

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

FIRST APPEAL NO. 442 OF 2002

The State of Maharashtra. ..Appellant..

VERSUS

Shri Vilas Dattatraya Kulkarni,
Special Power of Attorney Dattatraya
Vasudeo Kulkarni, age 60 yrs,
Occ. Farmer, R/o Chinchkheda BK.,
Tq. Edlabad, Dist. Jalgaon. ...Respondent...
(Orig petitioners)

WITH
FA/443/2002

The State of Maharashtra. ..Appellant..

VERSUS

Shri Kumar Dattatraya Kulkarni,
Special Power of Attorney Dattatraya
Vasudeo Kulkarni, age 60 yrs,
Occ. Farmer, R/o Chinchkheda (Bk),
Tq. Edlabad, Dist. Jalgaon. ...Respondent...
(orig petitioners)

...
AGP for Appellants : Mr R B Bagul
Advocate for Respondents : Mr. L V Sangit h/f V J Dixit

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CORAM : V.K. JADHAV, J.
Dated: April 20, 2017
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ORAL JUDGMENT :-

1. Being aggrieved by the common judgment and Award dated 11.4.2000 passed in L.A.R.Nos.391/2000

and connected LAR No.390/2000 by 2nd Jt. Civil Judge, S.D., Jalgaon, the Respondent-State has preferred this appeal.

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

a] The respondent is the owner in possession of the acquired land situated at village Chinchkhede Tq. Edalbad, Dist. Jalgaon and the same was acquired by the Government for the purpose of re-settlement of Project Affected Persons of the same village due to Hatnoor Dam. The Notification under section 4 of the Land Acquisition Act was published on 7.7.1983 and the SLAO has awarded the compensation to the acquired lands @ Rs.15,000/- per Hectare by treating the acquired land in LAR No.391/2000 as Bagayat Group 2 and Rs.16,000/- per hectare by treating the land in LAR No.390/2000 as Jirayat. Being dissatisfied with the inadequate compensation awarded by the Reference Court, the respondents-claimants preferred aforesaid land reference petitions. It has been contended in the said reference petitions that the S.L.A.O. has not

considered the prevailing market price of the agricultural lands of the vicinity and as such awarded gross in-adequate compensation. It has also been contended that, the S.L.A.O. has fixed the market price of the respective lands by dividing them into different classes without any base.

b] The appellant-State has strongly resisted the reference petitions by filing written statement. It has been contended that the SLAO has considered the location of the acquired lands and also taken into consideration other factors such as market price of the lands, revenue assessment, and the SLAO has awarded just and reasonable compensation. No interference is required. There is no substance in the reference petitions. The same are liable to be rejected.

c] The claimants have adduced oral and documentary evidence in support of their contentions. Respondent State has not adduced any evidence. The 2nd Jt. Civil Judge S.D., Jalgaon by its impugned judgment and award dated 11.4.2000 awarded the

compensation at the enhanced rate of Rs.27,000/- per Hectare for Jirayat land and double the amount for Bagayat land. Being aggrieved by the same, the State has preferred these two appeals.

3. The learned AGP submits that, the Reference Court has awarded exorbitant amount of compensation at the enhanced rate. The learned AGP submits that as per the contents of the sale instance Exh.12, father of the applicant sold his land for marriage of his daughter, however, the claimants have failed to adduce any evidence in that regard. The learned AGP submits that, the Reference Court has considered the said sale instance without any further evidence. The learned AGP submits that, even though, said sale instance Exh.12 is prior to the notification published under section 4 of the Land Acquisition Act, the villagers came to know about the acquisition of the land from the village for the re-settlement of the Project affected persons and as such, land sold by the father of the claimant's under sale instance Exh.12 was not a bonafide and genuine transaction. However, Reference Court has not

considered this material aspect. Furthermore, the Reference Court has also awarded compensation to the house properties at exorbitant rate.

4. The learned counsel for respondent-claimant submits that the Reference Court has rightly placed reliance on the sale instance Exh.12 and as per the contents of the sale instance Exh.12, if, the land under sale instance was sold for marriage of the sister of the claimant, then, certainly, the land under sale instance would have fetch more price, if, the same would have been sold without any necessity. The father of the claimant, one year prior to the notification published under section 4 in respect of the acquired land sold major portion of the land gat no.113/1A admeasuring 2H 42R for a consideration of Rs.60,000/-. Reference Court has rightly held that it is a bonafide and genuine transaction. The S.L.A.O. as well as reference Court has rightly treated the acquired land which is a subject matter of the LAR No.390/2000 as a Bagayat Land. The SLAO has awarded compensation of Rs.65,000/- for the house property and reference Court has enhanced said

compensation by adding Rs.10,000/-only. Thus, there is no substance in the appeals and both the appeals are liable to be dismissed.

5. On careful perusal of the evidence and judgment and Award passed by the Reference Court, it appears that, the Reference Court has relied upon the sale deed exh.12. On perusal of the sale instance exh.12, it appears that, the father of the claimant sold part of the acquired land gat no.113/1A admeasuring 2H 42R for a consideration of Rs.60,000/-. The learned Judge of the Reference Court has rightly held that said sale instance is genuine and bonafide transaction. There is no evidence on record to draw inference that the villagers came to know about the acquisition proceedings prior to publication of section 4 notification in respect of the acquired lands. It is not the case that, the possession of the acquired land was taken by negotiations prior to publication of section 4 notification and as such the villagers came to know about the acquisition prior to section 4 notification. Father of the claimant sold part of the acquired land gat no.113/1a admeasuring 2H 42R

for valuable consideration of Rs.60,000/- and as such, the market rate of the lands in the said vicinity comes to Rs.24,793/- Per Hectare. The learned Judge of the Reference Court has rightly considered escalation for one year and fixed the market price of the acquired land at Rs.27,000/- per Hectare. I do not find any fault in the impugned judgment and award.

6. So far as valuation of the house property is concerned, considering the life of the house, the Reference Court has rightly awarded compensation of Rs.10,000/- more compared to the compensation awarded by the S.L.A.O. to the house property. There is no substance in both the appeals. Both the appeals are thus liable to be dismissed. Hence, following order.

O R D E R

- I. First Appeal Nos. 442/2002 and 443/2002 are hereby dismissed with costs.
- II. First Appeals are accordingly disposed of.
- III. Civil Application, if any, stands disposed of.

(V.K. JADHAV, J.)

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