

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

FIRST APPEAL NO. 3007 OF 2017

DHARMARAJ MURLIDHAR DHAPATE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants : Mr Gaikwad T.G.
AGP for Respondents: Mr S N Morampalle

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CORAM : V.K. JADHAV, J.
Dated: August 03, 2017

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PER COURT :-

1. Heard.
2. Issue notice to the respondents. Learned AGP waives notice for respondents no. 1 and 2.
3. Heard finally with consent at admission stage.
4. Being aggrieved by the judgment and award passed by the District Judge-4, Ambajogai in L.A.R No.238/2003 dated 7.1.2017, the original claimants have preferred this appeal to the extent that from the same award, the reference court has awarded the compensation at the enhanced rate of Rs.3,000/- per

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Aar for the acquired Bagayat lands, excluding the compensation as awarded by the Special Land acquisition Officer, however, the Reference Court in the present reference has directed that the compensation already paid shall stand deducted from the amount calculated in paragraph no.'B' of the order.

5. Learned counsel for the appellants-original claimants submits that, the agricultural lands owned and possessed by the appellants situated at village Jawalban Tq. Kaij, District Beed came to be acquired by the Government for the construction of Undri Brihat Minor Irrigation Tank alongwith agricultural lands of other agriculturists. Learned counsel submits that, being aggrieved by the inadequate compensation awarded by the Special Land Acquisition Officer, the appellants-claimants as well as other agriculturists preferred land acquisition references. The reference court by judgment and award dated 10.9.2013 disposed of the LAR Nos.243/2004, 4/2004, 5/2004 and 8/2004 from the same acquisition proceedings and award and

awarded the compensation at the enhanced rate of Rs.3,000/- per Aar for Bagayat lands and Rs.1,500/- per Aar for jirayat lands excluding the earlier compensation paid to the respective petitioners by the Land Acquisition officer. However, L.A.R. No.238/2003 preferred by the present appellants came to be decided by the District judge-4, Ambajogai, wherein the court has awarded the compensation at the same enhanced rate, however, directed that compensation already paid shall stand deducted from the amount calculated in paragraph no.'C' of the order. Learned counsel submits that, in both the reference petitions, the claimants therein including the present appellants-claimants relied upon same sale instances and accordingly, reference court has awarded the compensation at the enhanced rate as mentioned above for the acquired lands. Learned counsel submits that, the respondents have challenged the common judgment and award passed in LAR No.243/2004 and other connected references before this Court and this Court by order dated 20.2.2015 passed in FA (ST).No.27259/2014 with

other connected first appeals dismissed the said appeals preferred by the acquiring body by confirming the judgment and award passed by the reference court. Learned counsel submits that, the appellant-claimants are entitled for the same compensation at the enhanced rate. Hence, this appeals.

6. Learned AGP submits that, if any enhancement is awarded by the reference court, the compensation awarded by the Special Land Acquisition Officer is liable to be deducted and as such, the impugned judgment and award is proper, correct and legal and calls for no interference.

7. It is true that, if the reference court awards the compensation at the enhanced rate, the compensation as awarded by the Special Land Acquisition Officer is liable to be deducted. However, on careful perusal of the common judgment passed in LAR No.243/2004 and other connected land acquisition references, it appears that, the claimants therein have placed their reliance on

three sale instances exh.25, 26 and 27 respectively. Those sale instances are from village Jawalban and prior to section 4 notification published in respect of the acquired lands. It appears that the reference court has relied upon those sale instances. It is not disputed that village Jawalban, Bhatumba, and Undri are the adjacent villages and lands from all these three villages came to be acquired for the same project. On perusal of the common judgment and award passed by the reference court in LAR No.243/2004 and three others, it appears that the rate per aar as per the sale instance exh.25 comes to Rs.4,250/- per R, rate of Rs.2,593/- per Aar comes for the land under sale instance exh.26 and rate of Rs.4000/- per aar comes for the lands sold under sale deed exh.27. All these three sale instances are prior to Section 4 notification published in respect of the acquired lands i.e. 26.8.1996. If the addition year wise is made in the consideration amount of those sale instances, the rate per aar of the said lands under sale instances would be considerably increased. It appears that the reference court has therefore excluded the

compensation as awarded by the Special Land Acquisition Officer and accordingly awarded the compensation at the enhanced rate of Rs.3,000/- per aar for Bagayat lands and Rs.1,500/- per Aar for Jirayat lands. In LAR No.238/2003 which is the subject matter of the present appeal, the reference court has considered the same sale instances and awarded the compensation at the same enhanced rate, however, included the amount as awarded by the L.A.O. under the enhanced compensation. It is to be repeated here that, common judgment and award passed in L.A.R. No.243/2004 and three others stands confirmed by this Court in the first appeals stamp no.27259/2014 and other connected matters by order dated 20.2.2015. Thus, to maintain the uniformity in the compensation awarded in respect of the acquired lands the judgment and award passed by the reference court in LAR No.238/2003 requires modification. In view of that, clause no.'C' of the operative part of the judgment is required to be deleted. Hence, following order.

O R D E R

1. First Appeal No.3007/2017 (Dharmaraj S/o Murlidhar Dhapate and others Vs. State of Maharashtra Through Collector, Beed and another), is hereby partly allowed with proportionate costs.
2. The judgment and award passed by the District Judge-4, Ambajogai dated 7.1.2017 in LAR No.238/2003 (Dharmaraj S/o Murlidhar Dhapate and others Vs. State of Maharashtra Through Collector, Beed and another) is hereby modified to the extent of clause “C” of the operative part of the judgment and as such clause “C” of the operative part of the judgment stands deleted.
3. Rest of the judgment and award stands confirmed except the above deletion.
4. Award be drawn up as per the above modifications.
5. The appeal is accordingly disposed of. Pending civil application, if any, also stand disposed of.

(V.K. JADHAV, J.)

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