



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 FIRST APPEAL NO. 943 OF 2018

Urmila Ananda Patil

VERSUS

The Special Land Acquisition Officer-2, Upper Tapi Project, Hatnur, Jalgaon &
Anr

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Mr. Kshirsagar Hemraj P, Advocate for Appellant.

Mr. A. V. Lavate, AGP for Respondent No.1.

Mrs. Snehal P. Kulkarni, Advocate for Respondent No.2.

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CORAM : AJIT B. KADETHANKAR, J.

DATE : SEPTEMBER 1, 2026.

PC :-

1. In pursuance to the last order passed by this Court, today, Sub-Division Officer, Waghur Dam Sub-Division No.1, Varadsim, Tal, Bhusawal, District Jalgaon, namely, Mr. Rahul Vijaysa Khanapure, is again present before this Court and an affidavit of unconditional apology has been tendered by the authority. The apology is accepted with a warning that henceforth the deponent shall not avoid any order passed by any Court in any proceedings. Failing which, he shall be subjected to personal costs and directions for departmental enquiry. So far as the contention of the appellant about settling claim of her sister, Nirmalabai Shriram Patil, in the Lok Adalat dated 14

September 2019 is concerned, it is spelt out in the affidavit that inadvertently the land of Nirmalabai Shriram Patil was considered as bagayat land, and mistakenly the claim was settled in the Lok Adalat. It is respectively deposed in the affidavit that the land of Nirmala is in fact jirayat land and ought not to have been compensated by treating it as bagayat land. It is further stated in the affidavit that steps are in progress for getting the Lok Adalat award modified/set aside. This Court does not comment on correctness of the said settlement.

2. Feeling aggrieved by the judgment and award dated 17 November 2009 passed by learned Civil Judge Senior Division Jalgaon, in Land Acquisition Reference No.837 of 2005, the appellant has approached this Court vide the present First Appeal.

3. The sum and substance of the case is that the appellant owned two pieces of land, i.e., 1 Hectare and 51R in Gat No.152/2 at Chinchkheda Tq. Jamner District, Jalgaon, and 1 Hectare 47R in Gat No.185/2 at village Chinchkheda Tq. Jamner District, Jalgaon. After completion of the proceedings under the Land Acquisition Act, the award was prepared. Feeling aggrieved thereby, the appellant initiated proceeding under Section 18 of the Act in Land Acquisition Reference No.837 of 2005. It was the contention of the claimants/appellant that the land comprised in Gat No.152/2 was a

bagayat land, and hence compensation ought to be awarded by treating the said land as bagayat land. Some sale instances were also relied upon by the appellant as well as the other claimants in the connected matters, which have arisen from the same vicinity. There was no dispute that the land comprising 185/2 was a bagayat land.

4. After assessing entire evidence, the reference Court fixed the rate of compensation at Rs.1,95,000/- per hectare for dry land/jirayat land comprised in Gat No.152/2. For the land comprising 185/2, compensation was fixed at Rs.3,90,000/- per hectare by treating it as bagayat land. As such, enhancement was granted. The First Appeal is preferred by the claimants disputing the findings of the Reference Court regarding the character of the land comprised in Gat No.152/2. Besides that, objection is also raised regarding the valuation of both types of the land. Notices were issued. And accordingly the acquiring body has marked his presence.

5. During the course of arguments, Mr. Kshirsagar, learned advocate for the appellant apprised this Court that in a number of First Appeals arising out of the same project i.e., Waghur Dam Project, after considering all aspects, this Court fixed the rate for various types of land.

6. Mr. Kshirsagar cites an order dated 2 November 2023 passed by this Court in the lead First Appeal No.1115 of 2021 with connected appeals. He

would invite my attention to the paragraph No.6 of the said order, wherein it is observed thus:

“6) The learned counsel for the respondent acquiring body has placed on record a letter dated 01.11.2023 issued by the Executive Engineer, Waghur Dharan Vibhag, Jalgaon whereby instructions are received that the amount of compensation be accepted at Rs.2,00,000/- for jirayat land, Rs.4,00,000/- for bagayat land and as far as trees are concerned 80% of the valuation is accepted. The said letter is taken on record and same is marked as ‘X-1’ for identification purpose.”

7. Mr. Kshirsagar thus submits that the jirayat land would fetch valuation at Rs.2,00,000/- per hectare and the bagayat land would fetch valuation at Rs.4,00,000/- per hectare. So far as trees are concerned, 80% of the valuation is accepted. In the present appeals, Mr. Kshirsagar in the light of the cited orders would fairly submit that so far as the bagayat land comprised in Gat No.185/2 is concerned, the appellant would be satisfied if the award is escalated as per the cited orders i.e., @Rs. 4,00,000/- per hectare.

8. Now, so far as other land in respect of which Mr. Kshirsagar is mainly concerned i.e. land comprised in Gat No.152/2, admeasuring 1 Hectare and 51R is concerned he would point out to me the revenue record, i.e., 7/12 extracts. He would submit that undoubtedly there are some entries since

1995 indicating that banana crops were cultivated in the said land for some years. He fairly agrees that due to some natural reasons, the said crops could not be continued, but it is a matter of fact that banana crops were sometimes cultivated there. He would submit that not only this, but the award itself would show that compensation was granted for some horticultural trees.

9. With this argument, he would submit that what is required, is a quality of land and not the crops which were being cultivated at the time of the initiation of the land acquisition process. Thus, Mr. Kshirsagar prays to allow the appeal by holding that the appellant is entitled to compensation at Rs.4,00,000/- per hectare for the land comprised in Gat No.152/2.

10. Mrs. Kulkarni, learned advocate for the acquiring body, would rely on the order cited by Mr. Kshirsagar. She would fairly agree that the rates for the lands acquired for the same project have been fixed by this Court. So far as the land in Gat No.185/2 is concerned, the appellant is indeed entitled to compensation at Rs.4,00,000/- per hectare. So far as the other land is concerned, she would rely on the findings recorded by the trial Court i.e. reference Court, and would request to pass an appropriate order.

11. I have heard both the learned advocates for considerable length. Bulky record is produced before me. Indeed, there are revenue entries indicating that the appellant has, at some point of time taken crops like bananas in the

subject matter land for some years. It is true that there was discontinuation for some years.

12. The Reference Court has also agreed that the land was used for cultivating banana crops for some years, however there was discontinuation thereafter. The piece of land acquired is hardly 1 Hectare and 51R. The legislation governing compensation to landowners is a beneficial piece of legislation. It cannot be lost sight of the fact that the subject matter land in Gat No.152/2 had bagayat quality, since crops like bananas were being cultivated for quite some year. Judicial notice can be taken of the fact that a crop of banana cannot be cultivated unless there is a supply of water.

13. In my considered view, what needs to be seen is the potentials and the character of the land. Being a beneficial piece of legislation, I deem it appropriate to hold that the land comprised in Gat No.152/2 needs to be considered as bagayat land for the purpose of awarding compensation to the appellant.

ORDER

(i) The First Appeal stand allowed.

(ii) The impugned award stands modified to the extent of holding land in Gat No.152/2 as Bagayat Land, and the appellants are entitled for compensation of Rs.4,00,000/- per

hectare for both lands. And as far as trees are concerned, the claimants are entitled to receive compensation to the extent of 80% of the amount of the valuation report.

(iii) The appellant shall be entitled to interest under Sections 28 and 34 of the Land Acquisition Act in terms of law laid down by Full Bench of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari**¹.

(iv) The appellants shall not be entitled to interest and statutory benefit for delayed period.

(v) Save and except above, impugned judgment and award passed by Reference Court shall stand unaltered.

(vi) The acquiring body shall deposit the enhanced compensation in above terms in this Court within 6 months. Upon deposit, the appellants shall be entitled to withdraw the same with accrued interest subject to payment of deficit Court fees.

(vii) The Record and Proceedings be sent back to Reference Court.

(viii) Award be drawn up accordingly.

[AJIT B. KADETHANKAR, J.]

1 2016 AIR (Bom.) 141