

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

FIRST APPEAL NO. 3463 OF 2016

THE STATE OF MAHARASHTRA, THROUGH THE COLLECTOR
VERSUS
NANASAHEB DNYANOBA JEDHE AND ANOTHER

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AGP for Appellant : Mr.S.P.Sonpawle.

Advocate for Respondent No.1: Ms Sunita Sonawane, h/f Mr.D.R.Jayabhar.

Advocate for Respondent No.2 : Mr. Avinash D. Aghav.

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

DATE : 06th March, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned District Judge-3, Beed dated 16th October, 2008 in LAR No.676 of 2006, the Respondent / State has preferred this appeal.

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

- i) The Claimant's land, alongwith well, stone bund and different types of trees, situated at village Hingewadi, Taluka Shirur, District Beed came to be acquired by the State for construction of

Hingewadi Gaon Tank Project. Notification under Section 4 of the Land Acquisition Act was published on 5th December, 2002 and by award dated 28th June, 2005, the Special Land Acquisition Officer has awarded the compensation at the rate of Rs.537/- per Are and Rs.15/- per Are for Pot Kharab land. The Special Land Acquisition Officer has also awarded compensation for well, stone bund and different types of trees. Being dissatisfied with the inadequate compensation awarded by the Special Land Acquisition Officer, the Claimants preferred the land acquisition reference for enhancement of compensation. It has been contended in the reference petition that the acquired land was situated at a distance of 30 to 40 kilometers from the sugar factory. There is market place available at Shirur Kasar which is at a distance of 10 kilometers from the acquired land. Village Hingewadi is situated on the road

from Shirur to Patoda and also on the bank of river Sindhphana. The acquired land is of superior and high quality. The Special Land Acquisition Officer has not taken into consideration the sale instances and awarded the meager compensation on the basis of land revenue assessment.

- ii) The Appellant / State has strongly resisted the claim by filing the written statement. It has been contended that the Special Land Acquisition Officer has awarded just and reasonable compensation by considering the prevailing market value in the area.
- iii) The Claimant has adduced oral and documentary evidence in support of his contention. The Appellant / State has not adduced any evidence. The learned District Judge, Beed vide its impugned judgment and award dated 16th October, 2008 awarded the compensation at the enhanced rate of Rs.1,500/- per Are. Hence, this

appeal.

4 The learned AGP submits that the Reference Court has erroneously considered the sale instances Exhibits 16 to 19 though the said sale instances are in respect of the lands situated at village Gomalwada, Taluka Patoda. Those sale instances Exhibits 16 to 19 are pertaining to small piece of land. The Appellant / State has acquired the land of the Claimant to the extent of 3 Hectare and 10 Ares. The learned Judge of the Reference Court without considering the same and without discussing those sale instances, awarded the compensation at the enhanced rate of Rs.1,500/- per Are.

5 The learned counsel for Respondent / Claimant submits that the Talathi, Sajja of village Gomalwada and village Hingewadi is one and the same. Further, the Claimant has deposed before the Reference Court that the distance between the lands under the aforesaid sale instances and the acquired land is not more than 1/2 kilometer. Further, the Claimant has also deposed that the acquired land is situated on the bank of river Sindhphana and thus, the land is more fertile compare to the lands under the sale instances. The Special Land Acquisition Officer has awarded the compensation on

the basis of land revenue assessment. Thus, considering the sale instances Exhibits 16 to 19, the Reference Court has rightly awarded the compensation and enhanced the rate at Rs.1,500/- per Are. No interference is required.

6 On perusal of the evidence and the judgment and award passed by the Reference Court, it appears that the sale-deeds at Exhibits 16, 18 and 19 pertain to small portion of land, sale-deed Exhibit – 17 pertains to the land admeasuring 1 Acre. The land under sale instance was sold on 24th December, 2001 by one Sk. Ibrahim to one Kishor Khade for the consideration of Rs.70,000/-. It is a seasonally irrigated land and as per the said consideration, the price of the land admeasuring 1 Acre comes to Rs.1,707/- per Are. The land under sale instance Exhibit – 17 is prior to notification under Section 4 of the acquired land. The other sale instances though pertain to smaller portion of land, unmistakably point out the prevailing market rate of the irrigated agricultural land in the area.

7 On perusal of copy of award Exhibit – 22, it appears that the Talathi, Sajja of village Gomalwada and village Hingewadi is one and the same. Further, the Claimant has deposed before the Reference Court that the lands under the aforesaid sale instances

though situated at village Gomalwada, situated at a distance of less than 1/2 kilometer from the acquired land. He has also deposed that the acquired land is more fertile compare to the lands under the sale instances. So far as the distance between the acquire land and the lands under the sale instances are concerned, except the suggestion given to the Claimant, which has been denied by him, the State has not adduced any oral or documentary evidence to rebut the evidence led by the Claimant. I do not find any fault in the judgment and award passed by the Reference Court. The Reference Court has rightly believed the oral evidence of the Claimant and after giving due weightage to the sale instances Exhibits 16 to 19, awarded the compensation at the enhanced rate of Rs.1,500/- per Are. There is no substance in the appeal and the same is liable to be dismissed. Hence, the following order:

ORDER

- I. The appeal, is hereby dismissed with costs.
- II. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]