

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

FIRST APPEAL NO.693 OF 2006

1. Anandkumar s/o Kachrual Pande,
Age 40 years, Occu. Agriculture,
R/o Hatnoor, Taluka Kannad,
District Aurangabad
 2. Pramodkumar s/o Kachrual Pande,
Age 38 years, Occu. Agriculture,
R/o as above
- ..Appellants
(Original claimants)

Versus

1. The State of Maharashtra,
Through Special Land Acquisition
Officer, Aurangabad
 2. The Executive Engineer,
Minor Irrigation Division,
[Shivna Takli Medium Project]
Aurangabad
- ..Respondents

Mr. S.K. Adkine, Advocate for appellants
Mr S.R. Yadav, Assistant Government Pleader for respondent No.1
Mr T.B. Bhosale, Advocate for respondent No.2

- WITH -
FIRST APPEAL NO.895 OF 2008

1. The State of Maharashtra,
Through Special Land Acquisition
Officer, Aurangabad
 2. The Executive Engineer,
Minor Irrigation Division,
Aurangabad
- ..Appellant
(Original respondents)

Versus

1. Anandkumar s/o Kachrual Pande,
Age 30 years, Occu. Agriculture,
R/o Hatnoor, Taluka Kannad,
District Aurangabad
 2. Pramodkumar s/o Kachrual Pande,
Age 28 years, Occu. Agriculture,
R/o as above
- ..Respondents
(Original Claimants)

Mr. S.R. Yadav, Assistant Government Pleader for appellant No.1
Mr T.B. Bhosale, Advocate for appellant No.2 (appearance filed in
F.A.No.693 of 2006)
Mr. S.K. Adkine, Advocate for respondents

CORAM : V.K. JADHAV, J.

DATE : 7th June 2016

ORAL JUDGMENT

Heard.

2. Being aggrieved by the judgment and award dated 31st December 2005, passed by the Ad hoc Additional District Judge, Aurangabad in L.A.R.No.714 of 1996, the original claimants have preferred First Appeal No.693 of 2006 and the State has also preferred First Appeal No.895 of 2008 challenging the said judgment and award.

3. Brief facts giving rise to the present appeals are as follows:

4. The agricultural land owned and possessed by the present appellants - original claimants came to be acquired by the Government for the purpose of construction of percolation tank at village Hatnoor. The Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act' for the sake of brevity) was published in Government gazette on 3rd December 1987, however, the same was not materialised and therefore, fresh Notification under Section 4 of the Act was published in Government gazette on 27th February 1992. Under the award, the land was assessed as dry and its market price was fixed at Rs.310/- per Aar. Besides it, towards the standing fruit bearing trees compensation of Rs.17,512/-, for a structure standing in the acquired land Rs.7,475/-

and towards price of a well Rs.10,162/- was awarded. Being dissatisfied with the same, the claimants approached the Civil Court for enhancement of compensation provided under Section 18 of the Act. The respondent - State and the Acquiring Body have strongly resisted the claim with the assertion that the Special Land Acquisition Officer has considered all the relevant factors and awarded the just and reasonable compensation as per the market price. The learned Ad hoc Additional District Judge, by impugned judgment and award dated 31st December 2005 awarded compensation at the enhanced rate of Rs.490/- per Aar. The reference Court has, however, rejected the claim of the appellants - original claimants for enhancement in the compensation awarded towards well, standing structure and the fruit bearing trees. Hence, the present First Appeal No.693 of 2006 by the original claimants.

5. The learned Counsel for the appellants - original claimants submits that being dissatisfied with the rate awarded by the Special Land Acquisition Officer, the other agriculturists whose land is also acquired for the construction of same percolation tank also filed Land Acquisition Reference before the Collector for making reference, as provided under Section 18 of the Act to the Civil Court. Accordingly, the reference petition is numbered as Land Acquisition Reference No.699 of 1996. The respondent - Acquiring Body has awarded the compensation at the enhanced rate of Rs.1130/- per Aar for the land in the same reference by way of settlement of the claim in Lok Adalat. The learned Counsel submits that the same rate may be awarded for the land which is the subject matter of present appeals.

6. The learned Counsel for the respondent - Acquiring Body submits that by way of settlement, the respondent - Acquiring Body has accepted the said rate of Rs.1130/- per Aar as a special criteria with the condition that the claimants therein shall abandon their claim for the pipeline, fruit bearing trees etc. The learned Counsel submits that accordingly, the settlement has taken place and the said Land Acquisition Reference No.699 of 1996 came to be disposed of in terms of the settlement arrived at between the parties in Lok Adalat. The learned Counsel in order to substantiate his contention placed reliance on the letter dated 1st October 2010 addressed to the Superintending Engineer, Irrigation department, Aurangabad.

7. The learned Counsel for the respondent - Acquiring Body submits that 4 hectare 60 - Aar land is acquired out of the land Gut No.66 and the same is treated by the reference Court as irrigated land and the land admeasuring 44 Aar is *Pot Kharab* land for which the claimants are entitled to 1/4th rate of compensation awarded to the irrigated land as per the enhanced rate of compensation.

8. The claimant Anandkumar Pande has examined himself before the reference Court and deposed that his land, which is acquired by the Government is an irrigated land and there were fruit plants, pipeline, engine house and water tank in the said land. The said land is situated on the bank of Shivna river and is perennially irrigated. He had grown sugarcane, zinger, grass, wheat and bajra in his land. He used to supply sugarcane to the sugar factories at Kannad and Sakharwadi, District Ahmednagar. He has further clarified that his

pipeline was also acquired and there were two wells in the land from which with the help of pipeline, the land was being irrigated. In cross-examination he has admitted that there is a well and he has not dug another well. Furthermore, he has also examined the Accountant of a sugar factory to substantiate his contention that he has supplied the sugarcane to the factory and accordingly, received price of the sugarcane supplied to the factory. The receipts issued by Kannad Sugar Factory are produced by him and placed on record at Exhibits 48 to 52. On the basis of the oral as well as the documentary evidence, the reference Court has rightly held that the acquired land Gut No.66 in fact, is an irrigated land and the Special Land Acquisition Officer has erred in treating it as *Jirayat / gairan* land.

9. In view of above, the respondent - Acquiring Body should not have made any discrimination while awarding the same rate of compensation to the land of the present appellants - original claimants. On careful perusal of the letter issued by the Executive Engineer dated 1st October 2010, it appears that the claimants in the said Land Acquisition Reference No.699 of 1996 have abandoned their claim for the fruit bearing trees, pipeline etc. In the case in hand also, the learned Counsel for the appellants - original claimants, on instructions, makes a statement that the appellants-claimants are not willing to press their claim for the pipeline, fruit bearing trees, well and the standing construction, if the same rate i.e. Rs.1130/- per Aar is awarded to their acquired land, which is the subject matter of the present appeals.

10. In view of the above submissions, in my considered opinion the appellants – original claimants in First Appeal No.693 of 2006 are entitled for the compensation at the enhanced rate of Rs.1130/- per Aar for the acquired land, by deducting the amount awarded by the Special Land Acquisition Officer for pipeline, fruit bearing trees, well and the standing construction in the acquired land.

11. There is no substance in First Appeal No.895 of 2008 preferred by the Acquiring Body against the judgment and award dated 31st December 2005 passed by the Ad hoc Additional District Judge, Aurangabad in L.A.R.No.714 of 1996. In view of the above discussion, I proceed to pass the following order :

ORDER

(i) First Appeal No.693 of 2006 (Anandkumar s/o Kachrual Pande and anr. Vs. State of Maharashtra and anr.) is hereby partly allowed.

(ii) The appellants – original claimants are entitled to receive the compensation from the respondents at the enhanced rate of Rs.1130/- per Aar for the land admeasuring 4 hectare 60 Are and Rs.282/- per Aar for the land admeasuring 44 Aar with all the statutory benefits and interest as awarded by the reference Court, by deducting the amount awarded by the Special Land Acquisition Officer for pipeline, well, standing structure and fruit bearing trees, as detailed in the award.

(iii) In view of disposal of First Appeal No.693 of 2006, First Appeal No.895 of 2008 (The State of Maharashtra Vs. Anandkumar s/o Kachrulal Pande and anr.) is hereby dismissed with no order as to costs.

12. Both the appeals are accordingly disposed of.

(V.K. JADHAV, J.)

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