



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

1065 FIRST APPEAL NO. 1105 OF 2008

Rameshlal S/o. Murlidhar Chechani,
Age. 50 years, Occ. Agri.,
R/o. Shelgaon, Tq. Badnapur, Dist. Jalna,
through special power of Attorney
Omprakash Murlidhar Chechani,
Age. 60 years, Occ. Agril,
R/o. Shelgaon, Tq. Badnapur, Dist. Jalna.Appellant

Versus

1. The State of Maharashtra
Through Collector, Jalana.
2. Special Land Acquisition Officer,
Collector Office, Jalna.
3. Executive engineer Minor Irrigation
Z.P., Jalna, Dist. Jalna.Respondents

Advocate for Appellant : Mr. K.J. Suryawanshi
Advocate for Respondents : Mr. V.M. Chate

CORAM : SHAILESH P. BRAHME, J.

Judgment reserved on : 20th December, 2023
Judgment pronounced on : 09th January, 2024

JUDGMENT :

1. Heard learned counsel for both the sides finally.
2. This Appeal is by the claimant for enhancement of the compensation for his land acquired by the respondents. The appellant is challenging the quantum of compensation awarded by learned District Judge-II, Jalna, vide judgment and order dated 26.10.2007 in LAR No. 101 of 1997.

3. It is undisputed that the appellant was the owner of land Gat No. 34 situated at Village Haldola, Taluke Badnapur, District Aurangabad, which is acquired by the respondents. Following are the relevant dates and events :

Sr. No.	Events	Dates	Rates
1.	Notification under Section 4	29.10.1993	-----
2.	Award by SLAO	23.04.1996	Rs. 380/- Per Are
3.	Judgment in LAR No. 101 of 1997	26.10.2007	Rs. 380+180= 560
4.	Claim of the appellant	-----	Rs. 800/- Per Are

4. In award dated 23.04.1996, the appellant was awarded compensation at the rate of Rs. 380/- per Are. It was enhanced to Rs. 560/- per Are by the Reference Court. The rate of Rs. 800/- per Are and in the alternative Rs. 690/- per Are is claimed by appellant is the limited controversy involved in this Appeal.

5. The appellant has placed on record sale deed dated 17.01.1996, of the land measurement 53 Are from Village Dawalwadi. He has also relied on the rate of Rs. 690/- per Are awarded by Reference Court in LAR No. 588 of 1998 for the land Gat No. 486/1 of Village Dawalwadi. The appellant adduced oral evidence of his power of attorney Mr. Omprakash Murlidhar Chechani.

6. The appellant submits that the rate awarded by the Reference Court at Rs. 560/- per Are is inadequate and it ought to have been Rs. 800/- per Are. The Reference court failed to appreciate sale

instance of 17.01.1996, disclosing rate of Rs. 3773/- per Are. Learned counsel further submits that Reference Court erred in holding that sale instance stated above cannot be made applicable because the land of the petitioner is from Village Haldola.

7. Learned counsel further submits that on the ground of parity the rate awarded by Reference Court in LAR No. 588 of 1998 of Rs. 690/- per Are should have been awarded. He seeks reliance upon judgment rendered in the matter of *State of Maharashtra Versus Sahadu Aba Shete and others*, **2009 (1) ALL MR 186**.

8. To repel the submissions of the appellant, learned AGP would submit there is no evidence led by the appellant to claim rate of Rs. 800/- per Are. The sale deed produced on record has no probative value and inadmissible. The vendor or the purchaser of the sale were not examined. The notification under Section 4 was issued on 29.10.1996, whereas the sale instance is of 17.11.1996. As per Section 23 (1) of the Land Acquisition Act (hereinafter referred to as 'The Act' for the sake of brevity and convenience), the Reference Court rightly discarded the same.

9. Learned AGP further submits that mere production of the sale deed is not sufficient. The appellant failed to produce any sale instances or judgments rendered by the Reference Court in respect of the lands from Village Haldola. He has placed reliance on *AP State Road*

Transport Corporation, Hyderabad Versus P. Venkaiyya and others, **AIR 1997 Supreme Court 2600** and *Kaware Singh Versus Union of India*, **AIR 1999 Supreme Court 370**.

10. Considering rival submissions of the parties, following points are framed :

POINTS

- i. Whether sale deed dated 17.01.1996 of Village Dawalwadi, can be considered to decide the rate of the land for awarding compensation.
- ii. Whether the appellant is entitled to the rate of Rs. 800/- per Are.
- iii. Whether the appellant is entitled for alternate rate of Rs. 690/- per Are.
- iv. Whether judgment and order passed by the Reference Court needs any interference.

REASONS

Point No. (i)

11. Learned counsel for the appellant has heavily relied upon sale deed dated 17.01.1996, which is in respect of 53 Are of land 07 Village Dawalwadi which is 3 km away from Village Haldola, where the acquired land is situated. The sale deed produced on record has not been exhibited. The rate in the sale deed is Rs. 3773/- per Are. The witnesses examined by the appellant is his real brother.

12. Though the sale deed is not exhibited, nothing is elucidated from the cross-examination of the witnesses casting doubt about the sale deed. The objection of the respondents for the sale instance is on the basis of the date of notification under Section 4 and date of execution of sale deed. Another objection is in respect of the place of the land. The witness of the appellant has referred to above referred sale instance.

13. The Act is a benevolent legislation. In the absence of serious challenge to the execution of the sale deed and its content, the submissions of learned AGP that the sale deed has not been exhibited or vendor / purchaser has not been examined, carries no force. It is hyper technical approach of the Court to refuse to look into sale instance which is apparently of the comparable nature.

14. Learned counsel for the appellant has referred to paragraph nos. 19 to 22 of the judgment rendered by Bombay High Court in *State of Maharashtra Versus Sahadu Aba Shete and others* (supra). In that matter also reference Court rejected the sale deed on the ground that it was from another village. The submissions of learned AGP on the ground of the place of the land are disapproved in paragraph No. 19.

15. In paragraph no. 21 of the said judgment the reliance is placed on the judgment rendered in the matter of *State of Maharashtra Versus Smt. Bhimabai Bhika Gondal*, **2007 (6) ALL MR 215**. The distance between Village Dawalwadi and Haldola is just 3 km which is

not disputed by learned AGP. I hold that the sale instance cannot be discarded out rightly. It is a sale instance of adjacent village and comparable one.

16. The judgment cited by learned AGP in the matter of *AP State Road Transport and Kawar Singh* (supra) may not be applicable to the present case. Though production of the sale deed does not dispense with the proof of the contents of the documents, in the present matter there is no challenge to the contents of the sale deed. The judgments may not help the respondents. I, therefore, answer Point No. (i) in affirmative.

Point No. (ii)

17. I have already recorded that sale deed dated 17.01.1996 is reliable one. The objection of learned AGP for deciding the rate on the basis of sale deed dated 17.01.1996, which is executed much after notification under Section 4 issued on 29.10.1993, is worth consideration. There is statutory provision of Section 23 (1) of the Act to consider rate prevailing at the time of issuance of notification under Section 4. Though, sale instance is after the period of three years from notification dated 29.10.1993, it cannot be discarded out-rightly. The appellant is claiming rate of Rs. 800/- per Are. The sale instance shows the rate of Rs. 3773/- per Are. The appellant is not entitled to the rate of Rs. 3773/- which is even not his claim. I find that the rate claimed by the appellant is reasonable. Learned Reference Court erred in granting rate of Rs. 560/- per Are instead of Rs. 800/- per Are.

18. Another aspect of the matter of which a judicial notice needs to be taken is the policy of the Government. Respondent no. 1 – Government has proclaimed Government Resolution dated 03.11.2016 and the corrigendum dated 23.02.2017 and dated 13.08.2018. The State has proposed to not to file Appeal against the Reference Court if the rate awarded by Reference Court is within four times of rate awarded by SLAO. When the Government has decided to not to challenge the rate if it is within fore-time. The contest of learned AGP in the present matter for the rate of Rs. 800/- is incomprehensible and misplaced. In the present matter also the rate of Rs. 800/- per Are claimed by the appellant is within slab of four times of the rate of Rs. 380/- per Are awarded by SLAO. I find that the petitioner is entitled to rate of Rs. 800 per Are. Accordingly, I answer point no. 2 in the affirmative.

Point No. (iii)

19. I have held that the appellant has proved that he is entitled to rate of Rs. 800/- per Are, I need not address Point No. 3, which according to me is redundant. However, in the alternative argument of the appellant I do approve that at least rate of Rs. 690 per Are should have been awarded which was the rate prescribed in LAR No. 588 of 1998 in the matter of Abdul Karim whose land was from Village Dawalwadi.

20. The Reference Court has relied on the rate awarded in LAR No. 102 of 1997, as it is the land from the same village. However, when

better sale instance is available, the Reference Court committed mistake in restricting the rate by relying on LAR No. 102 of 1997.

Point No. (iv)

21. For the reasons recorded above for point nos. 1 and 2, I am of the considered view that the quantum fixed by the Reference Court is inadequate. There is improper appreciation of evidence so far as fixation of the rate is concerned. However, I do not propose to interfere in the consequential benefits including rate of interest awarded by the Reference Court. The judgment and order passed by Reference Court needs modification to the extent of the rate of Rs. 800/- per Are instead of Rs. 560/- per Are payable to the appellant. The consequential benefits need no interference.

22. The appellant shall be entitled to compensation at the rate of Rs. 800/- per Are and the award be drawn after calculating the compensation by modified rate along with consequential benefit. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]