

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2166 OF 2008

- 1) The State of Maharashtra
- 2) The Executive Engineer,
Irrigation Division,
Aurangabad. = **APPELLANT/S**

VERSUS

Ramgir s/o Motigir Giri (Gosavi)
Age: 55 Yr., occu. Agril.
R/o Hatnoor, Tq. Kannad,
Dist. Aurangabad.
(Died, through L.Rs.) -

- 1A) Vasantgir s/o Ramgir Giri
(Gosavi) Age: 60 Yrs.,
occ. Agril.
- 1B) Narayan s/o Ramgir Giri(Gosavi)
Age:55 Yrs., occ. Agril.
- 1C) Saraswatibai w/o Ramgir Giri
(Gosavi) Age: 70 Yrs.,
occu. Agril.

All R/o Hatnur, Tq.Kannad,
District Aurangabad. = **RESPONDENT/S**

Mr.SN Ganachari, AGP for Appellant/State;

Mr.TB Bhosale, Adv. For Appellant No.2

Mr.DA Bide, Adv. h/for Mr. CK Sonawane, Adv.
Respondent Nos.1A to 1C

CORAM : P.R.BORA, J.

DATE : 21st June, 2017.

ORAL JUDGMENT:

1) Heard learned counsel appearing for the respective parties.

2) The Judgment and Award passed by 1st Ad hoc Additional District Judge, Aurangabad in LAR No.835/1996, is challenged in the present appeal. The land of the present respondents was acquired sometimes in the year 1987 for construction of percolation tank at Hatnoor, Tq. Kannad, District Aurangabad. The subject land was acquired, vide notification issued under Section 4 of the Land Acquisition Act, 1894 (for short, the Act), which was published in the Government Gazette on 24th September, 1987. Award under Section 11 came to

be passed on 22nd September, 1995. The Special Land Acquisition Officer offered the compensation to the claimants @ Rs. 230/- per Are holding the acquired land to be Jirayat land.

. Dissatisfied with the amount of compensation so offered, Respondent No.1 had preferred an application under Section 18 of the Act to Collector, Aurangabad, which was in turn forwarded for adjudication to the District Court at Aurangabad (hereinafter to be referred as the Reference Court). Before the Reference Court the claimant had claimed compensation @ Rs.1,250/- per Are. It was the contention of the claimant that though the subject land was irrigated, the Special Land Acquisition Officer had wrongly held the said land to be Jirayat land.

. In order to substantiate the claim, the claimant had adduced the evidence in the form of sale instances in addition to his oral testimony. The Reference Court, after having considered the oral and documentary evidence placed before it, determined the market value of the subject land

holding the same to be bagayat land @ Rs.730/- per Are and enhanced the amount of compensation accordingly. Aggrieved by, the State has preferred the present appeal.

3) Shri Ganachari, learned AGP appearing for the appellant/State assailed the impugned judgment mainly on the ground that the Reference Court has failed in appreciating the sale instances brought on record. The learned AGP further submitted that in the sale instances relied upon by the claimant, the rates as were received to the lands which were the subject matter of the sale instances, were quite less than the rate awarded by the Reference Court. The learned AGP further submitted that the Reference Court has erred in relying upon the earlier award in LAR No.77/1994 despite there being independent evidence on record.

. The learned AGP submitted that when the sale instances were placed on record, the Reference Court must have determined the market

value on the basis of the said evidence and should not have placed its reliance on the awards passed in earlier LARs. The learned AGP further submitted that the Special Land Acquisition Officer, after having considered the overall circumstances, had rightly determined the market value of the acquired land @ Rs.230/- per Are and no interference could have been caused by the Reference Court in the amount of compensation so offered by the Special Land Acquisition Officer. The learned AGP, therefore, prayed for setting aside the impugned judgment and award and to confirm the amount of compensation as was determined by the Special Land Acquisition Officer.

4) The learned Counsel appearing for the claimant supported the impugned Judgment and Award. The learned Counsel submitted that a Well was existing in the subject land and the claimant was taking two crops, which was indicative of the fact that it was a fully irrigated land. The

learned Counsel submitted that though existence of the well was quite evident on the basis of 7/12 extract, the Special Land Acquisition Officer had wrongly categorized the said land to be Jirayat land and has accordingly awarded less compensation by determining the market value of the said land @ Rs.230/- per Are. The learned Counsel submitted that the Reference Court has turned down the said finding recorded by the Special Land Acquisition Officer and has rightly held that the subject land was irrigated land and has accordingly determined the market value of the said land. The learned Counsel submitted that in Para 6 of the impugned judgment, the Reference Court has assigned the reasons for not relying upon the sale instances and in Para 7 of the judgment, it has also given justification for placing reliance on the earlier judgments arising out of the same acquisition. The learned Counsel submitted that there is no reason to cause any interference in the well-reasoned order passed by the Reference Court.

5) On perusal of the impugned judgment, it is revealed that the Reference Court has fully analyzed the oral and documentary evidence brought before it. Paras 6 and 7 of the impugned judgment are relevant. I deem it appropriate to reproduce herein below the said paras, -

"6. At Exh.22, the claimant has filed his affidavit, in which, he has referred to certified copies of the sale-deeds, on which, he intends to rely, in the present claim, for enhancement of compensation. The sale Deed, dt.15-07-82, Exh.25 and sale deed, Exh.26, dt 15-03-83, are in respect of lands at villages Allapur and Kesapur. The market price, as per Exh.25, is Rs.243/- per R and as per Exh.26, it is Rs.285/- per R. The claimant also has produced, at Exh.27, a sale deed of the land from village Tapergaon, at Exh.28 of the land at Jaitpur and Exh.29 of land at Hatnur, which are dated 9-7-82, 25-3-88 and 20-12-89 respectively. As per Exh.27, the

price of the land per R. is Rs.170/- and it is @ Rs.470/- or so, under the sale deeds, Exhs. 28 and 29. It is already pointed out that, the notification, u/s 4 of the Act, is dated 24-09-87 and, therefore, the first three sale deeds are of no importance whereas, Exh. 29 is executed nearly 02 years after the material date. So, the same deserves to be ignored.

7. The claimant also produced, at Exh.32, a copy of the award, dt 22-09-95, passed in LAR No.77/94 by the Civil Judge (SD), Aurangabad. A perusal of the same goes to show that, the market price of the land, which was situated at village Kasabkheda, was determined @ Rs.700/- per R. for the irrigated land. This award is relied upon, while determining the market price of the lands, at village Jaitpur, in the award, dated 4-1-05, in respect of L.A.R. Nos.629, 670, 808 and 845 of 1996. Accepting the market price determined in LAR no.77/94 for Bagayat-land, 10% acceleration has

been granted and accordingly, the compensation is determined. In this Court, in LAR No.821/1996, Exh.30, dated 30-06-05, the market price of the land of village Hatnur itself has been determined for bagayat-land @ Rs.700/- per R, by giving acceleration of 10% i.e. at Rs.730/-. In his affidavit, the claimant has deposed that, the agricultural lands, about which he has produced the sale deeds and lands, which are referred to in the award, are quite adjacent to his field. Therefore, there is no hitch to accept the market price determined earlier at Rs.730/- per R."

6) Looking to the discussion so made by the Reference Court it does not appear to me that the Reference Court has committed any error in determining the market value of the acquired land @ Rs.730/- per Are, holding the said land to be irrigated land. Further, the Reference Court has also observed that the Special Land Acquisition Officer had wrongly categorized the subject land

to be Jirayat land. Noticing that there was well in the subject land and having perused the crops statement, the Reference Court has held the subject land to be irrigated land and has accordingly determined the market value of the said land.

7) After having considered the entire evidence on record, it does not appear to me that the Reference Court has committed any error in determining the market value of the subject land @ Rs.730/- per Are. Admittedly, no evidence was adduced either on behalf of the State or by the acquiring body before the Reference Court. Whatever evidence was there was adduced by the claimant and the same has been properly analyzed by the Reference Court.

8) For the reasons stated as above, the appeal filed by the appellant State appears to be devoid of any substance and deserves to be dismissed and is accordingly dismissed, however,

without any order as to costs. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/