

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 643 OF 2003

Bhikkan s/o Puna Patil
age 50 years, occ. agril
r/o village Brahmanpuri
Tq. Shahada, Dist. Nandurbar

Appellant

Versus

1. Special Land Acquisition Officer
M.I.P. Dhule.
2. Executive Engineer
Minor Irrigation
Sinchan Bhavan,
Sakri Road, Dhule.
3. The State of Maharashtra
Through Collector, Dhule
Dist. Dhule.
4. The Collector, Nandurbar
at Nandurbar, Dist. Nandurbar

Respondents

WITH
FIRST APPEAL NO. 647 OF 2003

Nathu s/o Vallabh Patil
(Deceased through LRs)

- 1-A) Ramakant s/o Nathu Patil
age 42 years, occ. agriculture
r/o At and Po Bramhanpuri
Tq. Shahada, Dist. Nandurbar
- 1-B) Rukhmabai w/o Nathu Patil
age 72 years, occ. household
r/o At and Po Brahmanpuri
Tq. Shahada, Dist. Nandurbar

- 1-C) Sulochand w/o Bhaidas Patil
age 57 years, occ. household
r/o At & Post Bamkheda,
Tq. Shahada, Dist. Nandurbar
- 1-D) Malati w/o Arjun Patil
age 54 years, occ. household
r/o at and post Mhasavad
Tq. Shahada, dist. Nandurbar
- 1-E) Shalini w/o Hamji Patil
age 52 years, occ. household
r/o At and post Shivaji Nagar,
Wadibhokar Road,
Tq. & Dist. Dhule
- 1-F) Mamata w/o Bhagwan Patil
age 45 years, occ. household
r/o at and post Bahurupa
Tq. Nizar, Dist. Tapi (Gujrath State)
- 1-H) Dhanishtha w/o Rajendra Patil
age 38 years, occ. household
r/o at and post Kolda
Tq. & Dist. Nandurbar.

Appellants

Versus

1. Special Land Acquisition Officer
M.I.P. Dhule.
2. Executive Engineer
Minor Irrigation
Sinchan Bhavan,
Sakri Road, Dhule.
3. The State of Maharashtra
Through Collector, Dhule
Dist. Dhule.
4. The Collector, Nandurbar
at Nandurbar, Dist. Nandurbar

Respondents

WITH
FIRST APPEAL NO. 677 OF 2003

Nagin s/o Kalu Patil
age 65 years, occ. agril
r/o Village Lonkheda
Tq. Shahada, Dist. Nandurbar

Appellant

Versus

1. Special Land Acquisition Officer
M.I.P. Dhule.
2. Executive Engineer
Minor Irrigation
Sinchan Bhavan,
Sakri Road, Dhule.
3. The State of Maharashtra
Through Collector, Dhule
Dist. Dhule.
4. The Collector, Nandurbar
at Nandurbar, Dist. Nandurbar

Respondents

WITH
FIRST APPEAL NO. 1098 OF 2004

Shri Jaysing s/o Fulsing Rajput
age 32 years, occ. labour
r/o Brahmanpuri, Tq. Shahada
Dist. Nandurbar

Appellant

Versus

1. Special Land Acquisition Officer
M.I.P. Dhule.
2. Executive Engineer
Minor Irrigation
Sinchan Bhavan,
Sakri Road, Dhule.

3. The State of Maharashtra
Through Collector, Dhule
Dist. Dhule.
4. The Collector, Nandurbar
at Nandurbar, Dist. Nandurbar

Respondents

WITH
FIRST APPEAL NO. 74 OF 2004

Purushottam s/o Kalu Patil
(Deceased through LRs)

- 1-A) Smt. Kamalben w/o Purushottam Patil
age 77 years, occ. household
r/o Vidyavihar (Mohide Ta Ha) Tq. shahada
Dist. Nandurbar
- 1-B) Shri Dipak s/o Purushottam Patil
age 53 years, occ. household
r/o Vidyavihar (Mohide Ta Ha) Tq. Shahada
Dist. Nandurbar

Appellants

Versus

1. Special Land Acquisition Officer
M.I.P. Dhule.
2. Executive Engineer
Minor Irrigation
Sinchan Bhavan,
Sakri Road, Dhule.
3. The State of Maharashtra
Through Collector, Dhule
Dist. Dhule.
4. The Collector, Nandurbar
at Nandurbar, Dist. Nandurbar

Respondents

Mr. C.R. Deshpande with Mr. Chaitanya Deshpande, advocates for

appellants.

Mr. B.V. Virdhe, AGP for respondents.

CORAM : M.S. SONAK, J.

DATE : 25th JANUARY, 2018

ORAL JUDGMENT :

1. Heard Mr. C.R. Deshpande and Mr. Chaitanya Deshpande, learned counsel for appellants and Mr. B.V. Virdhe, learned AGP for respondents.

2. Learned counsel for the parties agree that these appeals can be disposed of by common judgment and order since they arise out of one and the same section 4 notification dated 09.11.1995.

3. In all these appeals, the Land Acquisition Officer had awarded compensation ranging between Rs. 53,000/- per Hectare to Rs. 56,000/- per Hectare in respect of Jirayat lands and Rs. 84,000/- per Hectare to Rs. 1,12,000/- per Hectare in respect of Bagayat lands.

4. Reference Court, in First Appeal No. 643/2003 has enhanced compensation to Rs. 1,12,000/- per Hectare. There is no clarity whether the land has been treated as Jirayat or Bagayat land. At one stage, it is held that the land is Jirayat however, at another stage, it is held that since there is water supply available and since the neighbouring lands are Bagayat lands, compensation can be awarded on the basis that it is Bagayat land. In First Appeal No. 647/2003, compensation is enhanced to Rs.1,00,000/- per Hectare on the basis that it is a Jirayat land. In First Appeal No 677/2003, compensation is enhanced from Rs. 79,500/- per Hectare to

Rs. 1,00,000/- per Hectare on the basis that it is Bagayat land. In First Appeal No. 74/2004, which involves the land of village Mohide-Tarfe-Haveli, compensation is enhanced from Rs. 1,18,000/- per Hectare to Rs. 2,00,000/- per Hectare. In First Appeal No. 1098/2004, compensation is enhanced from Rs. 80,240/- per Hectare to Rs. 1,06,000/- per Hectare for Bagayat land. Thus, there is no consistency in the rate awarded by the Reference Court.

5. In this claim, the claimants have examined themselves. Besides evidence of all the claimants, evidence of Ramakant Natthu Patil and Ravindra Bansi Patil CW 2 and CW 3 respectively is relied upon. All the claimants deposed that the acquired lands are Bagayat lands. CW 2 and CW 3 are the vendees in respect of sale-deeds which are exhibited at Exh. 34 and Exh. 36. The sale-instances are from village Chandsaili. First Appeal Nos. 643/2003, 647/2003 and 677/2003 relate to acquisition of lands from village Chandsaili itself. As per these sale-deeds, the rate in respect of Jirayat lands comes to Rs. 2,72,000/- per Hectare and Rs. 2,77,000/- per Hectare. These witnesses have deposed that they are familiar with the acquired lands and there is difference between the the land which they have purchased and the acquired lands.

6. There is further evidence on record that the villages Mohide-Tarfe-Haveli and Govindpur, from which the lands came to be acquired and which form subject matter of First Appeal No. 74/2004 and 1098/2004 are also adjacent villages. The lands from all these villages have been acquired under same notification and for the same project.

7. Appellants in First Appeal No. 643/2003 have taken out Civil Application No 5054/2004 seeking to lead additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. In this application, they have placed reliance upon two awards in LAR Nos. 47/2001 and 25/2001, which relate to Mohide-Tarfe-Haveli village and award in LAR No. 45/2001, which relates to Chandsaili village. These awards were in pursuance to acquisition which commenced vide section 4 notification dated 22.10.1995. In the present appeals, section 4 notification was dated 09.11.1995 i.e. hardly a month after the notification which forms subject matter of three land acquisition references. Insofar as Mohide-Tarfe-Haveli village is concerned, the rate awarded is Rs.1,25,000/- per Hectare to Rs. 1,50,000/- per Hectare in respect of Bagayat land. However, in case of village Chandsaili, the rate awarded is Rs. 2,50,000/- in respect of Bagayat land.

8. Mr. Deshpande, on the basis of evidence on record submits that all the lands are to be treated as Bagayat lands and on such basis, enhancement which would be much in excess of Rs. 2,70,000/- per Hectare is required to be granted. He submits that Exh. 35 and Exh. 36 relate to Jirayat lands. There is a rule of thumb that Bagayat lands normally fetch twice the rate as Jirayat lands. On this basis, Mr. Deshpande submits that compensation in respect of Bagayat lands is required to be enhanced to atleast Rs. 5,00,000/- per Hectare, which is what was claimed by appellants in the instant first appeal. He submits that additional evidence is also required to be considered in support of such enhancement.

9. Mr. Virdhe, learned AGP submits that there is no proper

evidence to the effect that the acquired lands were indeed Bagayat lands. He submits that the material on record suggests that the land is Jirayat land. He submits that the burden of proving enhancement is always on the claimants and, the claimants have failed to discharge such burden. He submits that no map was produced and, in the absence of map, it cannot be said that the villages Mohide-Tarfe-Haveli and Chandsaili are neighbouring villages. He submits that the lands which form subject matter of LAR No. 47/2001, 25/2001 and 45/2001 cannot be regarded as comparable instances in the absence of any proper evidence in this regard. He submits that the enhancement granted by the Reference Court is adequate and, therefore, there is no case made out for further enhancement in any of these matters.

10. Insofar as First Appeal No. 74/2004 is concerned, based upon appellants' own arguments, the same is required to be dismissed. The appellants have placed reliance on sale-deeds in LAR Nos. 47/2001 and 25/2001 in which the Reference Court has awarded compensation at Rs. 1,25,000/- per Hectare and Rs. 1,50,000/- per Hectare. These sale-deeds were in respect of acquisition which commenced vide notification dated 22-10-1995, however, in the present case, section 4 notification is dated 09.11.1995. The Reference Court, has awarded compensation of Rs.2,00,000/- per Hectare in respect of Bagayat lands. Accordingly, the compensation awarded seems to be quite adequate. First Appeal No. 74/2004 is therefore, liable to be dismissed and the same is hereby dismissed.

11. Insofar as remaining appeals are concerned, however, the material on record indicates that though the lands being Jirayat

lands, there was some source of water supply, on the basis of which, the crops were grown. There is reasoning to this effect in the award which is subject matter of challenge in First Appeal No 643/2003. It is on this basis that Reference Court has awarded compensation as would be possible in respect of Jirayat lands. Compensation awarded is however, inadequate, since, from the evidence on record, if Bagayat lands in Mohide-Tarfe-Haveli village fetch Rs. 2,00,000/- per Hectare, then, there is no reason as to why the same compensation should be denied to the lands in Chandsaili village.

12. Award in respect of LAR No. 45/2001 is again in respect of lands of village Chandsaili awarding compensation at Rs. 2,50,000/- in respect of Bagayat lands. Accepting contention of learned AGP Mr Virdhe that there is no direct evidence about comparability, still, considering that land is from the same village, the disparity cannot be as much. Insofar as sale-instance at Exh. 34 and Exh. 36 are concerned, though, vendors have deposed that the lands purchased by them were Jirayat lands, they have also deposed as to the quality and fertility of the lands. Thus, it can be safely held that even said lands were comparable to Bagayat lands. Taking into consideration the sale-instance as also award in LAR No. 45/2001 and making more deductions for want of proper evidence, it will be appropriate if the lands which are subject matter of appeals other than First Appeal No. 74/2004, are also granted compensation at the rate of Rs. 2,00,000/- per Hectare. This will also achieve some sort of parity, although in such matter, achievement of parity is not essential.

13. From the material on record, it ultimately appears that

proper rate at which the appellants deserve to be compensated is Rs. 2,00,000/- per Hectare and not anything less than the said rate.

14. First Appeals other than First Appeal No. 74/2004 are therefore liable to be partly allowed and compensation is liable to be enhanced to Rs.2,00,000/- per Hectare. Needless to add that the appellants will be entitled to statutory benefits and interest commensurate to the increase.

15. In the result, First Appeal No. 74/2004 is dismissed. First Appeal Nos. 643/2003, 647/2003, 677/2003 and 1098/2004 are hereby partly allowed and compensation amount is enhanced to Rs. 2,00,000/- per Hectare. Appellants are held entitled to receive additional compensation as also all the statutory benefits and interest proportionate to such additional compensation. Respondents are directed to work out and pay to the appellants additional compensation / statutory benefits / interest within three months from today. All these appeals are disposed of in the aforesaid terms. Civil Application, if any, does not survive and stands disposed of. In the facts and circumstances of the case, there shall be no order as to costs.

(M.S. SONAK, J.)