

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

FIRST APPEAL NO. 3459 OF 2016

THE STATE OF MAHARASHTRA AND OTHERS.
VERSUS
DAGDU SADHU SHINDE

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AGP for Appellants : Mr C V Dharurkar
Advocate for Respondent : Mr N R Pawade h/f L.C. Patil

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CORAM : V.K. JADHAV, J.
Dated: February 14, 2017

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the 2nd Jt. Civil Judge S.D., Osmanabad dated 16.12.2013 in Land Acquisition Reference No.693/2010, the Respondent State has preferred this appeal.
3. Brief facts, giving rise to the present appeal are as under :-

Land Gat No.123/A/5 admeasuring 1H 43R and land gat No.126/A/1 admeasuring 3R situated at village Chavanwadi (Katgaon), Tq. Tuljapur, Dist. Osmanabad belonging to the claimant came to be acquired by the State for the purpose of "Chavanwadi Percolation Tank No.5".

Notification under section 4 of the Act was published on 26.10.2006 and by award dated 26.12.2008 the S.L.A.O. has awarded compensation @ Rs.846/- per Aar for the acquired land. Being aggrieved by the same, the respondent-claimant had preferred LAR No.693/2010. It has contended in the said reference petition that, the acquired lands were black cotton soil up to 10 to 15 feet depth, fertile and equal in level in all its parts. Acquired lands were Bagayat lands with the help of well water and respondent-claimant used to raise double crops in a year such as Sugarcane, Vegetables, Groundnut, Wheat, Jawar, Cotton, Tur, Onion, etc. Respondent-claimant has thus claimed compensation at the enhanced rate of Rs.1,50,000/- per acre.

4. The appellant-State has strongly resisted the reference petition by filing written statement. After considering the quality and fertility of the acquired lands and comparable sale instances in the vicinity, the S.L.A.O. has awarded just and reasonable compensation to the claimants. Respondent-claimant has not put forth his claim before the S.L.A.O. It has also contended that enhancement as claimed by the claimant is excessive.

Adequate compensation for well is also awarded to the claimant.

5. Respondent-claimant adduced his oral and documentary evidence in support of his contentions, however, respondent-state has not adduced any evidence. The learned 2nd Jt. Civil Judge S.D. Osmanabad, by its impugned judgment and award dated 16.12.2013 awarded compensation at the enhanced rate of Rs.4,265/- per Aar. Hence, this appeal.

6. The learned AGP submits that, though the State has resisted the claim petition strongly by filing written statement, in paragraph no.22 of the judgment, the Reference Court has erroneously observed that respondent State has not filed the written statement and controverted the contentions of the claimant in any manner. On this ground alone, the Reference Court has accepted the sale transaction exh.14 as genuine transaction. The learned AGP submits that, so far as sale instance Exh.14 is concerned, land under the sale instance Exh.14 is not adjacent to the acquired land and the same is situated at a distance of 4-5 kilometers. The learned AGP submits

that, the land under sale instance is adjacent to State High Way. Admittedly, it was purchased for commercial purpose, however, those advantages are not available for the acquired lands. Learned AGP submits that, sale transaction under the sale deed Exh.14 is after the date of notification of the acquired lands and, even then, the Reference Court has considered the same and awarded the compensation at enhanced rate.

7. Learned counsel for respondent-original claimant submits that, the State has not adduced any oral or documentary evidence. Though, the Reference Court has erroneously observed about non-filing of the written statement by the State, the Reference Court has discussed about the sale transaction Exh.14 elaborately in paragraph no.21 of the judgment and after recording observations about its genuineness awarded rate to the acquired lands by deducting almost 70% of the consideration amount of the sale instance exh.14. Learned counsel submits that, though sale transaction exh.14 is of later date of the notification u/s 4 pertaining to the acquired land, agreement of sale as referred in the sale instance had been taken place in Dipawali of the year 2006 pertaining to the

land under sale transaction and therefore, consideration amount as shown in the sale transaction reflects true market value. Reference Court has awarded just and reasonable compensation. No interference is required.

8. On perusal of the evidence adduced by the claimant and the judgment and award passed by the Reference Court, it appears that, Reference Court has erroneously recorded in paragraph no.22 of the judgment that State has not filed any written statement and controverted the contentions of the claimant in any manner. Though, Reference Court has discussed that there is no reason to disbelieve the contentions of the claimant that sale transaction is genuine transaction, the Reference Court has discussed elaborately sale instance Exh.14 in paragraph no.21 of the judgment.

9. I have carefully gone through the sale instance Exh.14. I do not find that the land under sale instance is situated adjacent to the State High Way. Land under sale instance is also from village Katgaon and respondent-claimant has deposed that village Chavanwadi and village Katgaon has one and the same boundary line at a

distance of half kilometer. So also villages Nanduri, Dhotri, Devkurali, Hipparga are on boundary line at a distance of one and half kilometers from his village. Village Chavanwadi/Katgaon is big village having facilities like school, tar road, etc. Village Chavanwadi comes under the command area of Tuljabhavani Sugar Factory, Naldurg. Respondent-claimant has further deposed that, sale deed came to be executed on 17.10.2007, agreement had taken place between the parties in Dipawali of the year 2006. Though land under sale instance was purchased for the commercial purpose, said land is purely jirayat land. The claimant has deposed that land under sale instance is 10 to 15 feet in depth, fertile and of good quality and equal in level. It is not disputed that, acquired lands are permanent Bagayat land and Bagayat land fetch double market value compared to the Jirayat lands. Though it was further suggested to the claimant that land under sale instance is at a distance of 4-5 kilometers away from the acquired land, state has not adduced any evidence to substantiate the same.

10. Reference court in paragraph no.21 of the judgment has given thought to all aspects of the case and deducted

near about 70% of the consideration amount of the sale transaction exh.14 and further doubled the marked value on the ground that acquired land is bagayat land. Thus, considering the evidence on record, reference court has awarded just and reasonable compensation at the enhanced rate of Rs.4,265/- per aar. I do not find any fault in the impugned judgment and award. There is no merit in the appeal. Hence, I proceed to pass the following order.

ORDER

- I. Appeal is hereby dismissed with costs.
- II. First appeal is accordingly disposed of.

(V.K. JADHAV, J.)

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aaa/-