORE, J.)**