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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3100 OF 2016

Surendra Vishwanath Kale
Age – Major, Occ – Agriculture
R/o Beed, Taluka & District - Beed

APPELLANT

VERSUS

1. The State of Maharashtra
Through the Collector, Beed
2. The Executive Engineer,
Public Works Department,
Taluka and District - Beed

RESPONDENTS

.....
Mr. Suhas R. Shirsat, Advocate for the appellant
Mr. D. J. Patil, AGP for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th SEPTEMBER, 2024

ORAL JUDGMENT :

1. This appeal, filed by the original claimant, under section 54 of the Land Acquisition Act, challenges judgment and award dated 15th April, 2016 passed by learned Civil Judge, Senior Division, Beed in LAR No. 745 of 2006.
2. Admittedly, land survey No. 30, *ad measuring* 5100 square meter, belonging to the claimant, is acquired for Beed – Mhalas Jawala Road. Notification under section 4 of the Land Acquisition Act, was published on 16th February, 2005 and declaration under

section 6 of the Act was made on 12th June, 2005. Special Land Acquisition Officer declared the Award on 16th February, 2006 and awarded compensation @ Rs.193/- per square meter to the claimant.

3. Being aggrieved by the award passed by the SLAO, appellant - claimant preferred LAR No. 745 of 2006 before Reference Court. The Reference Court, after considering the evidence on record, awarded enhanced compensation @ Rs.117/- per square meter to the claimant. The appellant is aggrieved by grant of inadequate compensation by the Reference Court. Hence, this first appeal.

4. Heard learned advocate for appellant - claimant and learned AGP for respondents - State. Perused the record and proceedings and the impugned judgment and award.

5. Admitted position on record is that, the acquired land of the claimant is situated on the boundary of Beed Municipal Council, area. The acquired land is converted into non agriculture and even City Survey No. 7887 is given to the said land. It is surrounded by good residential areas and the same is 100 meter away from Beed - Parali State Highway. It is situated near Aditya Engineering College and Ayurvedic College. Residential colonies namely Gandhi Nagar and Gajajan Nagar are situated near the

acquired land.

6. Before the Reference Court, the claimant relied on four sale instances. The First sale instance (Exhibit-30) is of the open plot situated in Beed city, *ad measuring* 604.08 square meter, which was sold on 11th April, 2002 for a consideration of Rs.32,50,000/- (i.e. Rs.5380/- per square meter). Second sale instance (Exhibit-31) is of plot No. 20 situated in Beed city, *ad measuring* 110.54 square meter, which was sold on 9th September, 2004 for a consideration of Rs.5,18,000/- (i.e. @ Rs.4686/- per square meter). By the third sale instance (Exhibit-32), executed on 6th May, 2003, plot situated within the Municipal limits of Beed city, *ad measuring* 170.94 square meter was sold for a consideration of Rs.4,28,000/- (i.e. @ Rs.2503/- per square meter). By the fourth sale instance (Exhibit-33) executed on 3rd December, 2002, plot *ad measuring* 243.84 square meter was sold for a consideration of Rs.3,90,000/- (i.e. @ Rs.2202/- per square meter)

7, Reference Court, after discussing the sale instances, has relied on the second sale instance (Exhibit-31) and has observed that - “... *second sale instance is proximately near to the date of preliminary notification. In said sale instance, a constructed house was sold @ Rs.4686/0 per sqm. Huge deduction will have*

to be made.” Other sale instances i.e. 1st (Exhibit-30), 3rd (Exhibit-32) and 4th (Exhibit-33) though were of open plots, are not taken into consideration by the Reference Court on the spacious ground that those sale instances are of smaller areas which are situated in the heart of the city and the purchasers are partnership firm.

8. The Reference Court has erred in placing reliance on sale instance at Exhibit-31, which is admittedly of a plot along with constructed house. For no justifiable reason, sale instance at Exhibit-33, which is admittedly of an open plot, is not relied on. Reference Court has further failed to take into consideration the important aspects of the acquired land being situated abutting to the boundary of Beed Municipal Council, having NA permission and city survey number, that there are residential colonies nearby and Aditya Engineering College and Ayurvedic College are situated in the same area, which shows high potential of the acquired land, and has erroneously awarded meager compensation to the acquired land.

9. In view of the decisions relied on by learned advocate for appellant – claimant, in **“Trishala Jain and Another V/s State of Uttaranchal and Another” (2011) 6 SCC 47** and **“Atma Singh (Dead) Through LRS and Others V/s State of**

Haryana and Another” (2008) 2 SCC 568, reasonable deduction will have to be made while arriving at market value of the land.

10. Reference Court in paragraph No. 34 of the impugned judgment, has observed that -

“34. ... I am justified in fixing the market price of acquired plot to the tune of Rs.310/- per sqm. It is noticed that acquired plot although adjacent is not falling within local limits of Municipal Council.”

Though in the same paragraph, the Reference Court has observed that, *“the acquired plot is situate in an area under development”*.

11. Learned advocate for the appellant – claimant, by relying on judgments in ***“Trishala Jain”*** and ***“Atma Singh”*** (*supra*), has strenuously argued that only 10% deduction should be made from the market value of the land.

12. Admittedly, sale instances relied on by the claimant are of the plots from the Beed city and they are of smaller areas. There is merit in the submission of learned AGP that for developing the land, the claimant would have incurred development charges. However, fact remains that the acquired land is at a distance of 100 meter from Beed-Parali State Highway and is situated near

residential colonies and Aditya Engineering College and Ayurvedic Colleges are situated near the acquired land. Considering these potential of the acquired land, in my view, 50% deduction would be reasonable in the present case. Considering sale instance at Exhibit-33, dated 3rd December, 2002, whereby plot was sold for a consideration of Rs.2,202/- per square meter, by deducting 50%, the claimant is entitled for compensation of Rs.1,101/- per square meter. Thus, by deducing Rs.310/- (Rs.193 granted by SLAO + Rs.117/- enhanced by Reference Court) from Rs.1,101/- the claimant is entitled for enhanced compensation of Rs.791/- per square meter, along with statutory benefits.

13. For the aforesaid reasons, the First Appeal is partly allowed with proportionate costs.

14. Impugned Judgment and Award dated 15th April, 2016 passed by learned Civil Judge, Senior Division, Beed in LAR No. 745 of 2006 is modified and the claimant is held entitled for enhanced compensation of Rs.791/- per square meter, along with statutory benefits.

15. Rest of the award is maintained.

16. Respondents shall deposit the compensation amount along

with interest in this Court within 12 weeks from the date of uploading of this order and the claimant shall be entitled to withdraw the same on deposit of additional court fees, as per rules.

17. In view of disposal of first appeal, pending civil application is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

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