

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

910 FIRST APPEAL NO. 3398 OF 2008

Sitaram S/o. Bapu Marade,
Age : 62 years, Occu. Agricultural,
R/o. Poundul, Tq. Patoda,
Dist. Beed.

.. Appellant

Versus

State of Maharashtra
Through Collector Beed.

.. Respondent

Mr N. P. Bangar, Advocate for the appellant
Mr S. M. Ganachari, AGP for respondent/State

WITH
FIRST APPEAL NO. 3395 OF 2008

Havasrao S/o. Jagannath Bhosle,
Age : 53 years, Occu. Agricultural,
R/o. Poundul, Tq. Patoda,
Dist. Beed.

.. Appellant

Versus

State of Maharashtra
Through Collector Beed.

.. Respondent

Mr N. P. Bangar, Advocate for the appellant
Mr S. M. Ganachari, AGP for respondent/State

WITH
FIRST APPEAL NO. 3396 OF 2008

Bhujang S/o Sahebrao Marade
Age : 60 years, Occu. Agricultural,
R/o. Poundul, Tq. Patoda,

Dist. Beed.

.. Appellant

Versus

State of Maharashtra
Though Collector Beed.

.. Respondent

Mr N. P. Bangar, Advocate for the appellant
Mr S. M. Ganachari, AGP for respondent/State

WITH
FIRST APPEAL NO. 3397 OF 2008

1. Uttam Sahebrao Marade,
Age : 65 years, Occu. Agricultural,
R/o. Poundul, Tq. Patoda,
Dist. Beed.
2. Chandrakant S/o. Uttam Marade
Age : 42 years, Occ & R/o. As above.
3. Prakash S/o. Uttam Marade,
Age : 37 years, Occu & R/o. As above.
4. Bapu S/o. Uttam Marade,
Age : 22 years, Occu & R/o. As above. .. Appellants.

Versus

State of Maharashtra
Through Collector Beed.

.. Respondent.

Mr N. P. Bangar, Advocate for the appellant
Mr S. M. Ganachari, AGP for respondent/State

CORAM : P. R. BORA, J.
Dated: July 20, 2017

ORAL JUDGMENT :-

1. All these appeals can be decided by a common Judgment

since they are arising out of a common Judgment and the Award passed by the reference Court. The lands which are subject matter in the present appeals were acquired for the purpose of Narayan Gad Medium Project at village Poundul, Tal. Patoda, Dist. Beed. Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as the 'Act') was published on 10.10.1988 and the Award under Section 11 came to be passed on 12.07.1991. The Special Land Acquisition Officer had offered the compensation at the rate of Rs.170/- & Rs.210/- Per Are. Dissatisfied with the amount of compensation so offered, the appellants had preferred the reference applications under Section 18 of the Act. All those reference applications were decided by a common Judgment and Award passed on 07.04.2005. The Reference Court determining the market value of the acquired lands at the rate of Rs.500/- per Are for *jirayat* lands, enhanced the amount of compensation. The present appeals are filed seeking enhancement in the amount of compensation so awarded by the Reference Court.

2. The learned Counsel at the outset brought to my notice that, the companion appeals arising out of the same acquisition proceedings and filed against the same common Judgment and Award have been decided by this court (Coram: Shri. S.V. Gangapurwala, J.) on 21.12.2013. The learned

Counsel tendered across the bar the copy of the said Judgment delivered in First Appeal No.233/2006 with the connected appeals. The learned Counsel pointed out that, in so far as the lands involved in the present appeals are concerned, sufficient evidence was on record showing that, the lands were fully irrigated lands. The learned Counsel submitted that, in each of the said land, the existence of well is evident from the 7/12 extract of the respective lands. The learned Counsel taking me through the description of the respective properties as are mentioned in the memo of appeal submitted that, in some of the matters there are two wells and in one matter there are four wells. The learned Counsel further submitted that, the crop statements in respect of each of the subject land reveals that, fruit bearing trees were existing in all those lands *prima facie* evidencing that, there was a facility of water available for the said land. The learned Counsel submitted that, the Reference Court has however applied only one parameter and holding all these lands to be dry lands has enhanced amount of compensation determining the market value of the acquired lands at the rate of Rs.500/- per *Are*. The learned Counsel submitted that, in view of the Judgment delivered by this Court in the companion appeals, the lands which are the subject matter of the present appeals required to be held as fully irrigated lands and the compensation needs to be enhanced in all these

appeals by determining the market value of the subject lands at the rate of Rs.1000/- per *Are*.

3. Shri. Ganachari, the learned AGP opposed the submissions made by the learned Counsel appearing for the appellants. The learned AGP inviting my attention to the discussion made by this Court in the Judgment delivered in First Appeal No.233/2006 submitted that, there was no sufficient evidence as about the irrigation facility and it was not proved that the lands were fully irrigated or seasonally irrigated and as such the Reference Court has correctly awarded the compensation considering the said lands to be non irrigated lands. The learned AGP submitted that, even if it is accepted that, the existence of well is noticeable from the 7/12 extract of the respective lands, the claimants have not adduced any further evidence to establish that, the well water was being used effectively for taking crops by them. According to the learned AGP, the Reference Court was right in holding all those lands to be dry lands and therefore, no interference is required in the impugned Judgment and award.

4. I have carefully considered the submissions advanced by the learned Counsel appearing for the appellants and the submissions made by the learned AGP appearing for the respondent / state. I have

also carefully perused judgment in the case of First Appeal No.233/2006 with the connected appeals delivered on 21.12.2013 by the learned Single Judge of this court (Coram: S.V. Gangapurwala, J.). It is not in dispute that, the aforesaid appeals were also filed against the same common Judgment and Award passed by the Reference Court, which has been impugned in the present appeals.

5. In the above circumstances, I do not see any reason to take a different view than recorded in the said Judgment by this Court. The learned Single Judge in para no.8 of the Judgment has made the following observations :

8. The evidence appears to have been led in one Reference. Various 7/12 extracts are filed on record. In the aforesaid appeals filed by the claimants it appears that either there is a well in the land acquired or the claimants have right/share in the well water. It appears that the claimants have been awarded compensation for well so also in many of the cases the 7/12 extracts show that the claimants have right to take well water. The learned Asstt. Govt. Pleaders have also verified the said fact. Considering the above, there would no difficulty in treating the lands acquired as seasonally irrigated lands. Of-course, there is no positive evidence about the lands being perennially irrigated but the fact that there is existence of well, fruit bearing trees, pipeline. The lands can be assumed as at least seasonally irrigated even though oral evidence is lacking. The documentary evidence can be considered.

6. In light of the observation made as above, when I

scrutinized the evidence in the present matter and more particularly the documentary evidence placed on record, it is revealed that, in each of the subject land the existence of well is noticed. It is also true that, in some of the lands there are more than one well and the existence of fruit bearing trees is also noticeable. However, it is also a fact that, the respective claimants have failed in bringing on record any further evidence as about the full use of the well water evidencing that, the lands were fully irrigated lands. In such circumstances, relying on the observations made by this Court in the First Appeal No.233/2006, I also deem it appropriate to hold the lands which are the subject matters in the present appeals to be seasonally irrigated lands. It is thus evident that, the appellants in all these appeals are entitled for enhancement in the amount of compensation by determining the market value of their acquired lands at the rate of Rs.750/- per *Are* and the Award needs to be modified to the aforesaid extent. Order accordingly. Save and except the above, the other part of the award is maintained as it is.

The appeals stand partly allowed in the aforesaid terms.

No order as to costs.

(P R. BORA, J.)

ggp