

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

FIRST APPEAL NO. 269 OF 1995

RAMA NAGU GAYAKWAD (Died)
Through Lrs.

- 1-A Sudhakar Ram @ Rambhau Naga Gaikwad
age 35 years, Occ. Agri,
R/o Sawargaon Chakla,
Tq. Patoda, Dist. Beed.
2. Laxman s/o Nagu Gaikwad,
age 50 yrs, Occ. Agri,
R/o as above. .. Appellants..

VERSUS

The State of Maharashtra. ..Respondent..

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Advocate for Appellants : Mr K D Bade Patil
AGP for Respondent : Mr K D Mundhe

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CORAM : V.K. JADHAV, J.
Dated: May 02, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the Judgment and Award passed by the Joint District Judge, Beed dated 28.2.1995 in LAR No.516/1989 alongwith connected LARs, the original claimants in LAR No.1151/1989 have preferred this appeal.

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

The Government has acquired the land situated at village Ukanda for the purpose of construction of Percolation Tank at village Ukanda. The SLAO after holding the necessary inquiry into this acquisition proceeding fixed the market value of the land acquired @ Rs.86/- per Aar for jirayat land and Rs.96/- per Aar for the Bagayat lands. The Special Land Acquisition Officer had treated all the lands as Jirayat. Being aggrieved by the same, the present appellants/original claimants alongwith the other claimants preferred separate reference petitions claiming the market value of the acquired land @ Rs.1,000/- per Aar by treating the land as Bagayat lands. The learned Jt. District Judge, Beed by its common judgment and order dated 28.2.1995 awarded the compensation @ Rs.200/- per aar for the acquired land by treating the lands as Jirayat. Hence, this appeal.

3. The learned counsel for the appellant submits that, the claimant in LAR No.516/1989 has examined

herself at Exh.23. Other claimants including the claimants in LAR No.1151/1989 adopted the said evidence by filing separate purshis in their respective petitions. Learned counsel submits that, reference court has erroneously held that there is no entry of well for irrigation facility in respect of the land acquired vide L.A.R. No.1151/1989. Learned counsel has pointed that, in the award statement 'E' the land gat no.275 which is the subject matter of LAR No.1151/1989 is treated as partly as bagayat land on the water of well and, accordingly, compensation has awarded to the acquired land to the extent of 1H 62R by treating it as bagayat land. Learned counsel submits that, for the lands arising from the same land acquisition proceeding, the Reference Court has granted compensation @ Rs.1,000/- per Aar for bagayat land. Learned counsel submits that, the Reference Court has erroneously treated only the acquired land in LAR No.516/1989 as Bagayat land and treated other acquired lands as Jirayat lands. Learned counsel submits that, mere fact that certain crops are not shown in the 7/12 extract, no inference can be drawn

that the land was non-irrigated. The same is on the back drop that the SLAO himself has treated the land gat No.275 as bagayat land to some extent.

4. Learned counsel in order to substantiate his submissions placed his reliance on **Chindha Fakira Patil (D) through L.Rs. Vs. The Special Land Acquisition Officer, Jalgaon** reported in **AIR 2012 SC page 481**.

5. The learned AGP for the Respondent-State submits that, the reference Court has rightly awarded the compensation by treating the acquired land as Jirayat Land. The learned AGP submits that, the appellants/original claimants have not examined themselves before the Reference Court and, no evidence lead before the Reference Court to show that the land which is the subject matter of LAR No.1151/1989 is bagayat land. The learned AGP submits that, considering the evidence lead by the original claimants in LAR No.516/1989 the reference Court has treated the said land as Bagayat land and accordingly awarded the

compensation @ Rs.1000/- per aar. So far as remaining acquired lands are concerned, the Reference Court has rightly treated the same as Jirayat lands and accordingly awarded compensation @ Rs.200/- per aar. The learned AGP submits that, in the alternate, at the most, claim of the appellants-claimants can be considered to the extent of land 1H 62R treated by the SLAO as Bagayat land. The learned AGP further submits that in case, if, this Court comes to the conclusion that, the appellants/original claimants are entitled for the compensation at the fixed rate for the irrigated land, in that event, compensation granted for trees and well is liable to be deducted.

6. It appears that the claimant Muktabai Giri in LAR No.516/1989 has only examined herself in her reference petition for herself and on behalf of the other petitioners in their respective LAR's., The same is also recorded by the Reference Court in paragraph No.8 of judgment. The other claimants/petitioners have accepted and also relied upon the evidence lead by said Muktabai Gire in LAR No.516/1989 by filing purshis in their respective

reference petitions. So, in view of the above, even the Reference Court has recorded that the Court is find it convenient to decide all five reference petitions by one common judgment on the basis of common evidence recorded in LAR No.516/1998.

7. So far as LAR No.1151/1989 is concerned, the Reference court has observed that, 7/12 extract is produced at Exh.15 in respect of gat no.275 and in remarks column, it is mentioned that loan was raised for the purpose of digging the well but, it is not written as to whether the well was really dug and whether well was really in existence. Reference Court has treated the acquired land which is subject matter of LAR No.1151/1989 are Jirayat lands. It appears that the reference court has committed mistake. On perusal of the Award statement 'E', it appears that from the land gat no.275 well and trees were acquired and accordingly compensation is awarded for the same. In view of this, it cannot be said that well was not in existence in land gat no.275. Learned counsel for the appellants-claimants submits that, in the award the SLAO has not

clarified as to why the land admeasuring 1H 62R out of total area of 4H 11R of land Gat No.275 only treated as Bagayat land on the basis of water of well and remaining land is treated as dry land. Learned counsel submits that, it appears that, without giving any reasons the SLAO has treated only 1H 62R land as Bagayat lands. The learned AGP has also failed to explained the same. In absence of any reasoning in the award, the claimants contention is required to be accepted that, entire acquired land was Bagayat land.

8. So far as the compensation awarded in LAR No.516/1989 @ Rs.1,000/- per aar the rate awarded for the bagayat land is concerned, the same has now attended finality and admittedly the State has not preferred any appeal against it.

9. In view of the above discussion, in my considered opinion, the land which is the subject matter of LAR No.1151/1989 is bagayat land irrigated on the water of well and reference court ought to have awarded the compensation by treating the entire acquired land as

irrigated land @ Rs.1,000/- per Aar, as awarded for the acquired land which is the subject matter of LAR No.516/1989.

10. The learned counsel for the appellants/claimants submits that, if the compensation is awarded @ Rs.1,000/- per aar, treating the entire acquired land as Bagayat lands, the appellants-claimants are ready to waive their claim for trees and well and there is no objection on the part of the appellants-claimants if said amount is deducted from the enhanced compensation. In view of this, I proceed to pass following order.

ORDER

- I. Appeal is hereby allowed.
- II. The Judgment and Award dated 28.2.1985 passed by the learned Jt. District Judge, Beed, in LAR 516/1989 is modified to the extent of **LAR No.1151/1989** and thereby the opponent State is directed to pay the compensation @ Rs.1,000/- (Rs. One Thousand only) per Aar to the claimants for the acquired land.

III. The appellants-claimants are entitled for enhanced compensation by deducting the compensation awarded to the well and trees.

IV. Rest of the operative part of the Judgment and award dated 28.2.1985 stands confirmed.

V. Award be drawn up as per modifications.

VI. Appeal is accordingly disposed of.

VII. In the circumstances, there shall be no order as to costs.

VIII. Pending civil application, if any, also stands disposed of.

Sd/-

(**V.K. JADHAV, J.**)

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aaa/-