

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

FIRST APPEAL NO. 2650 OF 2017

Tukaram s/o Anna Akat,
age 60 years, occ. Agriculture,
R/o Satuna (Khurd), Tq. Partur,
District Jalna

... Appellant
Orig. Claimant

VERSUS

- 1] The State of Maharashtra,
through Collector, Jalna,
District Jalna,
- 2] The Special Land Acquisition Officer,
(L.K.S.) Jalna,
Tq. And Dist. Jalna,
- 3] The Executive Engineer,
Lowar Dudhana Project, Sailu,
Jalna Division, Jalna,
Motibag, Jalna, Dist. Jalna. ... Respondents

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Mr. Kailas B. Jadhav, advocate for the appellant
Mr. S.S.Dande, A.G.P. for respondent nos. 1 and 2
Mr. V.C.Solshe, advocate for respondent no.3

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CORAM : K.L.WADANE, J.

Reserved On : 23.08.2017
Pronouncement on : 31.08.2017

J U D G M E N T :

Heard Mr. K.B.Jadhav, learned counsel appearing on behalf of the appellant.

2. Admit.

Mr. S.S.Dande, learned A.G.P. for respondent nos. 1 and 2 and Mr. V.C.Solshe, learned counsel for respondent no.3 waive service of notice on admission.

3. With the consent of learned counsel for the parties, the appeal is heard finally at the admission stage.

4. The present appeal is filed by the original claimant for enhancement in the amount of compensation awarded to him in Land Acquisition Reference No. 200 of 2000 by the learned District Judge-3, Jalna on 29.11.2008.

5. The facts giving rise to this appeal, in brief are, Land owned by the appellant bearing Gut

No. 144, situated at village Satona (Khurd), Taluka Partur, District Jalna to the extent of 92 Ares was acquired for Nimna Dudhana Project. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was published in the Maharashtra Government Gazette on 6.4.1995. The award was passed on 21.12.1998.

6. The present Reference was sent before the Reference Court by the Collector, Jalna for determination of market value of the acquired land of the appellant on the date of Section 4 notification from village Satona Khurd, Taluka Partur, District Jalna.

7. Learned counsel for the appellant contended that the Special Land Acquisition Officer has not given proper opportunity to the appellant to put up his case. The Special Land Acquisition Officer has fixed the market value of the acquired land ranging between Rs.295/- and Rs.348/- per Are for dry land. The Special Land

Acquisition Officer has awarded Rs.25,689/- as total compensation to the appellant. The appellant has withdrawn the amount of compensation under protest.

8. Being aggrieved by the amount of compensation awarded by the Special Land Acquisition Officer, the appellant preferred Application under Section 18 of the Act to the Collector, Jalna, who forwarded it for adjudication to the District Judge, Jalna.

9. The Reference Court, after having assessed the oral and documentary evidence on record before it, determined the market value @ Rs.1,200/- per Are for 0.78 Are dry land and Rs.60/- per Are for 0.14 Are Potkharab land. Thus the amount of compensation awarded by the Reference Court is Rs.93,600/- for dry land and Rs.840/- for potkharab land i.e. total Rs.94,440/-.

10. The present appeal is filed by the

appellant original claimant seeking enhancement in the amount of compensation awarded by the Reference Court. The appellant has claimed compensation @ Rs.2,000/- per Are for dry land.

11. I have heard the arguments of both the learned counsel for the parties and perused the oral and documentary evidence produced on record with the help of record and proceedings.

12. Learned counsel for the appellant has contended that the Reference Court has not properly appreciated the sale instances brought on record by the appellant. The award under challenge is erroneous and is passed without proper appreciation of evidence on record. The enhancement awarded by the Reference Court is grossly inadequate and not in conformity with the market price prevailing on the date of publication of notification under Section 4 of the Act. The documents on record have not been considered by the Reference Court. Therefore, the appellant is

entitled for more compensation i.e. Rs.2,000/- per Are for dry land, on the basis of judgment and award dated 9.12.2011 passed in Land Acquisition Reference No. 44 of 2010 by considering one single unit.

13. Learned counsel appearing for the appellant has relied upon the judgment delivered by this Court (Coram : P.R.Bora, J.) on 17.7.2017 in First Appeal No. 1779 of 2012 and group of appeals and submitted that in Land Acquisition Reference No. 59 of 2002 arising out of the same acquisition proceedings and the same notification, the Reference Court has awarded the compensation @ Rs.1,500/- per Are for dry land. It is further contended that the said judgment has not been challenged by the acquiring body or by the State and, therefore, the appellant in the present appeal is entitled to receive compensation at par with the compensation awarded by the Reference Court in Land Acquisition Reference No. 59 of 2002. Learned counsel, therefore, prayed for

allowing the appeal by enhancing amount of compensation to Rs.2,500/- per Are.

14. Learned counsel appearing for respondents opposed the enhancement in compensation amount. They have contended that the Reference Court has considered the oral and documentary evidence on record as well as documents on record properly and has arrived at right conclusion while granting compensation to the appellant and hence, no interference is called for in the judgment under challenge and as such the impugned award is final and have prayed for dismissal of the appeal.

15. On careful consideration of the submissions advanced by the learned counsel for the respective parties, it is not in dispute that the land which is subject matter of the present appeal was acquired for Nimna Dudhana Project. The lands were acquired for the said project from 22 different villages. From the evidence on record it can be believed that all these villages

are adjacent to each other and are situated in Circle.

16. Having considered the above position and after considering the fact that in companion appeal, this Court has determined the market value of acquired lands from villages Devala, Kedar Wakadi and Rani Wahegaon, the same criterion needs to be applied for determining the market value of the land involved in the present appeal. As such, there is no reason to take different view than the one taken by this Court in the judgment (cited supra) and hence, the amount of compensation needs to be enhanced.

17. It is not disputed that the land involved in the present appeal is non-irrigated land. The appellant is, therefore, entitled to receive compensation @ Rs.1,500/- per Are for his non-irrigated land and @ Rs.750/- per Are for Potkharab land.

18. Hence, I pass the following order.

(i) Appeal is partly allowed.

(ii) The appellant is entitled for compensation @ Rs.1,500/- per Are for his 0.78 Are non-irrigated land i.e. Rs.1,17,000/- and @ Rs.750/- per Are for his 0.14 Are Potkharab land i.e. Rs.10,500/-, Total Rs.1,27,500/-. The Reference Court granted total compensation of Rs.94,440/- and the Special Land Acquisition Officer had granted compensation of Rs. 25,689/-. The Reference Court held the appellant entitled for compensation of Rs. 68,751/-. Thus the appellant is entitled to receive enhanced amount compensation of Rs.1,17,000/- minus Rs.68,751/- which comes to Rs.48,249/-.

(iii) The appellant is also entitled for statutory benefits and interest in accordance with law.

(K.L.WADANE, J.)