

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

FIRST APPEAL NO.3648 OF 2008

1. The State of Maharashtra,
Through- The Special Land
Acquisition Officer, Krushna Khore
Vikas Mahamandal, Collector Office,
Aurangabad.
2. The Executive Engineer,
Minor Irrigation Local Sector,
Aurangabad.

...APPELLANTS
(Ori.Respondents)

VERSUS

1. Tukaram s/o Bhagaji Badar,
Age: 58, Occu. Agriculture,
R/o. Pimpalgaonpeth, Tq. Sillod,
Dist. Aurangabad.

...RESPONDENTS
(Ori.Claimants)

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Mr. R.B.Bagul, AGP for the appellants.
Mr. N.J.Pahune Patil, Advocate, for respondent.

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CORAM: P.R.BORA, J.

DATE : June 13th, 2017

ORAL JUDGMENT:

1. Heard Shri R.B.Bagul, learned A.G.P. appearing

for the appellant State and Shri N.J.Pahune Patil, learned Counsel appearing for the respondents i.e. original claimant.

2. The appellant State has preferred present appeal against the judgment and award dated 17th April, 2006, passed in LAR No.79/2002 by the Vth Ad hoc Additional District Judge, at Aurangabad. The aforesaid Land Acquisition Reference was filed by respondent claimant, claiming enhancement in the compensation as awarded by the Special Land Acquisition Officer, invoking Section 18 of the Land Acquisition Act. Learned Reference Court, after having assessed the evidence brought before it, held the claimant entitled to receive the compensation of Rs.57,552/- with 30 per cent solatium and additional component of 12 per cent on both the amounts from the date of notification till the date of award and also held the claimant entitled for interest under Section 28 of the Act. Aggrieved thereby, the State has preferred the present appeal.

3. Shri Bagul, learned A.G.P., submitted that the

Tribunal has grossly erred in determining the market value of the acquired lands. Learned A.G.P. submitted that the Special Land Acquisition Officer had correctly assessed the market value of the acquired land at the rate of Rs.565/- per Are by taking into account all the relevant circumstances and no interference was required in the market value so offered by the Special Land Acquisition Officer. Learned Counsel submitted that the learned Reference Court, without considering the fact that the subject land was not irrigated land, has determined the market value of the said land as if the said land is irrigated land. Learned Counsel submitted that the 7/12 extract which was filed on record of the Reference Court indicates that crops of Jwar and Bajara were only taken from the subject land. Learned A.G.P. submitted that the entries of 7/12 extract clearly establish that the land was not irrigated land. Learned A.G.P., therefore, prayed for modification of the award.

4. Shri Pahune Patil, learned Counsel appearing for respondent i.e. original claimant, opposed the submissions advanced by the learned A.G.P. Learned Counsel

submitted that the acquired land was irrigated land and was having well therein. Learned Counsel submitted that along with the land, the well in the said land has also been acquired and the Special Land Acquisition Officer has awarded separate compensation in that regard. Learned Counsel invited my attention to the 7/12 extract filed on record at Exh.15. Learned Counsel further invited my attention to the entries for the years 1996-1997, 1997-1998 which clearly reveal that the cash crop was being taken and the land was irrigated.

5. Perusal of the impugned award reveals that Learned Reference Court has determined the market value of the acquired land on the basis of the sale deeds which were brought on record by the claimants. Total four sale deeds were brought on record at Exhs. 12, 13, 14 and 23. Learned Reference Court did not consider the sale deeds at Exhs. 12 and 13 observing that they pertain to small piece of land i.e. 5 Ares and 10 Ares, respectively. The Reference Court has also not relied upon sale deed at Exh.23 noting that the said sale instance was of the period post notification under Section 4 of the Act. The

Reference Court has relied upon sale deed at Exh.14 which was executed on 25th of January, 1999, i.e. before issuance of the notification under Section 4 of the Act. Vide the said sale deed 17 Are dry land was sold for consideration of Rs.15,000/- i.e. at the rate of Rs.882/- per Are. Taking the value received to the said land as a base the learned Reference Court has determined the market value of acquired land to double of the same, holding that the acquired land was irrigated land. I do not see that the learned Reference Court has committed any error in determining the market value of the acquired land. Admittedly, no evidence was adduced on behalf of the State.

6. After having considered entire evidence on record, I do not see any error in the judgment so passed. The First Appeal (No.3648/2008) being devoid of substance, deserves to be dismissed, and is accordingly dismissed.

(P.R.BORA)
JUDGE

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