

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 2622 OF 2009

WITH CA/5457/2008 IN FA/2622/2009 WITH FA/859/2010 WITH
FA/860/2010 WITH FA/863/2010 WITH FA/875/2010 WITH FA/876/2010
WITH FA/881/2010 WITH FA/882/2010 WITH FA/883/2010 WITH
FA/884/2010 WITH FA/885/2010 WITH FA/886/2010 WITH FA/888/2010
WITH FA/889/2010 WITH FA/890/2010 WITH FA/891/2010 WITH
FA/892/2010 WITH FA/893/2010 WITH FA/894/2010 WITH FA/1421/2011
WITH FA/2232/2011 WITH CA/5439/2008 IN FA/2232/2011

THE EX ENGINEER LOWER TERNA CANAL DIVISION NO. 2 NILANGA
VERSUS
KALYANIAPPA GUSIDAPPA SORDE AND ORS

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Advocate for Appellant : Mrs. Kalpalata Patil Bharaswadkar
AGP for Respondents State: Mr. S. G. Sangle
Advocates for Respondents: Mr. M.S.Patil Amalekar, Mr. A. S. Deshpande

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CORAM : S. V. GANGAPURWALA, J.

DATE : 1st September, 2015

PER COURT :

1. All these appeals are arising out of common judgment delivered by the Reference Court. So as to avoid rigmarole, the same are decided together.

2. Lands of the respondents claimants were acquired for right bank canal of lower Terna project. Notification under section 4 of the Land Acquisition Act is dated 20th January, 1990. The Special Land Acquisition Officer awarded compensation for the acquired lands @ Rs.300/- to Rs.340/- per R. The claimants, being aggrieved by the inadequate compensation granted, filed references under section 18 of the Land Acquisition Act. The Reference Court partly allowed the reference,

granting compensation @ Rs.600/- per R. In three references, considering the land to be bagayat land, wherein there are existence of wells and sugarcane crop is taken, the Reference Court awarded compensation @ Rs.1200/- per R. Being aggrieved thereby, the acquiring body has filed the present appeals.

3. Mrs. Patil-Bharaswadkar, learned counsel for the Appellant strenuously contends that there was no documentary evidence worth the name to consider, enhancing the compensation amount. Sale deed Exh.25 was in respect of land situated in village Nilanga which is about 3 to 4 kms. away and it is a village having population of almost 20000. The Reference Court has discarded the said sale deed, however, has considered Exhibits 46 to 51 and has considered the sale deed of highest consideration. The SLAO had considered all these sale deeds. He discarded the sale deeds having low consideration and highest consideration and had considered the sale deed of modest amount. The witness of the present Appellant has also stated on oath that the lands acquired are not very fertile, they are rocky and black cotton soil is only one or two feet.

4. Learned counsel submits that Reference Court has done the guess work and awarded compensation amount though sale deeds were on record. The same ought to have been considered. The SLAO has rightly considered the sale deeds. Even the witness who was examined to

prove Exh.25 was not available for cross examination as he was dead. The Reference Court has given perverse reasoning by stating that the said witness can be considered as against respondent No.1 and cannot be considered as against respondent No.2. When the said witness was not available for cross examination, the evidence of the said witness cannot be considered at all. Learned counsel submits that no reason is given for considering the sale deed of the highest consideration. According to the learned counsel, the Reference Court has committed error in exorbitantly enhancing the compensation amount.

5. Mr. Deshpande, the learned counsel for the respondents claimants supports the order and submits that even Exh.25 has not been relied nor the evidence of the witness who was examined to prove the documents and who subsequently died is relied. Sale deeds Exhibits 46 to 51 have been considered. These are all sale deeds executed prior to the notification under section 4 of the Land Acquisition Act and one of the lands is sold at Rs.50000/- per hectare. The said sale deed is considered. Reference Court has also considered the crops which were sown and harvested so also the fertility of the lands.

6. With the assistance of the learned counsel I have gone through the record and also I have considered their submissions.

7. No doubt, if witness is not available for cross examination, his examination-in-chief cannot be considered. Perusing the judgment of the

Reference Court, though the Reference Court has observed that the said evidence can be considered as against respondent No.1 but not as against respondent no.2 (which reasoning is certainly not proper), the Reference Court has not relied on the said evidence. Reference Court has evaluated the evidence led by the claimants and original opponent No.2. The sale deeds are brought on record. Even the SLAO has observed that the sale deeds are ranging from Rs. 9,000/- to Rs.50,000/- per hectare. There is no reason given for discarding the sale deed of the consideration of Rs.50000/- per hectare by the SLAO. The said sale deed certainly can be considered. The said sale deed is of the land situated in the same village as of the acquired land. It is also of Jirayat land. The crops which were sown were Jawar, Toor, groundnut, wheat chilly, sunflower etc. and in some of the lands sugarcane was taken. When these crops were taken, naturally the lands would be fertile lands. The land is of black cotton soil, which is admitted by the witness of the present Appellant, only he disputes about the depth of the black cotton soil.

8. Considering the aforesaid aspects of the matter, the reference court properly considered the sale deed. In three matters, the Special Land Acquisition Officer had granted compensation at the rate of Rs.640/- per R for which the Reference Court has enhanced Rs.1200/- per R, considering the fact that valuation of the bagayat land would be twice that of jirayat land and that is also only in three references. In remaining twenty references compensation awarded by the Reference Court @

Rs.600/- per R which would be almost Rs.24000/- per acre. The said amount awarded is modest amount. The same is based on the documents on record.

9. Considering the above, the appeals are dismissed. However, there is no order as to costs.

10. In view of the dismissal of the appeals, the civil applications also stand disposed of.

(S. V. GANGAPURWALA, J.)

JPC