

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

FIRST APPEAL NO.458 OF 2004

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| 1. | The State of Maharashtra | |
| 2. | The Special Land Acquisition Officer,
Jagaon | .. Appellants |

Versus

- | | | |
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| | Sukhdeo Kashiram Patil
(deceased), through Heirs : | |
| 1. | Narmadabai w/o Sukhdeo Patil,
Age 50 years, | |
| 2. | Kailash Sukdeo Patil, age 29 years | |
| 3. | Chandrakant Sukdev Patil, age 25, | |
| 4. | Sau. Shobhabai w/o Rajendra Patil
Age 23 years | |
| 5. | Pramilabai d/o Sukdeo Patil,
Age 19 years | |

All residents of Kurangi, Taluka
Pachora, District Jalgaon

..Respondents

Versus

- WITH -

FIRST APPEAL NO.459 OF 2004

- | | | |
|----|---|---------------|
| 1. | The State of Maharashtra | |
| 2. | The Special Land Acquisition Officer,
Jagaon | .. Appellants |

Versus

- | | | |
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| | Vishnu Kashiram Patil,
Age 41, Occu. Agri.,
R/o Kurungi, Taluka
Pachora, Dist. Jalgaon | |
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..Respondent

Mr S.P. Deshmukh, A.G.P. for appellants
Mr A.B. Kale, Advocate for respondents

CORAM : P.R. BORA, J.

DATE : 26th September 2016

ORAL JUDGMENT :

1. Since both these appeals are arising out of the common judgment and award delivered by the Civil Judge, Senior Division at Jalgaon on 20.4.2000 in L.A.R. No.278 and 277 of 2000, I have heard the common arguments and I deem it appropriate to decide both these appeals by a common judgment.

2. The lands which are the subject matter in the present appeals were acquired for percolation tank at village Kurungi, Taluka Pachora, District Jalgaon. The Notification under Section 4 of the Land Acquisition Act (hereinafter referred as 'the Act') in that regard was published in the government gazette on 6.12.1990, whereas the award under Section 11 of the Act came to be passed on 3.4.1993. The Special Land Acquisition Officer had determined the market value of the acquired land at the rate of Rs.9,500/- per hectare and accordingly, offered the amount of compensation to the respective claimants. Dissatisfied with the amount of compensation so offered, the claimants filed the applications under Section 18 of the Act seeking enhancement in the amount of compensation. The applications so submitted to the Collector, Jalgaon were forwarded by him to the Civil Court for adjudication. The learned Civil Judge, Senior Division, Jalgaon (hereinafter referred to as 'the reference Court') accordingly adjudicated the matters.

3. Before the reference Court, the claimants had claimed the compensation at the value of Rs.1 lakh per acre. In order to substantiate the claim so raised, the claimant in L.A.R. No.278/2000 deposed before the Court. The claimant in L.A.R. No.277 of 2000 had given the power of attorney to claimant in L.A.R.No.278 of 2000 namely Kailas Sukdeo Patil to depose on his behalf also. In addition to oral evidence of said Kailas, the claimants examined one Subhash Kashinath Patil as their witness, who had purchased 19 - Aar land from one Geeta Bhila Patil vide registered sale deed on 25.4.1990 for a consideration of Rs.17,000/-. The said land was situated at village Pardhade. In the evidence of said Subhash Patil, the said sale-deed was duly proved and was exhibited at Exh. 16. The claimants had also examined one more witness by name Ravindra Ghanshyam Chaudhari, who had carried out the valuation of the trees and had accordingly issued the valuation report.

4. No witness was examined by the State, nor any sale deed or like document was produced on record by the State.

5. Considering the oral and documentary evidence placed on record by the appellants, the reference Court determined the market value of the acquired land at the rate of Rs.65,000/- per hectare for non-irrigated land and Rs.1,30,000/- per hectare for irrigated land and accordingly, enhanced the amount of compensation. For the trees, the reference Court has awarded separate compensation. Aggrieved by the said judgment and award, State has filed the present appeals.

6. Mr Deshmukh, learned A.G.P. appearing for the appellant-State questioned the impugned judgment on various grounds. He submitted that the sale instance, which has been relied upon by the reference Court is of village Pardhade, which is at a distance of 3 to 4 Kms. from village Kurungi, where the acquired lands are situated. The learned A.G.P. submitted that the reference Court has erred in awarding the compensation on the basis of aforesaid sale deed of the land situated at a different village. He further submitted that the learned reference Court did not appreciate that sale instance relied upon by the claimants was pertaining to a small piece of land admeasuring 19 -R and as such, the market value of the acquired land could not have been determined on the basis of the value received to such small piece of land. Learned A.G.P. further submitted that nothing is brought on record by the claimants evidencing that no sale had taken place pertaining to the land situated at village Kurungi at the relevant period, so as to place reliance on the sale instance pertaining to the land situated at a different village. He further submitted that reference Court has unreasonably enhanced the amount of compensation. He further argued that the reference Court has also erred in awarding the separate compensation for the trees. Learned A.G.P. further argued that the reference Court has manifestly erred in awarding the compensation for the pot kharab land at the value of jirayat land at the rate of Rs.65,000/- per hectare. For all these grounds, learned A.G.P. prayed for setting aside the impugned judgment and award and redetermine the amount of compensation.

7. Mr Kale, learned Counsel appearing for the original claimants in both the appeals supported the impugned judgment and submitted that no interference be caused for the enhancement so awarded, since the reference Court has awarded adequate compensation to the claimants.

8. I have carefully considered the submissions advanced by learned A.G.P. and learned Counsel appearing for the claimants. I have also perused the impugned judgment and award and evidence on record.

9. The land of the claimants acquired in L.A.R. No.278 of 2000 was admeasuring 67 - R with 5 - R pot kharab land, whereas the land admeasuring 97 - R was acquired of the claimant in L.A.R. No.277 of 2000. It is not in dispute that both the acquired lands were situated at village Kurungi. As deposed by Subhash Kashinath Patil, the acquired lands were quite fertile and of superior quality. As has further come on record through the evidence of said Subhash Patil, both the lands were irrigated lands and the cash crops were being taken in the said lands. From the 7/12 extracts of the acquired lands, existence of well is noticed in the said lands. It is asserted by the claimants that the acquired lands were well irrigated lands and nothing has been brought on record by the State so as to disbelieve the said statement. Moreover, in the 7/12 extract, existence of well is noticed. 7/12 extracts also reflect that the crops like sugarcane were taken in the acquired lands. From the evidence on record, it is quite evident that

the claimants have successfully proved that the acquired lands were irrigated lands. There is further no dispute that the State has not adduced any oral evidence nor brought on record any document i.e. any sale deed for bringing on record the prevailing market value of the lands of similar nature and quality and situated in the vicinity. In the circumstances, the only option before the reference Court was to determine the market value of the acquired lands on the basis of oral evidence adduced by one of the claimants and the sale deed placed on record by the claimants at Exh.16. The land which was the subject matter of Exh.16 was admeasuring 19 - R and was sold by the registered sale deed executed on 25.4.1990 for a consideration of Rs.17,000/- i.e. at the rate of Rs.89,422/- per hectare. Considering the plus and minus factors of the acquired lands, the reference Court has eventually determined the market value of the acquired land at the rate of Rs.65,000/- per hectare for non-irrigated land and Rs.1,30,000/- per hectare for irrigated land. The reference Court has elaborately discussed the aforesaid evidence and has also provided a reasoning for its reliance on the sale instance so placed on record by the claimants.

10. After having gone through the evidence on record, it does not appear to me that the reference Court has committed any error in determining the market value of the acquired land at the rate of Rs.65,000/- per hectare for non-irrigated land and Rs.1,30,000/- per hectare for irrigated land. As has come on record through the evidence of witness examined by original claimants, village Pardhade

is at a short distance of 3 to 4 Kms. from Kurungi. Perusal of the impugned judgment also reveal that the reference Court has not mechanically determined the market value by placing implicit reliance on the sole sale instance Exh.16, but has also considered all other relevant factors. After having considered the entire material on record, it does not appear to me that any error has been committed by the reference Court in determining the market value of the acquired land at the rate of Rs.65,000/- per hectare for non-irrigated land and Rs.1,30,000/- per hectare for irrigated land. The market value so determined by the reference Court cannot be in any way said to be unjust or arbitrary or without having evidence therefor. On the contrary, as I noted herein above, the reference Court has considered the plus and minus factors of the entire land and has determined the market value of the said lands on the basis of the sale instance at Exh.16.

11. In so far as the compensation awarded by reference Court for the trees existing in one of the lands is concerned, the same also seems to have been awarded on the basis of the valuer examined by the claimants before the reference Court. I have gone through the evidence of Mr Ravindra Ghanshyam Chaudhari, who was an approved valuer. Nothing has come on record in his cross-examination to disbelieve the valuation report prepared by the said witness, on the basis of which the reference Court has determined the compensation payable to the claimants. It does not appear to me that the compensation awarded in that regard is in any way unreasonable or on a higher side.

12. Though it was sought to be canvassed by learned A.G.P. that the reference Court has grossly erred in awarding the compensation to the pot kharab land at the rate of Rs.65,000/- per hectare, I am not inclined to cause interference in the amount of compensation so offered for the pot kharab land at the said rate for the reason that the pot kharab land was admeasuring only .05 hectare. Though the same rate could not have been awarded by the reference Court to the said pot kharab land, as was awarded to the jirayat land considering the small quantum of the compensation awarded as aforesaid to the tune of Rs.3,250/- only, according to me it may not be proper to cause interfere in the amount of compensation so awarded, after the period of about more than ten years.

13. After having considered the entire material on record, I see no reason for causing any interference in the impugned judgment. Both the appeals, therefore, deserve to be dismissed and accordingly are dismissed. However, without any order to the costs.

(P.R. BORA, J.)

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