

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

FIRST APPEAL NO. 1458 OF 2013

WITH

FIRST APPEAL NO. 1459 OF 2013

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FIRST APPEAL NO. 1458 OF 2013

Dadarao s/o. Krishnaji Jagtap .. Appellants
died through LRs.

1. Rambhau s/o. Dadarao Jagtap
Age. Major, Occ. Agriculture,
R/o. Savargaon, Tq. Majalgaon,
Dist. Beed.
2. Jyotiram s/o. Dadarao Jagtap
Age. Major, Occ. Agriculture,
R/o. Savargaon, Tq. Majalgaon,
Dist. Beed.

Versus

1. The State of Maharashtra .. Respondents
Through – Collector, Beed.
2. The Executive Engineer,
Jayakwadi Project, Kesapuri Camp,
Majalgaon, Tq. Majalgaon,
Dist. Beed.

WITH

FIRST APPEAL NO. 1459 OF 2013

Bhausahab s/o. Chimaji Jagtap, .. Appellants
Died through LRs.

1. Laxman s/o. Bhausahab Jagtap
Age. 35 years, Occ. Labour & Agri.,
R/o. Savargaon, Tq. Majalgaon,
Dist. Beed.
2. Appasaheb s/o. Bhausahab Jagtap
Age. 33 years, Occ. &
R/o. As above.
3. Sonaji s/o. Bhausahab Jagtap
Age. 31 years, Occ. &
R/o. As above.
4. Ram s/o. Bhausahab Jagtap
Age. 25 years, Occ. &
R/o. As above.

Versus

1. The State of Maharashtra .. Respondents
Through – Collector, Beed.
2. The Executive Engineer,
Jayakwadi Project, Kesapuri Camp,
Majalgaon, Tq. Majalgaon,
Dist. Beed.

Mr. R.G. Hange, Advocate for the appellants.

Mr. N.B. Patil, AGP for respondent/State.

Mr. Ruturaj C. Patil, Advocate for respondent No.2.

CORAM : A.M. BADAR, J.
RESERVED ON : 16.11.2015
PRONOUNCED ON : 21.11.2015

J U D G M E N T :-

1. Present appellants had filed reference petitions under section 18 of the Land Acquisition Act, 1894, being dissatisfied with the amount of compensation awarded to them by the Land Acquisition Officer. The reference petitions filed by the appellant in First Appeal No.1458 of 2013 was registered as LAR No.24 of 2005 and reference petition filed by the appellants in First Appeal No. 1459 of 2013 was registered as LAR No.23 of 2005. These reference petitions were dismissed with costs by a common judgment and award dated 02.01.2013 by the learned District Judge-1, Majalgaon, Dist. Beed. Hence, the claimants have preferred these appeals challenging the said judgment and award passed by the learned Reference Court.

2. Heard.

3. Admit. At the request of learned Counsel

appearing for the parties, taken up for final hearing as R & P is received by the Court.

4. Facts leading to filing of present appeals can be summarized thus :-

. Claimant in First Appeal No.1458 of 2013 (LAR No.24 of 2005) was owner of house property bearing No.81/3 admeasuring 33.43 sq.mtr. Situated at village Savargaon in Majalgaon Taluka, Dist. Beed. Claimant in First Appeal No.1459 of 2013 (LAR No.23/05) was owner of house property bearing No.94/1 and 94/2 with open land annexed thereto, total admeasuring 300 sq.mtr. situated at the same village. The State has decided to acquire properties belonging to claimants and others for Jayakwadi project and accordingly on 30.07.1978, notification under section 4 of the Land Acquisition Act, 1894 came to be issued. The proceedings for acquisition of properties belonging to claimants were culminated in passing of award on 30.06.1986 by the Land Acquisition Officer. The rate of land was fixed at Rs. 10/- per sq.

mtr. and separate compensation was assessed and awarded to the house properties of claimants. Accordingly, claimants were paid compensation. Dissatisfied by the said award of the Land Acquisition Officer, claimants have chosen to file reference petition under section 18 of the Land Acquisition Act, 1894. It is seen that both the reference petitions were clubbed together by the learned Reference Court. Laxman Jagtap – claimant in LAR No.23 of 2005 came to be examined as witness No.1; whereas Rambhau Jagtap – claimant in LAR No.24 of 2005 came to be examined as witness No.2 by claimants. They separately adduced evidence of private valuer Balbhim Laxman Jaher Patil, in order to prove valuation report prepared by him valuing their acquired properties. Learned Reference Court by judgment and award, was pleased to reject report of Valuer with reasons that it does not mention date of inspection, notices were not issued to the respondents, even Gramsevak was not called at the time of inspection and that the Valuer was unable to tell boundaries of the acquired properties. Learned

Reference Court refused to place reliance on the judgment and award dated 31.07.2000 passed by learned Additional District Judge, Beed, in LAR No.93 of 1988, whereby house properties in Savargaon village itself were acquired for the same Jayakwadi project, by holding that the said judgment is not binding on it. Resultantly, both the Reference Petitions came to be dismissed by the impugned judgment and award dated 02.01.2013.

5. Mr. Hange, learned Counsel appearing for the appellants/claimants vehemently argued that valuation reports at Exh.56/C and at Exh.61/C respectively in both the Reference Petitions proved by witness Balbhim Jaher Patil do show date of inspection of the acquired properties. Those were inspected on 05.07.1986 and reports were submitted on 20.07.1986 as seen from the valuation reports. He further argued that claimants had relied on judgment and award of the Reference Court in LAR No.93 of 1988 decided on 31.07.2000, whereby house properties from the same village were acquired for the

same project by the same notification under section 4, which was issued on 30.07.1978. Hence, in his submission, learned Reference Court ought to have adopted same reasoning and ought to have accepted valuation reports by making some deductions. Mr. Hange, learned Counsel further submitted that market price of the acquired land ought to have been assessed at Rs.30 per sq. mtr. as has been done in case of lands acquired for the same project by same notification in LAR No.93 of 1988.

6. Per contra, Mr.Ruturaj Patil, learned Counsel for respondent No.2 submitted that there is no evidence to show that plots which were subject matter of LAR No.93 of 1988 decided on 31.07.2000 were similarly situated like the properties of claimants in the instant appeals. He submitted that as there is no evidence of the situation and the topography of lands covered by LAR No.93 of 1988 as well as lands of claimants in these appeals, judgment and award of LAR No.93 of 1988 is of no consequence for enhancing the compensation awarded to the

claimants by the Land Acquisition Officer. The learned AGP adopted the same submissions.

7. With the assistance of learned Counsels appearing for the parties, I have gone through the record and proceedings including oral evidence adduced on record as well as valuation reports of valuer Balbhim Jehar Patil. I have also gone through the judgment and award in LAR No.93 of 1988 at Exh.46/C in LAR No.23 of 2005.

8. At the outset, let us examine whether claimants have proved that they are entitled to enhanced compensation in respect of structures i.e. house properties acquired by the State. In order to prove this claim for enhancement of compensation of structure, the claimants are relying on valuation reports at Exh.56/C and at Exh.61/C, proved by their witness Bhalbhim Jaher Patil. By valuation report at Exh.56/C the valuer has determined cost of structure at Rs.25,739/- and cost of land at the rate of Rs.150/- per sq.mtr., of house

No.81/3. Valuation report of house property Nos.94/1 and 94/2 admeasuring 300 sq. mtr. is at Exh.61/C. By this valuation report, structure was valued at Rs.1,93,866/-; whereas land was valued at Rs.100/- per sq. mtr. Valuation reports are showing dates of visit to the acquired properties by the valuer. The properties seem to be inspected by the valuer on 05.07.1986. As such, the finding of learned Reference Court that the Valuation Report does not mention date of inspection is perverse. Similarly, though it is rule of prudence to issue notice to respondents to remain present at the time of valuation of properties, non-issuance of notices to respondents or Gramsevak will not be of any consequence, if ultimately it is found that evidence of valuer is truthful and trustworthy. In the case in hand, properties were acquired by issuing notification under section 4 of the Land Acquisition Officer, 1894 on 30.07.1978. As such one will have to ascertain value of acquired structure as on 30.07.1978. Perusal of valuation reports at Exh.56/C and Exh.61/C goes to show that witness Balbhim Jaher

Patil had valued both the house properties as per DSR-PDW rates for Beed for the year 1983-84. No evidence is tendered on record by claimants in order to ascertain what could have been price of acquired structure as on 30.07.1978. There is no material or data brought on record either through oral evidence of claimants or through evidence of valuer in order to make deduction from the valuation of house properties made by the Valuer for ascertaining market value of the structures as on 30.07.1978. True it is that in proceedings for determination of compensation, some guess work is permissible, but such guess work needs to be done with reference to some data and not arbitrarily.

9. My attention was drawn to the judgment and award in LAR No.93 of 1988, whereby learned Reference Court while deciding those matters made deduction of 45% from the valuation done by the Valuer for arriving at market price of the acquired structure. However, reasoning given by the Reference Court in that matter is bereft of

any consideration to the notification issued under section 4 of the Land Acquisition Act, 1894. Learned Reference Court in that matter proceeded on the premises that valuation reports are earlier by one year and nine months to the date of award of the Land Acquisition Officer. What is material for deciding the market value is not the date of award by the Land Acquisition Officer, but date of notification under section 4 of the Land Acquisition Act, 1894. How and for what reasons deductions are made in order to determine value of acquired structure is not stated by the Reference Court in that LAR No.93 of 1988. As such analogy adopted by the Reference Court in LAR No.93 of 1988 is of no assistance for determining market value of the structures acquired from the claimants vide notification dated 30.07.1978. As such, learned Reference Court in present matters has rightly refused to rely on valuation report at Exh.56/C and Exh.61/C, albeit with recording of wrong reasons. These valuation reports of witness Balbhim Jehar Patil as such cannot be relied upon for determining value

of structure as on date of notification under section 4 of the Land Acquisition Act, 1894. Claimants have adduced no other evidence in order to establish that acquired structures were costing more than the value offered to them by the Land Acquisition Officer vide award dated 30.06.1986. As such claim for enhancement of compensation for acquired structures fails.

10. Now let us examine what should be market value of the acquired land. The Land Acquisition Officer has awarded compensation at the rate of Rs.10/- per sq. mtr. for the acquired land. In submission of claimants, this valuation is totally on lower side. In order to establish market value of acquired land, claimants are heavily relying on judgment and award in L.A.R. No.93 of 2008 (Exh.47/C) decided on 31.07.2000 by the learned II Additional District Judge, Beed. Perusal of this judgment and award shows that the learned Reference Court relying on sale instances produced and proved in that matter, recorded a finding that market value of land from

village Savargaon is at Rs.30/- per sq. mtr. In that LAR No.93 of 1988, properties acquired were from village Savargaon, Tq. Majalgaon. Those properties were acquired for the same project i.e. Jayakwadi project. House properties of claimants are also situated in the very same village and those were acquired for the same project. The properties covered by present appeals as well as properties involved in LAR No.93 of 1988 were acquired by same notification issued under section 4 of the Land Acquisition Act. Respondents are not disputing the fact that this award has attained finality. As such, in order to maintain parity in compensation for acquired land, claimants also need to be given compensation of Rs.30/- per sq. mtr for their acquired lands. Therefore, it is held that claimants have proved that market value of their acquired land at the time of notification under section 4 of the Land Acquisition Act, 1894 was Rs.30/- per sq. mtr. and award at Rs.10/- per sq. mtr. for acquired land by the Land Acquisition Officer is not representing true market value as on the date of

notification under section 4 of the Land Acquisition Act, 1894.

11. In the result, both these appeals are partly allowed. Impugned judgments and orders are set aside. It is held that the appellants are entitled for compensation for acquired land at the rate of Rs.30/- per sq. mtr.

. Appellants/claimants are also entitled for 30% solatium on the amount of enhanced compensation under section 23(2) of the Land Acquisition Act, 1894.

. Appellants/claimants are also entitled for component at 12% p.a. on amount of enhanced compensation from the date of publication of notification under section 4 i.e. 03.07.1978 till the date of award of Land Acquisition Officer i.e. on 30.06.1986 under section 23 (1-A) of the Land Acquisition Act, 1894.

. Appellants/claimants are also entitled for

interest on enhanced amount of compensation at the rate of 9% p.a. from the date of award i.e. from 30.06.1986 to 29.06.1987 and at the rate of 15% p.a. from 30.06.1987 till the date of realization of the entire amount under section 28 of the Land Acquisition Act, 1894.

. Claim for enhancement of compensation for acquired structures is dismissed.

. Parties to bear their own costs.

[A.M. BADAR, J.]