

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.3378 OF 2016

1. The State of Maharashtra,
through The Collector, Beed,
2. The Executive Engineer,
Irrigation Division, Beed,
Dist. Beed.

**...APPELLANTS
(Ori.Respondents)**

VERSUS

1. Rama s/o. Dhondiba Patole,
Age:55 years,
2. Bhona S/o. Tanhaji Patole,
Age:40 years,
3. Babu S/o. Tanhaji Patole,
Age:40 years,

All Occu. Agril.,
All R/o. Dongarkinhi,
Tq. Patoda, Dist. Beed.

**...RESPONDENTS
(Ori.Claimants)**

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Mr.S.N.Morampalle, AGP for appellants.
Mr. Choudhari Sushant B., Advocate for respondent nos. 1
to 3.

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CORAM: P.R.BORA, J.

DATE : September 16th, 2016

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ORAL JUDGMENT:

1. The State has filed the present appeal taking exception to the judgment and award passed in LAR No.416/2011 on 20th of June, 2014, by the learned Civil Judge, Senior Division, at Beed.

2. The subject land was acquired for construction of percolation tank at Dongarkinhi village, taluka Patoda, district Beed. Total 79 Are land was acquired. The subject land was situated at village Dongarkinhi itself. Section 4 notification under the provisions of the Land Acquisition Act was published in the Government gazette on 31st May, 2007, and the award under Section 11 came to be passed on 22nd April, 2010. The Special Land Acquisition Officer (in short, 'S.L.A.O.') had offered the compensation to the claimants at the rate of Rs.775/- per Are. The claimants had claimed the compensation at the rate of Rs.2500/- per Are.

3. Being dissatisfied with the compensation so offered by the S.L.A.O., the Reference Application was

preferred by the claimants and it was adjudicated by the learned Civil Judge, Senior Division, at Beed. In order to substantiate the claim so raised by them, the applicants have placed on record three sale instances. No evidence was adduced on behalf of the State. Learned Reference Court, after having assessed the oral and documentary evidence placed on record, determined the market value of the acquired land at the rate of Rs.1800/- per Are and, accordingly, enhanced the amount of compensation. Aggrieved thereby, the State has preferred the present appeal.

4. Shri Morampalle, learned A.G.P. submitted that the Reference Court has grossly erred in appreciating the evidence on record. Learned A.G.P. further submitted that the sale instances which were relied upon by the claimants were pertaining to the irrigated lands whereas the acquired land is admittedly non irrigated land. Learned A.G.P. further submitted that even if the market value is to be determined on the basis of the sale instances brought on record by the claimants, the same ought to have been fixed to half of the price received to

the lands which were the subject matter of the sale deeds and as such, in any case, the market value of the acquired land could not have been determined at the rate more than Rs.1200/- per Are. Learned A.G.P., therefore, prayed for setting aside the impugned award and re-determine the amount of compensation.

5. Shri Sushant B. Choudhary, learned Counsel appearing for the respondents i.e. the original claimants, supported the impugned judgment. Learned Counsel invited my attention to the discussion made by the Reference Court in paragraph nos. 17, 18 and 20 of the impugned judgments and submitted that the Reference Court has appropriately considered the evidence on record and has rightly determined the amount of compensation. Learned Counsel submitted that no interference is warranted in the impugned judgment and, thus, prayed for dismissal of the appeal.

6. Perusal of the impugned judgment reveals that three sale instances were placed on record by the claimants. Admittedly, all the sale instances were

pertaining to the agricultural lands situated at village Dongarkinhi. The first sale instance was pertaining to a land admeasuring 20 gunthas, which was a canal irrigated portion, and was sold for consideration of Rs.2850/- per guntha. Said sale deed is at Exh.16/1. The second sale deed is at Exh.16/2 which pertains to the sale of land admeasuring 41 gunthas for consideration at the rate of Rs.1829/- per guntha. This was also canal irrigated land. The third sale instance was pertaining to semi irrigated land admeasuring 22 Ares and was sold at the rate of Rs.2045/- per Are. The Reference Court has observed that the average market rate, considering the aforesaid three sale instances was Rs.2241/- per guntha. The Reference Court has further observed that the Land Acquisition Officer, while passing the award under Section 11 of the Act, had noticed 14 sale instances wherein the consideration received was ranging in between Rs.361/- to Rs.2045/- per Are. The Reference Court has further observed that the sale instances which were relied upon by the claimants were of the period prior to issuance of notification under Section 4 of the Act. The Reference Court has further observed that considering the escalation

in the prices of the lands, the acquired land could have fetched consideration at the rate of Rs.1800/- per Are.

7. Though it was sought to be canvassed by the learned A.G.P. that the Reference Court could not have determined the market value at more than Rs.1200/- per Are, the contention so raised cannot be accepted in view of the evidence on record. Even if it is accepted that the sale instances were pertaining to irrigated and semi irrigated lands, there may not be any difficulty in determining the price of the acquired land which is non irrigated land on the basis of the aforesaid sale deeds. The said exercise has been rightly done by the Reference Court and has accordingly fixed the market value of the acquired land at the rate of Rs.1800/- per Are. The Reference Court has considered the plus and minus factors of the acquired land in reference to the sale instances placed on record. The Reference Court has further considered that the acquired land is at the near distance of Highway, the proposed Railway line and has thus good potential. It has also been considered by the Reference Court that two crops were being taken by the claimants

from the acquired land and after having considered the entire material record, the Reference Court has determined the market value of the acquired land.

8. After having considered the submissions in totality and considering the material on record, it does not appear to me that the Reference Court has committed any error in awarding compensation by determining the market value of the acquired land at the rate of Rs.1800/- per Are. No interference is, therefore, required in the impugned judgment and award. The appeal being devoid of substance, deserves to be dismissed and is accordingly dismissed, however, without any order as to the costs.

(P.R.BORA)
JUDGE

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AGP/3378-16fa