

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

FIRST APPEAL NO.420/2003.

Devidas Bhimrao Jaidare,
Age: Major, Occu: Agriculture,
R/o: Lonarwadi Tq. Paranda,
District Osmanabad. ...APPELANT

Versus

1. The State of Maharashtra,
through Collector, Osmanabad.
2. The Special Land Acquisition
Officer, No.2, Medium Project,
Osmanabad. ...RESPONDENTS

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Mr. J. R. Patil, Advocate for Appellant
Mr. B. V. Virdhe, AGP for Respondents

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CORAM : V. K. JADHAV, J.

DATED : 20TH JUNE, 2017.

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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award passed in LAR No.845/1991, the original claimant Devidas has preferred First Appeal No.420/2003 to the

extent of enhanced rate of compensation as awarded by the reference court.

2. Brief facts, giving rise to the present appeal are as follows : -

a] The Government has acquired the lands owned and possessed by the appellant-original claimant for construction of the Percolation Tank at Lonarwadi, Tq. Paranda, District Osmanabad. Section 4 notification was published on 18.8.1988. The S.L.A.O. has awarded the compensation for the acquired lands @ Rs.23,000/- per hectare corresponding to 230 per R and Rs.7,000/- for a well situated in block no.259/1. Being dissatisfied with the inadequacy of the compensation as awarded by the SLAO, the appellant-original claimant has preferred LAR No.845/1991. It has been contended that, the SLAO has not considered the fertility of the acquired land and also not considered the prevailing market price of the agricultural land in the said vicinity. It has also been contended that, the market value of the acquired land is Rs.25,000/- per acre.

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3 Respondent-State has strongly resisted the claim by filing reply. It has been contended that the SLAO has considered the quality, fertility and also considered the market price of the land within the vicinity and awarded just and reasonable compensation to the claimant. It has also been contended that the claimant was not taking irrigated crops and as such, market value claimed by the claimant was not proper.

4. The appellant-claimant has adduced evidence in support of his contentions. Respondent State has not adduced any evidence. The Reference Court by impugned judgment and award partly allowed the reference petition and awarded the compensation at the enhanced rate of Rs.300/- per R. Being aggrieved by the same, the claimant has preferred this appeal.

5. The learned counsel for the appellant submits that, the appellant-claimant was taking crops like jowar, sunflower, kardi in the acquired land and he was also taking the crops like sugarcane, wheat, chilli, paddy,

ground-nut in the acquired land. There is a well in the acquired land S.No.259/1 belonging to the claimant and the SLAO has paid separate compensation of Rs.7,000/- towards the costs of the said well. The learned counsel submits that the claimant has placed on record sale instance and also examined the purchaser of the said sale instance. Said sale deed is marked at exh.19. Said sale instance is from the adjoining village and in order to substantiate said contentions, the claimant has also examined witness no.3 and produced the map of revenue circle Selgaon Sajja at exh.33. It is clear that village Lonarwadi and village Shelgaon are from the same Sajja and situated adjacent to each other. Learned counsel submits that, Reference Court has not considered the sale instance exh.19 and awarded the compensation at a meager rate of Rs.300/- per Aar.

6. Learned AGP submits that, there is no entry of well in the 7/12 extract Exh.25 produced by the claimant in respect of the land acquired by the Government from S.No.259/1. Said well must be a dry

well and therefore entry to that effect had not appeared in the 7/12 extract. The learned AGP submits that, crop pattern as appearing in the 7/12 extract of the acquired land only speaks about crops like jower, sunflower and kardi. Crop pattern as reflecting from the 7/12 extract does not support the contention of claimant that he was taking the crops like sugarcane, chilly, etc. Learned AGP submits that, sale deed exh.19 is in respect of the irrigated land and irrigation facility was available for the said land under sale instance from the water of the well. Learned AGP submits that, reference court has therefore rightly discarded the sale instance exh.19 and awarded just and reasonable compensation at the enhanced rate by considering other factors. The learned AGP submits that, said sale instance is also one month later from the date of notification under section 4 published in respect of the acquired land.

7. On careful perusal of the pleadings, evidence and judgment and award passed by the Reference Court,

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particularly, 7/12 Extract exh.25, it appears that the claimant was taking the crops like Jowar, Kardi, sunflower in the acquired land. The claimant has also deposed that he was taking crops like sugar cane, wheat, chilly, ground nut, paddy. Though well is situated in the acquired land, gat no.259/1, and acquired by the Government under the same project, the entry of the well was not appearing in the 7/12 extract. It thus, appears that, the entries are not taken correctly in the 7/12 extract about well and also in respect of the crops. Even, assuming that the claimant was taking crops like Jowar, Kardi, and sunflower, said crop pattern indicates status of the acquired land as semi-irrigated land.

8. So far as sale instance exh.19 is concerned, witness Narayan Gharat purchaser of the land under sale instance has admitted in his cross examination that he paid more price towards consideration of the land under sale instance for the reason that vendor sold the said land along with share in the water of the well

and also in the electric motor. It is clear from the map exh.33 village Lonarwadi and aforesaid village Shelgaon are adjacent to each other and sale instance of the said village Shelgaon exh.19 can be considered as a comparable sale instance for determination of market price of the agricultural land in the said vicinity. Even, assuming that the purchaser Narayan Gharat has paid more consideration due to the share in the water of well and electric motor, till then the Reference Court ought to have considered the said sale instance for determination of the market value of the acquired land. Section 4 notification of the acquired land was published on 18.8.1988 whereas said sale deed was executed on 26.9.1988. It further appears from the contents of the sale instance that, the purchaser has not received right in the well water exclusively, but he has received the share in the well water alongwith other co-owners. Though the sale deed was executed on 26.09.1988, it appears from the contents of the sale deed that, the parties to the sale instance decided to proceed with the transaction much prior to the date of the sale deed and

part of the consideration was also paid prior to the execution of the sale deed. I, am, not inclined to discard sale instance exh.19 only on the technical reason that said sale deed was executed after Section 4 notification published in respect of the acquired land.

9. Witness Narayan Gharat has also deposed that, his purchased land is at a distance of 900 to 1000 feet away from the acquired land. It appears that, the land under the sale instance is a small piece of land, however from the land Survey No.259/1, the land admeasuring 62 R belonging to the appellant-claimant was also acquired along with the other lands. The claimant's contention is well supported by the evidence of said witness Narayan Gharat and map of the Revenue Circle Shelgaon Sajja (exh.33). However considering the fact that land under sell instance had fetched more price than market price owing to some other reason, I am inclined to award the compensation at the enhanced rate of Rs.450/- per R to the appellant-claimant. The appellant-claimant is entitled for the compensation at

the enhanced rate of Rs.450/- per R along with all the statutory benefits as awarded by the reference Court. Hence, following order.

ORDER

1. Appeal is hereby partly allowed with proportionate costs.

2. The Judgment and award passed by the Civil Judge, Senior Division, Osmanabad, dated 20.09.1995 in LAR No.845/1991, is hereby modified in the following manner :-

i) The reference petition No.845/1991 is hereby partly allowed and the claimant is entitled for the compensation at the enhanced rate of Rs.450/- per R (four hundred and fifty) for the acquired land Survey No.259/1 and land admeasuring 62 R, situated at village Lonarwadi, and land Survey No.259/3 admeasuring 1 H 60 R situated at village Lonarwadi, with all the

statutory benefits as awarded by the reference Court.

3. Decree be drawn up accordingly.
4. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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