



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.539 OF 2004

The Chief Officer,
Municipal Council,
Osmanabad.

.....APPELLANT
[Ori.R-2]

VERSUS

1. Pandharinath Sambhaji Dhoble,
Died through L.Rs.
- 1A. Sanjeev Pandharinath Dhoble,
Age: 58 years, Occu: Agril.,
R/o Anand Nagar, Osmanabad,
Tq. & Dist. Osmanabad
2. State of Maharashtra
Through Land Acquisition Officer,
Dy. Collector, Osmanabad.

.....RESPONDENTS
[R-1 is a ori. Claimant]

Mr. V. B. Deshmukh, Advocate for the appellant
Mr. D. J. Patil, AGP for the Respondent-State
Mr. J. B. Patil, Advocate for the Respondent no.1

CORAM	: SANJAY A. DESHMUKH, J.
RESERVED ON	: 06 TH NOVEMBER 2025
PRONOUNCED ON	: 24 TH NOVEMBER 2025

JUDGMENT :-

. This appeal is preferred against the judgment and award passed by the learned Civil Judge Senior Division, Osmanabad in Land Acquisition Reference No.66 of 1884, dated 12.11.2003.

2. Brief facts of the case are that the claimant's predecessor, late Pandharinath Sambhaji Dhoble was owner of survey no.140, admeasuring 44R, land situated in the Municipal Council, Osmanabad, which comes under the residential zone. Claimant's claim is that his land which was acquired under development plans for the construction of By-pass road from *Barshi Naka* to District Industrial Centre, Osmanabad had facility of electricity supply, water supply and a constructed road. Further adjacent to the said land there are constructed houses, high schools, and colleges. It is contended that the area is developed, however, these facts were not considered and compensation was not properly carved out and awarded.

3. The claim was opposed, contending that proper amount of compensation was awarded by the Special Land Acquisition Officer after considering all the relevant aspects, the market price prevailing at the relevant time i.e. Rs.8600/- was drawn up. The claimant has claimed an exorbitant amount of compensation without any justification. It is lastly prayed to dismiss the reference.

4. Learned Reference Court by framing 13 issues, held that claimants are entitled to enhanced amount of compensation @Rs.4 per sq. ft. for their 44R land acquired out of the land survey no.140, situated at Osmanabad city. Thus, the claim was allowed by the learned Reference Court.

5. The Municipal Council, Osmanabad preferred this appeal on the ground that the amount of compensation was not properly carved out. Oral evidence was not properly appreciated by the learned Reference Court, and the judgment is based on presumption and assumption. Exhibit 112 and 113, produced by the appellant were not properly considered while enhancing the amount of compensation. The sale instances were not comparable, however, they were relied upon. It is lastly prayed to set aside the impugned judgment and award.

6. During the argument, the learned Advocate for the appellant submitted that enhanced amount of compensation is not justified either on facts or law. The learned Reference Court erred in appreciating the evidence in its proper perspective, particularly with regard to the sale instances on record. He therefore submitted to set aside the impugned judgment. He is relying upon the judgment in *Nagesh Trivikram Naik Vs. Kalindi V. Parsekar*, reported in **2021 DGLS (Bom.) 2406**, in which, it is held that power of attorney holder may appear as representative of the party to the extent of it is permissible, but not in the manner that they may replace principal itself.

7. The learned Advocate for the appellant submitted that the evidence of the power of attorney holder cannot be considered. He

therefore submitted that the claimant's power of attorney is not legal and reliable.

8. Learned Advocate for the claimant submitted that the claimant's reference was filed within six weeks from the date of payment of compensation and it is within limitation. The learned Reference Court has held that the amount of compensation was accepted by the claimant under protest and therefore, the claimant's claim is sustainable. He submitted that the appeal filed by the appellant is not maintainable as the Collector has not filed the appeal, as held by the Division Bench of this Court in the case of ***State of Maharashtra (Public Works Department) Vs. Bapurao Dnyanba Chiddarwar***, reported in ***AIR 1973 BOMBAY 231***. It is lastly submitted that there is no illegality in the impugned judgment and award, therefore, no interference is warranted. It is lastly prayed to dismiss the appeal.

9. Considering the above facts, following point emerged for my consideration.

a. Was the learned Reference Court illegal and incorrect in awarding enhanced amount of compensation?

10. Perused the Record and Proceedings, particularly the impugned judgment and award and evidence on record. As far as the law laid down in the case of ***Nagesh Naik*** (supra) is concerned, it is

not the case of the appellant that only the claimant knew the entire facts of the case and that the power of attorney holder did not know anything. It is also not pointed out that something in the form of special knowledge was with the claimant and not with his son, who held the power of attorney. In this regard, evidence of the claimant's son-P.W.1 is not shaken in the cross-examination, as he has satisfactorily explained that his father is suffering from paralysis and therefore cannot appear before the Court. Therefore, on this count, the evidence of the claimant cannot be jettisoned. The ratio in the case of ***Nagesh Trivikram Naik*** supra is not helpful to the appellant, hence, it is not relied upon.

11. As far as the compensation determined and awarded by the learned Reference Court is concerned, it has relied upon the sale instances and particularly the sale deed of the claimant himself regarding the disputed property. The learned Reference Court after considering the village map and sale deeds dated 21.08.1979 and 11.06.1981 as well as 04.07.1981 at Exhibit 112 and 113 has rightly appreciated the entire evidence properly. Considering the N.A. potentiality of the land, a reasonable amount of compensation i.e. Rs.4/- per square foot is rightly granted by the learned Reference Court as per the market value of the land in question at the time of acquisition of the same and merely because acquired land of the

claimant was not converted into N.A. as it was agricultural land at the time of acquisition. There is no any illegality and perversity in the appreciation of the evidence by the learned Reference Court. Reasons and findings are legal and correct.

12. Therefore, no interference is warranted with the impugned judgment and award. There is no substance in the grounds of objections of this appeal. The appeal deserves to be dismissed. Hence, point no.1 is answered in the negative. Hence, following order:

ORDER

- a. First Appeal is dismissed.
- b. Civil Applications, if any, stand disposed of.

(SANJAY A. DESHMUKH, J.)