

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

FIRST APPEAL NO. 313 OF 2003

Vitthal Mohan Nimse deceased through L.Rs.:

1. Satyabhamabai w/o Vitthal Nimse,
age 59 yrs, Occ. Household and Agri,
 2. Balasaheb s/o Vitthal Nimse,
age 41 yrs, Occ. Agri.
 3. Appasaheb s/o Vitthal Nimse,
age 38 yrs, Occ. Agri,
 4. Sulbha Vitthal Nimse,
age 34 yrs, Occ. Agri,
 5. Arun S/o Vitthal Nimse,
age 25 yrs, Occ. Agri,
R/o Darewadi, Tq. &
Dist. Ahmednagar.
- ...Appellants..
(orig petitioners.)

VERSUS

The State of Maharashtra. ..Respondent..

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Advocate for Appellant : Mr Babanrao N Palve
AGP for Respondent : Mr B V Virdhe

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CORAM : V.K. JADHAV, J.

Dated: July 19, 2017

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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award dated 20.6.2002 passed by the Jt. Civil Judge, S.D., Ahmednagar, in LAR No.62/1990, the original claimants

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have preferred this appeal.

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

a] Agricultural lands owned and possessed by the appellants-claimants came to be acquired by the Government for the purpose of Mechanised Infantry Regiment Centre. Notification under section 4 (1) of the Land Acquisition Act, 1894 was published in the official gazette on 16.8.1985. The Special Land Acquisition Officer has awarded the compensation @ Rs.125/- per Aar for the acquired lands. Being dis-satisfied by the inadequate compensation awarded by the SLAO, the appellants-claimants preferred the aforesaid reference petitions for grant of compensation at the enhanced rate @ Rs.25,000/- per acre corresponds to Rs.625/- per aar. It has been contended in the claim petition that the Special Land Acquisition Officer has not taken into account all sale instances, actual market price, potentiality, proximity and other aspects and thereby awarded unreasonable and inadequate compensation.

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b] Respondent-State has strongly resisted the said claim petition by filing written statement. It has been contended that, the Land Acquisition Officer has taken into account all the aspects such as sale instance, actual market price and awarded just and reasonable compensation.

c]. The appellants-claimants have adduced the evidence in support of their contentions. Respondent-State has not adduced any evidence. The learned Jt. Civil Judge S.D. Ahmednagar, by its impugned judgment and award partly allowed the claim petition and awarded the compensation as claimed by the appellants-claimants. However, according to the appellants-claimants in the main LAR No.67/1990 which has been decided by the Court prior to impugned judgment and award, wherein, the Reference Court has awarded the compensation at the enhanced rate of Rs.1,360/- for the seasonally irrigated lands. Though, the appellants-claimants claims that, their acquired land is irrigated land, in the alternate, claims that they

are entitled for the compensation at the same rate as awarded by the reference court in the said LAR No.67/1990 for seasonally irrigated lands.

3. The learned A.G.P. submits that, reference court has awarded the compensation at the enhanced rate as claimed by the appellants-claimants, and as such, the present appeal is not maintainable. The learned A.G.P. submits that, so far as compensation awarded by the Reference Court to enhance the rate in main L.A.R. No.67/1990 is concerned, the appellants-claimants have not amended their claim petition to claim the compensation at the same rate and on the other hand, the appellants-claimants have not pressed their application seeking amendment on the basis of the judgment and award passed by the Reference Court in the said LAR No.67/1990. There is no substance in the appeal and the appeal as such is liable to be dismissed.

4. It appears from the impugned judgment and award that, though the reference court has considered the

compensation awarded at the enhanced rate in L.A.R No.67/1990 in respect of the acquired lands for the same project, refused to award the compensation at the same enhanced rate only for the reason that the appellants-claimants have restricted their claim to the extent of the rate Rs.625/- per aar and as such, reference court has allowed the claim petition in toto. It is well settled that, reference petitions before the Court below are required to be considered as original proceeding and reference court can come to an independent conclusion for determination of the market value. There is no limitation on the power of the Court to award adequate, just and reasonable compensation and State is bound to pay similar compensation to all the claimants.

5. On perusal of the pleadings, evidence and the judgment and award passed by the Reference Court, it appears that the certified copy of the judgment and award passed in LAR No.67 of 1990 came to be placed before the Reference Court vide Exhibit 21 alongwith the

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evidence adduced by the parties in the said matter. In addition to this, the Appellants/Claimants have also adduced oral evidence. Even the Reference Court in para 7 of the judgment has observed that on the basis of the evidence adduced in main LAR No.67 of 1990 coupled with the oral evidence of the Petitioner, the Reference Court is going to decide the petition. However, it further appears that the Reference Court has declined to consider the judgment and award passed in said LAR No.67 of 1990 for the reasons that the Applicants/Claimants have self determined the value of the acquired land.

6. It is now well settled that the proceedings before the Reference Court to be considered as original proceedings and the Court can come to the independent conclusion for determination of the market value. There is no limitation on the power of the Court to award adequate compensation and the State is bound to pay the similar compensation to all the Claimants. In the instant case, the judgment and award passed in LAR

No.67 of 1990 has attained the finality and from the same award, the Claimants in LAR No.67 of 1990 getting some more compensation for the acquired lands whereas the Appellants/Claimants in the present appeal are getting less compensation for no reason. Though the evidence recorded in LAR No.67 of 1990 placed before the Reference Court alongwith the judgment and award passed in LAR No.67 of 1990 vide Exhibit 21 and the parties to the reference petition have given consent to consider the said evidence recorded in LAR No.67 of 1990, the Reference Court has not awarded the compensation as per the compensation awarded by the Reference Court at the enhanced rate in said LAR No.67 of 1990 simply for the reason that the Appellants/Claimants have restricted their claim. The Reference Court has recorded the finding that the acquired land is seasonally irrigated land and the Respondent/State has not filed any cross-appeal against the said finding recorded by the Reference Court. In LAR No.67 of 1990, the Reference Court has awarded the compensation at the rate of Rs.67,400/- per Acre i.e. Rs.1,68,500/- per

Hectare for the seasonally irrigated land. The Claimants are entitled for the compensation at the same enhanced rate.

7. In the case of **Bhag Singh and ors. Vs. Union Territory of Chandigarh**, reported in, **AIR 1985 S.C. 1576**, the Supreme Court held that keeping in view the provisions of Section 25 of the Act, there is now no limitation on the power of the Court to award adequate compensation and the State is bound to pay similar compensation to all the Claimants.

8. In view of the above discussion and in view of the ratio laid down by the Supreme Court, the Appellants/ Claimants are entitled for the compensation as determined by the Reference Court in LAR No.67 of 1990, which has already attained the finality. Thus, the impugned judgment and award requires modification. Hence, the following order:

ORDER

- I. The appeal is hereby partly allowed. No costs.
- II. The judgment and award passed by the Joint Civil Judge Senior Division, Ahmednagar dated 20th June, 2002 in LAR No.62 of 1990, is hereby modified in the following manner:

“Opponent / State shall pay the compensation to the Claimants for the acquired land at the rate of Rs.67,400/- per Acre i.e. Rs.1,68,500/- per Hectare.”
- III. The Appellants / Claimants are entitled for all the statutory benefits as awarded by the Reference Court.
- IV. Award be drawn up as per the above notification.
- V. The appeal is accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

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