

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

FIRST APPEAL NO. 3143 OF 2013

GOPA POMA CHAVAN AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

THROUGH COLLECTOR, BEED

...

Advocate for the appellants : Mrs. Anjali Dube Bajpai

AGP for the Respondents State: Mr. P. N. Kutti

CORAM : S. V. GANGAPURWALA, J.

DATE : 27th October, 2015

PER COURT :

1. The claimants had filed reference under Section 18 of the Land Acquisition Act being dissatisfied with the amount of compensation awarded by the Special Land Acquisition Officer. The reference is partly allowed. The present appeal is filed for further enhancement.

2. Smt.Dube, learned counsel for the appellants submits that the reference Court in LAR No.446/88 and 447/88 in respect of land acquired vide notification u/s 4 of Land Acquisition Act dated 13/3/1980 and for the same project that is for submergence of Jaikwadi project has granted compensation at the rate of Rs.500/- per Are considering lands to be bagayat lands. Learned counsel submits that in the present case, the Reference Court has

granted compensation treating the lands as Jirayat lands at the rate of Rs.200/- per Are and only in respect of land Gat No.38 has considered the said land to be Bagayat land and awarded compensation at the rate of Rs.375/- per Are. The learned counsel submits that even on the ground of parity claimants are entitled for the same compensation. According to the learned counsel, the reference Court has not considered topography of the lands acquired. The lands acquired are situated on the bank of the river and are irrigated by canal water. In land gat no.38 there is well also. According to the learned counsel, only on the basis of crops undertaken the Court cannot come to the conclusion about the nature of the land being Bagayat or otherwise. All the lands were having black cotton soil, the same ought to have been considered by the reference Court.

3. Learned counsel submits that even 7/12 extracts have been filed on record. The map is also sought to be produced. The land of the claimants being on the bank of the river is to be considered as Bagayat land.

4. Learned A.G.P. submits that as far as land gat no.38 is concerned, the same was required to be considered as Bagayat land being irrigated by well. 7/12 extract also

shows presence of well. However, in other lands there is no well in existence nor there is any evidence to show that the said lands were irrigated by canal water. In absence of the same, the reference Court has rightly considered the lands to be Jirayat lands.

5. I have considered submissions canvassed by learned counsel for respective parties. I have also gone through judgment so also record and proceedings.

6. The fact is that all the lands have been acquired vide notification u/s 4 dated 13/3/1980 for the purpose of Jaikwadi project. The whole village has been submerged is an admitted fact. The lands are also near the river however, it appears that each of the claimants have not stepped into witness box to prove their case. The 7/12 extracts have been filed on record. In respect of land gat no.38 reference Court has considered the same to be Bagayat land and has awarded compensation at the rate of Rs.375/- per Are that is almost 1 and $\frac{1}{2}$ times more than the Jirayat land.

7. The reference Court in LAR Nos. 446/88 and 447/88 considered the evidence on record held the lands involved therein to be Bagayat lands and awarded compensation at

the rate of Rs.500/- per Aar. The sale deeds on record are also of higher amount. The said sale deeds are in respect of adjacent villages and not in respect of the same village as such some deduction is required to be made in that regard.

8. It appears that the judgment delivered in reference in LAR No.446/88 and 447/88 has become final. When the lands are acquired for the same project and by the same notification and from the same vicinity, same compensation is required to be awarded. The reference Court has awarded land $\frac{1}{2}$ times more compensation to the Bagayat land as compared to the other lands i.e. Jirayat lands maintaining the same ratio and considering the judgment of the reference Court in respect of similarly situated lands acquired for the same purpose and vide same notification, I would also award Rs.500/- per Are to the land bearing gat no.38 and at the rate of Rs.375/- per Are for other lands involved in the present matter.

9. In light of above, judgment and award passed by reference Court is modified. The respondent shall pay compensation to the claimants at the rate of Rs.500/- per Are for gat no.38 and at the rate of Rs.375/- per Are for all other lands. The statutory benefits as awarded by

reference Court are maintained and upheld.

10. The First Appeal is accordingly disposed of. No costs.

11. In case claimants have deposited less Court fees, claimants shall deposit the deficit Court fees.

(S. V. GANGAPURWALA, J.)

JPC