



**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 1043 OF 2002

Rajaram s/o. Laximarayan Yadav
Died L.Rs.

1. Smt. Shakuntalabai w/o. Rajaram Yadav,
Age 60 yrs., Occu. Household,
R/o. Vaazirabad Chowk, Govardhan
Ghate Road, Nanded.
2. Shankarlal s/o Rajarm Yadav,
Age 37 yrs., Occu. Business,
R/o. As above.
3. Lalchand s/o. Raajram Yadav,
Age 34 yrs., Occu. Business,
R/o. As above.
4. Sardar s/o. Rajaram Yadav,
Age 32 yrs., Occu. Business,
R/o. As above.
5. Sitaram s/o. Rajaram Yadav,
Age 28 yrs., Occu. Business,
R/o. As above.

....Appellants

Versus

1. The State of Maharashtra
Through Collector, Nanded.
2. The Special Land Acquisition Officer,
Upper Penganga Project, Nanded.

....Respondents

Mr. D.R. Bhadekar, Advocate for appellants.
Mrs. P.R. Bharaswadkar, AGP for respondents.

**CORAM
DATED**

**: ARUN R. PEDNEKER, J.
: 30/01/2024**

JUDGMENT :

1. The present first appeal is filed by the original claimants, challenging the judgment and award dated 20.12.1994 passed by the learned 3rd Additional District Judge, Nanded (reference court) in L.A.R. No. 88/1988,

by which the reference court was pleased to partly allow the reference of the claimants for the acquired house property bearing No. 2-10-158 situated at Vazirabad Chowk, Nanded, admeasureing 184.85 Sq. Fts.

2. The facts leading to the filing of the appeal can be summarized as under :-

3. The notification under section 4 of the Land Acquisition Act was published on 18.7.1977 for the purpose of road widening. The possession of the acquired house property, which was commercial shop situated at Vazirabad Chowk, Nanded, was taken on 6.2.1982. All the acquired shops were facing towards east and there is a road going to bus stand from the front side of the acquired shops. Claimants' shop admeasring 184.85 Sq. Fts. Was acquired for above purpose. Vazirabad Chowk is the market place, having different shops in the area. The respondents demolished the acquired portion and took material with them.

4. The Land Acquisition Officer has granted Rs.11,091/- as market price of the acquired portion of the plot and has granted Rs. 9,245/- for constructed portion on the plot. Thus, the Land Acquisition Officer has granted Rs.20,336/- for the acquired house property of the claimants, measuring 184.85 Sq. Fts. The Land Acquisition Officer has granted compensation at the rate of Rs.60/- per Sq. Fts.

5. Aggrieved by the compensation granted by the Land Acquisition Officer, the claimant filed L.A.R. No. 88/1988 before the Reference Court. The claimant has deposed at Exh. 44 that the compensation awarded by LAO is inadequate and is not according to prevailing market price of the acquired property. He deposed that the acquired property is situated at Vazirabad Chowk, it is the market place and situated in the heart of the city.

He deposed that there are different types of shops near the acquired property and he used to get Rs.1500/- rent for his shop.

6. The claimant has produced the decision in L.A.R. No. 13/1988 along with Exh. 37/A, which shows that Civil Judge, Senior Division has granted compensation at the rate of Rs.200/- per Sq. Ft. to the acquired house No. 2-12-64. Considering the evidence produced on the record, the reference Court has enhanced compensation at the rate of Rs.150/- per Sq. Ft. Dissatisfied with the judgment and award of the reference Court, the claimant has filed the present first appeal.

7. In L.A.R. No. 13/1988, the Civil Judge, Senior Division has granted compensation at the rate of Rs.200/- per Sq. Ft. Undisputedly, the acquired house property of the claimant was just adjacent to the property in L.A.R. No. 13/1988. There is road in between them and hotel business was running in the acquired shop in L.A.R. No. 13/1988. Both the properties i.e. acquired property in the present case and the property in L.A.R. No. 13/1988 are exactly identical. However, the reference court held that the hotel business was running in the acquired property of L.A.R. No. 13/1988 and in the acquired property in the present case there was ordinary shop running. The reference court has also held that no sufficient evidence was produced as regards the rent which was fetched by the claimant and granted compensation at the rate of Rs.150/- per Sq. Ft. in the present case.

8. In my view, once it is found that both the properties are adjacent to each other and the properties are similar in nature in all respects, the market price of both the properties would be the same. It cannot be said that merely because more income is derived from the business run in

adjacent shop, the value of the adjacent property would be enhanced. It is the commercial wisdom of the person running the shop that would fetch income. I find that both the shops are identical in nature and situated at the market place. The compensation granted under section 23 of the Land Acquisition Act would be the market value of the property. There is no evidence on record to show that the acquired property in the present case cannot be used for hotel business. Both the shops are identical in nature. Merely because different businesses are running, the market value of the acquired property of the claimant in the present case cannot be reduced. The acquisition under the L.A.R. No. 13/1988 is dated 31.7.1989, at the same time and for the same project i.e. for widening of the road. As such, I see no reason to grant different amount of compensation in the present case than the compensation awarded in L.A.R. No. 13/1988. In view of the discussion made above, I hold that compensation at the rate of 200/- per Sq. Ft. need to be granted in the present case for the acquired portion of the house property.

9. In view of the above, compensation at the rate of Rs.200/- per Sq. Ft. be granted in the present case for the above mentioned acquired portion of the house property of the claimant. All other statutory benefits and interest to be worked out accordingly. The judgment and award of the reference court is modified accordingly. The first appeal is partly allowed and disposed of accordingly.

[ARUN R. PEDNEKER J.]