

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

FIRST APPEAL NO. 3580 OF 2016

THE STATE OF MAHARASHTRA
VERSUS
KACHARU DEOJI CHITALKAR AND OTHERS

...

AGP for Appellant : Mr B V Virdhe
Advocate for Respondents : Mr P V Barde

...

CORAM : V.K. JADHAV, J.

Dated: March 29, 2017

...

PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and Award dated 19.6.2012 passed by the 2nd Jt. Civil Judge, S.D., Ahmednagar, in LAR No.9/2004 the original respondent State has preferred this appeal.
3. Brief facts, giving rise to the present appeal are as follows :-
 - a] The lands owned and possessed by the claimants came to be acquired by the State Government for the purpose of construction of Percolation Tank at village Dhawalpuri, Tq. Parner, District Ahmednagar. Section 4

notification was published. The SLAO has awarded the compensation at the rate of Rs.78,400/- per Hectare for Jirayat Land and Rs.1,17,600/- per hectare for seasonally irrigated land. Being aggrieved by the inadequate compensation awarded by the SLAO, the claimants preferred LAR No.9/2004 for grant of compensation at the enhanced rate. It has been contended in the reference petition that SLAO has awarded compensation on the basis of revenue assessment of the land and the same is not permissible. S.L.A.O. has not considered the crops taken by the applicants in the acquired portion of the lands and also not considered the quality, potentiality and fertility of the lands. The S.L.A.O. has not taken into consideration prevailing market price of the land at the time of acquisition of the land.

b] The appellant State has strongly resisted the reference petition by filing written statement. It has been contended that S.L.A.O. has awarded just and reasonable compensation. The S.L.A.O. has not only considered revenue assessment of the acquired land but

also considered sale data prior to the notification under section 4 of the Act in respect of the acquired land and after considering the quality, potentiality and fertility of the land awarded just compensation.

4. The claimants have filed pursis at exh.4 for adopting the evidence adduced in the pending LAR No.3/2004 and 4/2004 arises out of the same award. The appellant state has not adduced any evidence. The Reference Court has awarded the compensation at the enhanced rate of Rs.1,65,000/- per hectare by treating the acquired lands as seasonally irrigated lands. Being aggrieved by the same, the State has preferred this appeal.

5. The learned AGP for the appellant State submits that though the parties to the reference petitions relied upon the award passed in the Lok-Adalat dated 15.1.2001 marked at exh.20, and even though the claimants have accepted said award of Lok-adalat wherein the enhancement in the compensation was considered, till then, Reference Court has awarded the

compensation at the enhanced rate even in addition to the award passed in the Lok-Adalat by considering the acquired lands as seasonally irrigated lands. The learned AGP submits that the claimants have failed to prove that the acquired lands are the irrigated lands and even then Reference Court has awarded the compensation at the enhanced rate.

6. Learned counsel for respondents original claimants submits that there were two wells in the land gat no.164/2 and the claimants were taking irrigated crops in their respective lands. The 7/12 extract of the acquired land is produced and marked at exh.15. The crop statement reflects that the crops like sugarcane, wheat, grass, Jawar, Bajra, etc. are taken in those lands. Further 7/12 extract of the land bearing gat no. 164/2 is produced on record and marked at exh.22. There is entry of well in the 7/12 extract at exh.15 and 20 respectively. Learned counsel submits that, the reference court has therefore rightly treated the acquired lands as seasonally irrigated lands and awarded the compensation by making addition in the

award passed by the Lok-Adalat which has been accepted by both the parties. No interference is required.

7. On careful perusal of the judgment and award passed by the Reference Court, it appears that, on the basis of documentary evidence placed on record and the evidence lead in other connected reference petitions, the Reference Court has rightly come to the conclusion that the acquired lands are seasonally irrigated lands. Admittedly, there are two wells situated in the acquired land and the same is also reflected from the 7/12 extract marked at exh.15 and 20 respectively. The crop statement as mentioned in those 7/12 extracts supported the case of the claimants. Admittedly, out of the same award, some agriculturists have challenged inadequate compensation awarded by the S.L.A.O. by filing one reference application no.1/2004. Same was placed before the Lok-Adalat held on 7.3.2010. Even other agriculturists including the present claimants had also placed their reference petitions before the Lok-Nyayalaya. The other agriculturists in reference petition

no.1/2004 accepted the award passed in the Lok-Adalat, however, the reference applications preferred by these applicants could not be settled in the Lok-Adalat as the claimants were claiming compensation at the enhanced rate by treating their acquired lands as irrigated lands. In the Lok Adalat other reference applications were considered and as per the settlement arrived between the parties, market price was fixed and paid to those claimants at the rate of Rs.1,10,000/- per hectare for jirayat lands. In view of the above, in the light of the observations made in paragraph no.9 of the impugned judgment and award passed by the reference court which is in consonance with the evidence adduced by the claimants in the form of 7/12 extract marked at exh.15 and 20 respectively, the Reference Court has rightly made addition of Rs.55,000/- per Hectare in the amount as determined by the Lok Adalat and awarded the compensation @ Rs.1,65,000/- per Hectare. I do not find any fault in the judgment and award passed by the Reference Court. There is no merit in the appeal. Hence, following order.

O R D E R

1. Appeal is hereby dismissed with costs.
2. Appeal is accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

...

aaa/-