

**(2017) 07 BOM CK 0243**  
**In the Bombay High Court**  
**Case No : 336 of 2006**

Fatimabegum d/o Mirza Hamid Baig

APPELLANT

Vs

State of Maharashtra, & Ors.

RESPONDENT

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**Date of Decision :** 19-07-2017

**Acts Referred:**

[Land Acquisition Act, 1894](#), [Section 9](#), [Section 9\(1\)](#), [Section 18](#), [Section 28](#), [Section 34](#), [Section 4\(1\)](#) - Notice to per

**Citation :** (2017) 07 BOM CK 0243

**Hon'ble Judges :** Shalini Phansalkar-Joshi

**Bench :** SINGLE BENCH

**Advocate :** Abhay Sambre, Shamsi Haider

**Final Decision :** Dismissed

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## Judgement

1. This appeal is preferred by the original claimant against the judgment and the order of the Reference Court of the Civil Judge, Senior Division, Pandharkawada [Kelapur] dated 17.12.2005 in Land Acquisition Case No.197/2002, being aggrieved by inadequate amount of compensation awarded therein.

2. Brief facts of the appeal can be stated as follows: The land bearing Gat No.79, area admeasuring 4.64 hectare and the land bearing Gat No.53 area admeasuring 4.46 hectare situated at Gondwakadi was owned by the appellant. It was acquired by the respondents for the construction of Gondwakadi Tank Project, in pursuance of the notification issued under Section 4(1) of the Land Acquisition Act and published on 20.10.1994 in Government Gazette. The Special Land Acquisition Officer by his award dated 02.01.1996, granted compensation at the rate of Rs.22,000/per hectare for Gat No.79 and Rs.26,000/per hectare for Gat No.53.

3. Being not satisfied with the said amount of compensation, the appellant approached the Reference Court under Section 18 of the Land Acquisition Act,

contending inter alia that the actual market value of the acquired land as on the date of notification was far higher than the compensation awarded by S.L.A.O. It was submitted that the acquired land was irrigated with the water from canal (Nala). He was taking various cash crops therein and earning the net income of Rs.7000/to Rs.8000/per acre, per annum. According to the appellant, the village Gondwakadi is having all the facilities like electricity, Post Office, School etc. and hence, having regard to the fertility, potentiality and productivity of the land, its market value cannot be less than Rs.2,50,000/. For the Four Mango Trees, he claimed compensation at the rate of Rs.15,000/. Further according to him, there were 85 big Teak Wood Trees, 200 teak wood trees, 50 big Adjat trees and 20 small Adjat trees in the acquired land of Gat No.79 the valuation of which can be Rs.2,50,000/hence, on this count also he claims enhanced amount of compensation.

4. This petition came to be resisted by the respondents vide written statement at Exh.10 contending that L.A.O. has considered all the relevant factors for determining the market value of the acquired land. It was denied that the compensation awarded by the S.L.A.O. was inadequate or meagre in any way. The existence of Teak Wood Trees and other trees in the acquired land is also denied by the respondents. Respondents, therefore, placed prayed for dismissal of the petition on the ground that it was unrealistic and based upon imaginary grounds.

5. On these respective pleadings of the parties, the Reference Court framed necessary issues for its consideration at Exh.11. In support of their case claimant Mirza Niyajali Beg examined himself and that was the only evidence adduced in the case, apart from the certified copies of the judgments in other reference petitions, which were relied upon by the claimant, coupled with the 7/12 extract of the acquired land.

6. On appreciation of this evidence, the learned Reference Court was pleased to enhance the compensation for the acquired land from Rs.1800/per hectare to Rs.70,000/per hectare. The Reference Court however, rejected the claim for enhancement of compensation for the various trees.

7. Being not satisfied with this enhancement of the compensation awarded by the Reference Court, the claimants have preferred this appeal.

8. The only issue therefore, which necessarily arises for my determination in this appeal is whether the appellant is entitled for further enhancement in amount of compensation?

9. As stated above, the only oral as well as documentary evidence is that of the claimant. According to him, his land was irrigated and having good potentiality and fertility. However, the 7/12 extract of the land does not show any source of irrigation like the well, water pump or pipe line. There is nothing on record to show that the petitioner was irrigating his land from the water of canal with the help of oil engine pump. Even the entries of the crops in the 7/12 extract show

that the dry crops like cotton, tur and jowar were cultivated in the acquired land. Therefore, in the absence of evidence on record it has to be held that the acquired land was dry crop land.

10. The petitioner-claimant has then relied upon the three judgments of the Reference Court in respect of the adjoining lands. The first judgment pertains to the land situate at village Dhoki, which was belonging to one Omprakash and according to the petitioner, this land of Omprakash was adjoining to his land and was of the same quality. As per the judgment of the Reference Court, certified copy of which is produced on record at Exh.49, the Reference Court has awarded compensation for this land at the rate of Rs.2,07,800/per hectare. However, in my considered opinion the Reference Court has rightly refused to accept this judgment as comparable instance, having regard to the fact that the land acquired there in was from village Dhoki and there is nothing on record to show that it was adjoining to the acquired land of petitioner. The certified copy of village map of Gondwakadi Exh.53 is also sufficient to show that acquired land of petitioner is far away from the border of village Dhoki. Moreover, the said land was acquired for the purpose of a bridge of the National Highway No.7, which fact itself was suggestive that the said land was just abutting the National Highway. In the said judgment it was also considered that the National Highway passes through the acquired land of Omprakash. It was also considered that there were developed plots in the acquired land of Omprakash and hence, having regard to all these factors, especially the potential and the purpose for which the said land was acquired, the Reference Court has rightly refused to accept the same as base for awarding compensation at the same rate to the petitioner.

11. The other two judgments of the Reference Court on which the petitioner has relied upon pertain to the lands at village Gondwakadi. The first judgment of Reference Court, certified copy of which is produced on record at Exh.50 shows that it was in respect of acquisition of the land bearing Gat No.51, which was belonging to Syed Allem Shah and it was adjoining to the acquired land of the petitioner bearing Gat No.50. It was on record that both the lands were dry crop lands. Similarly, another land bearing Gat No.52, which was belonging to Haleem Shah was also adjoining to Gat No.51 and hence adjacent to petitioner's land. The certified copy of the judgment in respect of that land, which is produced at Exh.51, also shows that it was a dry crop land and acquired for the same project under the same notification.

12. As all these three lands including the land of the petitioner were having more or less the same potential and being in the vicinity, the judgments in respect of those two lands are relevant for ascertaining the market value of the acquired land. It can be seen that in those judgments the compensation was awarded at the rate of Rs.70,000/per hectare. There was nothing on record, not even any suggestion, that the respondents had challenged the said rate of compensation, by preferring the appeals against those judgments. Hence, both these judgments, the certified copies of which, were produced at Exh.50 and 51, were

rightly considered by the Reference Court as base for arriving at the market value of the acquired land.

13. The perusal of the judgment of the Reference Court goes to show that Reference Court has also considered that from the map of acquired land Exh.50 it was evident that petitioner's land is nearer to gaothan of village Gondwakadi, whereas the lands of above said two judgments of the Reference Court were somewhat away from the gaothan and hence, Reference Court held that the land of petitioner was having the nonagricultural potential. The Reference Court has hence held that market value of the petitioner's land was comparatively higher and enhanced it to Rs.70,000/per hectare.

14. While arriving at this rate of compensation the Reference Court has also considered the evidence of the claimant showing that he was earning net income of Rs.7000/to Rs.8000/per acre, which appeared to be excessive and hence, taking into consideration its location and the fact that it was a dry crop land, the Reference Court considered the net reasonable income of Rs.3000/to Rs.3100/per acre and accordingly arrived at the finding that even if the capitalization method is applied for assessing the market value of the acquired land, then it comes to Rs.76,570/per hectare.

15. Thus after taking into consideration all the relevant factors and applying both the methods of assessing the correct amount of compensation, namely the capitalization method, which is based on the income from the yield of the agricultural land and the earlier decided judgments of the Reference Court, the Tribunal has arrived at the just and fair amount of compensation as Rs.75,000/per hectare. Absolutely nothing new is brought on record to show that the said amount of compensation is in any way excessive or meagre and therefore, no interference is warranted therein, either at the instance of the petitioner or at the instance of the respondents.

16. The appellant has also claimed the compensation for 4 Mango Trees, 85 big teak wood trees and 200 small teak wood trees, 50 big adjat trees and 200 small adjat trees from the acquired land bearing gat No.79. To support her claim, the appellant has relied upon the 7/12 extract of the agricultural land. However, the Reference Court has rightly considered as to how the entry of these trees in the 7/12 extract is not pertaining to the acquired land, but pertain to the remaining land, which is the part of the same Gat No.79. It is a matter of record that out of the total area of 6.84 H.R. of Gat No.79, the area admeasuring 4.64 H.R. was only acquired by the respondents. Therefore, there was remaining portion of 2.20 H.R. of the acquired land the possession of which remained with the appellant. The 7/12 extract, which was produced on record at Exh.40, no doubt shows that there was entry of 85 teak wood trees, 4 Mango trees and 50 adjat trees. However, as rightly considered by the Reference Court this entry appears to be taken subsequently in the year 2005 when the 7/12 extract was issued and pertains to the unacquired portion land of Gat No.79, as in the 7/12 extract it is also mentioned that the remaining portion of the said land was acquired by the

Government. The Reference Court has also considered that there was no entry of these trees in the acquired portion of the land. Reference Court further found that the appellant has not produced on record any evidence like the certificate from Forest Department or even the report of horticulture expert to show the existence of these trees in the acquired land. The appellant has not even produced on record the joint measurement report or the copy of the award to prove the existence of these trees at the time of acquisition. Hence, in my opinion no fault can be found in the finding of the Trial Court of not granting the compensation for these trees.

17. Even as regards the claim of appellant for compensation of 47 big teak wood trees, 100 small teak wood trees, 115 adjat trees, 100 small adjat trees from the acquired land of Gat No.53, the Reference Court has considered that the entries of these trees is not appearing in the 7/12 extract of the acquired land, but entries appear to be made subsequent to the acquisition in the remaining portion of the land. Hence in the absence of any further evidence on record to that effect, including the copy of the statement, which was filed by the appellant before the S.L.A.O. after the receipt of notification under Section 9 of the Act, the Reference Court has rightly rejected the claim of the appellant towards compensation for these trees. No interference is warranted in the impugned judgment and order of the Reference Court on that score also.

18. At this stage learned A.G.P. points out that in the operative part of the judgment, the Reference Court has directed the respondents to pay interest on the amount of compensation and also the excess amount of compensation at the rate of Rs.9% per annum from the date after 15 days of the notice under Section 9(1) of the Land Acquisition Act, for the first year and then at the rate of 15% per annum for subsequent period till the date of deposit of such excess amount in the Court under Section 28 and 34 respectively of the Land Acquisition Act. The learned A.G.P. has rightly submitted that both these directions being legally not tenable they need to be set aside. To this limited extent only interference is warranted in the impugned judgment.

19. As a result, the appeal stands dismissed with a small modification in the impugned order of the Reference Court to the extent that appellants are held entitled for the interest at the rate of 9% per annum from the date of possession for the first year and at the rate of 15% per annum for subsequent period till realization of the amount. In the circumstances, there is no order as to costs.