

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

919 FIRST APPEAL NO. 1056 OF 2017

THAKU LATHU PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr. Dattatraya R. Jayabhar.

AGP for Respondent No.1 : Mr. A. M. Phule.

Advocate for Respondent No.2 : Mr. C. V. Dharurkar.

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

DATE : 19th July, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the common judgment and award passed by the District Judge-1, Majalgaon dated 30th September, 2013 in LAR No.2 of 2005 and other connected reference petitions, the original Claimant in LAR No.5 of 2005 has preferred this appeal.

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

- a) The agricultural land owned and possessed by the Appellant / Claimant came to be acquired by the Government for the purpose of construction of percolation at village Takarwan. The notification

under Section 4 was published on 23rd February, 1995. The Special Land Acquisition Officer has awarded the compensation at the rate of Rs.200/- per Are, Rs.225/- per Are and Rs.250/- per Are respectively. Being dissatisfied with the inadequate compensation awarded by the Special Land Acquisition Officer, the Claimants have preferred the aforesaid reference petitions. It has been contended in the reference petitions that the compensation awarded by the Special Land Acquisition Officer is inadequate, insufficient and based upon improper market value.

- b) The Respondent / State has strongly resisted the reference petitions by filing the written statement. It has been contended that the Government officials determined the market value of the property on the basis of scientific and rational methods and the reference is misplaced.
- c) The Appellant / Claimant has adduced oral and documentary evidence in support of his contentions.

The Respondent / State has not adduced any evidence. The learned District Judge-1, Majalgaon vide impugned judgment and award dismissed all the reference petitions by a common judgment including the reference petition filed by the Appellant / Claimant. Hence this appeal.

4 The learned counsel for Appellant / Claimants submits that the Appellant / Claimant placed reliance on a sale-deed dated 10th January, 1995 Exhibit 34, which is in respect of land Block No.103 admeasuring 2 Hectare 86 Ares from Mouje Takarwan. The Reference Court has not considered said sale-deed Exhibit 34 mainly on the ground that the land under sale instance is irrigated land whereas the acquired land is a dry land. The learned counsel submits that normally the irrigated land fetches double the amount and the Reference Court should have considered the same. However, the Reference Court has erroneously discarded the sale instance Exhibit 34 from consideration. The learned counsel submits that the Reference Court in LAR No.656 of 2004 in respect of the land acquired for the purpose of construction of percolation tank in the same village at some later period, considered the evidence led by the Claimants

therein and awarded the compensation for the acquired land of the same village at the rate of Rs.1,150/- per Are. The learned counsel submits that the Appellant / Claimant is atleast entitled for the same rate.

5 The learned AGP submits that even if the sale instance Exhibit 34 is considered, the market value of the irrigated land in the same vicinity comes at the rate of Rs.632/- per Are and if half of the value of the same is considered for awarding the compensation to the dry land, the Special Land Acquisition Officer has awarded just and reasonable compensation. The learned AGP submits that so far as the judgment and award passed by the Reference Court in said LAR No.656 of 2004 is concerned, the same is in respect of the construction of another percolation tank and Section 4 notification in respect of the same was published on 24th February, 2000. In the said reference petition, the Claimants therein placed reliance on the sale instance dated 2nd April, 1998. In the present matter, Section 4 notification was published on 23rd February, 1995 and as such, the said sale instance would be post notification sale instance. No interference is required.

6 On perusal of the pleadings, evidence and the judgment and award passed by the Reference Court, most particularly para 13 of the judgment and award passed by the Reference Court, it appears that the Reference Court has not considered the sale instance dated 10th January, 1995 Exhibit 34 on the ground that the said sale-deed pertains to irrigated land and the acquired land is a dry land. Even if the sale instance Exhibit 34 is considered as a comparable sale instance, it appears that the Special Land Acquisition Officer has awarded just and reasonable compensation. So far as the judgment and award passed by the Reference Court in LAR No.656 of 2004 is concerned, the subject matter of the said reference petition is the land acquired for construction of percolation tank in the same village under Section 4 notification published on 24th February, 2000. The Appellant / Claimant has not placed on record a copy of the judgment and award passed in LAR No.656 of 2004 before the Reference Court in his reference petition. However, no purpose would be served for remanding the matter on that ground for the reason that the Reference Court in that reference petition, considered different Section 4 notification in respect of another percolation tank in the same village and the Claimants therein placed their reliance on the sale instance of the year 1998. If the percolation tank, which is subject matter of the

present case is concerned, admittedly constructed prior to the year 1998 and therefore, the said sale instance being post notification sale instance, cannot be considered in the present matter. In view of the same, I do not find any substance in the appeal. The appeal is thus, liable to be dismissed. Hence, the following order:

ORDER

- I. The appeal is hereby dismissed. No costs.
- II. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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