



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO. 956 OF 2017

Sudhirkumar S/o Anantprasad Pande,
Aged about 60 years, Occ.-Cultivator,
R/o. Ward No.14, Gandhi Chowk, Pulgaon,
Tahsil Deoli, District Wardha.

.... **APPELLANT**

// VERSUS //

1) State of Maharashtra,
Through the Collector, Wardha.

2) Executive Engineer,
Public Works Department,
(Special Project), Wardha.

.... **RESPONDENTS**

Mr. C. R. Najbile, Advocate for Appellant.
Mr. P. P. Pendke, Assistant Government Pleader for Respondent
Nos.1 and 2.

CORAM : SANJAY A. DESHMUKH, J.

DATE : 27th SEPTEMBER, 2024.

ORAL JUDGMENT.

1. This appeal is preferred against the Judgment and Award passed by learned Joint Civil Judge, Senior Division, Wardha in Land Acquisition Case No.532 of 2007, dated 20.01.2015.

2. Brief facts of the claimant's case are as under :

(i) The land bearing Survey No.359, admeasuring 0.35 HR. out of total area 3.12 HR. situated at village Nachangaon, Tahsil Deoli, District Wardha was acquired for the purpose of construction of Nagpur-Wardha-Aurangabad-Mumbai Express highway (known as Samrudhi Highway). A notification under Section 4(1) of the Land Acquisition Act, 1984 (for short the "L.A. Act") was issued on 17.10.2001. The Land Acquisition Officer had passed an Award dated 25.11.2004. By the said Award, the Land Acquisition Officer fixed the market value of acquired land of appellant @ Rs.76,000/- per hectare. The appellant got total compensation of Rs.39,221/- for the acquired land of 0.35 HR.

(ii) The applicant averred in the reference application that an opportunity was not given to him to adduce the evidence of prevalent market price and therefore, inadequate compensation was awarded to him. It is averred that there were non-agriculture lands surrounding to the acquired land of the applicant and that time applicant also moved an application before the Tahsildar for granting permission to non-agricultural use. Before the Notification under Section 4 of the LA Act, that was not considered by the Authority. He claims Rs.40/- per sq.ft. rate of the acquired land.

(iii) The respondents have not objected the claim. Learned Reference Court cast the following issues :

- (1) *Does the applicant prove that the compensation awarded by the L.A.O. is wholly inadequate?*
- (2) *Does the applicant further prove that he is entitled to enhanced compensation?*
- (3) *Whether the instant reference is filed within limitation?*

3. Learned Reference Court held that applicant is entitled for compensation @ Rs.3,00,000/- (Rs. Three Lakhs only) per hectare along with other statutory benefits. Thus, claim was partly allowed.

4. Being aggrieved by the said decision, this appeal is preferred by the claimant/appellant on the following grounds of objections.

5. The Reference Court considered the case of appellant with discriminatory approach. It failed to consider that adjoining lands were non-agriculture lands and having dry crop quality. Lands in the closed proximity along with doctrine of potentiality would have considered by the Reference Court. The appellant is entitled for the compensation by calculation of 'Square Meter' or 'Square Foot' basis. Future use of land was not considered by the Reference Court. The findings of the learned Reference Court are not legal and correct.

The learned Reference Court ought to have accepted the valuation report of an expert to grant consequential benefits. The discrimination of the learned Reference Court can be patently seen. Therefore, he prayed to set aside the judgment and to enhance the amount of compensation.

6. Learned Advocate for the appellant argued that learned Reference Court awarded meager amount of compensation. It ought to have granted Rs.500/- per sq.mtr. compensation to the appellant. The non-agriculture potentiality of the land was not considered. He submitted to allow the appeal by granting compensation @ Rs.500/- per sq.mtr. He is relying upon following authorities :

(i) *Executive Engineer, Pubic Works Department No.2, Nagpur and Ors., Vs. Sarosh S/o Ramanlal Chandak, **First Appeal No.311/2017***, decided on 07.12.2020. In this case the land was acquired for the same highway. Notification was published on 22.06.2006. In which it is held that the Reference Court has taken into consideration the ready reckoner for the year 2006 which indicates value of the land adjoining State Highway between Rs.1500/- and Rs.2600/- per sq.mtr.

(ii) ***First Appeal No.1678 of 2019** (Laxmikant S/o Yashwant Nilawar Vs. The State of Maharashtra and others)*, decided on

06.04.2023, in which compensation @ Rs.123/- per sq.ft. was granted. The said land was acquired from village Arni, District Yavatmal and it was having non-agriculture potentiality.

7. Nobody will dispute the ratio laid down in the above authorities. However, each case has to be decided on its own facts and merit.

8. Learned Assistant Government Pleader for the State submitted that relevant factors are rightly considered by the Reference Court. The value of the property is rightly considered that it is not having any potentiality. He is relying upon authority of ***Atma Singh (Dead) through LRs. & Ors., Vs. State of Maryana & Anr.***, reported in ***(2008) 2 SCC 568***, in which compensation @ Rs.1,08,000/- per acre was awarded by the Hon'ble Supreme Court by partly allowing the appeal.

9. The following points emerged for consideration :

- (1) *Was the Reference Court incorrect and illegal in awarding compensation to the appellant at the low rate?*
- (2) *Are the impugned judgment and award illegal and required interference?*

10. Perused the evidence adduced by appellant. The appellant adduced his evidence by filing his affidavit of examination-

in-chief, in which, he has reiterated the facts which are already stated in the application. He adduced evidence of sale instances of village Nachangaon at Exhibit-18 dated 04.02.2002 and Exhibit-19 dated 04.02.2003. He had also filed the index of sale-purchase of the agricultural lands at Exhibit-20 to 24. He was not cross examined by respondents. The claimant/appellant also adduced evidence of Smt. Meera Bodile, the adjoining land owner of the same village. She deposed that her son's land is adjacent to the land of the appellant's land. There is non-agricultural lands of Shrikant Deshpande, Smt. Sujata Janbandhu and Shri Tiwari. She further deposed that adjacent lands bearing Survey No.440, plot No.10 admeasuring 140 sq.mtr. is purchased by her by sale-deed dated 14.12.1998 for Rs.1,50,000/-. The said sale-deed is at Exhibit-31. She is not cross examined. The appellant lastly examined Surendra Mankar, Civil Engineer. He is working as Private Consulting Civil Engineer. He deposed that he visited the acquired land of the appellant. He deposed that the land of the appellant would have been used for N.A. purpose after plotting it, he would have got Rs.40/- per sq.ft. rate. He had proved his Report at Exhibit-45 along with Map Exhibit-46. He is not cross examined.

11. Regarding evidences of these three witnesses, learned Reference Court held that the Land Acquisition Act is beneficial

legislation. The said sale instances at (Exhibit-19 and 18) are of years 2003 and 2002. The acquired land is not exactly adjacent to the land developed for non-agricultural purpose by layout and plots are carved out. The learned Reference Court held that said land is not abutting to the developed layout plan. On the contrary, appellant's land is dry crop land. It considered that sale instances of Exhibit-19 appears to be more comparable than sale instance at Exhibit-18. On the basis of it and after considering the entire evidence, the compensation amount is carved out. Further, it is held that there is no such documentary proof to show that the appellant applied for permission for the use of non-agricultural purpose for the remaining land out of same survey number.

12. Considering these reasons and after reappreciation of the entire evidence, this Court is of view that reasons in para No.17 to 20 of the impugned judgment are correct and market value is properly determined by the Reference Court. The case law of *Laxmikant S/o Yashwant Nilawar* cited supra regarding land acquired from the another District Yavatmal is not helpful to the appellant to consider it on the basis of parity. It is because, claimant's land in the case of *Laxmikant S/o Yashwant Nilawar* cited supra was surrounded by the land having non-agricultural potentials. Therefore compensation @

Rs.123/- per sq.ft. was granted by this Court. On the contrary, learned Advocate for the respondents pointed out **Atma Singh** cited supra, in which Hon'ble Supreme Court held that claimant is entitled Rs.1,08,000/- per hectare. Considering all these aspects and only because the witnesses are not cross examined by the respondents, the evidence adduced by the appellant does not warrant enhancement of more amount of compensation.

13. If the judgment of Hon'ble Supreme Court in **Atma Singh** cited supra is considered, in which compensation of Rs.1,08,000/- per acre is granted. In the case in hand also compensation of Rs.3,00,000/- (Rs. Three Lakhs only) per hectare granted by the Reference Court is reasonable amount of compensation and, therefore, there is no scope of interference in the impugned judgment and award. The judgment and award of learned Reference Court is legal and correct and no interference is warranted in it. The argument of learned Advocate for the appellant is not acceptable. Therefore, appeal deserves to be dismissed. Hence point Nos.1 and 2 answered negative. The appeal is **dismissed**. No order as to costs.

(SANJAY A. DESHMUKH, J.)