

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

First Appeal No. 784 of 2004

- 1) The State of Maharashtra
Through the Collector, Jalna.
- 2) The Executive Engineer,
Minor Irrigation Division,
Jalna.
- 3) The Special Land Acquisition
Officer (B & C), Jalna. **.. Appellants.**

Versus

- * Shankar s/o Kashinath Harkal,
Age major, Occupation : Agril.,
R/o Revgaon,
Taluka and District Jalna. **.. Respondent.**

Shri. V.H. Dighe, Assistant Government Pleader, for
appellant.

CORAM: T.V. NALAWADE, J.

DATE : 19th NOVEMBER 2015

JUDGMENT:

- 1) The appeal is filed against the judgment and
award of Land Acquisition Reference No.403/1997 which
was pending in the Court of the Civil Judge, Senior
Division, Jalna. The Reference filed under section 18 of

the Land Acquisition Act is allowed by the Reference Court and compensation granted by the Land Acquisition Officer is enhanced. Heard learned Assistant Government Pleader.

2) Land Gat No.264 situated in village Revgaon admeasuring 1 hectare and 57 R of present respondent Shankar Harkal is acquired by the Government for Waki Irrigation Project. The notification under section 4 of the Land Acquisition Act was issued on 8-2-1996. The Land Acquisition Officer presumed that it is jirayat, dry land, and gave compensation at the rate of Rs.460/- per R. It is the case of the present respondent that though there was no well in land Gat No.264, owner of land Gat No.264 was entitled to take water from adjacent land Gat No.265 and this circumstance is not considered by the Land Acquisition Officer. He contended that he was taking two crops every year in the land and so compensation ought to have been given by presuming that there is irrigation facility to the land. He contended that market value of his land was at least Rs.1500/- per R.

3) Respondents, present appellants, contested the matter by filing written statement and they contended that after considering the relevant factors, compensation was granted by the Land Acquisition Officer. It was denied that the land of the claimant was having facility of irrigation.

4) Before the Reference Court Shankar examined himself and he placed reliance on record like 7/12 extract, Exhibit 21 and some sale instances. He gave substantive evidence that he was taking water from the well situated in land Gat No.265 and he was taking two crops every year. He gave evidence that he was taking crops like cotton, jawar and vegetables and he was making good income per year. His evidence that his land had irrigation facility has support of the revenue record and it shows that he was entitled to get water from the well situated in land Gat No.265.

5) It appears that before the Land Acquisition Officer there were at least 18 sale instances but the Land Acquisition Officer refused to take into consideration the

sale instances of higher value by holding that they were for smaller areas. Present respondent relied at least on 4 sale instances which were given exhibit by the Reference court at Exhibits 24 to 28. It appears that the present respondent did not examine either the vendor or the purchaser of these sale instances and due to that the Reference Court did not consider these sale deeds in support of the case of the claimant. As per these sale deeds it was possible for the claimant to prove that the value of similar land was around Rs.1000/- per R. It is already observed that before the Land Acquisition Officer also there were many sale instances available but he refused to use the sale instances of higher value by holding that they were for smaller areas. All these sale instances were of the period prior to the date of publication of notification under section 4 of the Land Acquisition Act.

6) The Reference Court has, however, accepted the case of the present respondent that there was irrigation facility to his land. Nature of crops which were taken by the respondent is also taken into consideration.

The Reference Court has presumed that the market value of the land of the present respondent was at least Rs.690/- per R. This value is much less than the value of similar lands shown in the sale instances. In view of these circumstances, this Court holds that it is not possible to interfere in the decision given by the Reference Court.

7) In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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