IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3896 OF 2019

Pandharinath Raghunath Jadhav
Age : 60 years, Occu. Agri.
R/o. Kaygaon Road, Gangapur,
Tq. Gangapur, Dist. Aurangabad .. Appellant

Versus

1. The State of Maharashtra
Through the Special Land Acquisition Officer,
Jayakwadi Project -1,
Collector Office, Aurangabad.

New Address – Dy. Collector (Land Acquisition),
S.D.O. Office, Vaijapur, Dist. Aurangabad.

2. The Executive Engineer,
Nandur Madhmeshwar Canal Divison,
Vaijapur, Tq. Vaijapur,
Dist. Aurangabad. .. Respondents

Mr. Nandkishor J. Pahune Patil, Advocate for the Appellant.
Mr. S. B. Pulkundwar, AGP for Respondent No. 1.
Mr. B. R. Surwase, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 10th OCTOBER, 2023.

ORAL JUDGMENT :-

. Heard both the parties.

2. The original claimant whose land is acquired by respondent No. 2 has filed this appeal challenging the award passed under Section 18 of the Land Acquisition Act by the learned Joint Civil Judge Senior

Division, Vaijapur dated 10.11.2017 in land acquisition reference No. 27/2011. A challenge is only to the extent of deducting 50% of the amount of compensation under the head of development charges/betterment charges. So far as rate at which the award is passed is not under dispute.

3. The facts in short are that the land of the claimant was acquired for the purpose of construction of Canal. Total 18 Guntha land was acquired by fixing the rate of compensation at the rate of Rs. 3,500/- per R. The claimant therefore filed reference contending that on the date of award the rate was Rs. 40,000/- to Rs. 50,000/- per R. The land is situated in the Municipal Council limits. The Municipal Council is a well developed town and a Taluka place. The claimant also produced on record a certificate issued by the Municipal Council, Gangapur at Exhibit 10 to show that the land is situated in the Municipal Council limits. It is further case of the claimant that, since the land is situated in the Municipal Council limits, it is having N.A. potential. To prove his case the claimant produced on record a sale deed dated 12.01.2007 in respect of a land which is just 150 ft. away from his land. The said sale deed is of 12.01.2007 and therefore it is relevant considering the date of award as the award is published on 22.09.2007. The said instance was in respect of dry land and that was

sold for Rs. 4,41,000/- i.e. at the rate of Rs. 22,050/- per R.

4. The learned Trial Court also considered and accepted the sale deed and there is no dispute about the same as the Reference Court has also taken into consideration 5% rise in the cost of land.

5. Learned advocate Mr. Pahune Patil for the appellant heavily criticizes the aspect of deduction of 50% betterment/development charges. He submits that, even in the cases where the non agricultural lands are acquired only 15% of the amount is deducted towards betterment charges while granting layout, permission etc. The planning authorities considered that 15% land goes in providing civil amenities and public road etc. He submits that, in this case the land is agricultural land and not non agricultural land and therefore, such deduction under the head of betterment charges is not applicable at all.

6. Learned advocate for respondent No. 2 – acquiring body submits that, the learned Reference Judge has rightly considered the aspect. It is considered that, the land is situated in the Municipal limits and will be put in non agricultural limits and therefore, betterment charges rightly deducted.

7. This Court has considered the submissions and the judgment. As fairly submitted by learned advocate Mr. Pahune Patil for the appellant

that he is not disputing the rate at least the compensation is awarded, but he has raised challenge only to the extent of deduction of 50% amount towards betterment charges. This Court from the discussion in the judgment finds that Court has not discussed as to why it has arrived at the conclusion to deduct 50% amount towards betterment charges. Assuming the betterment charges are applicable even then it was necessary to consider that in normal course the planning authority reserved 15% of the land for amenities and public road etc. Considering that, this Court finds that deduction of 50% amount towards betterment/development charges is certainly on the higher side. This Court finds that, at the most it should have been taken to be 15% of the compensation. Thus, this Court finds that, as per the calculation by the Reference Court the award is of 4,16,736/-. The total amount by deducting 63,000/- already granted. The appellant held to be entitled to Rs. 1,45,368/-. If the rate per R is taken to be 23,152/- less 15% towards betterment charges Rs. 3,472/- is considered, then the rate per R would be 19,680/-. Thus, the total amount would come to Rs. 3,54,240/- less the amount actually awarded by the S.L.A.O.

8. The award shall stand modified by considering the deduction at the rate of 15% towards betterment/development charges.

9. With this, the appeal stands disposed off. Decree be drawn accordingly.

(KISHORE C. SANT, J.)

P.S.B.