

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

FIRST APPEAL (STAMP) NO.3859 OF 2016

THE STATE OF MAHARASHTRA
VERSUS
BABU AMBIR SHAIKH AND ANOTHER

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AGP for Appellant : Mr.B.V.Virde.

Advocate for Respondent No.1-Caveator : Mr. Santosh N. Patne.

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CORAM : **V. K. JADHAV, J.**

DATE : 14th March, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned 5th Joint Civil Judge Senior Division, Osmanabad dated 31st January, 2013 in LAR No.835 of 2002, original Respondent / State has preferred this appeal.

3 Brief facts giving rise to the present first appeal are as follows:

- i) The Claimant is the owner of land Gat No.10 admeasuring 1 Hectare alongwith bund situated at village Khanapur, Taluka Tuljapur, District Osmanabad. The land was acquired by the

Government for the construction of percolation Tank No.2 Khanapur. The notification under Section 4 of the Land Acquisition Act was published on 30th September, 1993. The Special Land Acquisition Officer has awarded the compensation at the rate of Rs.21,000/- per Hectare i.e. Rs.210/- per Are. Being dissatisfied with the inadequate compensation awarded by the Reference Court, the Claimant preferred LAR No.835 of 2002. It has been contended in the said petition that the Claimant used to take Bagayat crops such as wheat, groundnut, sunflower etc., however, the Special Land Acquisition Officer has awarded the compensation on the basis of the land revenue, which is improper and incorrect. The Special Land Acquisition Officer has not considered the sale instance in the vicinity of the acquired land. Tuljabhavani Sugar Factory and Siddheshwar Sugar Factory are at a distance of 15 kilometers and National Highway No.9 is also adjacent to the acquired land. The Claimant has

therefore, claimed the price of the acquired land at the rate of Rs.1,50,000/- per Hectare.

- ii) The Respondent / State has strongly resisted the claim by filing the written statement. It has been contended that the Special Land Acquisition Officer has personally visited the acquired land verified the quality and fertility and facilities available to the acquired land. The Special Land Acquisition Officer has also considered the market price prevailing in the vicinity of the acquired land at the time of notification under Section 4 of the Land Acquisition Act and awarded just and reasonable compensation. The Claimant has adduced oral and documentary evidence in support of his contention. The learned 5th Joint Civil Judge Senior Division, Osmanabad vide its impugned judgment and award dated 31st January, 2013 awarded the compensation at the rate of Rs.26,800/- per Acre i.e. Rs.670/- per Are. Being aggrieved by the same, the Respondent / State has preferred this appeal.

4 The learned AGP submits that the Reference Court has considered the sale instance Exhibit – 30, which came to be executed after the notification and the same is also from the different village. The learned AGP submits that the Reference Court has awarded the compensation at the exorbitant rate.

5 The learned counsel for Respondent / Claimant submits that the Section 4 notification was published on 30th September, 1993 and the sale-deed Exhibit – 30 came to be executed on 17th May, 1994. After noticing that the land under the sale instance was seasonally irrigated land and considering the date of notification and the date of sale-deed, the Reference Court has deducted 30% of the amount from the purchased price of sale-deed Exhibit – 30 for determining the market price of the acquired land. The learned counsel submits that from the said award, other agriculturists preferred LAR Nos.832 of 2002, 837 of 2002 and 836 of 2002. The Reference Court has also awarded the compensation at the same enhanced rate as awarded to the present Respondent / Claimant by relying upon the present sale instance at Exhibit – 30. By letter dated 2nd July, 2013, the Solicitor-cum-Deputy Secretary to

Government, Law and Judiciary Department, Aurangabad has communicated to the Assistant Government Pleader, Osmanabad that the Government has decided to acquiesce in the decision passed by learned 5th Joint Civil Judge Senior Division, Osmanabad dated 31st January, 2013 in the aforesaid LAR Nos.832, 836 and 837 of 2002. The learned counsel submits that it appears that inadvertently, the State has preferred the present appeal.

6 As per the order passed by this Court dated 28th February, 2017, the learned AGP took the instructions from the concerned Special Land Acquisition Officer, Manjara Prkalp, Osmanabad, who has confirmed by his communication dated 2nd March, 2017 that in the aforesaid LAR Nos.832, 836 and 837 of 2002, the Government has decided to acquiesce the decision and so far as LAR Nos.835 of 2002, which is subject matter of the present appeal is concerned, the same is also from the said group. The learned AGP has placed on record the said communication dated 2nd March, 2017.

7 On perusal of the judgment and award passed by the Reference Court, most particularly para 17, the Reference Court

has rightly placed reliance on the sale instance Exhibit – 30 and by deducting 30% amount on the ground that the land under sale instance is seasonally irrigated land and further Section 4 notification of the acquired land was published on 30th September, 1993 and the sale-deed was executed on 17th May, 1994. It appears that the Reference Court has awarded just and reasonable compensation by relying upon the sale instance Exhibit – 30.

8 The learned counsel for the Respondent has placed before this Court the common judgment and award passed by the Reference Court in LAR Nos.832 of 2002, 837 of 2002 and 836 of 2002. On perusal of the same, it appears that the Reference Court while deciding those reference petitions considered the same sale-deed dated 17th May, 1994, which is marked as Exhibit – 35 in the aforesaid reference petitions. It, thus, appears that in the said group of matters, the State has now decided not to prefer any appeal against the judgment and award passed by the Reference Court and in the light of the communication dated 2nd March, 2017, the concerned Special Land Acquisition Officer has informed to the learned AGP that the LAR No.835 of 2002 is also from the said group of LAR Nos.832 of 2002, 837 of 2002 and 836 of 2002 as

referred above. In view of this also, I do not find any substance in the present appeal. Hence, the following order:

ORDER

- I. The appeal is hereby, dismissed with costs.
- II. The appeal is accordingly disposed of.
- III. Pending civil application stands disposed of.

[V. K. JADHAV, J.]

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