

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

10 FIRST APPEAL NO. 72 OF 2017
WITH CA/11268/2011 IN FA/72/2017

THE STATE OF MAHARASHTRA AND ANR
VERSUS
HANMANTRAO VENKATRAO PATIL AND ORS

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A.G.P. for Appellants : Mr. A.M. Phule.
Advocate for Respondents : Mr. B.N. Patil

CORAM : K. L. WADANE, J.

DATE : 11th September, 2017

ORDER:

1. With the consent of the parties, appeal is taken up for final hearing.
2. Heard Mr. Phule, learned A.G.P. appearing for the appellant and Mr. B.N. Patil, learned counsel appearing for the respondents.
3. Being aggrieved by the judgment and award passed by the learned Jt. Civil Judge, Senior Division Nilanga, District Latur, in Land Acquisition Reference No. 99/2006 dated 02.02.2010, the appellants filed this first appeal under section 96 of the Code of Civil Procedure.
4. Brief facts may be stated as follows;

The land of the claimants/respondents bearing

Gat No. 13 admeasuring 3-H 12-Are situated at village Bevnal Tq. Nilanga is acquired by the appellants for the purpose of construction of percolation tank No. 3 at village Bevnal. Notification under section 4 of the Land Acquisition Act was issued and published on 01.03.2001. After issuance of necessary notifications, the Land Acquisition Officer fixed the market price of the acquired land at the rate of 575/- per Are, which the claimants have accepted under protest on 17.04.2003.

5. According to claimants/respondents acquired land is having good fertility and is perennial irrigated and the claimants were taking income at the rate of Rs. 25000/- per acre.

6. Present appellants/respondents No. 1 and 2 have resisted the claim petition and contended that the acquired land is of medium quality. The Land Acquisition Officer visited the acquired land and by making local inspection has awarded reasonable compensation. It is further contended that, there is no water source to the acquired land. The claimants were taking Kharip crops. They further contended that, the claimants have not replied the notices under section

6,9 and 12 of the Land Acquisition Act and they have accepted the amount of compensation without protest.

7. In the reference court the claimant No. 5 adduced his oral evidence and relied upon the sale deeds Exh. 16 and 17. As against this the appellants have relied upon the sale-deeds Exh. 28 and 29.

8. Considering the evidence on record and after hearing both the sides, the learned reference court awarded compensation at the rate of Rs. 1381/- Per Are, along with other statutory benefits.

9. Mr. Phule, learned A.G.P. by referring the reasons recorded by the learned reference court has pointed out that the learned reference court has relied upon the sale instance which is placed at Exh. 16, however, the claimants have failed to establish the distance between acquired land and the land under sale-deed (Exh.16). Therefore, Mr. Phule, learned A.G.P. has argued that, the reasons recorded by the learned reference court are without any base.

10. As against this, Mr. Patil, learned counsel, has argued that the learned reference court has rightly taken into consideration that the land in sale-deed

(Exh. 16) is near Gavthan as well as it is adjacent to the land of purchaser. Therefore, in view of the above two aspects the learned reference court has deducted 30 % amount for minus factors.

11. Mr. Patil, learned counsel further points out that, the learned reference court has considered 10 % increase in the price of the acquired land, as the sale-deed Exh. 16 is dated 23.02.1999 i.e. prior to one year of notification under section 4 of the Land Acquisition Act.

12. I have also gone through the evidence on record and reasons recorded by the learned reference court, from which it appears that, the sale-deed Exh.16 dated 23.02.1999 is pertaining to Gat No. 41 admeasuring 82 Are, purchased by the purchaser for Rs. 90,000/-. This land is situated at village Bevnal and the Gat number of the acquired land is 13. Therefore, there is reason to believe that the land under sale-deed is close to some extent to the acquired land Gat No. 13.

13. From the reasons recorded by the learned reference court it appears that, the reference court has rightly taken into consideration the sale-deed Exh. 16 as it is prior to the notification under

section 4 of the Land Acquisition Act.

14. Thus, from the reasons recorded by the learned reference court, it appears that, the reference court has rightly relied upon the oral evidence of claimant No. 5 Shahuraj coupled with documentary evidence sale-deed Exh. 16 and therefore has rightly awarded the compensation to the respondents/claimants. Therefore, I do not find any irregularity and impropriety with the order passed by the learned reference court. Consequently, there is no substance in the appeal. Therefore, it is liable to be dismissed. Accordingly, it is dismissed with no order as to costs.

15. As first appeal is dismissed, civil application No. 11268/2011 is disposed of.

(K. L. WADANE, J.)

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