

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.622 OF 1991

Tukaram Pomanna Jadhav
(since deceased through his legal heirs
and representatives)

a) Homanna Tukaram Jadhav and Ors.

.. Appellants

Vs.

State of Maharashtra and Anr.

.. Respondents

WITH

FIRST APPEAL NO.623 OF 1991

Balu Jyotiba Jadhav

.. Appellant

Vs.

State of Maharashtra and Anr.

.. Respondents

Mr.Rahul Deodhar h/f Mr.S.M.Kamble for the appellants

Mr.A.R.Patil, A.G.P. for the State

CORAM : K.K.TATED, J.
DATED : 15TH JANUARY, 2015

PC:

1 Heard the learned counsel for the parties.

2 These two First Appeals are preferred by the claimants challenging the judgment and award dated 28th August, 1990 passed by IInd Additional District Judge, Kolhapur in LAR No.41 of 1984 and 113 of 1984 rejecting the appellant claimant's claim for enhanced compensation in respect of acquired land.

3 For the sake of convenience, the nomenclature of the parties as is stated in the reference u/s18 of the Land Acquisition Act will be referred to hereinafter as the appellant claimant and respondent/State.

4 First Appeal No.622 of 1991 is arising from LAR No.41 of 1984. In the said application, claimant's land is acquired for submergence by main dam of Tilar Hydro Electrical Project admeasuring 1H 88 R i.e. from Survey No.432/2 0.4 Ares, Survey No.255/2 0.3.5 Ares, Survey No.386 0.16.5 Ares, Survey No.274 0.25 Ares and Survey No.274/9 1H. 39 Ares situated at Village Tudaye, Taluka Chandgad, District Kolhapur.

5 First Appeal No.623 of 1991 arises from the judgment and award passed by Reference Court in LAR No.113 of 1984 in which the State acquired claimant's land from Survey No.421/2 admeasuring 0.25.3 Ares of Village Tudaye Taluka Chandgad, District Kolhapur, for the same project.

6 The Special Land Acquisition Officer in both the matters issued notification under section 4 of the Land Acquisition Act dated 19th

June, 1978 and published in Gazette 13th July, 1978. After following due process of law, Special Land Acquisition Officer declared award dated 19th December, 1983 and determined a sum of Rs.14,046.70 for the land in First Appeal No.622 of 1991 and in First Appeal No.623 of 1991 Rs. 3,413.25 @ Rs.7,471/- per hectare approximately.

7 Being aggrieved by the said judgment and award passed by the Reference court, the claimants preferred reference under section 18 of the Land Acquisition Act claiming compensation @ Rs.50,000/- for sugarcane growing land, Rs.35,000/- for paddy growing land and Rs.25,000/- for sweet potato, nilgiri and chilli growing land per hectare. In support of their contention, claimants relied on the three sale instances dated 22nd March, 1979 of 0. 28 Ares from Village Halkarni. The said land fetched Rs.25,501/-. The sale deed is at Exhibit 18. Another sale deed dated 14.5.1974 Exhibit 20 is in respect of 14 ½ Gundhas from Survey No.61 of Rs.5000. The third sale instance is dated 12.4.77 Exhibit 26 admeasuring 22 Gunthas of land from Survey No.18/7 of Village Surute for Rs.5000/-. The claimants also relied on the judgment and award dated 22.3.1979 in LAR No.56 of 1984 Exhibit 29 arising from the same project in which the reference Court awarded compensation in respect of acquired land @ Rs.28,500/- per hectare for irrigated land and Rs.15,000 per hectare for non-irrigated land. The trial court after considering the evidence on record held that the claimant failed and neglected to place on record sufficient evidence to show that they are entitled to additional compensation in respect of acquired land. The Reference Court dismissed both the references. Hence, the present First Appeal.

8 The learned counsel for the appellant submits that the Reference Court erred in coming to the conclusion that the claimants failed and neglected to place on record sufficient documents and / or evidence to show that they are entitled enhanced compensation in respect of acquired land. He submits that the claimants placed on record three sale instances to show that the market value of acquired land on the date of issuing notification under section 4 of the Land Acquisition Act was more than Rs.50,000/- per hectare. He further submits that even the Reference Court failed to consider the judgment dated 22nd March, 1979 in LAR No.56 of 1984 Exhibit 29 which has arisen from the same acquisition in which the Reference Court awarded compensation in respect of acquired land @ Rs.28,500/- per hectare for irrigated land and Rs.15,000/- per hectare for non-irrigated land. He further submits that the Reference Court erred in coming to the conclusion that the acquired land was non-irrigated land. He submits that both the claimants specifically stated in their deposition that they used to take sugar cane crop. He further submits that even the claimants placed on record receipt issued by the Sugar Factory (Sakharkhana). On the basis of these submissions, the learned counsel for the claimants submits that the impugned judgment and award passed by Reference Court requires to be set aside and the Reference Application filed by the claimant under section 18 of the Land Acquisition Act need to be allowed with all benefits as per amended provisions of the Land Acquisition Act.

9 The learned counsel for the claimant submits that the State of

Maharashtra challenged the judgment and award dated 14th February, 1990 passed by Reference Court in LAR No.86 of 1984 by First Appeal No.262 of 1991 which was dismissed by this court (Coram: Mrs.Mridula Bhatkar, J.) by oral judgment dated 13th November, 2014. He submits that even Hon'ble High Court at the time of deciding First Appeal No.262 of 1981 considered the judgment of the Reference Court in LAR No.56 of 1984. Hence, in any case, the claimants are atleast entitled compensation as per the rates awarded by the Reference Court in LAR No.56 of 1984.

10 On the other hand, the learned A.G.P for the respondent State vehemently opposed these First Appeals. He submits that the Reference Court considered the entire evidence on record including the sale instances produced by the claimant as well as the judgment and award dated 22nd March, 1979 in LAR No.56 of 1984 Exhibit 29 and held that the claimants failed to satisfy that they are entitled to additional compensation in respect of acquired land. He further submits that the claimants in their deposition stated that they took sugar cane crop in the land. They failed to place on record any documentary evidence like 7/12 extract to show that they use to take sugar cane crops in acquired land. He further submits that the receipts produced by the claimant in respect of the sale of sugar cane to Doulat Sugar Factory is also not proved by the claimant. Hence, the Reference Court discarded those receipts. He further submits that the claimant himself admitted in deposition on the date of notification under section 4 of the land Acquisition Act that they reaped paddy crops from the land under acquisition. Therefore, on

the basis of these facts, the Reference Court rightly held that the said land acquired is non-irrigated land. Hence, there is no substance in the present Appeals and they be dismissed with costs.

11 On the basis of the submissions made by both the counsel, the following issues arise in the present First Appeal for determination:

- a) Whether the claimants adduced sufficient evidence to show that they are entitled to enhanced compensation?
- b) Whether the claimants are entitled to compensation as per the judgment and award dt.22nd March, 1979 in LAR No.56 of 1984 Exhibit 29?

12 I have gone through the copy of Reference under section 18, written statement filed by the State as well as deposition of claimants and other documents. In the present proceedings, the claimants mainly relied on the judgment dated 22nd December, 1979 in LAR No.56 of 1984 for claiming enhanced compensation. It is to be noted that in the Reference Court they specifically stated that the land involved in LAR No.56 of 1984 was acquired for the same project by same notification and common award was passed. It is to be noted that if the land involved in the LAR No.56 of 1984 was acquired for the same project, hence, the claimants in the present proceedings are entitled to compensation at the same rate on the basis of parity.

13 The Apex Court in the matter of *Union of India v. Bal Ram and*

another.¹ held that the determination of market value of land on the basis of comparable instances of sale of land acquired from different villages for same purpose can be relied.

14 Even the Apex Court in the matter of *Fida Hussain & Ors. v. Moradabad Development Authority & Anr.*² held that even the lands acquired under same notification in respect of same villages there should not be any difference in granting compensation.

15 The Apex Court in the matter of *Bhim Singh and others etc. v. State of Haryana and another*³ held that the best method would be to look at the earlier judgments and Awards and not the sale instances at the time of determining the compensation in respect of acquired land. Even our High Court in the matter of *Bayaji Tatya kalunge vs. State of Maharashtra*⁴ held that the land situated in the same village acquired for the same purpose under the same notification then the claimants are entitled to compensation at the same rate on the ground of parity.

16 In the present proceeding, there is no dispute that the lands acquired in the present two First Appeals as well as LAR No.56 of 1984 are for the same project. The judgment and award passed by the Reference Court in LAR No.56 of 1984 are considered by this court in First Appeal No.262 of 1991 and dismissed the First Appeal preferred by the State of Maharashtra.

1 AIR 2004 SCC 3981

2 JT 2011(8) SCC 333

3 AIR 2003 SCC 4382

4 2007 (2) ALL MR 316

17 In the present proceeding, though the learned counsel for the claimants submitted that the acquired lands were irrigated land but he failed to point out even a single document in support of that. Hence, it must be held that the land acquired by the State of Maharashtra in these appeals is non-irrigated land.

18 On the basis of above mentioned facts and the law declared by the Apex Court and our High Court, I am of the opinion that the claimants are entitled to compensation in respect of acquired land on the basis of judgment and award passed by Reference court in LAR No.56 of 1984 dated 22nd March, 1979 i.e. @ Rs.15000/- per hectare for non-irrigated land.

19 Hence, following order:

a) Both the First Appeals are partly allowed as under:

In both the First Appeals the claimants are entitled to compensation in respect of acquired land @ Rs.15,000/- per hectare along with all other statutory benefits as per amended provisions of the Land Acquisition Act and they shall be paid at this rate after deducting the amount already paid.

b) Both the First Appeals are disposed of accordingly.

(K.K.TATED, J.)