

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 446 OF 2010

Sampati Kishan Hajare,
Age 72 years, Occ. Agri.,
R/o. Wadi-Wagholi, Ta. Latur,
District Latur.

**... APPELLANT
(Orig. Claimant)**

VERSUS

- 1] The State of Maharashtra,
Through Collector, Latur,
District Latur.
- 2] The Executive Engineer,
Raighvan Project, Osmanabad,
District Osmanabad.

**... RESPONDENTS
(Orig. Respondents)**

WITH

FIRST APPEAL NO. 447 OF 2010

- 1] Waman Baburao @ Bapurao Hajare,
Died, through LRs.
- 1-1] Smt. Parvatibai Waman Hajare (Patil),
Age 82 years, occ. Nil,
R/o. Wadi-Wagholi, Ta. Latur,
District Latur.
- 1-2] Dagdu Waman Hajare (Patil),
Age 67 years, occ. Agri.,
R/o. Wadi-Wagholi, Ta. Latur,
District Latur.
- 1-3] Prabhakar Waman Hajare (Patil),
Age 63 years, occ. Agri.,
R/o. Wadi-Wagholi, Ta. Latur,
District Latur.

- 1-4] Deelip Waman Hajare (Patil),
Age 62 years, occ. Agri.,
R/o. Wadi-Wagholi, Ta. Latur,
District Latur.
- 1-5] Rajabhau Waman Hajare (Patil),
Age 57 years, occ. Agri.,
R/o. Wadi-Wagholi, Ta. Latur,
District Latur.
- 1-6] Madhukar Waman Hajare (Patil),
Age 55 years, occ. Agri.,
R/o. Wadi-Wagholi, Ta. Latur,
District Latur.
- 2] Dattu Baburao @ Bapurao Hajare,
Age 82 years, occ. Agri.,
R/o. Wadi-Wagholi, Ta. Latur,
District Latur.

... APPELLANTS
(Orig. Claimants)

VERSUS

- 1] The State of Maharashtra,
Through Collector, Latur,
District Latur.
- 2] The Executive Engineer,
Raighvan Project, Osmanabad,
District Osmanabad.

... RESPONDENTS
(Orig. Respondents)

...
Mr. V. G. Kodale, Advocate h/f Mr. V. D. Gunale, Advocate for the
Appellants in both the appeals.

Mr. S. R. Yadav, AGP for Respondent No.1 in FA No.446 of 2010.

Mr. G. O. Wattamwar, AGP for Respondent No.1 in FA No.447 of 2010.

Mr. Suresh D. Dhongade, Advocate for Respondent No.2 in both the
appeals.

...

CORAM : **P. R. BORA, J.**

DATE : 01st August, 2016.

ORAL JUDGMENT:

. The present appeals are filed by the original Claimants seeking enhancement in the amount of compensation awarded by the Reference Court in the awards impugned in the present appeals. Since both the appeals are arising out of the same acquisition and they are decided by a common judgment, I deem it appropriate to decide these appeals by common reasoning.

2 Since the factual aspects are not in dispute as about acquisition of land and issuance of notification under Section 4 and passing of the award under Section 11 of the Act, I do not find it necessary to reproduce the said facts. The SLAO had determined the market value of the subject lands at the rate of Rs.10,000/- per Hectare. Since the price so offered by the SLAO was inadequate, the Appellants disputed the said price and filed references under Section 18 of the Act. The said references were forwarded for adjudication to the Civil Court at Latur.

3 Before the Reference Court, the Appellants had claimed compensation at the rate of Rs.75,000/- per Acre. In order to substantiate their contention, the Appellants relied upon sale instance of a land situated at adjacent village sold in the relevant period. The sale deed of the said land was duly proved and was marked as Exhibit – 47. It was 26 Ares land, which was sold at the price of Rs.24,600/-. No evidence was adduced on behalf of the acquiring body. The Reference Court after having considered the evidence adduced by the Claimants, determined the market value of the land under acquisition at the rate of Rs.30,000/- per Acre and also awarded separate compensation for black plum trees, which were 70 in number in L.A.R. No.8 of 1991 and 75 in L.A.R. No.7 of 1991. Being dissatisfied by the amount of compensation determined by the Reference Court, the Claimants have preferred the present appeals.

4 The learned counsel for the Appellants assailed the impugned judgment on several grounds. According to the learned counsel, the Reference Court has not considered the evidence brought on record by the Appellants about the yearly yield from lands under acquisition. The learned counsel submitted that the subject lands were fully irrigated and sugarcane crop was being grown in the

said lands. The learned counsel further submitted that sufficient evidence was placed on record by the original Claimants evidencing that sugarcane crop was sold by the Appellants to the sugar factory and the necessary receipts were also placed on record of the Trial Court.

5 The learned counsel further submitted that though the averments in the sale instance at Exhibit – 47 were revealing that the said land was irrigated land, in fact it was the Jirayat land. The learned counsel inviting my attention to the evidence of Shri Yeshwantrao Patil submitted that the said witness in his deposition before the Court has categorically stated that the said land was Jirayat land, however, since the sale would not have been permitted of such a small piece of land admeasuring 26 Ares unless it is shown that it was an irrigated land that it was mentioned that the land in question was an irrigated land though it was a Jirayat land. The learned counsel submitted that these aspects are, however, ignored by the learned Reference Court. The learned counsel further submitted that from the evidence, which was adduced by the present Appellants before the Reference Court, it was fully established by the Appellants that the land in question was a fully irrigated and fertile

land. In such circumstances, the market value of the said land must have been determined at the rate of Rs.75,000/- per Acre as was claimed by the Appellants. The learned counsel has, therefore, prayed for enhancing the amount of compensation in view of the evidence, which was adduced by the Appellants and to modify the impugned award to the said extent. In so far as price of trees is concerned, it was argued by the learned counsel that the same has also not been properly determined by the Reference Court. The learned counsel submitted that though expert was examined, the Court has on its own conclusion unnecessarily decrease the amount of compensation. The learned counsel has, therefore, prayed for enhancement on that count also.

6 The learned counsel for the acquiring body resisted the submissions made on behalf of the Appellants. The learned counsel submitted that the Reference Court has awarded the adequate amount of compensation and no interference is required in the compensation so awarded. The learned counsel submitted that the SLAO has determined the market value of the land at the rate of Rs.4,000/- per Acre and that has been enhanced by the Reference Court by seven and half times and determined at the rate of

Rs.30,000/- per Acre. The learned counsel further submitted that the price determined by the Reference Court of the land under acquisition and the compensation paid for the trees is adequate and no interference is required in the impugned award. He, therefore, prayed for dismissal of the appeals.

7 After having considered the arguments advanced by the learned counsel for the respective parties and on perusal of the impugned judgment and the evidence on record, apparently it does not appear to me that the compensation awarded by the Reference Court is inadequate as has been argued by the learned counsel for the Appellants.

8 The material on record clearly reveals that the evidence, which is much relied upon by the Appellants is a sale instance at Exhibit – 47. Though now it has been contended on behalf of the Appellants that the said sale instance was pertaining to Jirayat land and the said fact was also brought on record through the evidence of the vendor of the said land, the submissions so made are wholly unacceptable. The learned Reference Court has rightly discussed that the documentary evidence placed on record would prevail. The

discussion made by the Reference Court reveals that in the said sale deed at Exhibit – 47, it is clearly averred that the subject land is an irrigated land. It is not in dispute that the land, which was subject matter of Exhibit – 47 admeasuring 26 Ares was sold at the price of Rs.24,600/-. The learned Reference Court has observed that since the Respondents did not adduce any evidence, the Court has determined the amount of compensation on the basis of the evidence brought on record by the Claimants. Accordingly the Reference Court has determined the market value of the land under acquisition at the rate of Rs.30,000/- per Acre. After having gone through the discussion made by the Reference Court and the reasoning given by the Reference Court while arriving at aforesaid conclusion, it does not appear to me that the Reference Court has committed any error in determining the market value of the land under acquisition. In view of the fact that the sale instance at Exhibit – 47 was the only evidence brought on record by the Appellants for determining the market value of the land under acquisition, the same was considered by the Reference Court and accordingly the price was fixed. Though it was sought to be canvassed by the learned counsel for the Appellants that while determining the market value, the aspect of yearly income

derived from the land, must have been considered by the Reference Court, it has to be stated that the said aspect is aptly considered while determining the market value on the basis of the comparable sale instance, which was brought on record.

9 The Appellants have also claimed enhancement in the amount of compensation for the trees existing in the land under acquisition. However, I do not see any force in the claim so made. The Reference Court in paras 11 to 13 of the judgment has elaborately discussed about the entitlement of the Appellants for the compensation towards fruit bearing trees in their respective land under acquisition. The Reference Court has also considered the evidence of the expert adduced on behalf of the Appellants. The Reference Court has held that black plum trees on an average would have a yield of 100 kg per year and holding the rate of Rs.2/- per kg, has calculated the amount of compensation. According to me, the Reference Court has adopted a proper procedure and has determined the adequate compensation to be paid for the trees existing in the land under acquisition.

10 After having considered the entire material on record, it

does not appear to me that any case is made out by the Appellants for enhancing the amount of compensation. The appeals are devoid of any substance and deserve to be dismissed. Hence, the following order :

ORDER

Both the appeals stand dismissed. However, no order as to the costs.

[P. R. BORA, J.]

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