

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1376 OF 2014

Digambar Rajaram Patil
deceased through legal heirs

1. Kishor Digambar Patil
Age: 44 years, Occu. Agri
2. Ramdas Digambar Patil
Age: 35 years, Occu.Aгри.,
3. Sau. Sandhyabai Kishor Patil
Age: 41 years, Occu. Agri.,
4. Sau. Mandabai Rajendra Mahajan
Age: 37 years, Occu.Aгри.,
5. Vidyabai Ganesh Patil
Age: 29 years, Occu. Agri
6. Smt. Kamalbai Digambar Patil
Age: 63 years, Occu. Agri.

Nos. 1, 2 and 6
R/o. Nimbol, Tq. Raver,
Dist. Jalgaon,
Nos. 3, 4 and 5 R/o. Ainpur

7. Sudhakar Sitaram Patil
Age: years, Occu. Agri.,
R/o. Nimbaol, Tq. Raver,
Dist. Jalgaon

= **APPELLANTS**
(Ori. Petitioner)

VERSUS

1. The Collector, Jalgaon
Tq. and Dist. Jalgaon
2. The Special Land Acquisition

Officer
Uppar Tapi Project, Hatnur (1),
Jalgaon

3. Executive Engineer,
Hatnur Project Division,
Jalgaon = **RESPONDENTS**
(Ori. Respondents)

WITH
FIRST APPEAL NO.1748 OF 2015

Kishor Digambar Patil
Age: 44 years, Occu.Agri,

R/o. Nimbol, Tq. Raver,
Dist. Jalgaon = **APPELLANT**
(Ori. Petitioner)

VERSUS

1. The Collector, Jalgaon
Tq. and Dist. Jalgaon
2. The Special Land Acquisition
Officer
Uppar Tapi Project, Hatnur (1),
Jalgaon
3. Executive Engineer,
Hatnur Project Division,
Jalgaon = **RESPONDENTS**
(Ori. Respondents)

WITH
FIRST APPEAL NO.1749 OF 2015

Digambar Rajaram Patil
deceased through legal heirs

1. Kishor Digambar Patil
Age: 44 yeras, Occu. Agri
2. Ramdas Digambar Patil
Age: 35 years, Occu.Agri.,
3. Sau. Sandhyabai Kishor Patil

Age: 41 years, Occu. Agri.,

4. Sau. Mandabai Rajendra Mahajan

Age: 37 years, Occu. Agri.,

5. Vidyabai Ganesh Patil

Age: 29 years, Occu. Agri

6. Smt. Kamalbai Digambar Patil

Age: 63 years, Occu. Agri.

= **APPELLANTS**
(Ori. Petitioner)

VERSUS

1. The Collector, Jalgaon

Tq. and Dist. Jalgaon

2. The Special Land Acquisition
Officer

Uppar Tapi Project, Hatnur (1),
Jalgaon

3. Executive Engineer,
Hatnur Project Division,
Jalgaon

= **RESPONDENTS**
(Ori. Respondents)

WITH

FIRST APPEAL NO.1750 OF 2015

Rajesh Sudhakar Patil

Age: Major, Occu. :Agri

R/o. Nimbol, Tq. Raver,

Dist. Jalgaon

= **APPELLANT**
(Ori. Petitioner)

VERSUS

1. The Collector, Jalgaon

Tq. and Dist. Jalgaon

2. The Special Land Acquisition
Officer

Uppar Tapi Project, Hatnur (1),
Jalgaon

3. Executive Engineer,
Hatnur Project Division,
Jalgaon

= **RESPONDENTS**
(Ori. Respondents)

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Adv.for Appellants : Mr. Vijay B. Patil, For
Appellant/s No 1 To 6. - claimants
Mr. CV Dharurkar, AGP for Resp.Nos. 1 & 2;
Mr. Chillarge Subhash S. Adv. For R/3.

CORAM : P.R.BORA, J.

DATE : 11th July, 2017.

ORAL JUDGMENT :

1) First Appeal Nos.1748/2015; 1749/2015 &
1750/2015 are not board. Taken on Board.

2) With consent of learned Counsel
appearing for the parties, taken up for final
disposal.

3) The present appeals are filed against
common Judgment and Award passed by Joint
Civil Judge, Senior Division, Jalgaon
(hereinafter referred to as the Reference
Court on 3rd February, 2011 in LAR No.

1849/2005 with connected LARs.

4) It is not in dispute that the present appellants had not preferred any application under Section 18 of the Land Acquisition Act, 1894 (for short, the Act), seeking enhancement in the amount of compensation, as was offered by the Special Land Acquisition Officer. After some of the land acquisition reference applications filed under Section 18 of the Act by the other claimants, whose lands as well as house properties were acquired for the same project and under the same Notification, were decided by the Reference Court, the present appellants invoking the provisions under Section 28-A of the Act, preferred the applications to Collector, Jalgaon to re-determine the amount of compensation. Accordingly, the amount of compensation was determined by the Collector, Jalgaon. However, since the appellants were

not satisfied with the compensation so determined by the Collector, the appellants moved application to the Collector requesting him to prefer the matter for adjudication to the civil court. Accordingly, the said applications were referred under Section 28(3) of the Act for adjudication to the Civil Court at Jalgaon.

5) The learned Reference Court, after having assessed the oral and documentary evidence brought before it, determined the amount of compensation @ Rs. 225/- per sq.mtr for open plot and Rs. 1200 per sq.mtr for built up area on the basis of the award earlier passed by it in LAR No. 2/1991 with the connected LARs arising out of the same acquisition proceedings. Dissatisfied with the amount of compensation so determined by the Reference Court, the appellants have

preferred the present appeals.

6) Shri V.B.Patil, learned Counsel appearing for the appellants, submitted that the claimants in LAR No. 2/1991 to 4/1991 had preferred appeal before the High Court and thereafter to the Hon'ble Apex Court and the Hon'ble Apex Court, vide its judgment delivered on 11th November, 2010 in Civil Appeal No. 2819/2005 with connected appeals, has enhanced the compensation for the constructed area @ Rs. 1200 per sq.mtr. The learned Counsel submitted that in view of the judgment of the Hon'ble Apex Court, the amount of compensation needs to be enhanced in the matters of the present appellants also.

7) The submissions made on behalf of the appellants are resisted by Shri Chillarge, learned Counsel appearing for the acquiring

body. The learned Counsel submitted that under Section 28-A of the Act, the appellants can seek re-determination of the compensation on the basis of the award of the Reference Court in the matters arising out of the same acquisition proceedings and not on the judgment of the High Court or the Hon'ble Apex Court. In order to support his contention, the learned Counsel relied upon the judgment of the Hon'ble Apex Court in the case of Bhagti (Smt.)(Deceased) Through Her Lrs. Jagdish Ram Sharma Vs. State of Haryana - (1997) 4 SCC 473. The learned Counsel submitted that the appeals filed by the appellants are devoid of any substance and, therefore, prayed for dismissal of the appeals.

8) I have carefully considered the submissions advanced by the learned Counsel appearing for the parties. I have also perused the impugned Judgment and Award and

the other material placed on record. It is not in dispute that the present appellants had not preferred the application under Section 18 of the Act. The appellants preferred the applications under Section 28-A of the Act after the Reference Application arising out of the same acquisition proceedings and under the same notification were decided by the Reference Court, claiming compensation as was enhanced in the said matters by the Reference Court. It is further not in dispute that the Reference Court has accordingly enhanced the amount of compensation in the matters of the appellants also. Thereafter the appellants have now come in appeals challenging the order passed by the Reference Court alleging that in some matters, wherein the claimants approached the Hon'ble Apex Court, the Hon'ble Apex Court has enhanced the amount of compensation for the constructed area @ Rs. 1700 per sq.mtr.

The objection so raised by the appellants in exception to the impugned Judgment and Award is liable to be rejected at the threshold in view of the law laid down by the Hon'ble Apex Court in the case of Bagti (cited supra). In the said matter, the Hon'ble Apex Court has held that the claimants can seek re-determination of the compensation on the basis of the award of the Reference Court and not the judgment of the High Court. Once the appellants had availed the remedy under Section 28-A(1) of the Act, it was not open for them to claim any further enhancement in the amount of compensation without filing any appeal merely on the basis of the judgment passed by the Hon'ble Apex Court in the appeals filed by some other claimants. I, therefore, do not see any merits in the appeals filed by the appellants.

9) In the result, following order is passed, -

ORDER

- i) The appeals are dismissed, however without any order as to costs;
- ii) Pending civil application, if any, stands disposed of.

(P . R . B O R A , J .)

bdv/