

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

FIRST APPEAL NO. 511 OF 2017

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
DEVENDRA SADASHIV KANTEKURE

...

AGP for Appellants : Mr.S.S.Dande.

Advocate for Respondent : Mr. V. S. Tanwade.

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CORAM : **V. K. JADHAV, J.**

DATE : 28th February, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Civil Judge Senior Division, Omerga dated 30th October, 2009 in LAR No.1263 of 2009, the Respondent / State has preferred this appeal.

3 Brief facts giving rise to the present appeal are as follows:

- i) The land owned and possessed by the Respondent / original Claimant came to be acquired by the State for the purpose of left canal of Benipura Medium Project, under Section 4 notification published on 18th June, 1998 and the Special Land

Acquisition Officer under the award dated 25th June, 2002 awarded the compensation at the rate of Rs.1365/- per Are. Being aggrieved by the inadequate compensation awarded by the Special Land Acquisition Officer, the Respondent / original Claimant has preferred LAR No.1263 of 2009. It has contended in the said reference petition that the Special Land Acquisition Officer has not considered the market price of the agricultural land in the said vicinity and awarded the compensation on the basis of the revenue assessment. The Special Land Acquisition Officer has not considered that the acquired land is situated within the limits of village Murum and in the said village Murum, all the facilities such as telephone post, market, primary health center, primary school and college are available.

- ii) The Appellant / State has strongly resisted the said claim petition by filing the written statement. It has contended that the Special Land Acquisition Officer has considered the sale instances from the said

area and awarded just and reasonable compensation.

- iii) The Respondent / Claimant has adduced oral and documentary evidence. However, the State has not adduced any evidence. The Reference Court after considering the evidence on record, awarded the compensation at the enhanced rate of Rs.1663/- per Are. Being aggrieved by the same, the State has preferred this appeal.

4 The learned AGP submits that the Reference Court has not considered the oral and documentary evidence in its proper perspective and wrongly placed reliance on the sale instances Exhibits 15 and 16 respectively. The said sale instances came to be executed for higher consideration. It has recited in the aforesaid sale-deeds that in addition to the sale of the land, the purchaser would get $\frac{1}{2}$ of the share in the water of the well and also ownership of the electric motor installed on the well. The learned AGP submits that those, two sale instances hardly reflect the market price of the land of the said area.

5 The learned counsel for Respondent / Claimant submits that those sale instances Exhibits 15 and 16 are from the same village

and pertaining to Bagayat land. The Reference Court has considered the same and after deduction of 15% in the consideration amount of the said sale instances, awarded the just and reasonable compensation at the enhanced rate of Rs.1663/- per Are. No interference is required.

6 On careful perusal of the pleadings, evidence and the judgment and award passed by the Reference Court, it appears that the Reference Court has rightly considered the sale instances Exhibits 15 and 16, which are prior to the Section 4 notification of the acquired land. The Reference Court has also considered the land under the said sale instances as Bagayat land and accordingly reduced the price of the acquired land to the extent of 15%. The Reference Court has thus, awarded the just and reasonable compensation at the enhanced rate of Rs.1663/- per Are. I do not find any fault in the observations made by the Reference Court. There is no perversity in the said observations made by the Reference Court. There is no substance in the appeal. Hence, the following order:

ORDER

- I. The appeal, is hereby dismissed with costs.

- II. The appeal is accordingly disposed of.
- III. Pending civil application stands disposed of.

[V. K. JADHAV, J.]

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