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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2890 OF 2019

Gangadhar Krushna Gite
Age Major, Occ - Agriculture
R/o Pimpri - Lauki, Taluka - Sangamner
District - Ahmednagar

APPELLANT

VERSUS

1. The State of Maharashtra
Through the Collector
SLAO No. 13, on behalf of Collector
Wadiya Park, Ahmednagar
2. The Executive Engineer,
Minor Irrigation Division,
(Sthanik Sthar)
Ahmednagar

RESPONDENTS

.....
Mr. Rajendra L. Kute, Advocate for the appellant
Mr. R. B. Dhaware, AGP for respondents - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th SEPTEMBER, 2024

ORAL JUDGMENT :

1. This First appeal, filed by the appellant - original claimant, under section 54 of the Land Acquisition Act, challenges judgment and award dated 6th May, 2019 passed by learned Third Joint Civil Judge, Senior Division, Sangamner, in Land Acquisition Reference No. 90 of 2014.

2. Land of the appellant – claimant *ad measuring* 28 Are, situated in Gut No. 106/14 of village Pimpri - Lauki Taluka - Sangamner, District - Ahmednagar, is acquired for construction of percolation tank. Notification under section 4 of the Land Acquisition Act was published on 27th April, 2011. Declaration under section 6 of the Act was issued on 27th April, 2012. Final Award was declared by the Special Land Acquisition Officer on 28th February, 2013. The Special Land Acquisition Officer, in the provisional award, though held that the land of the claimant is Class-II *Jirayat* land and fixed its market value @ 6,58,600/- per Hectare, however, has awarded compensation @ Rs.2,14,700/- per Hectare.
3. The claimant challenged the Award passed by the Special Land Acquisition Officer, by filing LAR No. 90 of 2014, claiming enhanced compensation. Reference Court awarded compensation @ Rs.3,50,000/- per Hectare, along with statutory benefits. Claimant is aggrieved by the inadequate compensation granted by the Reference Court.
4. Heard learned advocate for the appellant – claimant and learned AGP for respondents - State at length. Perused the record and proceedings and the impugned judgment and award.
5. Learned advocate for the claimant submits that in fact the

Special Land Acquisition Officer has categorized land of the claimant as *jirayat* Class - II land and though fixed its market value @ Rs.6,58,600/- per Hectare, however, awarded compensation @ Rs.2,14,700/- per Hectare. Though this aspect was brought to the notice of the Reference Court, the same is not properly appreciated and the Reference Court has awarded inadequate compensation of Rs.3,50,000/- per Hectare, though the acquired land is treated as seasonally irrigated land. Further submission is that, the Reference Court has committed error in calculations while enhancing the compensation. Sale instance relied on by the claimant is not properly appreciated. As per the sale instance, relied on by the Reference Court, 30 Are irrigated land is sold for a consideration of Rs.1,41,000/- i.e. @ Rs.4,70,000/- per Hectare. Thus, according to him, Reference Court ought to have awarded compensation @ Rs.3,52,200/- per Hectare for the acquired land, it being seasonally irrigated land.

6. Learned AGP, on the other hand, supports the impugned Judgment and Award. He submits that the Reference Court has properly appreciated the material on record and has awarded just compensation and no case is made out by the claimant to interfere in the impugned Judgment and Award.

7. It is a matter of record that while passing the impugned

award, the Special Land Acquisition officer has categorized the acquired land of the claimant- appellant as *Jirayat* Class II land and has fixed its market value @ Rs.6,58,600/- per Hectare. However, it is mentioned in the award that the provisional award was scrutinized by the Assistant Director of Town Planning, Ahmednagar and he has fixed rate of Rs.2,14,700/- per Hectare for *Jirayat* class II land, which is approved by the Collector and, therefore, final award was passed awarding compensation at this rate.

Without there being any justifiable reason and / or basis, the Assistant Director of Town Planning has fixed rate of *Jirayat* class II land at Rs.2,14,700/- per Hectare, ignoring the rate fixed by the Special Land Acquisition Officer, on the basis of sale instance. It is, thus, clear that inadequate compensation is awarded by the Special Land Acquisition Officer.

8. There is substance in the contention of the appellant that though this aspect was pointed out to the Reference Court, the Reference Court has not adverted to the same, in the impugned award. In paragraph No.13 of the impugned award, passed by the Reference Court, this argument of claimant is mentioned, however, while arriving at the market value of the acquired land, this aspect is not at all discussed by the Reference Court.

9. Reference Court, on the basis of the evidence brought on record, has held that the acquired land of the claimant is seasonally irrigated land, then by relying on the sale deed dated 16th April, 2008, by which 30 Are irrigated land, out of Gut No. 80/2, was sold for a consideration of Rs.1,41,000/-, and as the said sale deed was two years prior to the date of notification under section 4, the Reference Court has abruptly come to the conclusion that the claimant is entitled for compensation of Rs.3,50,000/- per Hectare for the acquired land, since it is a seasonally irrigated land.

10. Reference Court has failed to appreciate the above sale instance, in the proper perspective and has ignored the relevant aspects and without assigning any reason, has abruptly come to a conclusion that claimant is entitled for compensation of Rs.3,50,000/- per Hectare. Admittedly, in the sale instance dated 16th April, 2008, 30 Are irrigated land out of Gut No. 80/2 of the same village, was sold for a consideration of Rs.1,41,000/- i.e. @ Rs.4,70,000/- per Hectare. Since the acquired land is seasonally irrigated land, 75% of the said market value will have to be awarded to the claimant, which comes to Rs.3,58,200/- per Hectare. The said sale instance is of the year 2008 and notification under section 4 of the said Act is dated 27th May, 2011. Therefore, in view of the ratio laid down by the Hon'ble

Apex Court in ***“Mehrawal Khewaji Trust (Registered) Faridkot and Others V/s State of Punjab and Others” (2012) 5 SCC 432***, the claimant is entitled for 10% increase per year and by adding 30% increase for 3 years, market value of the acquired land comes to Rs.4,58,250/- per Hectare, to which the claimant is entitled to.

11. For the aforestated reasons the First Appeal is partly allowed, with proportionate cost.

12. Impugned Judgment and Award dated 6th May, 2019 passed by learned Civil Judge, Senior Division, Sangamner, District - Ahmednagar in LAR No. 90 of 2014 is modified and claimant is held entitled for enhanced compensation of Rs.4,58,200/- per hectare, including the statutory benefits.

13. Rest of the award is maintained.

14. Respondents shall deposit enhanced compensation along with interest in the Reference Court within 12 weeks from the date of uploading of this order.

15. Claimant shall pay the additional Court fees on enhanced amount, as per rules.

[NITIN B. SURYAWANSHI]
JUDGE