

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

FIRST APPEAL NO. 3265 OF 2018

Vishnu S/o Kashinath More,
Age 52 yrs occ. Agril.,
R/o Mapegaon (Bu.), Tq.Partur,
Dist. Jalna. ..Appellant

Versus

1. The State of Maharashtra
Through the collector, Jalna.
2. Special Land Acquisition Officer
(B & C), Jalna.
3. The Executive Engineer,
Lower Dudhna Project,
Selu, Tq. Selu,
Dist. Parbhani ..Respondents

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Mr. Vijay B. Jogdandpatil, Advocate for the Appellant.
Mr. R.B. Gaikwad, Advocate for Respondent No.3.
Mr. R.B. Bagul, AGP for Respondent/State.

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CORAM : P.R. BORA, J.

DATE : 30th OCTOBER, 2018.

ORAL JUDGMENT:-

1. The appeal is taken up for final disposal at the admission stage with consent of the learned counsel for the parties.

2. The appellant is the owner of land gut no.65/2 ad-measuring 4 H 47 R situated at village Mapegaon (Bk), Taluka Partur, District Jalna. Out of the said land, land ad-measuring 3 H 92 R was acquired by the Government for the purpose of Lower

Dudhna Project. Since, the SLAO offered a meager amount amount of compensation to the present appellant, he preferred the application under Section 18 of the Act to the Collector, which was in turn forwarded to the District Court for its adjudication. It was registered as L.A.R. No.479 of 2011. The learned Reference Court vide the judgment and award passed on 22.08.2017 has dismissed the said reference application against which the appellant has preferred the present appeal.

3. The Reference Court has dismissed the reference application on the ground that the applicant has not mentioned in his reference application the correct number of the acquired land and in the circumstances has recorded further observations that he has failed to substantiate as to for which land the enhanced compensation was demanded by him. The learned counsel submitted that it was an inadvertent mistake on part of the applicant and the said mistake could not be noticed also by the counsel who was appearing for the applicant before the Trial Court. The learned counsel submitted that in the proceedings before

the Reference Court everywhere gut no. has been wrongly mentioned as 62/2 to be owned by present appellant, whereas in fact gut no.65/2 is owned by the present appellant and out of the said gut no. 3 H 92 R has been acquired by the Government. The learned counsel submitted that because of the technical mistake which has occurred at the hands of applicant, he cannot be deprived of the due amount of compensation. The learned counsel in the circumstances has prayed for remanding the matter back to the Reference Court and direct the Reference Court to allow the applicant to amend the application under Section 18 of the Act and to put necessary evidence in support of his contention and to decide the reference application afresh.

4. Shri Bagul, the learned AGP submitted that primary burden was on the appellant to specifically mention the accurate number of the acquired land as well as area of the said land in respect of which he was demanding the enhanced compensation towards acquisition of the said land. The learned AGP submitted that no fault can be found with the impugned judgment since, there was no evidence before the said Court that the present

appellant was the owner of gut no.65/2.

5. I have given due consideration to the submissions made by the learned counsel for the parties. I have perused the impugned judgment and the evidence on record. I have also perused other materials on record. The learned counsel has tendered across the bar 7/12 extract of the subject land and the same is also taken on record.

6. It is apparent that the reference application has not been decided by the Reference Court on merits. It is further revealed that the Reference Court has held that the appellant-claimant has failed to prove that he is the owner of gut no.65/2 and that the said land has been acquired by the Government for the purpose of Lower Dudhna Project. As was submitted by the learned counsel for the appellant, it was a genuine inadvertent mistake may be on part of the applicant or to some extent on part of the learned counsel appearing for the applicant that gut no. was wrongly mentioned as 62/2 claiming the same to be owned by present applicant and stated to be acquired for the purpose of Lower Dudhna Project.

I have perused 7/12 extract which is now tendered across the bar. I have also perused the discussion made by the reference Court.

7. It is not disputed even by the learned AGP that gut no.65/2 belonging to the present applicant has been acquired for the purpose of Lower Dudhna Project. The said gut no. is mentioned in the 'E' Statement also. In the aforesaid circumstances, it appears to me that though the gut no. was wrongly mentioned by the applicant, the fact remains that land gut no.65/2 owned by the appellant has been acquired for Lower Dudhna Project and that applicant has not received any enhanced compensation of the said land. The applicant cannot be deprived from his right to receive due compensation on such technical mistake. From the averments of the award as well as other documents, it is revealed that the land belonging to the present applicant bearing gut no.65/2 ad-measuring 3.92 R has been acquired by the respondents-State for Lower Dudhna Project.

8. In the circumstances, I deem it appropriate to remit the matter back to the

Reference Court with a direction that Reference Court shall permit the appellant to carry out the necessary amendment in his reference application as well as other related documents and if so required, further permit him to adduce necessary evidence in order to substantiate his contentions in the reference application and to decide the reference application afresh.

9. Having considered the fact that the acquisition is of the year 1994, the Reference Court is requested to decide the reference application as expeditiously as possible preferably within a period of six months.

10. Since the matter has remained pending since long and in view of the fact that the reference application containing incorrect information therein was filed by the applicant on 01.08.2011, the applicant is dis-entitled from claiming any interest either under Section 28 of the Act or under Section 34 of the Act for the period between 01.08.2011 till this date in the case the amount of compensation is enhanced by the Reference Court.

11. The appeal thus stands allowed in the
aforesaid terms.

(P.R. BORA, J.)

Mujaheed//