

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

8 FIRST APPEAL NO. 605 OF 2016

Audumbar S/o. Anna Borade,
Age : 75 years, Occu. Agriculture,
R/o. Pathrud, Tq. Bhoom,
Dist. Osmanabad.

.. Appellant

VERSUS

1. The State of Maharashtra
Through the Collector,
Osmanabad, Dist. Osmanabad.

2. The Special Land Acquisition Officer No. 2,
Osmanabad, Dist. Osmanabad.

3. The Executive Engineer,
Minor Irrigation Division,
Osmanabad (Presently as Krishna Khore
Vikas Mahamandal), Dist. Osmanabad.

.. Respondents

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Advocate for Appellant	:	Mr. A. R. Devakate
AGP for Respondents no.1 & 2	:	Mr. S.P. Sonpawale
Advocate for Respondent no.3	:	Mr. D.B. Pawar

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CORAM: P. R. BORA, J.

DATE : 19TH JUNE, 2017.

ORAL JUDGMENT :-

1. The appellant has challenged the Judgment and Award passed by the 3rd Joint Civil Judge, Senior Division, Osmanabad

(hereinafter referred to as the 'Reference Court'), on 10.12.2012 in Land Acquisition Reference No.73/2004 by filing the present appeal.

2. The appellant had filed the aforesaid reference application under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') seeking enhancement in the amount of compensation offered by the Spl. Land Acquisition Officer (hereinafter in short 'SLAO'). The land admeasuring 1 Hectare 29 Ares owned by the appellant was acquired for Minor Irrigation Tank to be constructed at village Dudhodi, Tal. Bhoom, Dist. Osmanabad. The Notification under Section 4 of the Act in that regard was published on 26.12.1996 and the Award bearing No.1995/LNQ/A/29 under Section 11 of the Act came to be passed on 13.03.2000. The SLAO had offered the compensation at the rate of Rs.24,500/- per hectare for jirayat land. Being dissatisfied with the amount of compensation so offered, the appellant preferred the aforesaid reference application under Sec.18 of the Act.

3. According to the appellant, the subject land was irrigated land having two wells therein and he was taking cash crops in the said land. The appellant had relied upon three sale instances and also the Valuation Report to substantiate his claim. The learned Reference

Court after having assessed the oral and documentary evidence placed on record, determined the market value of the acquired land at the rate of Rs.47,100/- per acre and accordingly enhanced the amount of compensation.

4. In the present appeal, it is the contention of the appellant that, the Reference Court though has fairly determined the market value as Rs.47,100/- per acre for *bagayat* land, has committed an error in awarding compensation for the acquired land at the same rate though the acquired land is irrigated land. Shri. Devkate, the learned Counsel appearing for the appellant submitted that, in view of the Valuation Report on record, which was exhibited by consent of the learned Counsel appearing for the acquiring body, the Reference Court should not have recorded such a finding that, there was no evidence to show that, the subject land was irrigated land. The learned Counsel further submitted that, in addition to the Valuation Report, there was a joint measurement report which was also admitted and the same was also showing the existence of well in the acquired land.

5. The learned Counsel for the appellant further submitted that, in his deposition before the Court, the appellant has

categorically stated that the acquired land was irrigated land and he was taking two crops in a year and also taking sugarcane crop in the subject land. The learned Counsel submitted that, considering the evidence as was produced by the appellant, the Reference Court must have awarded the compensation to the appellant for the acquired land at double of the rate as was determined for non-irrigated land. The learned Counsel, therefore prayed for allowing the appeal.

6. Mr. S.P. Sonpawale learned Counsel appearing for the acquiring body opposed the submissions made on behalf of the appellant. The learned Counsel invited my attention to para nos.7, 9 and 11 of the Judgment and submitted that, the Reference Court has considered oral as well as documentary evidence adduced on record by appellant and has rightly determined the market value of the acquired land. The learned Counsel submitted that, though the appellant had undertaken to produce 7/12 extract of subject land on record, he did not produce the same and in the circumstances the Reference Court has rightly drawn the adverse inference and has held that, the appellant had failed in proving that the acquired land was irrigated land. The learned Counsel submitted that, no interference is, therefore required in the Judgment and Award so passed.

7. After having considered the submissions advanced by the learned Counsel appearing for the respective parties and on going through the impugned judgment and the evidence on record, it is revealed that, only because the appellant did not or could not file on record the 7/12 extract of the acquired land, the Reference Court has declined to accept the contention of the appellant that the acquired land was irrigated land and had consequently awarded the compensation for the acquired land holding the same to be non - irrigated land. In fact when in the cross – examination the appellant had undertaken to file on record 7/12 extract of his land evidencing that, there was a well in his land and further that he was taking cash crops in the said land, it is not understood as to why he did not place 7/12 extract on record. Even in the appeal no plausible explanation has been given by the appellant as to why he could not file the 7/12 extract of his land before the Reference Court. However, merely for this reason the appellant cannot be deprived of the just and fair compensation if really his land is irrigated one. As was pointed out by the learned Counsel for the appellant the joint measurement report also indicates the existence of the well in the acquired land. Considering all these facts it appears to me that, the opportunity needs to be given to the appellant to place on record 7/12 extract of his acquired land of the relevant

period before the Reference Court and to adduce necessary evidence, if any, in support of his claim that, the acquired land was irrigated one. No prejudice is likely to be caused to the respondent if such opportunity is given to the appellant, since the respondent will have equal opportunity to rebut the said evidence. To do substantial justice I deem it appropriate to pass the following order.

ORDER

- (i) The impugned Judgment and Award stands set aside.
- (ii) The matter is remitted back to the Reference Court to decide it afresh with a direction that, the Reference Court shall permit the appellant to file on record the 7/12 extract of the subject land for the relevant period and to adduce necessary evidence to support his contention that, the subject land was irrigated land. It would be open for the appellant to examine the valuer, the report of whom, is already filed on record. Needless to state that, the State and/or the acquiring body will have equal opportunity to rebut the evidence, which may be adduced by the appellant and further to adduce any

other evidence in support of their defence.

- (iii) The appeal stands allowed in the aforesaid terms.

[P. R. BORA, J.]

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