

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2758 OF 2013

- 1) Subhash s/o Harihchand Barwal
Age: 55 Yrs. Occu. Agril.,
R/o Kanhori, Tq. Phulambri,
District Aurangabad.
 - 2) Premsingh s/o Harihchand Barwal
Age: 46 Yrs., occu and r/o
as above.
- = **APPELLANTS**
(orig. Petitioners)

VERSUS

- 1) The State of Maharashtra
Through Special Land Acquisition
Officer, Jaikwadi Project No.1,
Collectorate, Aurangabad.
District Aurangabad.
 - 2) Executive Engineer, Minor Irrigation
Local Sector, Near Hedgewar
Hospital, Aurangabad.(Garkheda
Parisar)
- = **RESPONDENTS**
(orig. Respondents)

Mr. S.K.Adkine, Advocate for Appellants;
Mr. G.O.Wattamwar, AGP for Respondent No.1 – State;
Respondent No.2 duly served.

CORAM : P.R.BORA, J.

DATE : 17th November, 2016.

ORAL JUDGMENT:

- 1) Heard. Admit. By consent of the learned
Counsel appearing for the parties, taken up for

final disposal.

2) The appellants are seeking enhancement in the amount of compensation as awarded by the Court of Civil Judge, Senior Division, Aurangabad (for short, the Reference Court) in LAR No. 30/2007 decided on 28th June, 2012.

3) The subject land was acquired for the purpose of Kanhori percolation tank, Tq. Phulambri District Aurangabad. Total 3 hectares and 29 Ares land was acquired of the appellants. Notification under Section 4 of the Land Acquisition Act, 1894 (for short, the Act) in that regard was published in the official gazette on 24th April, 2003 and Award under Section 11 of the Act came to be passed on 7th June, 2005. The Special Land Acquisition Officer, (for short, SLAO) has assessed the compensation by holding the market value of the acquired land @ Rs.900/- per Are. Dissatisfied with the amount of compensation so offered, the appellants had

preferred an application under Section 18 of the Act to Collector, Aurangabad, who in turn forwarded the said application for adjudication to the Civil Court at Aurangabad.

4) Before the Reference Court, the appellants had claimed compensation @ Rs.4,500/- per Are. It was the contention of the appellants that the acquired land is fully irrigated land, having well in the said land. It was also the contention of the appellants that sugarcane crop was being regularly taken in the said land, and as such, the land was irrigated land.

5) In order to substantiate the claim before the Reference Court, in addition to their own evidence, the appellants had placed on record certain other sale instances and have also relied upon the judgment delivered by the same Reference Court in LAR No.546/2006. Admittedly, no oral or documentary evidence was adduced on behalf of the State.

6) The learned Reference Court, after having assessed the oral and documentary evidence brought before it, determined the market value of the acquired land @ Rs.1969/- per Are and accordingly enhanced the amount of compensation. According to the appellants, the Reference Court has not adequately enhanced the amount of compensation and hence, the present appeal is preferred.

7) Shri Adkine, learned Counsel appearing for the appellants, submitted that the Reference Court has grossly erred in holding that the acquired land was not irrigated land. The learned Counsel submits that in his testimony, appellant No.1 has specifically deposed that the appellants were taking sugarcane crop in the acquired land and that the 7/12 extracts of the acquired land show existence of the well as well as the crops statement also shows that sugarcane crop was taken in the acquired land. The learned Counsel further submits that merely because in

the relevant period, i.e. Prior to acquisition of the acquired land, no sugarcane crop was being taken in the acquired land, no such inference can be drawn that the acquired land was non-irrigated land. The learned Counsel further submits that in LAR No.546/2006, which was also arising out of the same acquisition proceedings, for the adjacent lands, the same Reference Court has awarded compensation @ Rs.2954/- per Are holding the said land to be irrigated land. The learned Counsel further submitted that the same criterion ought to have been applied while determining the amount of compensation in the present matter also. The learned Counsel submits that for erroneous reasons, the reference Court has determined the market value of the acquired land @ Rs.1969/- per Are. The learned Counsel further submits that the judgment in LAR No.546/2006, which was the subject matter of challenge before the High Court in First Appeal No.91/2015 and the said appeal has been dismissed by this Court (Coram:N.W.Sambre,J.) vide the judgment dated 14th

July, 2015. The learned Counsel submits that the land involved in the present appeal is at par with the land, which was the subject matter of LAR No.546/2006 and as such the same criterion needs to be applied in determining the market value of the land involved in the present case. The learned Counsel, therefore, prayed for determining the market value of the acquired land @ Rs.2954/- per Are and accordingly to enhance the amount of compensation.

8) Shri Wattamwar, learned AGP, has supported the impugned judgment. The learned AGP submits that the Reference Court has assigned adequate reasons for not holding the acquired land to be an irrigated land. The learned AGP furtherer submits that in the cross-examination, one of the claimants has specifically admitted that the appellants have not filed on record the crop statements of the years from 2000-2001 onwards. The learned AGP further submits that in absence of any evidence the acquired land cannot

be treated as irrigated land and the price of irrigated land cannot be awarded to the said land. The learned AGP, therefore, prayed for dismissal of the appeal.

9) I have carefully considered the submissions advanced by the learned Counsel appearing for the appellant and learned AGP appearing for the State. I have also perused the impugned judgment and evidence on record as well as the other material placed on record. It is not in dispute that 7/12 extract of the acquired land shows existence of well therein. From the crop statements, it is seen that the appellants were taking sugar cane crop in the acquired land since 1993-94. It is also true that the appellants have not placed on record the particulars as about the crops which were being taken from the period 1994 onwards in the said land. As has been observed by the Reference Court, the bills and other particulars, showing that the crops like sugarcane were taken have

also not been filed by the appellants. For all these reasons, the Reference Court has refused to accept the contention of the appellants that the acquired land was irrigated land.

10) After having considered the evidence on record and after having gone through the documents placed on record, the conclusions so drawn by the Reference Court cannot be fully supported. The evidence on record shows that though a suggestion was put to the appellant claimant in his cross-examination that he was taking the crops in the acquired land only on the rain water and as such, the acquired land was falling in the category of non-irrigated land, the same was clearly rejected by the claimant. Perusal of the discussion made by the Reference Court in para Nos.8 and 9 in the impugned judgment reveals that there was some confusion in the mind of the Reference Court as about the category of the acquired land. In order to prove that the acquired land was irrigated land, the

appellant claimant had relied upon the 7/12 extracts of his land and has also placed on record the electricity bills showing that the well water was being used for irrigating the land with the help of water pump. It is true that some more evidence could have been adduced by the appellants claimants so as to remove the doubts whether the acquired land was fully irrigated or semi-irrigated or non-irrigated. However, from the evidence on record there is reason to believe that there was a well in the acquired land and the well water was being used by the appellants claimants to irrigate the said land. It is also true that the appellants did not produce on record any concrete evidence to show that he has taken the crop like sugarcane proving that the land was being fully irrigated from the well water. However, it also cannot be ignored that the evidence which is available on record demonstrates that till 1993-94, the appellants claimants had taken sugarcane crop in the acquired land. The Reference Court has also

observed that the evidence on record was suggesting that from taking the water from the said well, the appellant claimant was irrigating the acquired land. In the aforesaid circumstances, the acquired land certainly cannot be held as falling in the category of non-irrigated land. Had the appellant claimant placed on record latest crop statements on record and also would have placed on record the bills showing sale of sugarcane crop etc., the acquired land could have been certainly held to be fully irrigated land. In absence of any such evidence, though it is not possible to hold the acquired land to be fully irrigated, from the available evidence on record, there may not be any difficulty in recording a finding that the acquired land was falling in the category of semi-irrigated land. Thus, the market value of the acquired land needs to be determined holding the said land to be semi-irrigated land.

11) In LAR No.546/2006, the Reference Court

has determined the market value of the fully irrigated land @ Rs.2,954/- per Are. There is no dispute that the land, which was the subject matter of LAR No.546/2006 was acquired for the same project and vide the same notification and was situated at the same village Kanhori. The Reference Court has also in para 9 of the judgment recorded the similar conclusions.

12) In view of the above, the market value of the acquired land belonging to the present appellants is determined @ Rs.2,200/- per Are. I hold the appellants claimants, therefore, entitled to receive compensation of the acquired land at the said rate. The impugned Award shall, therefore, be modified to the aforesaid extent and amount of compensation be accordingly enhanced. The appellants shall also be entitled for the statutory benefits and the interest available under the provisions of the Act on the enhanced amount of compensation.

13) The First Appeal stands allowed in the
aforesaid terms. Pending Civil Application, if
any, stands disposed of.

sd/-
(P.R.BORA)
JUDGE

bdv/