

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2093 OF 2015

Datta s/o Gopinath Sakhare
Age 40 years, Occ. Agriculture
R/o. Dandegaon, Tq. Kalamnuri
District Hingoli

...Appellant

versus

1. The State of Maharashtra
Through Collector, Hingoli
2. The Special Land Acquisition Officer
Upper Penganga Project No.02,
Hingoli, Tq. and District Hingoli
3. The Executive Engineer, U.P.P.
Division No.6, Nanded
District Nanded

...Respondents

WITH
FIRST APPEAL NO. 2094 OF 2015

Basappa s/o Munjappa Rankhamb
Age 62 years, Occ. Agriculture
R/o. Dandegaon, Tq. Kalamnuri
District Hingoli

...Appellant

versus

1. The State of Maharashtra
Through Collector, Hingoli
2. The Special Land Acquisition Officer
Upper Penganga Project No.02,
Hingoli, Tq. and District Hingoli
3. The Executive Engineer, U.P.P.
Division No.6, Nanded
District Nanded

...Respondents

WITH
FIRST APPEAL NO. 2237 OF 2015

Punjappa s/o Gangadhar Sakhare
Age 52 years, Occ. Agriculture
R/o. Dandegaon, Tq. Kalamnuri
District Hingoli

...Appellant

versus

1. The State of Maharashtra
Through Collector, Hingoli
2. The Special Land Acquisition Officer
Upper Penganga Project No.02,
Hingoli, Tq. and District Hingoli
3. The Executive Engineer, U.P.P.
Division No.6, Nanded
District Nanded

...Respondents

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Mr. S.K. Mathpati, advocate for the appellants-claimants
Mr. S.S. Dande, A.G.P. for respondent Nos. 1 and 2
Mr. R.C. Patil, advocate for respondent No.3
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CORAM : V. K. JADHAV, J.
DATED : 21st JUNE, 2017

PER COURT:-

1. Heard finally with consent of the parties, at admission stage.
2. Being aggrieved by the judgment and award dated 30.03.2015, passed by the Reference Court, the original claimant in L.A.R. No. 30 of 2010 has preferred first appeal No. 2093 of 2015, original claimant in L.A.R. No. 31 of 2010 has preferred first appeal No. 2094 of 2015

and original claimant in L.A.R. No. 32 of 2010 has preferred first appeal No. 2237 of 2015.

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

a) The agricultural lands owned and possessed by the appellants-claimants came to be acquired by the Government for construction of Upper Penganga Project No.2, Hingoli in the following manner:-

Sr. No.	Name of the appellant-claimant and Appeal No.	Gat No. and area	Rate awarded by the S.L.A.O.	Rate awarded by the Reference Court
1	Datta Gopinath Sakhare (F.A. No. 2093 of 2015.	360, 0.27 Are	Rs.710/- Per Are	Rs.1210/- per Are
2	Basappa Munjappa Rankhamb (F.A. No. 2094 of 2015.	354, 0.25 Are	Rs.710/- Per Are	Rs.1210/- per Are
3	Punjappa Gangadhar Sakhare (F.A. No. 2237 of 2015)	365, 0.45 Are	Rs.710/- Per Are	Rs.1210/- per Are

b) Section 4 notification was published in the Government gazette on 2.1.2003 and the S.L.A.O. has awarded the compensation at the rate of Rs.710/- per R. Being dissatisfied with the inadequate compensation awarded by the S.L.A.O., the respective appellant-claimant filed the aforesaid separate reference petitions. It has been contended in those reference petitions that the S.L.A.O. has granted

very meager amount of compensation. It has also been contended that the acquired lands were having black cotton soil with irrigation facilities and situated adjacent to Akola-Hyderabad Highway. It has also been contended that one sugar factory is situated at a distance of 5 to 7 kilometers from village Dandegaon. Big market places like Basmat, Hingoli and Nanded are near to village Dandegaon. It has also been contended that the market price of the agricultural land at village Dandegaon and nearby villages are not less than Rs.1,25,000/- per acre i.e. approximately Rs.3,00,000/- per hectare. The S.L.A.O. however, has not considered the aforesaid factors while granting compensation in respect of acquired land. The S.L.A.O. has awarded insufficient compensation to the appellants-claimants in respect of acquired lands. Thus, they have claimed the compensation for the acquired land at the rate of Rs.3,00,000/- per hectare with all statutory benefits.

c) The respondent Nos. 1 and 2 have strongly resisted all reference petitions by filing written statement. It has been contended that the S.L.A.O. has awarded the compensation as per the market price prevalent at the material time and the S.L.A.O. has considered all necessary circumstances while awarding the compensation. It has also been contended that the S.L.A.O. has awarded just and reasonable compensation. The respondents No.3 acquiring body has

not filed any written statement and as such hearing the reference petitions ordered to be proceeded without written statement of respondent No.3 acquiring body.

d) The appellants claimants have adduced oral and documentary evidence in support of their respective contentions. However, the respondents have not adduced any evidence. The Reference court by judgment and award dated 30.3.2015 awarded the compensation to the appellants claimants at the rate of Rs.1210/- per R as against Rs.710/- per Are, awarded by the S.L.A.O. Hence, these three separate appeals.

4. Learned counsel for the appellants-claimants submits that even though the appellants have adduced oral and documentary evidence to the satisfaction of reference Court that the acquired lands are irrigated lands, the reference court has not considered the same. The appellants have produced on record 7x12 extracts in each and every reference petitions and on perusal of the same, there appears entires about the irrigation facility by well water. Furthermore, the crop pattern as shown in the 7x12 extract unmistakably points out that the acquired lands are irrigated lands. However, the reference court has not considered the said evidence and awarded the compensation at the enhanced rate by considering

acquired land as dry land. The appellants have produced on record two sale instances at Exh. 24 and 25, respectively. The lands under both the sale instances are from adjacent village. However, the reference court has not considered those sale instances only on the ground that the irrigation facilities are available for the lands under sale instance and as such those sale instances cannot be taken as comparable sale instance to determine the market value of the acquired land. Furthermore, the reference court has discarded the sale instances Exh.25 on the ground that the purchaser of the said land has purchased the same, as it is adjacent to his land and as such, the land under sale instance has fetched the more price than the market price. Learned counsel submits that the sale instance Exh.24 is about seasonally irrigated land and near in time of issuance of section 4 notification in respect of the acquired land. The reference court ought to have considered the said sale instance Exh.24, however, the reference court has treated the acquired land as dry land and discarded the sale instance Exh.24 only on the ground that it pertains to irrigated land.

5. Learned counsel for the respondent acquiring body submits that though reference court has awarded just and reasonable compensation at the enhanced rate, the reference court has committed certain errors while calculating the compensation. The

reference court after minutely considering the entries in 7x12 extracts of the acquired land, rightly arrived at the conclusion that the acquired lands are dry lands. Furthermore, the reference court has rightly discarded the sale instances at Exh. 24 and 25, respectively. Both the sale instances are post notification sale instances and also on some other justifiable ground, the reference court has discarded those sale instances. Learned counsel submits that so far as the error committed by the reference court while calculating the compensation at the enhanced rate is concerned, the same is required to be corrected.

6. I have also heard the learned A.G.P. for the respondent Nos. and 2.

7. On careful perusal of evidence and the judgment and award passed by the Reference Court, it appears that so far as the acquired lands, which are subject matter of land acquisition reference Nos. 30 of 2010 and 31 of 2010 are concerned, the reference court has rightly considered the said land as dry land. On perusal of 7x12 extracts of those lands, it appears that though there is entry about new well in other rights column, the crop pattern speaks about the crops which are being taken in the dry lands. Except one year in which some different crop shown to have been taken. The reference

court has therefore, rightly expressed its doubts about entries taken in the 7x12 extract and accordingly treated the acquired land in those reference petition as dry land. I am not inclined to interfere in the said findings recorded by the reference court.

8. So far as the acquired lands in L.A.R. No. 32 of 2010 (first appeal No. 2237 of 2015) is concerned, on perusal of 7x12 extract Exh.27 in respect of acquired land Gat No. 365, I find entry about the well in the other rights column and further entry of Banana crop right from the year 1994-95 till the year 2001 and even thereafter in remaining land of Gat No. 365 for the years subsequent thereto. The reference court has not considered 7x12 extract Exh. 26, 27 and 28 respectively, in its proper perspectives. The said acquired land Gat No. 365 to the extent of 45 Are is required to be considered as irrigated land.

9. So far as the sale instances Exh.24 is concerned, it appears that the reference court should have considered the sale instances Exh.24 as comparable sale instance. The sale deed Exh.24 came to be executed on 24.4.2003 and Section 4 Notification was published on 2.1.2003. The said sale instance pertains to seasonally irrigated land. It appears that the reference court has discarded the said sale instance only on the ground that it pertains to irrigated land. So far

as the acquired lands, which are subject matter of L.A.R. No. 30 of 2010 and 31 of 2010 are concerned, by reducing the amount to certain extent, owing to the reason and its status as dry land and also some percentage of deduction for post notification sale, the market value of acquired lands can be determined. So far as the acquired land which is subject matter of L.A.R. No. 32 of 2010 is concerned, it is held in the foregoing paras that the said land is irrigated land and as such, sale instance Exh.24 is required to be considered for determination of the market value of irrigated land i.e. acquired land in L.A.R. No. 32 of 2010.

10. In view of the above, the appellants-claimants in L.A.R. No. 30 of 2010 and 31 of 2010 (first appeal Nos. 2093 of 2015 and 2094 of 2015, respectively,) are entitled for compensation at the enhanced rate of Rs.1500/- per Are and the appellants-claimants in L.A.R. No. 32 of 2010 (first appeal No. 2237 of 2015) is entitled for enhanced compensation of Rs.3000/- per Are. All the appellants-claimants are also entitled for statutory benefits as awarded by the reference court.

11. After deducting the amount awarded by the S.L.A.O., the appellant-claimant in first appeal No. 2093 of 2015 (L.A.R. No. 30 of 2010) is entitled for total compensation of Rs.21,330/-. Similarly, after deducting the amount awarded by the S.L.A.O., the appellant-

claimant in first appeal No. 2094 of 2015 (L.A.R. No. 31 of 2010) is entitled for total compensation of Rs.19750/-. Similarly, after deducting the amount awarded by the S.L.A.O., the appellant-claimant in first appeal No. 2237 of 2015 (L.A.R. No. 32 of 2010) is entitled for total compensation of Rs.1,03,050/-. The appellants claimants are entitled for all statutory benefits as awarded by the reference Court on the aforesaid amount of compensation. Hence, I proceed to pass the following order:-

O R D E R

- I. (A) First appeal No. 2093 of 2015 (Datta Gopinath Sakhare vs. The State of Maharashtra and others) and First appeal No.2094 of 2015 (Basappa Munjappa Rankhamb vs. State of Maharashtra and others) are hereby partly allowed with proportionate costs and (B) first appeal No. 2237 of 2015 (Punjappa Gangadhar Sakhare vs. The State of Maharashtra and others) is hereby allowed with costs.
- II. The judgment and award dated 30.3.2015 passed by the learned Civil Judge, Senior Division, Hingoli in L.A.R. Nos. 30 of 2010, 31 of 2010 and 32 of 2010 are hereby modified in the following manner:-

“The appellant-claimant in first appeal No. 2093 of 2015 (L.A.R. No. 30 of 2010) is entitled for total compensation of Rs.21,330/-, the appellant-claimant in first appeal No. 2094 of 2015 (L.A.R. No. 31 of 2010) is entitled for total compensation of Rs.19750/- and similarly, the appellant-claimant in first appeal No. 2237 of 2015 (L.A.R. No. 32 of 2010) is entitled for total compensation of Rs.1,03,050/-. The appellants-claimants are also entitled for all other statutory benefits as awarded by the reference Court on the aforesaid amount of compensation.

- III. Rest of the judgment and award, passed by the Reference Court in aforesaid Land Acquisition references stand confirmed.
- IV. Award be drawn up as per the above modification.
- V. All first appeals are accordingly disposed of.

(V. K. JADHAV, J.)