

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

FIRST APPEAL NO.1109 OF 2007

Rajnitai w/o Shankarrao Satav,
Age : 60 year, Occu.Housewife,
R/o : Kalamnuri, Tq. Kalamnuri,
Dist. Hingoli

**... APPELLANT /
(Original Petitioner)**

VERSUS

1. The State of Maharashtra,
Through the Collector, Hingoli,
Dist. Hingoli.
2. The Special Land Acquisition
Officer, Hingoli. Dist. Hingoli,
3. District Social Welfare Officer,
Social Welfare Office, Hingoli,
Dist. Hingoli.

**...RESPONDENTS
(Orig. Respondents)**

...
WITH

FIRST APPEAL NO.3672 OF 2008

1. The State of Maharashtra,
Through the Collector, Hingoli,
2. The Special Land Acquisition
Officer, Hingoli.
3. District Social Welfare Officer,
Social Welfare Office, Hingoli

**... APPELLANTS /
(Ori. Respondents)**

VERSUS

Rajnitai w/o Shankarrao Satav,
Age : 50 year, Occu.Agric.
R/o : Kalamnuri, Tq. Kalamnuri
Dist. Hingoli.

**...RESPONDENT
(Ori. Claimant)**

Advocate for the Appellant : Mr. Pushpak U. Gujrathi h/f.
Mr. V. P. Latange
AGP Respondent -State : Mr. B. V. Virdhe
Respondent No. 3 : Served.

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 22.11.2022

PRONOUNCED ON : 05.01.2023

JUDGMENT :

Both these appeals are filed challenging one and the same judgment and award dtd. 25.04.2007 passed by the learned Civil Judge Senior Division at Hingoli (hereinafter referred to as 'the learned Reference Court') in L.A.R. No. 01 of 2000. The original claimant is the appellant in First Appeal No. 1109 of 2007 and she has filed the said appeal for enhancement of the compensation. As against this, First Appeal No. 3672/2008 has been filed by the State -Acquiring Body challenging the enhanced compensation granted by the learned Reference Court. Since both these appeals are in respect of one and the same judgment, the same are taken for disposal by common judgment.

2. The background facts are as under :

The Government issued notice under Section 4 of the Land Acquisition Act ('the Act' for short), on 04.09.1997, whereby land

Survey No. 167 to the extent of 2 H. 31 R. equivalent to 23100 sq. mtrs. situated at Kalamnuri, Taluka Kalamnuri, District Hingoli belonging to the appellant -claimant was acquired for construction of Government Boys' Hostel. The claimant, after receiving notices, claimed that the compensation be determined at Rs. 200/- per square meter aggregating Rs. 46,20,000/- for the land under acquisition as it was converted for non-agricultural purpose in the year 1988 itself. The Special Land Acquisition Officer, however, did not consider the rate claimed by the claimant and granted compensation at the rate of Rs. 27.65 ps. per square meter despite considering the sale instances as mentioned in the award. The learned Reference Court enhanced the compensation amount by granting rate of Rs. 50/- per square meter against the claim of appellant -claimant of Rs. 200/- per sq.mtr. Hence, the claimant is before this Court for further enhancement. On the contrary, the State -Acquiring Body has also filed its appeal feeling aggrieved by the rate of Rs.50/- per square meter.

3. The learned counsel for the appellant -claimant in First Appeal No. 1109 of 2007 vehemently argued that though the sale instances produced before the S.L.A.O. showing the rates of the adjacent lands of the acquired land were ranging from 130 to 400 within the period from 1994 to 1998, but the S.L.A.O. granted meagre amount of

compensation by determining the rate only of Rs. 27.65 ps. per square meter. He further submits that the Reference Court by ignoring the comparable sale instances in respect of adjacent lands, determined the rate only of Rs. 50 per sq. mtr. He pointed out that there is no explanation or reasons by the learned Reference Court as to how the rate of Rs. 50/- per sq. mtr. was determined. Admittedly, the acquisition is of the year 1997 and there is also no dispute that the land under acquisition was already converted to non-agricultural purpose in the year 1998 itself i.e. before the acquisition. The learned counsel further submits that despite specific evidence led in respect of the rate of the adjacent land being around of Rs. 200/- per sq.mtr. supported by the sale-deeds, the learned Reference Court failed to appreciate the same. He further submits that though the learned Reference Court considered the admission given by the S.L.A.O., where he had stated that the rate of acquired land was more than Rs. 200/- at the time of acquisition, but while considering the value, very less amount was determined.

4. On the contrary, the learned AGP on behalf of State -Acquiring Body strongly opposed the submissions made on behalf of the claimant -appellant submitted that the Reference Court had enhanced the compensation exorbitantly without any base.

5. Heard rival submissions. Also perused the impugned judgment along with the award of Special Land Acquisition Officer and Record and Proceedings of L.A.R. No.01/2000 with the assistance of learned AGP as well as learned counsel for the claimant.

6. Though it is contended by the State-Acquiring Body that the L.A.R. filed by the appellant -claimant was not within the limitation period, but on perusal of the impugned judgment specially the finding of learned Reference Court in respect of issue No.2, it appears that there is no substance in the contention of State -Acquiring Body that the L.A.R. was time barred. So far as determination of compensation in respect of the acquired land is concerned, it is evident that S.L.A.O. has determined rate of Rs. 27.65 ps. per sq.mtr. which has been enhanced by the learned Reference Court to Rs. 50/- per sq. mtr. It is significant to note that the appellant -claimant has examined herself and also examined two witnesses, who had purchased the plots from adjacent land bearing Sy.No. 187/1 wherein rates of those plots were mentioned as Rs. 216/- per sq. mtr. and Rs. 207/- per sq. mtr. Moreover, the original award passed by the S.L.A.O. at Exhibit 66 also indicates that the S.L.A.O. had considered the sale instances in respect of the adjacent lands for the period from the year

1994 upto 1998. The chart in the said award indicates that the rate per square meter in respect of those lands were ranging from 130 per sq.mtr. to 400 per sq. mtr. in the abovesaid period. Further, it is clearly mentioned in the said award that the acquired land i.e. Sy.No. 167 was already converted for non-agricultural use before the acquisition under the order of Collector dtd.19.10.1988. Further, it is also observed in the said award that the village map and spot inspection report indicated that the land Sy. No.170 is situated adjacent to the acquired land. Further, the chart also indicates that the rate ranging from Rs. 166 per sq. mtr. to 180 per sq. mtr. was shown in respect of sale transaction out of the said Sy.No.170. The last sale instance appears to be of dtd.18.06.1997 wherein rate of Rs. 180/- per sq. mtr. is granted to the plot admeasuring 100 sq. mtr. in the land Sy.No.170. The present acquisition is of 1997 and therefore, the transaction dtd.18.06.1997 from the land Sy.No.170 can be considered as comparable sale instance wherein rate of Rs. 180 per sq. mtr. is mentioned.

7. It is significant to note that the learned S.L.A.O. has also considered the report of Assistant Director, Town Planning, Valuation, Aurangabad (A.D.T.P., Valuation, Aurangabad), wherein the rate of acquired land was determined as Rs. 63/- per sq. mtr. on the basis of

ready recknor. It was observed by A.D.T.P., Valuation, Aurangabad in the said report that the land under acquisition was having non-agricultural potential, but for considering the same, the area of 33% of the said land required to be deducted on account of roads, garden and other public utility. Thus, the A.D.T.P., Valuation, Aurangabad had opined that only $2/3^{\text{rd}}$ of the total area of acquired land was available for selling. However, the rates mentioned in ready recknor are only for the purpose of collecting the revenue on transaction, but the market value of the land can be determined by comparable sale instances in respect of the lands nearby the acquired land.

8. The learned Reference Court, after considering the evidence on record, has come to the conclusion that the comparable sale instances from Sy.No.187/1 were doubtful, mainly because one witness admitted in cross-examination that he had not received the consideration in advance, but before the learned Registrar. However, on perusal of the said sale-deed, there is no complaint in respect of the rate determined by the parties. Merely because there was ambiguity as to when the consideration amount actually received by the vendor, the rate in the said sale-deed around Rs. 200/- per R. cannot be doubted. Moreover, even if those sale-deeds at Exhibits 46 and 47 are kept aside for a while, then also the sale instances recorded

in the original award passed by the S.L.A.O. in respect of Sy. No. 170 which according to the map Exhibit 68 from the Record and Proceedings, indicate that the rate in the year 1997 for Sy.No. 170 was of Rs. 180/- per sq.mtr. It is extremely important to note that the learned Reference Court has determined the rate of Rs. 50/- per sq. mtr. in respect of the acquired land as against the claim of Rs. 200/- per sq. mtr. of the claimant, only because the sale instance produced by the claimant at Exhibit 47 was for smaller area or for the plot. Besides this, there is no reason assigned by the learned Reference Court in justification of determination of rate of Rs. 50/- per sq.mtr.

9. It is also important to note that the State -Acquiring Body has examined the learned S.L.A.O., who passed the original award, as its witness No.1 i.e. D.W.1. It is highly surprising that the said S.L.A.O. has clearly admitted in his cross-examination that at the time of acquisition, the rate of acquired land was more than Rs.200/- per sq. mtr. Such type of admission cannot be ignored specially when the same S.L.A.O. had considered the sale instances in respect of the lands in the vicinity of acquired land which were ranging from Rs. 130 per sq. mtr. to Rs. 400/- per sq. mtr. in the period from 1994 to 1998. As such, while determining the just compensation, the rate of Rs.

180/- per sq. mtr. was to be considered either by the S.L.A.O. or the learned Reference Court.

10. However, the sale instances referred by the S.L.A.O. as well as the learned Reference Court, were in respect of small plots of the larger lands. Therefore, one has to take into consideration the opinion of A.D.T.P., Valuation, Aurangabad that generally 33% of the land is required to be left for construction of roads, gardens and public facilities while converting the land into plots. Therefore, the rate of Rs. 200/- per sq.mtr. available on record in respect of the adjacent land was for the plot area. Therefore, deduction of 33% is required from the rate of Rs. 180/- per sq.mtr. to determine the rate of plot from the acquired land having non-agricultural potential. Thus, on such determination the rate of acquired land comes to Rs. 120/- per sq. mtr. and according to my opinion, the petitioner is entitled for the compensation at the said rate for the acquired land Sy.No.167 to the extent of area admeasuring 2 H. 31 R. equivalent to 23100 sq.mtrs. As such, the rate determined by the learned Reference Court is apparently erroneous. Moreover, there cannot be further decrease in the rate determined by the learned Reference Court as claimed by the State -Acquiring body in its appeal. Thus, the appeal filed by the claimant -appellant needs to be allowed partially and the appeal filed

by the State -Acquiring Body needs to be dismissed.

11. In view of the same, I pass the following order :-

ORDER

- (i) The First Appeal No. 1109 of 2007 is partly allowed.
- (ii) The market value of the acquired land Survey No. 167 to the extent of 2 H. 31 R. situated at Kalamnuri, Taluka Kalamnuri, District Hingoli is determined at the rate of Rs. 120 per square meter and therefore, the appellant is held entitled for enhancement as per the calculations at the aforesaid rate.
- (iii) The appellant is also entitled for statutory benefits such as solatium and additional compensation as granted by the learned Reference Court under the provisions of Land Acquisition Act on the enhanced compensation.
- (iv) The appellant is also entitled for the interest under Sections 28 and 34 of the Act on the enhanced amount of compensation from the date of passing of award under Section 11 of the Act i.e. 28.04.1999.

- (v) The Acquiring Body shall deposit the amount of such enhanced compensation along with the interest and statutory benefits as awarded, within three months from the date of this order and on such deposit the appellant is at liberty to withdraw the same.
- (vi) The award in the aforesaid First Appeal No. 1109 of 2007 be modified accordingly.
- (vii) The First Appeal No. 3672 of 2008 filed by the State - Acquiring Body stands dismissed.
- (viii) The pending Civil Applications, if any, also stand disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

shp/-

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