IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3731 OF 2016

1. Dhiraj s/o Dattatraya Bagdure,
Age 12 years, Minor,

2. Suraj s/o Dattatraya Bagdure,
Age 14 years, Minor,

3. Deepa d/o Dattraya Bagdure,
Age 17 years, Minor,

All are minors U/g father
Dattatraya s/o Madhavrao Bagdure,
Age 42 years, Occu : Agriculture,
All R/o Hosur, Tq. Nilanga
Dist. Latur. **...APPELLANTS**
(Orig. Claimants)

VERSUS

1. The State of Maharashtra,
Through District Collector,
Latur District Latur.

2. The Sub-Divisional Officer,
Nilanga, Tq. Nilanga,
District Latur.

3. The Executive Engineer,
Latur Minor Irrigation Division,
Latur District Latur

...RESPONDENTS
(Orig. Respondents)

...

AND
FIRST APPEAL NO. 3732 OF 2016

1. Vyankat s/o Madhavrao Patil,
Deceased through his L.Rs.

1-A) Saraswati w/o Vyankatrao Patil,
Age 48 years, Occu : Agriculture,
R/o : Hosur, Tq. Nilanga, Dist. Latur

1-B) Sandip s/o Vyankatrao Patil,
Age 30 years, Occu : Agriculture,
R/o : as above.

1-C) Sachin s/o Vyankatrao Patil,
Age 27 years, Occu : Agriculture,
R/o : as above.

1-D) Pooja d/o Vyankatrao Patil,
Age 21 years, Occu : Agriculture,
R/o : as above.

2. Sulochana w/o Madhavrao Patil,
Age 72 years, Occu : Agriculture,
R/o : as above.

3. Shakuntala w/o Gangadhar Dapkekar,
Age 52 years, Occu : Agriculture,
R/o : as above.

4. Govind s/o Madhavrao Patil,
Age 43 years, Occu : Agriculture,
R/o : as above.

5. Jivan s/o Madhavrao Patil,
Age 41 years, Occu : Agriculture,
R/o : as above. **...APPELLANTS**
(Orig. Claimants)

VERSUS

1. The State of Maharashtra,
   Through District Collector,
   Latur District Latur.

2. The Sub-Divisional Officer,
   Nilanga, Tq. Nilanga,
   District Latur.

3. The Executive Engineer,
   Latur Minor Irrigation Division,
   Latur District Latur

...RESPONDENTS
(Orig. Respondents)

AND

FIRST APPEAL NO. 3733 OF 2016

1. Waghambar s/o Devrao More,
   Age 54 years, Occu : Agriculture,
   R/o : Botkul, Tq. Nilanga, Dist. Latur

2. Suryabhan s/o Narayan More,
   Age 57 years, Occu : Agriculture,
   R/o : Botkul, Tq. Nilanga, Dist. Latur

...APPELLANTS
(Orig. Claimants)

VERSUS

1. The State of Maharashtra,
   Through District Collector,
   Latur District Latur.

2. The Sub-Divisional Officer,
   Nilanga, Tq. Nilanga,
   District Latur.

3. The Executive Engineer,
   Latur Minor Irrigation Division,
   Latur District Latur

...RESPONDENTS
(Orig. Respondents)

Shri S.B. Gastgar, Advocate for Appellants
Shri S. M. Ganachari, AGP for State
Shri S.G. Bhalerao, Advocate for Respondent No.3.

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CORAM: P.R. BORA, J.

DATE : August 21st, 2017

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Date of reserving the judgment: 20/06/2017.
Date of pronouncing the judgment: 21/08/2017

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JUDGMENT:

1. Since these appeals are arising out of the common judgment and award passed by the Court of Civil Judge, Senior Division, Nilanga, on 7th of October, 2015, in LAR No.2/2014 with LAR No.3/2014 and LAR No.4/2014, I have heard the common arguments in the matter and I deem it appropriate to decide these appeals by a common reasoning.

2. The lands which are the subject matter of the present appeals were acquired for construction of additional road of Halgara to Hosur for Hanumantwadi Storage Tank at village Hosur and village Botkul. The notification under Section 4 of the Land Acquisition Act,

1894, hereinafter referred to as the Act, was published on 20th of September, 2011 and the award under Section 11 came to be passed on 12th of June, 2013. The Special Land Acquisition Officer had offered the compensation for the acquired lands at the rate ranging in between Rs.92,600/- to Rs.2,18,800/- per acre. Dissatisfied with the amount of compensation so offered, the appellants, who are hereinafter referred to as the claimants, preferred applications under Section 18 of the Act which were adjudicated by the Court of Civil Judge, Senior Division, Nilanga, District Latur (hereinafter referred to as `the Reference Court'). The Reference Court, vide the impugned judgment has determined the market value of the acquired lands at the rate of Rs.8,000/- per Are for dry land and Rs.16,000/- per Are for the irrigated land and has accordingly enhanced the amount of compensation. According to the appellants, the amount of compensation so enhanced by the Reference Court is also inadequate and they have, therefore, preferred the present appeals seeking enhancement in the amount of compensation as awarded by the Reference Court.

3. The LAR No.2/2014 was pertaining to two lands Gat No.317 admeasuring 22 Are and Gat No.316 admeasuring 24 Are. In LAR No.3/2014, the land involved was Gat No.375 admeasuring 5 Are whereas Gat No.2 admeasuring 8 Are and Gat No.6 admeasuring 11 Are were the subject matter of LAR No.4/2014. The land Gat No.316 admeasuring 24 Are is only held to be irrigated land by the Reference Court.

4. Shri Gastgar, learned counsel appearing for the appellants i.e. original claimants, criticized the impugned judgment and award on various grounds. Learned Counsel submitted that the Reference Court has failed in appreciating the sale instances placed on record by way of comparable sale instances. Learned counsel submitted that the sale instances in which highest price is received must have been considered by the Reference Court for determining the market value of the acquired lands but the Reference court has considered the sale instance wherein lowest price was received to the land involved in the said sale instance. Learned counsel further submitted that the Reference court has further grossly erred in holding

the lands survey No.317, Survey No.375, Survey No.2 and Survey No.6 to be non irrigated lands. Learned counsel submitted that ample evidence was placed on record by the claimants in order to prove that the aforesaid lands were having irrigation facility and the crops like sugarcane were being taken in the said lands. Learned counsel submitted that the evidence in that regard has not been properly appreciated by the learned Reference Court. Learned counsel submitted that great injustice has been caused to the appellants. He, therefore, prayed for allowing the present appeals by appropriately enhancing the amount of compensation.

5. Shri Bhalerao, learned Counsel appearing for the acquiring body, supported the impugned judgment and award. The learned counsel submitted that the Reference Court has determined the market value of the acquired lands on the basis of the sale instances brought on record by the claimants and, as such, in fact, the appellants are now estopped from raising any objection in that regard. The learned Counsel further submitted that the Reference Court has correctly analyzed the evidence

brought on record. Learned counsel submitted that, as has been observed by the Reference court, the claimants failed in bringing on record any cogent and sufficient evidence to substantiate their contention that their lands were irrigated lands and that they were taking cash crops in the said lands. Learned counsel submitted that the Reference Court has awarded the just and fair compensation to the claimants and no interference is, therefore, required in the impugned judgment and award. He, therefore, prayed for dismissal of the appeals.

6. I have carefully considered the submissions made on behalf of the appellants as well as the respondents. I have also perused the impugned judgment and award and the oral and documentary evidence existing on record.

7. The claimants had claimed compensation for their acquired lands at the rate of Rs.16,00,000/- (Rs. Sixteen lakh) per acre. In order to substantiate the claim so raised by them, one of the claimants, namely, Govind Madhavrao Patil testified before the Reference

Court for and on behalf of the claimants. In addition to the oral evidence of said Govind Madhavrao Patil, the claimants placed on record five sale instances (Exh.19 to Exh.24). The land which was the subject matter of Exh.19 was admeasuring 41 Are situate at village Botkul and was sold vide the registered sale deed executed on 18th of December, 2000 for consideration of Rs.3,05,000/- (Rs. Three lakhs, five thousand) i.e. at the rate of Rs.7,439/- per Are. According to the claimants, it was the dry land. 25 Are land situate at village Hosur was the subject matter of Exh.20 which was sold for consideration of Rs.1,40,000/- i.e. at the rate of Rs.5,600/- per Are. In the sale deed at Exh.21, the land involved was admeasuring 22 Ares situate at village Hosur and was sold by registered sale deed executed on 28.11.2000 for value of Rs.2,37,000/- i.e. at the rate of Rs.10,773/- per Are. The sale deed at Exh.22 pertains to 11 Are land situate at village Hosur and the same was sold for price of Rs.1,10,000/-vide registered sale deed executed on 1.9.2005. The said land was thus sold at the rate of Rs.10,000/- per Are. The sale deed at Exh.23 was in respect of 82 Are land situate at village Hosur and the same was sold on 1.9.2005 for consideration of Rs.6,50,000/- i.e. at the rate of Rs.7,927/- per Are. The sale instance at Exh.24 was of 21 Are land situated at village Hosur and the price received to the said land sold on 2.9.2005 was Rs.2,10,000/- i.e. at the rate of Rs.10,000/- per Are. According to the claimants, except the land involved in sale deed at Exh.21, all other lands were Jirayat lands. Learned Counsel submitted that all the sale instances were of the period prior to about six years of the notification under Section 4 by which the subject lands were acquired. Learned Counsel submitted that by giving adequate notional enhancement in the market value received to the said lands, the Reference Court must have determined the market value which could have been much more than the market value as has been determined by the Reference Court.

8. As against it, it was the argument of the learned Counsel appearing for the acquiring body that the Reference Court has shown all fairness in determining the market value on the basis of the evidence brought before it and has correctly determined the same.

9. Now, it would be useful to see the reasons which are assigned by the Reference court while determining the market value of the acquired lands on the basis of sale instances brought on record by the claimants. In paragraph no.13 of the impugned judgment, such discussion is made by the learned Reference Court. I deem it appropriate to reproduce the said paragraph hereinbelow:

> "13. On careful perusal of sale instances brought by the claimants, it reveals that the sale instances filed at Exh. 19 to 21 are of the year 2000. The notification under Section 4 is published on 20.09.2011. The said sale instances are above 10 years old from the notification. I am of the view that the sale instances more than 5 years old are not safe for reliance and cannot be considered to determine the market value of acquired land. The land of sale instances filed at Exh. 22 and 24 is nearest to the acquired land and of the same zone. Those sale instances are of dated 1.09.2015 and 2.09.2005 respectively and in those sale instances the land of Gat No. 317 and 384 is sold at the rate of Rs. 10,00,000/- per hector. It appears that the land of those sale instances is irrigated land. In sale instance filed at Exh.24 it is mentioned that it is Jirayat land but it appears that there is a correction in the word Jirayat and said sale instance seems to be doubtful. Therefore, in my view the sale instance filed at Exh. 22 can be considered to determine the market value of acquired land as on the date of publication of notification under Section 4 of the Land

> Acquisition Act. In the present references' notification is of dated 06.08.2010 and the sale instance is of dated 01.09.2005. Therefore, it 10 % increase is given then the market value of acquired land as on 20.09.2011 will come to the tune of Rs.16,00,000/- per hector for irrigated land and Rs.8,00,000/- for dry land. The Land Acquisition Officer has awarded compensation at the rate of Rs.2,31,500/-, 2,73,500/- per hector to dry land and Rs.5,47,000/- for irrigated land. In view of above discussion and considering the evidence on record, I am inclined to hold that the Land Acquisition Officer awarded meager amount of compensation to the claimants and the market value of the acquired land is Rs. 8,000/- per R. i.e. Rs. 8,00,000/- per hector for Jirayat land and Rs. 16,000/- per R. i.e. Rs.16,00,000/- per hector for irrigated land as on 20.09.2011. In the result, I answered issues No.1 and 2 accordingly.''

10. From the discussion made by the Reference Court, it is quite clear that it has given weightage to the evidence which was favouring the case of the claimants. There were three sale instances on record; two executed on 1.9.2005 and the third on 2.9.2005. In fact, the land which was involved in Exh.23 had received the consideration at the rate of Rs.7,927/- per Are. The Reference Court could have considered the said sale instance for determining the market value, however, the Reference Court preferred to consider sale instance at Exh.22 wherein the price received was Rs.10,000/- per

Are. Further, the evidence was not free from doubt whether the lands involved in the sale instances placed on record were irrigated or dry since there were some corrections appearing in that regard in the respective sale deeds. After having considered the evidence brought on record it, however, appears to me that the learned Reference court has correctly determined the market value of the acquired land at the rate of Rs.8,000/- per Are for dry land and Rs.16,000/- per Are for irrigated lands. The appellants have failed in making out any case for any enhancement in the amount of compensation as has been determined by the Reference Court.

11. The next question falls for my consideration is whether the Reference Court has committed any error in not holding the land Gat No.317, Gat No.375, Gat No.2 and Gat No.6 to be irrigated lands. It was vehemently argued by Shri Gastgar, learned counsel appearing for the appellants that despite there being sufficient evidence on record showing that the aforesaid lands were irrigated lands, the Reference court has held the said lands to be the dry lands. After having perused the entire record I,

however, do not find any substance in the allegations so made by the appellants. The learned Reference Court in paragraph no.11 of its judgment has considered the submissions in this regard. I find it necessary to reproduce the said discussion which reads thus :

> ''11. The claimants have pleaded that entire acquired land is irrigated land and the claimants were raising sugarcane and other crops in it. On perusal of 7/12 extracts filed on record, it reveals that except the land of Gat No. 16 area 24 R, there is no entry of irrigation facility to other land. In some 7/12 extracts the entries of sugarcane is shown but those entries of the year 2012-13. On perusal of an award Exh.17, it reveals that in the award it is specifically mentioned that the land of Gat No. 16 adm. 24 R. is irrigated land and other land is dry land. The claimants have filed some electric bills on record but only on relying on those bills it cannot be held that entire acquired land is irrigated land. Therefore, considering above facts, I have no alternative to hold that the land of Gat No. 16 adm. 24 R. is irrigated land and other acquired land is dry land.''

12. In view of the submissions made on behalf of the appellant and in the light of the observations made by the Reference court in paragraph no.11 of its judgment reproduced hereinabove, I scrutinized the record. The 7/12 extract pertaining to land Gat No.316 distinctly shows the existence of a well. The crop statement also shows

that the sugarcane crop was being taken. The 24 Are land acquired out of the said survey number has, therefore, been rightly held by the Reference Court to be irrigated land. The 7/12 extract of the land Gat No.317 is at Exh.26. It, admittedly, does not show the existence of any well in the said Gat number. As was deposed by Govind Madhavrao Patil before the Reference Court, the claimant used to take water of well situated in land Gat No.316 for his other acquired land i.e. Gat No.317. It was also deposed by the said witness that 7/12 extract of Gat No.317 will also show that for preceding three years of the notification under Section 4, the cash crops were being taken in the said land. The crop statement of Gat No.317, however, shows the sugarcane crop only for the year 2011-2012 and not prior to that. From 2001-2002 to 2011-2012 sugarcane crop was taken only once i.e. in the year 2011-2012. The observation by the Reference Court that the entry of the sugarcane is shown in the year 2012-2013 is incorrect. However, merely because during the period of ten years only once sugarcane crop was taken; that too, just few months prior to the issuance of notification under Section 4, will not be enough to categorize the said land as the irrigated land. The ultimate conclusion recorded by the Reference Court, therefore, does not require any indulgence. If the crop statement of the land Gat No.375 is perused, it reveals that since 2006-2007 no sugarcane or any other cash crop is taken in the said land. Similarly, the claimants have failed in bringing on record any cogent and sufficient evidence to show that the land Gat No.2 and land Gat No.6 were irrigated lands and the cash crops were being taken in the said lands.

13. In the circumstances, it does not appear to me that the Reference Court has committed any error in not holding the said lands to be irrigated lands. There is no merit in the appeals filed. Hence, the following order:

ORDER

All the aforesaid First Appeals are dismissed, however, without any order as to the costs.

(P.R.BORA)
JUDGE

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AGP/