

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

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909 FIRST APPEAL NO.918/2015 WITH CIVIL APPLICATION
NO.7503 OF 2015 IN FIRST APPEAL NO.918/2015

WITH FIRST APPEAL NO.917/2015 WITH CIVIL APPLICATION
NO.7502/2015 IN FIRST APPEAL NO.917/2015

WITH FIRST APPEAL NO.919/2015 WITH CIVIL APPLICATION
NO.7504/2015 IN FIRST APPEAL NO.919/2015

WITH FIRST APPEAL NO.915/2015 WITH CIVIL APPLICATION
NO.7506/2015 IN FIRST APPEAL NO.915/2015

WITH FIRST APPEAL NO.914/2015 WITH CIVIL APPLICATION
NO.7507/2015 IN FIRST APPEAL NO.914/2015

WITH FIRST APPEAL NO.916/2015 WITH CIVIL APPLICATION
NO.7508/2015 IN FIRST APPEAL NO.916/2015

WITH FIRST APPEAL NO.2143/2015 WITH CIVIL APPLICATION
NO.8841/2015 IN FIRST APPEAL NO.2143/2015

SPECIAL LAND ACQUISITION OFFICER DHULE AND ANOTHER
VERSUS
SITABAI RAMSINGH RAJPUT AND OTHERS

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Advocate for Appellants-Acquiring Body : Mrs. Vaishali
Patil- Jadhav

Advocate for Respondent/claimants: Mr. Kale Ajeet B.
AGP for Respondent/SLAO: Mr. S. P. Sonpawale

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CORAM : S. V. GANGAPURWALA, J.

DATE : 13th October, 2015

PER COURT :

1. Lands of the present respondents/claimants are acquired for Mandal Minor Irrigation Tank. For the said project, lands from Moghan and Dhodre are acquired. The Special Land Acquisition Officer awarded compensation

ranging from Rs.65475/- to Rs.75100/- per hectare. The claimants, being dissatisfied with the amount of compensation awarded, filed References under section 18 of the Land Acquisition Act. The said Reference are partly allowed. Aggrieved thereby, the acquiring body has filed the present appeals.

2. Mrs. Vaishali Patil, the learned counsel for the acquiring body strenuously contends that each and every case has to be individually considered on its own evidence, on the basis of evidence led. According to the learned counsel, the claimants have not led any evidence to show the topography of the acquired lands and the land under sale instances relied by the claimants. The learned counsel submits that three sale instances are relied by the claimants i.e. Exhibits 14, 15 and 16. Sale deed dated 01.12.1999 is in respect of the land situated at Moghan which is of the same village as that of the acquired land, wherein 11 R land is sold for Rs.11,000/- i.e. @ Rs. one lakh per hectare. Learned counsel submits that another sale deed relied is in respect of land situated at another village i.e. Mandal in which the land admeasuring 61 R is sold for Rs.69,000/- and the third sale deed relied is from another village Hendrun

wherein, 80 R land is sold for Rs.1,18,000/- i.e. @ Rs.1,47,500 per hectare. Learned counsel submits that even the Reference Court has come to the conclusion that there is absolutely no evidence on record to suggest the situation of the properties acquired and the lands under the sale deeds. No topography was available before the Reference Court. Still the Reference Court enhanced the compensation amount to Rs.1,25,000/- per hectare without any basis. The Reference court has awarded exorbitant compensation amount. According to learned counsel, in absence of comparability between the lands under acquisition and the land covered under the sale instances, the Reference Court could not have enhanced the compensation amount.

3. The learned counsel relies on the judgment of the learned single judge of this court in a case of **Deputy collector Vs. Diogo, reported in 2006 (2) Bom. C.R.769**. The learned counsel also relies on the judgment of the Apex Court in case of **Hookiyar Singh Vs. The Special Land Acquisition Officer, reported in 1996 (3) SCC 766** to submit that the burden of proving the market value prevailing as on the date of publication of notification under section 4 of the Land Acquisition Act

is upon the claimants. According to the learned counsel, the claimants have miserably failed to prove the market value as on the date of publication of notification under section 4 of the Land Acquisition Act as Rs.1,25,000/- per hectare. The Reference Court, though has not accepted the sale instances, has granted enhanced compensation amount at Rs.1,25,000/- per hectare only on the basis of guess work which is not permissible.

4. Mr. Kale, the learned counsel for the respondents/claimants submits that the lands are acquired for the Mandal Minor Irrigation Tank of village Moghan and Dhodre. When lands are acquired from different villages for the same project, the Court can consider the sale instances of all the said villages and the same compensation will have to be awarded. The learned counsel relies on the judgment of learned Single Judge of this Court in the case of **Hanmabai Irana Patil (deceased-through her L.Rs.) Vs. The State of Maharashtra, Through District Collector and another, reported in 2009 (4) Bom.C.R. 380** and submits that even on the ground of parity, the same compensation is to be awarded in respect of lands situated in different villages which are affected by the same project.

5. The learned counsel further submits that the sale instance of 11 R land for Rs.11,000/- is in respect of the the same village from which the lands acquired i.e. village Moghan. The same is one and half years prior to the notification under section 4. If 10% addition is made, the market value would be the same i.e. Rs.1,25,000/- per hectare. Even the sale deed in respect of 61 R land is of village Mandal i.e. for which project the lands of the claimants have been acquired. The rate of the said land also would be in the same range as awarded by the Reference Court by adding 10% increase.

6. With the assistance of learned counsel, I have gone through the judgment so also copies of the sale deeds relied by the claimants and referred in the judgment.

7. There cannot be any dispute with the proposition that the sale instances to be relied should be comparable sale instance. So far as the sale instance dated 28.03.2000 wherein 80 R land is sold for Rs.1,18,000/- is concerned, the same certainly cannot be considered as it is a sale in respect of a bagayat land. The sale instance of 11 R land for Rs.11,000/- is in respect of jiriyat land and which is also of the same village that of the acquired land. The said sale instance is of a

small area of land. The other sale instance which is relied is in respect of 61 R land which is sold for Rs.69000/-. The same is in respect of village Mandal and the land is acquired for the project of village Mandal. The said sale deed is also of a jirayat land. The lands that are acquired also are not large chunk of land but are small pieces of land. The land acquired ranges from 20 R to 1 hectare 59 R. In many of the matters, it is below 1 acre.

8. The sale instances in respect of jirayat land of the same village can certainly be considered so also of the adjoining villages, because the lands are acquired for the minor irrigation tank of village Mandal which necessary show that they are adjoining villages and lands are situated in the same vicinity. Considering the sale instances of jirayat land, the market value would come to Rs.1,25,000/- per hectare as the land under the sale deed is situated in the same area and village as that of the acquired land. The said sale deed certainly would be relevant to come to the conclusion as to the market value of the acquired land.

9. Considering the above, the Reference Court has awarded reasonable amount of compensation. The same needs no interference. The First Appeals are dismissed.

10. In view of dismissal of appeal, the claimants are allowed to withdraw the amounts deposited. Civil applications are accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC