

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 575 OF 2001

Madhav Sangram Patwari
(Since deceased, through his L.Rs.)

1. Sangabai Madhavrao Patwari
Age 70 years, Occ. Nil
R/o. Habaoyrm, Tq. Udgir
District Latur
 2. Godavari w/o Nagshetty Biradar
Age 60 years, Occ. Household
R/o. As above
 3. Tejabai w/o Shivaji Biradar
Age 55 years, Occ. Household,
R/o. Kalsar Tugaon, Tq. Bhalki
District Bidar (Karnataka)
 4. Savita w/o Yashwant Hallale
Age 50 years, Occ. Household,
R/o. Shirol Janapur, Tq. Udgir
District Latur
 5. Shivprema w/o Rajkumar Hippalge
Age 45 years, Occ. Agriculture
R/o. Basweshwar Galli, Udgir
Tq. Udgir, District Latur
 6. Chandrekala w/o Manmath Patne
Age 40 years, Occ. Household
R/o. Chakur, Tq. Chakur
District Latur
 7. Govind s/o Madhavrao Patwari
Age 35 years, Occ. Agriculture
R/o. Janapur, Tq. Udgir,
District Latur
- ...Appellants

versus

The State of Maharashtra
Through the Collector, Latur
District Latur

...Respondents

...
Advocate for Appellants : Mr. V D Gunale
AGP for Respondents: Mr. S.R. Yadav
.....

CORAM : V. K. JADHAV, J.
DATED : 14th JUNE, 2016

ORAL JUDGMENT:-

1. Being aggrieved and dissatisfied with the judgment and award dated 6.9.2000 passed by the learned Additional District Judge, Latur in L.A.R. No. 472 of 1996, the appellant-claimant preferred this appeal for enhancement of compensation.

2. Brief facts, giving rise to the present appeal, are as under:-

a) The appellant original-claimant is owner and in possession of land Block No. 46, admeasuring 4 hectare and 56 Ares, situated at village Gurdhal, Tq. Udgir, district Latur and the said land was acquired for the purpose of construction of minor irrigation tank. The S.L.A.O. has granted compensation for the acquired land at the rate of Rs.150/- per Are i.e. Rs. 15,000/- per hectare.

b) Being dissatisfied by the award passed by the S.L.A.O., the appellant-claimant had preferred Reference before the Reference Court thereby claiming compensation for the acquired land as per the market price, at the rate of Rs.60,000/- per acre i.e. Rs.1,50,000/- per

hectare. According to the appellant-claimant, the said land is situated on the bank of river and depth of it's soil is 20 to 22 ft. There are primary as well as Zilla Parishad schools. The sugar factory is at a distance of 12 to 15 kilometers from the village. It is also contended that the land under acquisition is fertile and Bagayat land and thus appellant-claimant used to take crops like sun-flower, Udid, vegetables, wheat etc.

c) The respondent State has strongly resisted the reference petition contending that the S.L.A.O. has rightly passed award after considering that the appellant-claimant was taking the crops like sun-flower, Udid, vegetables, wheat etc. in the acquired land. It is further contended that the Land Acquisition Officer visited the acquired land, drawn the panchnama and accordingly awarded just and reasonable compensation to the appellant-claimant.

d) The claimant has examined himself in support of his contentions. Learned Additional District Judge, Latur by its impugned judgment and award dated 6.9.2000 partly allowed the reference petition and thereby enhanced the compensation at the rate Rs.30,000/- per hectare. Being aggrieved by the same, the original claimant preferred this appeal to the extent of quantum.

3. Learned counsel for the appellant-claimant submits that the Reference Court has not considered the sale instances placed before it. The claimant has produced certified copy of sale instances wherein one Sayyed Rajiyoddin sold the land bearing survey No. 12 to the extent of 2 Acres and 2 gunthas to Vasant for consideration of Rs.1,00,000/-. Copy of said sale deed is marked Exh.16. The said land is situated at village Nideban. The land under sale instance is Jirayat land. The acquired land is bagayat land. The claimant has produced on record 7x12 extract of the acquired land of the years 1988-89 and 1989-90. There is well in the said land and there are 7 (seven) mango trees standing in the acquired land. Even the S.L.A.O. has not considered the sale instance while determining the amount of compensation. Learned counsel for the appellant submits that the claimant has filed copy of judgment delivered by the 3rd Additional District Judge in L.A.R. No. 392 of 1994 along with other connected matters on 27.10.1997, thereby the learned 3rd Additional District Judge decided in all 16 references by common judgment. Learned counsel submits that learned 3rd Additional District Judge in the said group of Land Acquisition References, granted compensation to the land situated at village Gurdhal acquired for the same purpose at the rate of Rs.1,20,000/- per hectare. Learned counsel submits that the said judgment and award passed by 3rd Additional District Judge in L.A.R. No. 392 of 1994 along with other

connected matters has attained finality and therefore, the appellant-original claimant is entitled for compensation at the same rate.

4. Learned A.G.P. appearing for the respondent submits that it appears from the sale instances at Exh.10 and Exh.16 that the lands under the said sale instances are situated near municipal limits of Udgir. Reference Court has rightly discarded those sale instances. The 3rd Additional District Judge in Land Acquisition Reference No. 392 of 1994 referred above, has considered the sale instance of land bearing survey No. 100 wherein vendor sold the land to the extent of 81 Are for consideration of Rs.90,000/-. The Reference court has thus rightly observed that the observation made by the learned 3rd Additional District Judge in the said reference in respect of sale instance cannot be taken into consideration in the present matter. The 7x12 extract placed on record, which is marked at Exh.12 unmistakably points out that the land is Jirayat land and appellant-claimant was taking Jirayat crops. It is mentioned in the award, which is placed on record that no well is acquired and that the land acquired by the Government is of *Murmad* quality and is away from village. Learned A.G.P. submits that, the Reference Court on appreciating the evidence led by the claimant, has rightly come to the conclusion that the claimant is entitled for enhanced compensation of Rs.30,000/- per hectare. Learned A.G.P. submits that there is no

substance in the appeal and thus the appeal be dismissed with costs.

5. On careful perusal of impugned judgment and award, it appears that the reference court has rightly discarded the sale instance at Exh. 10 and 16 respectively. However, I do not find any justifiable reason for the reference court in ignoring the judgment delivered by 3rd Additional District Judge in L.A.R. No. 392 of 1994 along with other connected matters, arise from the same village out of same acquisition proceedings. I have carefully gone through the judgment delivered by 3rd Additional District Judge in Land Acquisition Reference No. 392 of 1994. After considering the sale instances and after considering entire evidence on record, learned 3rd Additional District Judge has awarded compensation at the rate of Rs.80,000/- per hectare for dry land and further awarded Rs.1,20,000/- per hectare for seasonally irrigated land. Learned counsel for the appellant-claimant submits that the judgment delivered in the said L.A.R. No. 392 of 1994 by the 3rd Additional District Judge has attained finality. Learned A.G.P. has not disputed the same. The said group of L.A.R. No. 392 of 1994 was decided by the 3rd Additional District Judge by common judgment on 27.10.1997. The Reference court in the present matter has not given any reason for ignoring the said decision. Since the judgment delivered by the 3rd Additional District Judge on 27.10.1997 in L.A.R.

No. 392 of 1994 has attained finality, in my opinion, the claimants in this case is entitled for the same rate of compensation for the acquired land.

6. The Reference court in para 13 of the judgment and award has observed that the claimant has not filed any document to show that he was getting the income of Rs.15,000/- per acre excluding cost of cultivation from the acquired land. Learned Judge of the reference court has further observed that the claimant was raising Bagayat crops in the said land. However, 7x12 extract Exh.12 does not support the case of the appellant-claimant. On the other hand, the claimant has deposed that even he was raising crops like sun-flower, Udid, vegetables, wheat etc. the concerned Talathi did not make entry about the same in the 7x12 extract of acquired land. The learned Judge of the reference court has not recorded a finding to the effect that land acquired is Bagayat land. Learned Judge of the Reference Court has however, observed that the acquired land was fertile land. Learned A.G.P. has invited my attention towards spot visit conducted by the S.L.A.O. as recorded in the award at Exh 9. The S.L.A.O. has observed in the award that the land under acquisition is black soil quality and *murmad* land and being used for Kharip and Rabbi crops for agricultural purpose. He has further observed that the land under acquisition does not bear non

agriculture potentiality and they are away from village Gaothan.

7. In view of the above, I am not inclined to accept the statement made by the learned counsel for the appellant-claimant that acquired land is Bagayat land. It is true that in other rights column of 7x12 extract Exh.12 a well is shown, however, in the award Exh.9 there is no reference about acquisition of said well. Even reference petition is also silent about acquisition of well, if any.

8. In view of the judgment delivered by the learned 3rd Additional District Judge, Latur in L.A.R. No. 392 of 1994 and other connected matter, I am inclined to award the same rate of compensation for the acquired land in the present matter. The appellant-claimant is entitled for compensation for the acquired land at the rate of Rs.80,000/- per hectare with all statutory benefits, as directed by the Reference court in the impugned judgment and award.

9. The appeal is hereby partly allowed with proportionate costs.

10. The judgment and award passed by the learned 3rd Additional District Judge, Latur dated 6.9.2000 in L.A.R. No. 472 of 1996 is modified in the following manner:-

“The claimants are entitled for enhanced compensation for the acquired land at the rate of Rs.80,000/- per hectare with all statutory benefits as awarded by the Reference Court.”

11. Award be drawn up in tune with the modification, as aforesaid.
12. Appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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