2025:BHC-AUG:27065

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3439 OF 2022

Sheshrao S/o. Kachru Ghuge,
Age : 75 years, Occu. : Agriculture,
R/o. Mehegaon, Tq. Kannad,
Dist. Aurangabad ... Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through the Collector,
Aurangabad.

2. The Executive Engineer,
M.I.E.G.S. Division No.2,
Local Sector, Aurangabad. ... Respondents

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Mr. A. A. Nimbalkar, Advocate for Appellant.
Mrs. A. S. Mantri, APP for Respondent - State.

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 11 SEPTEMBER 2025
PRONOUNCED ON : 30 SEPTEMBER 2025

JUDGMENT :

1. In this appeal, original claimant takes an exception to the judgment and order dated 27.06.2022 passed by the Reference court (8^{th} Joint Civil Judge, Senior Division, Aurangabad) in L.A.R. No.57 of 2016, on the ground of grant of meager compensation.

2. On behalf of respondent no.2 the Executive Engineer, M.I.E.G.S. Division No.2, Local Sector through the Collector acquired

land of village Mahegaon, Tq. Kannad for the purpose of percolation tank i.e. after issuing notification under section 4 of the Land Acquisition Act dated 21.09.1994 and S.L.A.O. passed an award on 25.03.1996 and awarded compensation at the rate of Rs. 560 per R. Against the same, original claimant - appellant filed Reference bearing L.A.R. No. 57 of 2016 asserting compensation at the rate of Rs.1,00,000/- per Acre. Claimant adduced his own evidence at Exh.15 and relied primarily on sale instance at Exh.21 dated 13.09.1994. Respondent - acquiring body did not adduce any evidence.

After appreciating the oral and documentary evidence, learned Reference Court held that S.L.A.O. has considered land of appellant as Jirayat i.e. dry land in spite of documentary evidence regarding existence of well. Exh.21 was also taken into account, however, learned Reference Court did not consider it to be comparable sale instance and thereby granted double the rate granted by S.L.A.O. and enhanced the rate from 560 to 1120 per Are and granted other statutory benefits and interest.

3. Feeling aggrieved and dissatisfied by non consideration of rate sought, original claimant has preferred instant appeal on various grounds mentioned in the appeal memo.

4. Heard both sides. Perused the pleadings and evidence adduced in the trial court as well as visited the judgment impugned herein. Fundamental ground raised before this court while taking exception to the impugned judgment is, Reference Court erred in not considering the sale instance Exh.21 which was in proximity to the date of publication of notification under section 4 of the Act. Learned counsel pointed out that, claimant by placing on record Exh.21 had made out the case for entitlement of consideration of rate at least Rs.5,000/- per Are as sale instance showed price of 34 Are land as Rs.1,55,260/-. Learned counsel pointed out that no rebuttal evidence on behalf of acquiring body either in the form of oral evidence or documentary evidence.

5. He sought reliance on the judgment of Hon'ble Apex Court in the case of ***Chimanlal Hargovinddas v. Special Land Acquisition Officer*** reported in AIR 1988 SC 1652; ***Akkalkot Municipal Council v. Vasantrao Tulsiram Kharade and others*** reported in 2009(6) Mh.L.J. 311 was relied on the point of consideration of sale instance of same locality.

6. Learned APP in answer to above would justify the rate of compensation awarded by the Reference Court and would emphasize that admittedly S.L.A.O. did not consider existence of well and erred

in holding land to be dry one. That, therefore, learned Reference Court rectified the mistake and granted double amount than awarded for dry land and thereby enhanced the compensation. She would further pointed out that, Exh.21 was not comparable sale instance and was exorbitant and was of smaller area. Resultantly, according to her, there is no illegality or perversity in the impugned judgment and she prayed to dismiss the appeal.

7. On complete re-appreciation of available evidence, it is emerging that, appellant in support of his claim of compensation at the rate of 5000/- per Are has placed on record sale instance at Exh.21 dated 13.09.1994 which is in between parties, namely Shriram Keshavrao Ghuge on one hand and Sandu Taukaram Eknure on the other hand. For area admeasuring 35 Are, a deal seems to have been struck for total price of Rs.1,55,260/-. The date of sale instance is definitely in proximate to the date of notification dated 21.09.1994 issued under section 4 of the Act i.e. less than 9 days prior to notification. There is nothing from respondent side to show that said sale instance is not realistic. Law is fairly settled that, for comparable sale instance, the one which is proximate to the notification deserves consideration.

8. It would be fruitful to borrow and quote the observations of this court in the case of ***The State of Maharashtra and Ors. v.***

Yashwant Kahnu Shirsath reported in 2008 (1) BomCR 204, more particularly paragraph no.7 reads as under :-

> *"7. It is a settled principle of law that the land of the adjacent villages can be made the basis for determining the fair market value of an acquired land. This principle of law is qualified by a clear dictum of the Supreme Court itself that wherever direct evidence i.e. the instances from the same village are available then it is most desirable that the Court should consider those instances rather than relying upon sale instances of the adjoining land. The exclusion of these exhibits from the zone of consideration for determination of the controversy thus cannot be said to be incorrect in law. The land in Exhibit-30 relates to village Mukane, while Exhibits-14 and 15 relate to the other two villages viz. Modade and Rayambe. These villages are located around the acquired land but have a better potential as they are closer to industrial area and the Highway. The evidence tendered in relation to the land of the adjacent villages would be a relevant piece of evidence for determining the market value of the land and even the awards relating to those adjoining villages would also be a relevant consideration. Reference in this regard can be made to the case of Sham Krishan Chandiwala v. Union of India MANU/DE/0169/1978 and judgment of the Supreme Court in the case of Harcharan v. State of Haryana, MANU/SC/0166/1982, where the Court stated that subject to the test of comparison of land areawise, topography wise and usewise, awards and transactions in relation to the adjacent areas are the best evidence with regard to valuation of price of land. Still, in the case of Gokal v. State of Haryana, MANU/SC/0033/1992, the Court was concerned with awarding of compensation to the land similarly situated but vide different notifications issued by the Government*

under Section 4 of the Act. Trend in increase of the land prices in those areas was also taken to be a relevant consideration.”

Similarly, in the same judgment, this court had also discussed and relied on the judgment of Hon’ble Supreme Court in the case of ***Shaji Kuriakose v. Indian Oil Corporation Limited*** reported in 2001 (2) L.A.C.C., para 11, which is relevant is as under :-

> *“That courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of Net Income Method or Expert Opinion Method. Comparable sales methods of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it has been sold in open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfillment of those factors the compensation can be awarded according to the value of the land reflected in the sales. The factors laid down inter alia are (1) the sale must be a genuine transaction, that (2) the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act that (3) the land covered by the sales must be in vicinity of the acquired land, that (4) the land covered by the sales must be similar to the acquired land and that (5) the size of the plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the*

sale value of the land covered, by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality,m shape site or nature of land between land covered by sales and land acquired, it is open to Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land."

9. Going by above legal precedents, here appellant succeeds in pointing out that the S.L.A.O. failed to consider existence of well and therefore learned reference court rightly appreciated the 7/12 extract and noted about availability of well. Therefore, there being source of water, there is no hesitation to hold land to be irrigated one.

10. Exh.21 which is heavily relied is also apparently of village Mehegaon, i.e. of the village of which appellant's land has been acquired. Applying the above ruling of this court itself, there is no hesitation in considering Exh.21 to be the comparable sale instance for deriving entitlement of compensation. In the light of total price fetched for sale transaction Exh.21 i.e. Rs.1,55,260/- for 35 Are land per Are computation would be Rs.4436/-.

While computing the entitlement, learned Reference Court having perused the entire record including revenue record has made the following observations in paragraph nos.18 and 19 of the judgment.

“18. As per the award, the valuation of the acquired land was determined on the basis of sale instances and land assessment. The other factors are not taken into consideration while fixing the valuation of the acquired land. From the award it makes clear that the acquired land is situated at Mehegaon, Tq. Kannad, Dist. Aurangabad which is just 12 K.M. away from the Taluka Head Quarter i.e. Kannad. Further, as per the award the acquired land is connected with approach road to main road Kannad to Pishor. As per the award the land is rich and superior soil and capable of production of Sugarcane, Bajara, Cotton Crops. Considering the said observations of the award it can be safely conclude that the acquired land has capacity to yield both Kharip and Rabbi Crops. The acquired land is just 12 K.M. away from Taluka Head Quarter i.e. Kannad. These factors are not considered by the SLAO while determining the market price.

19. If aforesaid factors would have been considered then market value must be mere than Rs. 560/- per R. As I held above the consideration shown in the sale instance is much more and the compensation awarded by the SLAO is lesser than what the acquired land deserve. I have perused the decision of the Hon'ble Bombay High Court in the State of Maharashtra V/s. Shri. Fulyabai Kisan Goveerdhane 2008 (1) Bom. CR. 386. It is observed that, we are also of the considered view that it was not necessary for the court always grant a fixed percentage of increase or decrease. There cannot be a definite formula of this kind to compute the fair market value of the land. Each case has to be determined on its own facts and circumstances. In the case in well hand the SLAO has considered the acquired land as a Jirayat land and granted compensation accordingly. As per the

> *evidence of the claimant as well as the 7/12 extract of the acquired land shows that from the year 1987-1988 to 2001-2002 the claimant was taking the crop of sugarcane. Definitely, the area of the crop sugarcane differs from year to year. Further, the claimant has proved that in the acquired land there was a well and the said irrigation facility available to the claimant. Considering these aspects, the market price fixed by the SLAO @ Rs. 560/- per R is inadequate and I award increased compensation of Rs. 560/- per R. This will result into the market value of acquired land as Rs. 1120/- per R."*

On completely reanalysis of the evidence, it is here clearly emerging that in the judgment in paragraph no.19, learned trial court has held that there is evidence about existence of well and therefore findings of S.L.A.O. about land to be 'Jirayat' is rightly faulted and rectified by directing to hold land of appellant as 'Bagayat'. The sale instance Exh.21 admittedly is of same village, however, there are two factors which also need consideration i.e. land acquired relating Exh.21 is post notification under section 4 of the Act. However, it is fairly settled that such sole criteria will not militate against the claimant bearing in mind the fact that the appellant's acquired land being 12 km away from Taluka Headquarter Kannad and is definitely entitled to fetch a just price. Learned trial court has considered the evidence and held that appellant is entitled for compensation at the rate of Rs.1120/- per Are. However, in the considered opinion of this court, it would be rational to consider other essential factors as enumerated by the Hon'ble Apex Court in the case of Land Acquisition Officer, ***Kammarapally v. Nookala Raja Mallu & Others, (2004) 1 BCJ 467.*** Para 20 of the said judgment is borrowed and quoted hereinder :-

> *"20 ....*
>
> *"The element of speculation is reduced to minimum if the underlaying principles of fixation of market value with reference to comparable sales are made.*
>
> *(i) when sale is within a reasonable time of the date of notification under Sec. 4(1);*
>
> *(ii) it should be a bonafide transaction;*
>
> *(iii) it should be of the land acquired or of the land adjacent to the land acquired; and*
>
> *(iv) it should possess similar advantages. It is only when those factors are present, it can merit a consideration as a comparable case."*

Bearing in mind the above essential factors compensation at the rate of Rs.2,000/- per Are, in the considered opinion of this court, is just compensation.

11. Respondent State has not pointed out any single cogent reason as to why Exh.21 cannot be considered as an comparable sale instance so as to keep it from the purview of consideration. Even learned Reference Court has not assigned or ascribed any plausible

reason for not considering Exh.21 as a comparable sale instance. It is merely observed that rate therein is exorbitant, but how, has not been elaborated. Resultantly, appellant succeeds.

12. In view of above discussion, compensation is required to be assessed at Rs.2,000/- per Are. Reference court has erred in awarding compensation to the appellant at the rate of at the rate Rs.1120/- per Are. Hence claimant is entitled for enhanced compensation at Rs.880/- per Are. In the result, following order is passed :

ORDER

(I) The First Appeal is partly allowed with proportionate costs.

(II) The judgment and award passed by the Reference Court is modified to the effect that claimant shall be paid enhanced compensation at the rate of Rs.880/- per Are along with statutory benefits on enhanced compensation.

(III) Respondents to pay interest to the claimant on enhanced compensation as per the provisions of the Land Acquisition Act, excluding the period of delay caused in filing this First Appeal.

(IV) The First Appeal is disposed off in view of above terms.

(ABHAY S. WAGHWASE, J.)

Tandale