

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

...
910 FIRST APPEAL NO. 2591 OF 2015

NAGAPPA HAVAPPA SAGRE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
WITH
FIRST APPEAL NO. 2592 OF 2015
PARWATI BHAGWAN MORE
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER
WITH
FIRST APPEAL NO.2593 OF 2015
SAVITA BHAGWAT GARAD
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER
WITH
FIRST APPEAL NO.2594 OF 2015
SADANAND BHIMASHANKARAPPA UTGE
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER
WITH
FIRST APPEAL NO.2595 OF 2015
SUBHASHAPPA @ SHIVSHANKARAPPA SHIVMURTIPPA UTGE
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for AppellantS : Mr. Devakate Anant R
AGP for Respondents State: Mr. P. N. Kutti
...

CORAM : S. V. GANGAPURWALA, J.

DATE : 21st October, 2015

PER COURT :

1. Lands of the claimants in these appeals have been acquired for percolation tank. The lands are situated at Ausa. Notification under section 4 is dated 24th August, 2000. Being dissatisfied with the amount of compensation

awarded, the claimants filed reference before the reference court under section 18 of the land acquisition Act. The said references are partly allowed. The present appeals are filed for further enhancement of compensation.

2. Mr. Deokate, the learned counsel for the appellants strenuously contends that from the very same village, vide notification under section 4 of the year 1992, the lands were acquired for percolation tank. The reference court in LAR Nos. 292/1995 and 293/1995 awarded compensation to the claimants @ Rs. 3750/- per R. In the present case, the notification under section 4 is 8 years after the notification under said reference. 10% addition is permissible and the valuation would come to Rs.7293/- per R. The same is also considered by the reference court. However, the court has not awarded the same compensation. According to the learned counsel, even the appeals filed by the State against that judgment and award passed in the said references bearing LAR Nos. 292/1995 and 293/1995 have been dismissed. The said judgment can be considered as an yardstick for awarding compensation amount in the present case. There was no impediment to award compensation @ Rs.7293 per R.

at least, in the present case.

3. According to learned counsel the land involved in First Appeal No. 2594/2015 has been treated as bagayat land. There is an existence of well. Even compensation is awarded for the well. Sugarcane crop is harvested. As such, the land is required to be considered as Bagayat land and compensation twice that of the jirayat land ought to have been awarded i.e. @15,000/- per are. According to learned counsel, the other sale deeds on record also can be considered and highest sale exemplar is required to be considered. The sale transaction relied upon are genuine sale transactions. There was no impediment to consider the highest sale exemplar and award the compensation accordingly. However, the court has restricted the compensation amount to Rs.3750/- per R without considering the judgment in the earlier reference and sale instance.

4. Mr.Kutti, the learned AGP, submits that the reference court has considered all the relevant aspects of the matter. The compensation is awarded by the reference court on the higher side. The court has considered the topography of the lands acquired. The Lands under the sale deed are situated on road, as such

the necessary deductions are required to be made. The reference court has awarded reasonable compensation amount. The judgment in the earlier references cannot be considered as an yardstick because the subsequent sale deeds are available for consideration.

5. With the assistance of learned counsel, I have gone through the judgment and order so also the sale deed and the evidence relied by the claimants.

6. The basic contention of the claimants is that the vide notification of the year 1993 under section 4 of the Land Acquisition Act, lands from the same village AUSA were acquired for the purpose of percolation tank. At that time, in the reference filed by the claimants bearing LAR Nos. 292/1995 and 293/1995, the reference court has awarded compensation @ Rs. 3750/- per R. By giving 10% increase every year, the compensation amount needs to be awarded in the present case. The said notification is 7 years prior to the notification in the present case. During the interregnum, period, there are sale deeds available and placed on record. As such, adding 10% every year to the amount determined by the reference court to arrive at market value for the acquired land would be unsafe. The market value is value

at which the willing seller is ready to sale and willing purchaser is ready to purchase the property. When the sale deeds are on record, naturally the said sale transactions will have to be considered. Even the claimants have produced on record the said sale transactions also.

7. Various sale transactions are discussed by reference court. Exhibit 51 is the sale deed for 29 $\frac{1}{4}$ R land sold for total consideration of Rs.1,26,000/-. As per the said sale deed valuation would come to Rs.4200/- per R. The reference court has observed that the land under the sale deed is situated adjacent to residential plot and the road of municipal counsel is 20 feet towards the southern side. Sale deed exh. 52 is of a small area of land i.e. 5 and half R, which is sold for an amount Rs.7000/- per R. Exhibit 46 is the sale deed for 1 H 14 R land. If 10% permissible increase is added, the rate would come to Rs.3149/- per R. Exhibit 47 is for 15 R land and if 10% increase is added every year from the date of sale deed till the date of notification, the valuation would come to Rs.6021/- per R. Exhibit 49 is the sale deed for 16 R land. The valuation by adding 10% increase every year would come to Rs.4426/- per R.

8. The reference court has considered the situation of the acquired lands as per the award of the Special Land Acquisition Officer. It is stated that village AUSA is a Taluka, having all the facilities and amenities and the land acquired are adjacent to the said village. The court ought to have considered the sale exemplar properly. Of course, for a smaller area of land and the land adjacent to the road, some deductions will have to be made. The land under the sale deed Exhibit 47 is for 15 R land. However, by adding 10% increase every year, market value comes to Rs.6021/- per R. Considering that it is of a small area of land, deductions will be required to be made. Considering the necessary deductions and the other sale deeds on record, I would value the acquired land at Rs.5000/- per R.

9. The claimants are claiming that the land involved in First Appeal No.2594/2015 is a bagayat land. I have perused the 7/12 extract produced on record. The said 7/12 extract shows that there is presence of well. Even the Special Land Acquisition Officer has awarded compensation for the well, so also in part of the land sugarcane crop is also harvested. Considering the aforesaid aspect, there would be no impediment to hold

the said land to be seasonably bagayat land. The compensation would be one and half times as that of the jirayat land.

10. In light of the above, the judgment and award passed by the reference court is modified.

11. The appellants are held entitled for compensation @ Rs.5000/- per R in all these appeals, except First Appeal No. 2594/2015. In First Appeal No. 2594/2015, the appellants are entitled for compensation @ Rs.7500/- per R.

12. The respondents shall pay compensation to the appellants in First Appeal No.2594/2015 @ Rs.7500/- per R and in all other appeals @ Rs.5000/- per R. The statutory benefits as awarded by the reference court are upheld maintained.

13. The first appeals are according allowed. No costs.

(S. V. GANGAPURWALA, J.)

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JPC