

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1 OF 2012

Madhukar s/o Daulatrao Kotwal (died)
(Through legal heirs)

1. Indumati wd/o Madhukar Kotwal
Age: 62 Yrs., occu. Household;
2. Rajendra s/o Madhukar Kotwal
age: 37 Yrs., occu. Agril.
3. Mahesh s/o Madhukar Kotwal
age: 35 Yrs., occu. Agril.

All R/o New Mondha, Partur,
Tq. Partur, Dist. Jalna.

= **APPELLANT/S**
(orig. claimants)

VERSUS

- 1) The State of Maharashtra
Through Collector, Jalna,
District Jalna.
- 2) The Executive Engineer,
Lower Dudhana Project,
Division Sailu, Dist.Parbhani
- 3) The Special Land Acquisition Officer

(Krushna Khore), Jalna,

District Jalna

= **RESPONDENT/S**

(orig. Respondents)

Mr. Sachin S.Panale, Advocate for Appellants;

Mr. SM Ganachari, AGP for Respondent Nos.1 to 3.

CORAM : P.R.BORA, J.

DATE : 24th July, 2017.

ORAL JUDGMENT:

1) Heard. Admit. With the consent of learned Counsel appearing for the parties, the appeal is taken up for final disposal.

2) The present appeal is filed seeking enhancement in the amount of compensation as awarded in LAR No.388/1998 decided by District Judge-3, Jalna decided on 3rd May, 2008.

3) Land admeasuring 4 hectares and 4 Ares belonging to the present appellants was acquired for the purpose of rehabilitation of the project affected persons having nexus with Lower Dudhana Project. Notification under Section 4 of the

Land Acquisition Act (hereinafter referred to as the Act) in that regard was published in the official Gazette on 18th February, 1997 and after complying with the required procedure, award under Section 11 of Act came to be passed on 12.2.1998.

. The Special Land Acquisition Officer had offered the compensation @ Rs.483/- per Are. Dissatisfied with the amount of compensation so offered, the appellants filed an application under Section 18 of the Act, which was adjudicated by the Civil Court (hereinafter referred to as the Reference Court).

. In Reference Court the appellants had claimed the compensation @ Rs.1,500/- per Are. The learned Reference Court, after having assessed the oral and documentary evidence brought before it, determined the market value of the acquired lands @ Rs.725/- per Are and accordingly enhanced the amount of compensation. According to the appellants, even the Reference Court has not awarded the just and fair

compensation to the expectation of the appellants – claimants. The present appeal is, therefore, preferred by them seeking enhancement in the amount of compensation as has been awarded by the Reference Court.

4) Shri Sachin Panale, learned Counsel appearing for the appellants – claimants, submitted that though sufficient evidence was adduced by the claimants before the Reference Court, so as to determine the market value of the acquired lands on the basis of the said evidence, the Reference Court, instead of making the said sale instances a base for determining the market value of the acquired land, preferred to rely upon the decision in LAR No.385/1998, which was settled in Lok Adalat. In the said matter, the compensation was enhanced with consent of the parties by 50% i.e. from Rs.483/- per Are to Rs.725/- per Are. The learned Counsel submitted that merely because the claimants in the said LAR settled the matter

amicably and accepted the compensation as has been agreed in the said matter, will not preclude the present appellants or the similar other appellants to claim enhanced compensation more than as has been awarded in the said matter. The learned Counsel submitted that the present appellants had never agreed for any settlement in Lok Adalat and were willing to get their matter decided by the Court on its own merits. The learned Counsel submitted that in such circumstances, the learned Reference Court should not have determined the market value of the acquired lands on the basis of the settlement arrived at in LAR No.385/1998. The learned Counsel submitted that two sale instances were placed on record by the appellants one at Exh.50 and another at Exh. 51. Learned Counsel submitted that the land, which was the subject matter of Exh. 50, was admeasuring 73 Ares from village Warphal and was sold by registered sale deed executed on 15th April, 1994 for the consideration of Rs.1,00,000/-, i.e. @ Rs.

1,370/- per Are. The learned Counsel submitted that it has come on record that village Warphal is at the distance of hardly 1 km from village Koregaon, where the subject land is situated. The learned counsel submitted that the land which was the subject matter of Exh.51 was sold on 14th December, 1994 and has received the consideration at Rs.2,500/- per Are. It was 2 Ares land and was sold for the consideration of Rs.5,000/-. The leaned counsel submitted that the vendee of the said land was examined before the court and it has come in the evidence of the said witness that the acquired land belonging to the present appellants was better in quality than the land sold by her vide sale deed at Exh.50. The learned Counsel submitted that in such circumstances, based on the said sale instance, the Reference Court must have determined the market value of the acquired lands.

. The learned counsel submitted that the Reference Court has also ignored the evidence brought on record by the appellants as about the

irrigation facilities available to the acquired lands. The learned Counsel submitted that the appellants have placed on record the receipts from the sugar factory, evidencing purchase of sugarcane belonging to the appellants by the said sugar factory. The learned Counsel submitted that the 7/12 extracts of the acquired lands show existence of Well therein. However, the Reference Court has drawn an incorrect inference that the acquired land was semi-irrigated land, when the evidence on record was enough to reach to the conclusion that the acquired land was fully irrigated land. The learned Counsel, therefore, prayed for adequate enhancement in the amount of compensation based on the evidence as has been adduced by the claimants before the Reference Court.

5) Shri Ganachari, learned AGP appearing for the State, has opposed the submissions advanced on behalf of the appellants. Learned AGP, reading out the discussion made by the

Reference Court in para 15 of its judgment, submitted that it were the appellants/claimants who have relied upon the settlement arrived at in LAR No.385/1998, meaning thereby that if the same rate is awarded in their matter also, they will accept the said price. The learned AGP further submitted that in such circumstances, the Reference Court has rightly considered the market value, which was determined by way of settlement in LAR No.385/1998 and has given same market value for the land of the present appellants. The learned AGP submitted that the appellants are now estopped from giving any challenge to the order so passed in view of the evidence adduced by the appellants claimants themselves. The learned AGP, therefore, prayed for dismissal of the appeal.

6) I have carefully considered the submissions made on behalf of the learned Counsel appearing for the respective parties.

7) I have perused the impugned Judgment and the evidence on record. On perusal of the impugned Judgment, it is apparently revealed that, the market value of the acquired land was determined by the Reference Court on the basis of the settlement arrived at in Lok Adalat in case of Land Acquisition Reference No.385/1998. The question arises whether the settlement arrived at between the parties in some different proceedings can be accepted as a base for deciding a dispute between two different parties without their consent. The market value determined in LAR No.385/1998 by way of amicable settlement between the parties in the said proceedings will be binding only for the said parties and the parties to the present appeal, more particularly, the original claimants unless they agree for accepting the market value received in the said LAR no.385/1998, the market value in the present matter would not have been determined on the basis of the settlement arrived at in the said LAR.

8) The Reference Court was bound to determine the market value on the basis of two sale instances brought on record by the claimants in order to substantiate the claim raised by them. The land which is the subject matter of Exh.50 was admeasuring 77 R and was sold for the consideration of Rs.One Lakh vide registered sale deed executed on 15.04.1994 i.e. at the rate of Rs.1370/- per Are. The said land was of village Warphal whereas the land which is the subject matter of the present appeal is from village Koregaon. It has come on record that, village Warphal is at the distance of 1 k.m. from Koregaon. The second sale deed at Exh.51 was pertaining to the land admeasuring 2 Are. The said land was also from village Warphal and was sold at the price of Rs.5000/- i.e. at the rate of Rs.2500/- per Are. At the outset, it has to be stated that, the sale instance pertaining to small piece of land admeasuring 2 Are could never have been the base to determine the market value of the subject land, which was more than 4

hectors. The said sale instance will have to be therefore kept out of consideration and the Reference Court has also rightly kept the same out of consideration. However, insofar as the sale instance at Exh.50 is concerned, in absence of any contrary evidence or in absence of any other sale instance brought on record by the respondent, the Reference Court was bound to take into account the said sale instance for determining the market value of the acquired land.

9) During the course of the argument, it was brought to my notice that, in companion matter arising out of the same acquisition pertaining to the lands belonging to some other villages, the Reference Court has determined the market value at higher rate, and as such, the same criteria may be applied for determining the market value in the present matter also. I am not at all convinced by the argument so advanced and it appears to me that, when sufficient evidence is

available on record in the present matter, the market value of the subject land can be determined on the basis of the said material. As has come on record through the evidence of PW No.2 - Sau. Radhabai, the land involved in the sale instance Ex.50 was the irrigated land. It was sought to be canvassed by the learned Counsel appearing for the appellant that, the land which is the subject matter of the present appeal is also fully irrigated land and sufficient evidence in that regard was produced on record. The learned Counsel invited my attention to various receipts evidencing sugarcane belonging to the present appellant purchased by Godavari Dudhna Sugar Factory. The learned Counsel further brought to my notice that, the 7/12 extract pertaining to the subject land very well shows the existence of the well therein. In this background, it was the contention of the learned Counsel that, the Reference Court must have held the subject land to be irrigated one and has accordingly given rate of the irrigated land.

Though the submissions so made was opposed by the learned AGP stating that, the evidence on record is insufficient to reach to any conclusion whether the subject land is fully irrigated or otherwise, I do not find it necessary to indulge in the said controversy in view of the conclusion recorded by the Reference Court that, the subject land is semi irrigated land.

10) The next question arises whether at what rate the compensation could have been awarded for the said land. As I discussed herein above the sale instance at Exh.50 was duly proved by the appellant by examining the vendee of the said land. Though the said land was from village Warphal, as I noted earlier there was no difficulty in accepting the said sale instance as of a comparable land, since it was hardly at the distance of 1 k.m. from the acquired land. It was argued by the learned AGP that, the said land was fully irrigated land and as such if at all the market value is to be determined on the basis of

the consideration received to the said land, the appropriate deductions will have to be made to the subject land being semi irrigated land.

11) I have carefully perused the evidence of PW No.2 Radhabai and I have also perused the contents of the sale deed at Exh.50. After having considered the said evidence, it does not appear to me that, the said land was fully irrigated land. As has come on record, in the evidence and as the recitals of the sale deed also suggest that, 22 Are land out of the 73 Are land was fully irrigated meaning thereby that, the remaining land was not fully irrigated. Therefore, there may not be any difficulty to hold that, the consideration which was received to the said land was due consideration for the semi irrigated land. Even if some negative allowances are given while determining the market value of the subject land on the basis of the land involved in Exh.50, it does not appear to me that, the market value for the acquired

land can be determined at the rate less than Rs.1200/- per Are. After having considered the evidence brought on record by the appellant, I deem it appropriate to determine the market value of the acquired land at the rate of Rs.1200/- per Are and hold the appellant entitled for the enhanced compensation accordingly with all statutory benefits and interest under the provisions of the law. Award be modified accordingly.

Appeal stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

bdv/