



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

FIRST APPEAL NO. 1481 OF 2018

1. Vishwanth S/o. Rama Waghule
Age: 78 years, Occu.: Agri.
R/o. : Deogaon Rangari, Tq.Kannad,
District : Aurangabad.
2. Bhanudas s/o. Vishwanath Waghule
Age: 37 years, Occu.: Agri.,
R/o. : Deogaon Rangari, Tal.Kannad,
District : Aurangabad. Appellants

Versus

1. The State of Maharashtra
2. The Executive Engineer,
Minor Irrigation Division No.1,
Aurangabad. Respondents

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Advocate for Appellants : Ms.M.R. Jamdhade
AGP for Respondent no.1 : Mrs.D.S.Jape
Advocate for Respondent no.2 : Mr.Ranjit B. Gaikwad

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 21 JULY, 2025

PRONOUNCED ON : 31 JULY, 2025

JUDGMENT :-

1. Instant appeal arises out of judgment and order dated 09-01-2018 passed by the learned Joint Civil Judge, Senior Division, Aurangabad in Land Acquisition Reference (LAR) No.130 of 2010.

FACTS IN BRIEF

2. Present appellants, who are owners of land at Gut nos.230, 232/1, 232/2 and 233 situated at Chambharwadi, Tq.Kannad, District Aurangabad, which came to be acquired by respondent no.2 Acquiring Body for Deogaon Rangari Minor Irrigation Project, are dissatisfied by the judgment and award passed by the Reference Court in aforesaid LAR. In the said LAR, case was set up that said land was fully irrigated having wells with sweet lime trees. That, the appellants were harvesting crops like Cotton, Tur, Mug, Sugarcane, Jowar etc. in the said land and were earning approximately Rs.75,000/- to Rs.1,50,000/- per acre per annum and therefore, they set up a claim of Rs.7,00,000/- per hectare.

The Acquiring Body, the Executive Engineer, Minor Irrigation Division, Aurangabad and State both resisted the above LAR.

Evidence adduced by the appellants -claimants was appreciated by the learned Civil Judge, Joint Civil Judge, Senior Division, Aurangabad, and reached to a finding that the appellants – claimants are entitled for compensation @ Rs.3,375/- per Are and accordingly, passed judgment and award dated 09-01-2018. The learned Reference Court has granted aforesaid compensation with interest under the Land Acquisition Act (hereinafter referred as the “Act”)

from the date of Notification under Section 4(1) of the Act.

Being dissatisfied with the impugned judgment of the Reference Court, the appellants - claimants have preferred instant appeal for enhancement of compensation.

SUBMISSIONS

On behalf of appellants :

3. Learned counsel for the appellants pointed out that appellants are owners of above land. That, the land is irrigated one. That, there are two wells located in Gut Nos.232/1 and 232/2 each. That, there is pipeline laid for watering the fields. That, there is evidence to that extent. She would point out that even learned Reference Court admitted about existence of well and pipeline in the fields. Thus, according to her, land was irrigated one. However, learned Reference Court failed to appreciate and consider such evidence and erred in holding that the land is not irrigated one and rather it is seasonally irrigated. Therefore, she seeks enhancement of compensation to the tune of Rs.13,00,000/- per Hectare for land, wells, house structure, trees existing over acquired land.

On behalf of Respondents :

4. Learned counsel for respondent Acquiring Body and learned APP have resisted the appeal on the ground that learned Reference Court has correctly appreciated evidence. That, though there was consideration of existence of wells, there was no evidence that land was irrigated. That, the area in which the said land was situated, does not have much rainfall and therefore, only seasonal rain was source of irrigation and therefore, according to him, no fault can be found in manner of appreciation of evidence by the learned Reference Court. He further submitted that even he has objection to the grant of interest from the date of Notification under Section 4 of the Land Acquisition Act and the interest may be granted from the date of award of the Special Land Acquisition Officer (SLAO).

5. Heard. Perused the papers.

6. Appellant – claimant Vishwanth Rama Waghule has lead evidence by way of filing an affidavit at exh.14. The sum and substance of his evidence is as under :

In paragraph no.5 of the affidavit, it is stated that in his land Gut Nos.232/1 and 232/2, there were two constructed wells. That,

for fetching water from the said wells, there were two 5 H.P electric motors. That, electricity connection was taken from MSEB. That, in support of his claim, he placed on record the original copies of electric motor bills of the respective wells.

In paragraph no.6, it is stated that he had cultivated the sugarcane in the acquired land. That, he had supplied the sugarcane to the nearest Sugar Factory in the vicinity. That, he placed on record some sugarcane supply receipt.

In paragraph no.7, it is stated that as he used to cultivate crop like sugarcane, his land was totally irrigated land.

In support of above evidence, appellants produced on record 7/12 extracts of land at Gut No.232/1 and 232/2 and copies of electricity bills of the electric motors connected to the wells.

7. Award passed by the SLAO has been taken exception to by filing LAR. In the said LAR, it is a specific case of the appellants that land acquired by the Acquiring Body, was irrigated land having two wells and therefore, compensation in that consonance ought to have been granted, which is alleged to be not done.

Apart from evidence of appellant Vishwanath, appellants have placed on record 7/12 extracts of aforesaid Gut numbers. Close

scrutiny of the same, it appears that, apart from taking crops like cotton, Bajra, Jowar, Maize, Wheat, Sunflower, there were sweet lime trees in Gut No.232/1. It has also come in evidence that appellants have laid pipeline of length of 1000 feet in the field. In the 7/12 extracts of Gut Nos.232/1 and 232/2, to which attention of this Court is invited, there is reference about existence of two wells. Therefore, considering the aspect of existence of wells coupled with existence of evidence about pipeline being laid and taking into account the fact that the appellants were harvesting sweet lime apart from regular crops, the claim of appellants that land is irrigated seems to be justified.

The observations of the learned Reference Court in paragraph no.10 show that existence of pipeline and well is also admitted. However, learned Reference Court has held that there is no evidence that the well has sufficient water and on this count coupled with aspect that, in that area, usually there are no heavy rains, land is considered as seasonally irrigated one. In fact evidence on record is contrary to above inference drawn by the Reference Court as there is evidence to show that there is source of water not in the form of one well but in the form of two wells having pipeline laid for supply of water to the fields.

8. It appears that the learned Reference Court has considered the land as seasonally irrigated land and has awarded compensation @ Rs.3,375/- per Are. However, in view of above discussed evidence, the compensation is required to be enhanced to atleast Rs.5,000/- per Are, which seems to be just and proper.

9. The learned counsel for the respondent no.2 Acquiring Body submits that, the interest should be computed from the date of passing of award by the SLAO and not from the date of Notification of Section 4(1) of the Act.

In support of such submission, he placed reliance on decision of Full Bench of this Court (Nagpur Bench) in case of ***State of Maharashtra v. Kailash Shiva Rangari, 2016(4) ALL MR 513.***

10. Perused the aforesaid ruling. The computation of interest as awarded by the learned Reference Court is as per the settled position of law i.e. as summarized in the above ruling.

SUMMATION

11. To sum up, the appellants, in this appeal, have demonstrated and substantiated that the land acquired by the respondent acquiring body was in fact irrigated one. There is evidence in the form of 7/12

extracts and even learned Reference Court has agreed about existence of a well. However, learned trial Court has lost sight of another well, which was also situated along with adjoining land in Gut No.232/2. That apart, even learned Reference Court has taken into account evidence about existence of pipeline of 1000 feet. Therefore, there is trustworthy evidence suggesting land to be irrigated one and therefore, the inferences drawn by learned Reference Court that, land is seasonally irrigated and there is scarcity of rain in the area, are without any foundation. For above reasons, interference at the hands of this Appellate Court is necessary and resultantly appeal deserves to be partly allowed. Accordingly, I pass following order :

ORDER

(I) Appeal is partly allowed.

(II) The judgment and award passed by the learned Reference Court on 09-01-2018 is modified only to the extent of compensation. The appellants – claimants are entitled to get enhanced compensation @ Rs.5,000/- per Are for acquired land.

(III) All consequential benefits under the Land Acquisition Act, be given on the aforesaid enhanced compensation, as per the judgment and award of the Reference Court.

(IV) The appellants - claimants are entitled for the interest on the enhanced amount excluding delayed period, if any.

(V) The appellants – claimants are directed to pay court fee on the enhanced compensation amount, if any, as per Rules.

(VI) Award be drawn up accordingly after payment of deficit court fee, if any.

(VII) First Appeal is disposed of in above terms.

(ABHAY S. WAGHWASE)
JUDGE