

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 489 OF 2003

1. The State of Maharashtra
(Notice to be served on the
Collector, Jalgaon)
2. The Special Land Acquisition Officer III
UTP Hatnur, District Jalgaon ...Appellants

versus

Sahebrao Shamrao Patil,
Age 30 years, Occ. Agriculture
R/o. Deogaon, Tq. Chopda
District Jalgaon ...Respondent

.....
Mr. A.M. Phule, A.G.P. for the appellant
None for the respondent

.....

CORAM : V. K. JADHAV, J.
DATED : 20th JULY, 2017

ORAL JUDGMENT:-

1. Being aggrieved by the common judgment award dated 15.04.1991 passed by the learned 2nd Joint C.J.S.D. Jalgaon in L.A.R. No. 373 of 1984 and other connected matters, the State has preferred this appeal.

2. Brief facts giving rise to the present appeal are as follows:-

a) The agricultural land Gat No. 87 owned and possessed by the respondent claimant to the extent of 0.21 R situated at village Deogaon

came to be acquired by the Government alongwith other lands for construction of Deogaon minor Hatnur right bank canal. Notification under section 4 was published on 21.5.1981. The S.L.A.O. had awarded the compensation at Rs.15,000/- per hectare for the acquired land of respondent claimant. Being dissatisfied with the inadequate compensation awarded by the S.L.A.O., the respondent claimant preferred aforesaid L.A.R. for grant of compensation at the enhanced rate. It has been contended in the said reference petition that the land Gat No. 87 is Bagayat land and the S.L.A.O. has committed error in holding the said land as Jirayat land. It has also been contended that the acquired land is superior and fertile land. The S.L.A.O. has considered the sale instances showing the lower price and ignored the sale instances showing higher price. It has also been contended that the acquired land is situated near Tapi river. The respondent/claimant accordingly claimed compensation at the rate of Rs.40,000/- per acre.

b) The appellant State has strongly resisted the said reference petition by filing written statement. It has been contended that the claimant has not accepted the amount of compensation under protest and further he has not preferred any claim before the S.L.A.O. under section 9 of the Act. As such, the claim is barred under section 25(2) of the said Act. The S.L.A.O. has considered the situation of the quality and assessment of the land alongwith other relevant factors and awarded just and reasonable compensation.

c) The claimant has adduced oral and documentary evidence in support of his contentions. However, the appellant State has not adduced any evidence. Learned IInd Joint C.J.S.D. Jalgaon, by its impugned judgment and award dated 15.4.1991 allowed the claim petition and thereby awarded the compensation at the rate of Rs.63,500/- per hectare by treating the acquired land of the respondent claimant as Bagayat land. Being aggrieved by the same, the State has preferred this appeal.

3. The learned A.G.P. for the appellants State submits that the reference court has treated the acquired land of respondent claimant as Bagayat land, without any basis. The respondent original claimant has placed his reliance on the sale deed Exh.28. The said sale instance is of another village and admittedly, the said village Adawad is situated at a distance of 6/7 kilometers away from the village Deogaon, where the acquired land is situated. Learned A.G.P. submits that the reference court has erroneously relied upon the said sale instance and awarded the compensation at an exorbitant rate.

4. Learned counsel appearing for the respondent sole is absent.

5. On perusal of pleadings, evidence and the judgment and award passed by the Reference Court, it appears that in para 6 of the

judgment, the reference Court has considered 7x12 extract pertaining to Gat No. 87, Exh.22 produced by the respondent claimant on record. On perusal of same, it appears that the respondent owner had cultivated Banana plant in the year 1981-82 in Gat No. 87 and he was getting bagayat crops in the said land as per the crops showing in the 7x12 extract. I do not find any fault in the findings recorded by the reference court that the land Gat no. 87 is Bagayat land.

6. It appears that the respondent claimant has relied upon sale deed Exh.28. Respondent claimant has honestly stated about the distance between village Deogaon where the acquired land is situated and village Adawad, where the land under sale instance is situated. The distance between two villages is about 6/7 kilometers. According to the respondent/claimant, the lands of both the villages as well as their prices are similar. It is the contention of the claimant that the acquired land is situated on Jalgaon-Chopda road. The respondent claimant has also pointed out to the reference court that S.L.A.O. himself has stated in the award that there are no sufficient sale instances available at village Deogaon. In view of same, it appears that the reference Court has rightly relied upon the sale instance Exh.28 which is of adjacent village Adawad. It further appears that the said sale instance is of the year 1975 whereas Section 4 notification in respect of the acquired land was published on 21.5.1981. The reference court has carried out the deduction as the land under sale instance is from different village and

the land has been sold alongwith the well. However, the learned Reference court has failed to make any addition in the consideration amount so far as the said gap of 6 years is concerned. The reference court has considered the acquired land as Bagayat land and accordingly awarded just and reasonable compensation at the rate of Rs.63,500/- per hectare, as against claim of Rs.1,00,000/- per hectare to the respondent-claimant. I do not find any fault in the judgment and award passed by the Reference Court. The reference court has awarded just and reasonable compensation by relying upon the sale deed Exh.28. Further the reference court has rightly treated the acquired land as Bagayat land.

7. In view of the above, I find no substance in the appeal. There is no merit in the appeal, as such the appeal is liable to be dismissed. The appeal is accordingly dismissed with costs.

(V. K. JADHAV, J.)

rlj/