

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 1354 OF 2013

THE STATE OF MAH AND ORS

VERSUS

BALU BALBHIM MOHITE

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Advocate for Appellants : Mr. P. P. More, Asst. Govt. Pleader

Advocate for Respondent : Mr. S. W. Wakure

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CORAM : S. V. GANGAPURWALA, J.

DATE : 19th August, 2015

PER COURT :

1. Mr. More, the learned AGP submits that the claimant, being aggrieved by the amount of compensation awarded by Special Land Acquisition officer (SLAO), has preferred Reference under section 18 of the Land Acquisition Act for enhancement of compensation. The land to the extent of 1H 27R of the claimant is acquired for the purpose of percolation tank No.5 at village Walwad.

2. Learned AGP submits that the SLAO awarded compensation @ Rs.10,000/- per hectare. However, the reference Court awarded exhortation amount of compensation i.e. @ Rs.30,000/- per acre. Learned counsel submits that though reliance is shown to have been placed on Exhibits 41, 43 and 44, the Reference Court has not even discussed the relevancy of the said Exhibits 43 and 44. For considering the relevancy of the sale deed, proximity of lands under sale deed and land acquired has to be considered so also the fertility and all other

aspects. However the Reference Court has not at all considered the said aspects. The Reference Court has relied on agreement to sale for arriving at the conclusion for awarding Rs.30,000/- per acre compensation. The agreement to sale is not a registered document. The reference court could not have relied upon the said document to base its claim. According the learned AGP, even in Exh.43 nothing is stated as to how the said land is similar to the acquired land and moreover the same is after the notification under Section 4. As such the same cannot be relied upon.

3. Learned counsel for the claimant Mr. Wakure submits that the agreement to sale is executed at Exh.41 of which, subsequently sale deed is also executed. As such the said agreement will have to be relied on. Learned counsel submits that the land under sale deed Exh.43 was a Jirayat land and the land acquired is a Bagayat land. Even the well is acquired so also fruit bearing trees are acquired. However no compensation is awarded by the Reference Court for the fruit bearing trees such as mango, tamarind etc.

4. With the assistance of learned AGP and learned counsel for the respondent, I have gone through the record and the judgment.

5. From the record it does appear that the land acquired of the claimant is a Bagayat land. Even it is observed in the judgment that Mango and tamarind trees are present so also the stone bund structure is

there. However, compensation for mango trees, tamarind trees, stone bund structure and well is rejected on the ground that the enhanced compensation for the land is being awarded.

6. Sale deed Exhibit 43 is immediately after the notification under Section 4. The same is of Jirayat land. The land of the petitioner is a Bagayat land. The land under the sale deed Exh. 43 is sold for Rs.73,000/-. 80 R land was sold vide the said sale deed. Almost same compensation is awarded to the claimant. The land of the claimant as observed above is a Bagayat land and it was having fruit bearing trees, well and stone bund structure however no separate compensation was awarded by the reference Court for the same.

7. Considering the aforesaid aspects of the matter, compensation of Rs.30,000/- per acre appears to be reasonable and proper. In the light of that first appeal is dismissed. No costs.

(S. V. GANGAPURWALA, J.)

JPC