



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

FIRST APPEAL NO. 1117 OF 2003

. The State of Maharashtra,
Through the Collector,
Osmanabad

**.. Appellant
(Ori. Respondent)**

Versus

. Shripati Nivrutti Mitkari,
Age: Major, Occu: Agri.,
R/o. Kanherwadi, Tq. Kallam,
District. Osmanabad

**.. Respondent
(Ori. Claimant)**

...
AGP for Appellant : Mrs. Priya R. Bharaswadkar
Advocate for Sole Respondent : Mr. M. B. Kolpe
...

CORAM : ARUN R. PEDNEKER, J.
Reserved On : 16.01.2024
Pronounced on : 19.01.2024

JUDGMENT:

1. Heard.
2. The land of the claimant was acquired by notification under Section 4 of the Land Acquisition Act dated 02.03.1994, situated at village Kanherwadi, Taluka – Kallam, in Gut No.94, to the extent of 59 Are for the purpose of project of percolation tank. For the acquired land, the Land Acquisition Officer had granted rate of land of Rs.18,000/- per

Hector and the claimant had accepted the amount under protest and filed the reference.

3. The claimant claimed that the acquired land was of superior quality and that the land had a well and other facilities. The claimant in the reference proceedings filed evidence in terms of sale deeds at Exhibit 20 and Exhibit 21 of the Taluka place Kallam, so also, sale deed instance at Exhibit 20 of village Kanherwadi, which is the adjacent land at 250 ft. away from the acquired land of the claimant, so also, the claimant led evidence of Pratap Vasantrao Kavade, through Exhibit 33, who was the witness to the sale deed, where the similarly placed land was sold for Rs.75,000/- per Acre in the year 1994. He also led evidence of one Mr. Ramchandra Shankarrao Baraskar, consulting engineer and approved valuer / civil engineer for the purpose of valuation of the well, Tal (stone paul) and cattle shade. The valuation given by Mr. Ramchandra Shankarrao Baraskar for well is Rs.1,06,559/-, for the Tal (stone paul) as Rs.39,000/- and for the cattle shade the valuation is Rs.30,500/-, so also, as per the claimant there were 250 sandalwood plants on the acquired land. In support of the valuation of the sandalwood plants, no evidence was led by the claimant.

4. Per contra, the state has not led any evidence as far as the land price is concerned but has led evidence of Mr. Mukund Bhagwanrao

Pandav, Deputy Engineer (Irrigation) in irrigation department. He has produced valuation report prepared by the department. The valuation report indicates the valuation of well as Rs.15,993/-, the valuation of cattle shade as Rs.7,564/- and the valuation of stone paul as Rs.2,384/- and he had applied the D.S.R. rates for the year 1994 – 1995 in preparation of the valuation report.

5. The reference court after considering the material on record accepted the Exhibit 20, as a land price of Rs.75,000/- per Acre as the land is similarly placed and situated just 250 ft. away from the acquired land, so also, the sale instance is just prior to the date of acquisition of Section 4 notification. I see no error in the order of the reference in court in accepting the price of the land at Rs.75,000/- per Acre as a similarly situated land which is just 250 ft. away from the acquired land is sold at Rs.75,000/- per Acre and the evidence suggests that the land of the claimant is comparatively better than the land which was sold at Exhibit 20 in terms of the sale deed by Exhibit 20.

6. As far as the sandalwood plants are concerned, the reference court has granted Rs.100 per plant as there is an evidence that 250 sandalwood plants were in the acquired area and the same was mentioned by the defense witness in his cross-examination. Thus, the costs granted of Rs.100/- per plant is neither exorbitant nor excessive. As

such, the award granting Rs.25,000/- at the rate of Rs.100/- per plant can be accepted without any further correction.

7. As regards the construction of the well is concerned, the defense has examined an expert, who on examination has stated that the well is a constructed well i.e. the well is not merely a digged well but has a construction of brick from inside. Thus, the valuation of the well of Rs.1,06,559/- is not excessive. The contra evidence placed on record in terms of the valuation report given by the acquiring body. The acquiring body / State has not examined the valuer. Thus, the reference court has accepted the valuation given for the well can be accepted as it is. So also, the valuation of the cattle shade of Rs.30,500/- and the Tal (stone paul) of Rs.39,000/-, cannot be said to be excessive, as it is based on the evidence of the expert valuer, who has deposed in the court. Whereas the author of the valuation report submitted by the State / Acquiring Body was not examined by the State / Acquiring Body. The reference court in totality accepted the valuation report given by the claimant and has rejected the valuation report given by the acquiring body on the count that the evidence was not given by the valuer, only valuation report was produced.

8. There is no independent evidence as regards the construction costs of the well produced by the claimant, however, it cannot be said

that the valuation report by Mr. Ramchandra Shankarrao Baraskar is highly inflated. In view of the above, discussion, the valuation of well, Tal (stone paul) and cattle shade is also accepted.

9. In view of the same, the First Appeal is dismissed.

[ARUN R. PEDNEKER, J.]

marathe