



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

939 FIRST APPEAL NO. 2442 OF 2008

1. Jalilmiya Mastansab Naikwade
Age: 60 years, Occu: Agriculturist
R/o Aurad Shahjani, Tq. Nilanga
Dist. Latur
2. Khadar S/o Badesab Naikwade,
Age: 70 years, Occu: Agriculturist
R/o as above
through power of attorney
Isak S/o Abdul Rahiman Naikwade
Age 40 years, Occu: Agriculturist
R/o Aurad Shahjani, Tq. Nilanga,
Dist. Latur

...Appellants
(Orig. Claimants)

VERSUS

1. The State of Maharashtra
Through Collector, Latur
Dist. Latur
2. The Executive Engineer,
Civil Division, M. S. E. B.,
Osmanabad
3. The Special Land Acquisition Officer,
P-T-IT, Latur
Dist. Latur

...Respondents

....
Mr. V D Gunale, Advocate for Appellant
Mr. A. A. A. Khan, AGP for Respondent/State
Mr. A. S. Bajaj h/for Mr. H. M. Karwa, Advocate for Respondent No.2

....

CORAM : SANJAY A. DESHMUKH, J.

DATE : 01.12.2025

ORAL JUDGMENT:-

1. This appeal is preferred against the judgment and award dated 17.03.2008 passed by the learned Reference Court Nilanga, Dist. Latur in Land Acquisition Reference No.151 of 2003.

2. Learned advocate for the appellants / claimants pointed out pleadings that agricultural land of the appellants bearing Block No.153, admeasuring 1 Hectare and 20 R of village Aurad Shahjani was acquired by notification dated 25.03.2001 for installation of 33 KV sub station at Aurad Shahjani. However, possession was taken in the year 1999. He further pointed out that the S.L.A.O. awarded compensation to the claimants at the rate of Rs.75,000/- per hectare. The appellants / claimants objected and filed an application and prayed for enhancement of amount of compensation. After considering the entire evidence, the Reference Court enhanced the amount of compensation and awarded Rs.30 per sq. ft. Being aggrieved by the said judgment and award, the claimants preferred this Appeal on the ground that the sale exemplar were not properly appreciated by the learned Reference Court. Even the award passed for the lands of same village on 21.04.2007, in the case of ***Kishan Bhingole Vs. State of Maharashtra***, L.A.R. No.447 of 2002, dated 21.02.2007, was not considered, wherein compensation was awarded Rs.45/- per sq. ft., for similarly situated lands having same potentiality

was acquired.

3. learned advocate for of the appellants / claimants further pointed out that while deciding L.A.R. No.447 of 2002, the sale exemplar relied upon by the claimants were duly considered, and on the basis of it and upon considering the fact situation, particularly the location and vicinity of the acquired land, the Reference Court determined its market value by deducting 20% amount as development charges. Aurad Shahjani is commercially developed village. As compared to the sale exemplar Exhibit 22 dated 04.04.1995, the learned Reference Court awarded meager amount of compensation without considering that claimants' land is situated near to Bidar road. He prayed to allow the appeal by enhancing the amount of compensation and setting aside the impugned judgment and award on the principle of parity or sale exemplar. He relied upon the authority of *State of Maharashtra and others Vs. Maimuma Banu and Others*, reported in (2003) 7 SCC 448, in which it is held that no any provision of Land Acquisition is applicable for rental compensation and court may grant it on equitable ground.

4. Learned Advocate for the respondent no.2 submits that sale exemplar at Exhibit 22 and judgment in Land Acquisition Reference No.447 of 2000 are not relevant and cannot be accepted to determine the market value of the land of the appellant. He pointed out map of

village which shows that the property in sale exemplar, Exhibit 22 is situated abutting to highway. The sale exemplar Exhibit 22 of land bearing block no.109 was acquired for construction of bridge by paying higher price and therefore the land of the claimant which is not having access to the road cannot be equated with it. The area is 40 x 15 i.e.600 sq. ft. sold for consideration of Rs.1,00,000/-, its purpose was different and it was non agricultural plot and therefore it cannot be relied upon. Therefore, claimant is not entitled to enhancement of compensation and principle of parity cannot be applied. He relied upon the judgment of full bench of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari***, reported in ***2016 (3) Mh.L.J.***, in which it is held that the Collector has power to determine rental compensation and award it.

5. Perused the record and proceedings, particularly the pleadings, impugned judgment, the evidence adduced by the claimants before the Reference Court and the judgment in L.A.R. No.447 of 2002.

6. The Reference Court, while awarding the compensation in paragraph No.31 of the impugned judgment, held that since the acquired land was used for construction of residential houses, 20% out of the total acquired area is required to be deducted towards development charges for roads etc. The land in question is acquired for 33 K.V. of M.S.E.B. The appellants' acquired land is not to be used for

residential purposes, therefore it is not necessary to deduct any area for development or reduce the amount for it. The learned Reference Court erred in this regard by awarding meager amount of compensation.

7. On perusal of the impugned judgment, the sale exemplar Exhibit 22, and entire evidence on record, it is found that the land acquired in L.A.R. No.447 of 2002 is from one and same area of same village, the land of the present appellants was not developed as non agricultural land, but it has N.A. potentiality as there is college and houses in that area. It is near to Bidar road. Therefore, the market value determined by the Reference Court in L.A.R. No.447 of 2002 at the rate of Rs.45 per sq. ft. with deduction of 20% for development charges. The said compensation was awarded for lands acquired in the year 1995, whereas the lands of the present appellants was acquired in the year 2001. Therefore, it is justifiable to increase the market value by 10% per year from 1995 to 2001 i.e. cumulative increase for six years totally comes to Rs.27/- per sq. ft., the total Rs.72/- per sq. ft., but 20% deduction for small piece of land is not justifiable if 20% more price is deducted then it comes to Rs.58/- per sq. ft., which is just and reasonable amount of compensation to the claimant suiting to the facts of the case for the acquired land of the appellants.

8. In respect of rental compensation for taking possession of acquired land, in the operative part of the impugned judgment, admittedly mistake is occurred which requires correction. It is corrected by this Court as the rental compensation shall be awarded from the date of taking possession, till the date of notification under Section 4 of the Land Acquisition Act, dated 25.03.2001.

9. Considering all these aspects, this Court is of the view that the reasons and findings in the impugned judgment and award are not legal and correct and require interference. The claimants are entitled for enhanced amount of compensation as held above.

10. The appeal deserves to be allowed and impugned judgment and award deserves to be partly set aside. Hence, the following Order:

::ORDER::

I. The appeal is allowed.

II. The judgment and award passed in L.A.R. No.151 of 2003 is partly set aside and modified as under:

(a) The claimants are entitled for compensation at the rate of Rs.58/- per sq. ft. for their acquired land along with statutory benefits of interest, component and solatium as per the provisions of the Land Acquisition Act, 1894.

(b) The claimants are further entitled for rental compensation @8% p.a. from the date of taking possession of their acquired lands till the issuance of notification under Section 4 of the Land Acquisition Act, i.e.25.03.2001.

(c) The respondent-State is directed to deposit the enhanced amount of compensation with interest accrued thereon in this Court within 12 weeks from today. The claimants are permitted to withdraw the said amount.

(d) The claimants have to pay deficit court fees, if it is not paid.

(e) Award be drawn up accordingly.

(f) Record and Proceedings be sent back.

[SANJAY A. DESHMUKH, J.]

HRJadhav