

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

FIRST APPEAL NO. 821 OF 2006

1. Haridas s/o Chandrabhan Varne,
Deceased, through his L.R.s
- 1a. Sau. Ranjanbai w/o Haridas Varne,
age 38 years, Occ. Agril, and household,
R/o Pimpalgaon, Tq. Gangapur,
District Aurangabad [Divshi/Pimpalgaon]
- 1b. Kantabai d/o Haridas Varne,
age 24 years, Occ. Agri and Household,
R/o as above.
- 1c. Yogesh s/o Haridas Varne,
age 21 years, Occ. Agri, r/o as above.
- 1d. Sonu Haridas Varne,
age 19 years, Occ. Agri,
R/o as above.
- 1e. Roopali d/o Haridas Varne,
age 16 years, minor u/g of
Ranjanabai Haridas appellant
No.1a.
2. Gorakhnath Chandrabhan Varne,
age 33 years, Occ. Agril,
R/o as above.
...Appellants...
[orig. claimants]

VERSUS.

The State of Maharashtra,
Through the Special Land Acquisition
Officer, M.I.W., Aurangabad,
District Aurangabad.
...Respondent...
[orig respondent]

...
Advocate for Appellants : Mr S K Adkine
AGP for Respondent : Mr K D Mundhe

...
CORAM : V.K. JADHAV, J.
Dated: April 11, 2016
...

ORAL JUDGMENT :-

1. Being aggrieved by the Judgment and Award passed by the 3rd Adhoc Additional District Judge, Aurangabad dated 15.2.2006, in LAR No.510.1996 (new) 120/1994 (old).

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

The claimants are the owners of Block No.43 admeasuring 27 Acres 18 Gunthas situated at village Kinhal, Taluka Gangapur, District Aurangabad. The Government has acquired the land in the year 1989 for construction of a percolation tank in the village and out of block no.43, land ad-measuring 2 Hectors 80 Aars owned and possessed by the claimants came to be acquired. The Special Land Acquisition Officer passed an award on 2.8.1993 and awarded the compensation @ Rs.230/- per Aar. Being aggrieved by the same, the

appellants/original claimants had filed a Reference. The learned 3rd Adhoc Additional District Judge, Aurangabad, by its impugned Judgment and Award dated 15.2.2006 partly allowed the Reference and thereby awarded enhanced compensation @ Rs.115/- per are in addition to the rate awarded by the Special Land Acquisition Officer. Thus, the learned Judge of the Reference Court has awarded compensation @ Rs.345/- per Aar for the acquired land. Hence, this appeal.

3. Learned counsel for the appellant submits that, the acquired land was a black cotton soil and irrigated land. Learned counsel submits that, there is evidence to show that the acquired land is irrigated on the water of well by means of pipe line through electric motor installed on the well situated in the acquired land. Learned counsel submits that the claimant has deposed before the Reference Court that he was taking sugarcane, grass, zinger, wheat, and gram in his land prior to the acquisition. Learned counsel submits that, even the S.L.A.O. has also accepted acquisition of the well

situated in the acquired land. Besides the land, the compensation is awarded separately for acquisition of the well. Learned counsel submits that, even though the appellants/claimants have proved the sale instance of land bearing Block No.142 of the same village, same is not considered by the Reference Court. Learned counsel submits that, said transaction of land admeasuring 37R dated 23.4.1990 for a consideration of RS.20,500/-. The claimant has examined attesting witness on the said sale deed and accordingly, said sale deed is marked as Exh.23. Learned counsel submits that, the appellant-claimant has also produced on record certified copy of another sale deed which was executed three years prior to the notification u/s 4 of the present acquired land. Learned counsel submits that, the Reference Court has not considered the same. Learned counsel submits that, though reference Court has corrected the mistake committed by the S.L.A.O. and treated the acquired land as seasonally irrigated land, failed to consider the sale instance as stated above and awarded the compensation at a very meager rate.

4. Learned AGP appearing for respondent-State submits that, so far as the sale instance at Exh.23 is concerned, the land under the sale instance was purchased alongwith the share in the well and in the electric motor. Learned AGP submits that, as per the contents of the sale deed itself, land under the sale instance was situated adjacent to Gavthan. Learned AGP further submits that moreover the land under the sale instance was adjacent to the another land of the purchaser. Learned AGP submits that, therefore, so far as land under sale instance is concerned correct marked price does not reflect from the same. Learned AGP further submits that, so far as another sale deed produced before the Reference Court is concerned, same was produced on record after closure of oral evidence of both the sides. Learned AGP submits that, the Reference Court has therefore rightly discarded the said sale instance. Learned AGP submits that, the Reference Court has rightly enhanced the compensation @ Rs.115/- per Aar in addition to the rate awarded by the Special Land Acquisition Officer. In the facts and

circumstances of the case, no interference is required. There is no merit in the appeal and the appeal is liable to be dismissed.

5. So far as the classification of the land acquired is concerned, the Reference Court has rightly come to the conclusion that the Special Land Acquisition Officer has committed mistake in treating the acquired land as Jirayat land and the S.L.A.O. should have considered the acquired land as seasonally irrigated land.

6. So far as the sale instance Exh.23 which has been duly proved by the appellant-claimant before the Reference Court is concerned, the land under said sale instance has fetched more price than the market rate for the reason that the land in sale instance was just adjacent to Gavthan and another land of the purchaser. In this case, the Section 4 notification is 1.11.1990, sale transaction at Exh.23 was on 23.4.1990. Even though assuming that the land under sale instance has fetched more price than market price, to some extent, this sale instance speaks about the prevailing market rate in the

said village. The sale deed Exh.23 was executed some seven months prior to the date of notification for the acquired lands. The appellant-claimant has also deposed before the Court that, distance between the acquired land and land under sale instance Exh.23 is about 8000 to 9000 feet.

7. So far as other sale instance produced after closing of the evidence is concerned, the learned counsel for the appellant-claimants submits that, the said sale deed was executed three years prior to the date of notification for a consideration of Rs.600/- per aar. Said sale deed thus not considered by the Reference Court for the reason that it was not tested by cross examination. However, by considering the sale instance at Exh.23, I am of the opinion that, the Reference Court has not correctly awarded the rate while awarding enhanced compensation to the claimants. In my opinion, it would be just and proper if the compensation is awarded @ Rs.215/- instead of 115/- as awarded by the Reference Court.

8. In the result, appeal is partly allowed in terms of the following order.

O R D E R

- I. Appeal is hereby partly allowed.
- II. The impugned judgment and Award passed by the 3rd Adhoc Additional District Judge, Aurangabad in LAR No. 510/1996 (New) 120/1994 (old) dated 15.2.2006 is hereby modified in the following manner :-

“The Respondent-State shall pay the compensation to the claimants for the acquired land at the rate of Rs.215/-(Rs. Two Hundred fifteen only) per Aar in addition to the compensation awarded by the Special Land Acquisition Officer @ Rs.230/- per Aar.”

- III. Rest of the Judgment and Award stands confirmed.
- IV. The appellants-claimants to pay the deficit court fees, if any.
- V. Award be drawn up accordingly.

VI. Needless to say that, if the amount is paid as per award passed by the Reference Court, the same shall be deducted while computing the compensation as per the modified Award.

VII. First Appeal disposed of. No costs.

sd/-

(V.K. JADHAV, J.)

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aaa/-