

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.484 OF 2004

1. The State of Maharashtra,
(through, Collector, Jalgaon),
2. The S.L.A.O. Jalgaon,

...APPELLANTS
(Ori. Respondents)

VERSUS

Laxman Ramchandra Pawar,
Age:35 years, Occu.: Agril.,
R/o. Parola, Dist. Jalgaon.

...RESPONDENT
(Ori. Claimant)

WITH

FIRST APPEAL NO.485 of 2004

1. The State of Maharashtra,
through the Collector, Jalgaon,
2. The S.L.A.O., Jalgaon,

...APPELLANTS
(Ori. Respondents)

VERSUS

Yadav Dagadu Chambhar,
Age:41 years, Occu: Agril.,
R/o. Parola, Dist. Jalgaon.

...RESPONDENT
(Ori. Claimant)

WITH

FIRST APPEAL NO.486 OF 2004

1. The State of Maharashtra,

through the Collector, Jalgaon

2. The S.L.A.O., Jalgaon,

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

VERSUS

Shri Pandit Tathu Chaudhari,
(Deceased)

HEIRS

1. Smt. Sayabai Pandit Chaudhari,
Age:65 years, Occu.: Household,
R/o. Parola,
2. Shri Vasant Pandit Chaudhari,
Age:42 years, Occu: Service,
R/o. Tarad Kasabe, Tq. Shirpur,
Dist. Dhule,
3. Ashok Pandit Chaudhari,
Age:32 years, Occu.: Agril,
R/o. Parola, Shewale Galli,
Dist. Jalgaon,
4. Sau. Ushabai Raman Chaudhari,
Age:38 years, Occu.: Household,
R/o. Dharangaoj, Tq. Erandol,
5. Sau. Latabai Manik Chaudhari,
Age:35 years, Occu.: Household,
R/o. Kashoda, Tq. Erandol,
Dist. Jalgaon,
6. Chandrakalabai Rajendra Chaudhari,
Age:28 years, Occu.: Household,
R/o. Kapadane, Tq. & Dist. Dhule,
7. Suresh Pandit Chaudhari,
(Deceased)

HEIRS

8. Rambhabai Suresh Chaudhari,

Age:35 years, Occu.: Household,
R/o. Ajende, Tq. Raver,
Dist. Jalgaon,
Minor Gardian of,
Jotsanabai Suresh Chaudhari,
Age:11 years,
Dayaneshwat Suresh Chaudhari,
Age: 8 years.

...RESPONDENTS
(Ori. Claimants)

===

Mr. G.O. Wattamwar, AGP for Appellants;
Mr. R.C. Patil, Advocate for Respondent/s.

WITH

FIRST APPEAL NO.1001 OF 2003

Shri. Pandit Tathu Chaudhari,
(Since deceased through his L.Rs.)

1. Smt. Sayabai Pandit Chaudhari,
Age:75 years, Occu.: Household,
R/o. Parola,
2. Shri. Vasant Pandit Chaudhari,
Age:52 years, Occu.: Service,
R/o. Tarad Kasabe, Tq. Shirpur,
Dist. Dhule,
3. Ashok Pandit Chaudhari,
Age:42 years, Occu.: Agril.,
R/o. Parola, Shewale Galli,
Dist. Jalgaon,
4. Sau. Ushabai Raman Chaudhari,
Age:48 years, Occu.: Household,
R/o. Dharangaon, Tq. Erandol,
5. Sau. Latabai Manik Chaudhari,
Age:45 years, Occu.: Household,
R/o. Kashoda, Tq. Erandol,

Dist. Jalgaon,

6. Chandrakalabai Rajendra Chaudhari,
Age: 38 years, Occu.: Household,
R/o. Kapadane, Tq. Dhule,
Dist. Dhule,

7. Suresh Pandit Chaudhari,
Deceased through his L.Rs.:-

7-A Rambhabai Suresh Chaudhari,
Age:45 years, Occu.: Household,
R/o. Ajenda,
Minor Gardians of,

7-B Jotsanabai Suresh Chaudhari,
Age:21 years,

7-C Dnyaneshwar Suresh Chaudhari,
Age: 18 years,

All R/o. Ajanda, Tq. & Dist.
Aurangabad.

...APPELLANTS
(Ori. Applicants)

VERSUS

1. The State of Maharashtra,
through, The Collector,
Jalgaon,

2. The Special Land Acquisition,
Office, Jalgaon

...RESPONDENTS
(Ori. Opponents)

...

Mr. R.C. Patil, Advocate for Appellant/s.
Mr. G.O. Wattamwar, AGP for Respondents.

CORAM : P.R.BORA, J.

RESERVED ON :18th August,2016.

PRONOUNCED ON: 21st September,2016

JUDGMENT:

1) Since in all these appeals challenge is to the common Judgment and Award passed by Civil Judge, Senior Division, Amalner on 28th March, 2002 in LAR Nos.152/1992, 188/1992 and 190/1992, common arguments were heard in all these matters and I deem it appropriate to decide these appeals by a common reasoning.

2) First Appeal Nos.484/2002 to 486/2004 are filed by the State; whereas First Appeal No.1001/2003 is filed by the original claimants.

3) The lands, which are the subject matter of the present appeals were acquired for Bhokarbari irrigation project. The acquired lands were of village Bhokarbari. Notification under Section 4 of the Land Acquisition Act, 1894 (for short, the Act) in that regard was published in the Government Gazette on 7th June, 1987;

whereas Award under section 11 of the Act came to be passed on 28th August, 1990. The Special Land Acquisition Officer had determined the market value of the acquired lands at the rate ranging from Rs.11,000/- to Rs.14,000/- per hectare and has accordingly offered the amount of compensation to the respective claimants.

. Since the amount so offered was not agreeable to the claimants, all of them had preferred applications under Section 18 of the Act to Collector, Jalgaon, who in turn, forwarded all such applications for adjudication to the civil court at Jalgaon (herein after referred to as Reference Court). The claimants had claimed compensation @ Rs.1,00,000/- per hectare before the Reference Court.

. In order to substantiate the contentions raised in their respective applications, the claimants in each of the reference applications, had deposed before the Reference Court and the claimants had also placed on record certain sale

instances. The State had also examined the Circle Inspector viz. Gorakh Borkar to support the contentions raised in its written statement and has also placed on record certain sale instances.

. The learned Reference Court after having assessed the oral and documentary evidence brought on record by the parties, determined the market value of the acquired lands @ Rs.289/- per Are, i.e.Rs.28,900/- per hectare. Aggrieved by the State has preferred the present appeals.

. The claimant in LAR No.152/1992 has also preferred an appeal as mentioned herein above being First appeal No.1001/2003, seeking enhancement in the amount of compensation awarded by the Reference Court.

4) Shri Wattamwar, learned AGP, assailed the impugned judgment on various grounds. The learned AGP submitted that the sale instance at Exh.37, which has been relied upon by the Reference Court while determining the market

value of the acquired lands, was pertaining to irrigated land and as such, the market value of the acquired lands, which are admittedly non-irrigated lands, could not have been determined on the basis of the said sale instance.

. The learned AGP further submitted that when for the irrigated land admeasuring 1 hectare and 21 Ares, the consideration was received to the tune of Rs.35,000/-, in no case, the market value of the acquired lands, which are the non-irrigated lands, could have been determined by the Reference Court @ Rs.28,900/- per hectare. The learned AGP further submitted that the Reference Court has awarded compensation at the same rate even to the potkharab lands.

. The learned AGP also objected to the order passed by the Reference Court awarding the interest from the date of possession of the land instead of granting the same from the date of award. The learned AGP, therefore, prayed for setting aside the impugned Judgment and Award and to re-determine the amount of compensation on the

basis of the evidence brought on record by the State.

5) Shri R.C.Patil, learned Counsel appearing for the claimants in all these matters resisted the submissions advanced by the learned AGP. The learned Counsel submitted that in so far as LAR Nos.188/1992 and 190/1992 are concerned, no interference is required in the impugned Judgment and Award since the Reference Court has awarded a very reasonable amount of compensation.

. The learned counsel further submitted that the land, which was the subject matter of LAR No.152/1992 was fully irrigated land, and as such, the Reference Court ought to have awarded the compensation at the double rate of the compensation awarded for the non-irrigated land. The learned counsel, therefore, prayed for enhancing the amount of compensation in so far as LAR No.152/1992 is concerned and prayed for dismissal of the appeals filed against the Award

passed in LAR Nos.188/1992 and 190/1992.

6) I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and the evidence on record. The record shows that in every reference application, the respective claimants have adduced their oral evidence in order to support the contentions raised by them in their respective applications.

. In addition to their own oral evidence, the claimants had commonly placed reliance on the sale instance at Exh.26, which was brought on record in the proceedings of LAR No.152/1992. The sale instance at Exh.26 was pertaining to the land admeasuring 20 Ares out of Gut No.216/2/5 situated at village Mhasve. The sale deed was executed on 12th February, 1987 and the consideration was received to the tune of Rs.15,500/- ,i.e. Rs. 77,500/- per hectare. It was the contention of the claimants that village

Mhasve and Bhokarbari are at the very short distance from each other and quality and potentiality of the lands at both the villages was quite similar to each other. The claimants had, therefore, claimed the compensation at the said rate. Whereas the State had also brought on record one sale instance at Exh.37 executed on 10th January, 1986 in relation to Gut No.116/3 admeasuring 1 hectare and 21 Ares for the consideration of Rs.35,000/-.

. As noted herein above, according to the State, the land which was the subject matter of sale deed at Exh.37 was irrigated land. Perusal of the judgment reveals that the Reference Court preferred not to rely upon the sale instance brought on record by the claimants at Exh.26. The Reference Court has observed that the sale instance at Exh.26 was pertaining to the land situated at village Mhasve, which was not adjoining village of village Bhokarbari. The Tribunal has further observed that village Vanjari Kh. was the adjoining village of

Bhokarbari and after crossing the boundaries of village Vanjari kh, there is village Mhasve. It was further observed by the Reference Court that the sale instance at Exh.26 was pertaining to the small piece of land admeasuring 20 Ares.

. The Reference Court preferred to rely upon the sale instance brought on record by the State at Exh.37. The land which was the subject matter of the sale deed at Exh.37 was of village Bhokarbari, i.e. from the same village where the acquired lands were situated. It was 1 hectare and 21 Ares land and was sold by the registered sale deed executed on 10th January, 1986 for the consideration of Rs.35,000/- i.e. @ Rs.28,926/- per hectare. From the observations made by the Reference Court in the impugned judgment, it is further revealed that though it was the contention of the State before the Reference Court that the land which was the subject matter of Exh.37 was irrigated land, in fact, the same was non-irrigated land. In Para 17 of the

impugned judgment the Reference Court has observed that the 7/12 extract of the said land was revealing that the holder of the said land was taking the crops of Jawar, Bajra, Wheat and gram in the said land in Kharip season. The Reference Court has further observed that though in the 7/12 extract of the said land it was shown that the holder of the said land was possessing right to take water from the well constructed on land Gut No.269, from the crops which were being taken in the relevant period in the said land, it was quite evident that no Bagayati crops were being taken and thus it was non-irrigated land.

7) The Reference Court has further observed that the land Gut No.268, which was the subject matter of LAR No.152/1992, the land Gut no.276, which was the subject matter of LAR No.188/1992 and the land Gut No.278, which was the subject matter of LAR No.190/1992, were all Jirayat lands. In the circumstances, the Reference Court determined the market value of the acquired lands

@ Rs. 289/- per Are on the basis of sale instance at Exh.37.

8) After having gone through the elaborate discussion made by the Reference Court, it does not appear to me that the Reference Court has committed any error in determining the market value as aforesaid. There seems no substance in the objections raised by the appellant State that the Reference Court has determined the compensation of the non-irrigated land by applying rates received to the irrigated land.

9) The another objection which was raised by the State was that the Reference Court awarded the compensation to the potkharab land at the same rate, as was awarded to the non-irrigated lands. The record reveals that in LAR No.152/1992, the potkharab land is only to the extent of 1 Are whereas in LAR No.190/1992, there is no potkharab land. It is however true that in LAR No.188/1992 21 Ares land is potkharab land.

. As per the settled norms for potkharab land, the Reference Court should have awarded the compensation @ Rs.146/- per Are. Thus, the Reference Court has awarded the excess amount to the tune of Rs.3066/- to the claimants in LAR No.188/1992. Considering the fact that quantum of the amount is meagre and further considering the fact that the acquisition is of the year 1985, I am not inclined to cause any interference in the compensation so awarded by the Reference Court. Thus, there appears no substance in the appeals filed by the State.

11) The appellant in FA No.1001/2003 has prayed for enhanced amount of compensation claiming that his acquired land was fully irrigated land and as such, the compensation at the double rate, as was awarded for the non-irrigated land, ought to have been awarded to him. However, from the evidence on record, which has been properly discussed by the Reference Court, I see no merit in the prayer so made by

the appellant in First Appeal No. 1001/2003. The Reference Court has categorically observed that 7/12 extract of Gut No.268 was not reflecting that any bagayati crop was taken in the said land. Nothing has been brought on record by the appellant in the present appeal so as to take any contrary view as taken by the Reference Court. I, therefore, do not find any substance in First Appeal No.1001/2003. In the result, the following order, -

ORDER

. All the aforesaid First appeals are dismissed without any order as to costs. Pending Civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

Title -Kodgire
bdv/Jt.