

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

**901 FIRST APPEAL NO.1154 OF 2007
WITH CA/2477/2000 IN FA/1154/2007**

1. The State of Maharashtra
through Collector, Jalgaon.
2. Special Land Acquisition Officer-I,
Upper Tapi Project (Hatnur),
Jalgaon.

..Appellants
(Ori. Opponents)

Versus

1. Vishwanath Keshav Patil, Age: 60,
2. Rajaram Keshav Pati, Age: 54,
3. Raghunath Keshav Patil
deceased heirs,
3A. Madhukar Raghunath Patil, Age: 28,
3B. Sanjay Raghunath Patil, Age: 25,
3C. Vinayak Raghunath Patil, Age: 21,
3D. Smt.Yamunabi Raghunath Patil, Age: 49,

All Agriculturist and r/o. Witwe,
Post. Ainpur, Tal.Raver, Dist.Jalgaon.

Applicants are having $\frac{3}{4}$ th share in the
suit land Gat No.140.

..Respondents
(Ori. Applicants)

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**WITH
FIRST APPEAL NO.3118 OF 2009
WITH CA/2342/2000 IN FA/3118/2009**

1. The State of Maharashtra
through Collector, Jalgaon.

2. Special Land Acquisition Officer-I,
Upper Tapi Project (Hatnur),
Jalgaon. ..Appellants
(Ori. Opponents)

Versus

- . Rajaram Keshav Patil ..Ori. Claimant
(Deceased) Through
Legal Representatives
1. Vijay S/o Rajaram Patil
Age: 40 years,
 2. Yuvraj S/o Rajaram Patil
Age: 39 years,
 3. Sumanbai W/o Rajaram Patil
Age: 62 years, R/o. Vitwe,
Tq.Raver, Dist.Jalgaon.
 4. Sou.Shashikalabai S/o Prakash Patil
Age; 45 years, R/o.Karhale, Tq.Raver,
Dist.Jalgaon.
 5. Sou.Nandabai S/o Kishor Patil
Age: 43 years, C/o.Kishor Onkar Patil
R/o.Tandalwadi, Tq.Raver,
Dist.Jalgaon. ..Respondents

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Advocate for Appellants - State : Shri A.M.Phule
Advocate for Respondent Nos.1 to 5 (in FA/3118/2009) :
Shri M.R.Malpani h/f. Shri A.B.Kale

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In FA/1154/2007 as per Registrar's order dated 25.08.2009,
appeal is abated against respondent Nos.1 and 2.
IN FA/1154/2007, Respondent Nos.3A to 3D are served

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CORAM : P.R.BORA, J.

DATE: 19th September, 2018

ORAL JUDGMENT:-

1. Since both these appeals are arising out of the common Judgment and award passed by the Court of Joint Civil Judge, Senior Division, Jalgaon (hereinafter referred to as 'the Reference Court'), I have simultaneously heard both these appeals and I deem it appropriate to decide these appeals by common order.

2. The lands which are the subject matter in the present appeals were acquired for submergence of Hatnur Project. Subject lands in both the appeals are from village Vitwe. The Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') was published in the official Gazette for acquisition of the aforesaid lands on 24.02.1983 and the award under Section 11 of the Act came to be passed on 13.03.1987. The First Appeal No.1154 of 2007 is arising out of the Land Acquisition Reference No.131 of 1991 and the First Appeal No.3118 of 2009 is arising out of Land Acquisition Reference No.132 of 1991. In so far as the land, which is the

subject matter of First Appeal No.1154 of 2007 is concerned, the Special Land Acquisition Officer had offered compensation to the claimants @ Rs.42,000/- per Hectare for irrigated land whereas the land which the subject matter of First Appeal No.3118 of 2009 is concerned, the Special Land Acquisition Officer has offered compensation @ Rs.28,000/- per Hectare for non-irrigated land and Rs.250/- per Are for Pot Kharab land.

3. In the Reference Applications, the learned Reference Court enhanced the compensation in Land Acquisition Reference No.131 of 1991, by determining the market value of the acquired land @ Rs.1,00,000/- per Hectare for irrigated land, whereas in Land Acquisition Reference No.132 of 1991, the Reference Court enhanced the compensation by determining the market value @ Rs.50,000/- per Hectare for non-irrigated land and enhanced Compensation for Pot Kharab land @ Rs.500/- per Are. Aggrieved by the Judgment and award so passed by the Reference Court, the State has preferred the present appeals.

4. Shri A.M.Phule, learned AGP appearing for the State

assailed the impugned Judgment passed by the Reference Court on various grounds. The learned AGP submitted that the Reference Court has taken into account the sale instances of lands having small area and belonging to some other village. Learned AGP pointed out that though the certified copies of two sale instances were placed on record by the State, the Reference Court for the wrong reasons discarded the said evidence and preferred to rely upon the sale instances at Exh.16 and Exh.17 respectively brought on record by the claimants. The learned AGP submitted that the sales instances, which are relied upon by the Reference Court cannot be held of comparable lands. The learned AGP submitted that the sale instances at Exh.17 pertains to the land situate at village Ainpur, whereas the subject lands are from village Vitwe. The learned AGP further submitted that though, it is settled practice that Pot Kharab land is valued at half of the price, which may be fixed for non-irrigated land, the Reference Court awarded compensation for Pot Kharab land at half of the price of the irrigated land. The learned AGP submitted that in such circumstances, the impugned award deserves to be set aside and quashed and the award passed by

the Special Land Acquisition Officer, needs to be restored.

5. The learned Counsel appearing for the claimants supported the impugned Judgment and award. The learned Counsel submitted that the Reference Court has elaborately considered the evidence brought on record by the claimants and has arrived at correct conclusion. The learned Counsel submitted that several sale instances are considered by the Reference Court and thereupon, the market value has been determined by the Reference Court. The learned Counsel submitted that a well reasoned order does not need any interference.

6. I have given due consideration to the submissions made by learned AGP appearing for the State and learned Counsel appearing for the original claimants.

7. After having perused the impugned Judgment, apparently it does not appear to me that the Reference Court has committed any error in determining the market value and enhancing the compensation accordingly. Merely because the

sale instances pertaining to the lands situated at village Ainpur has been relied upon by the Reference Court, the impugned award cannot be set aside. As has come on record, the distance between village Ainpur and Vitwe is hardly 2km. Moreover, the Reference Court has not blindly accepted the price as was received for lands which were subject matter of Exh.16 and 17. As has been discussed by the Reference Court, the said lands had received price @ Rs.1,60,000/- per Hectare. However, considering all plus and minus factors, the Reference Court has determined the market value of land involved in Land Acquisition Reference No. 131 of 1991, as @ Rs.1,00,000/- per Hectare since it is irrigated land and Rs.50,000/- per Hectare for the non-irrigated land involved in the Land Acquisition Reference No.132 of 1991. Therefore, it does not appear to me that the Reference Court has committed patent illegality or has awarded unreasonable compensation.

8. In so far as the compensation awarded for Pot Kharab lands is concerned, though, I do agree with the submission of learned AGP that the compensation must have been awarded at

half of the price of the non-irrigated land whereas the Reference Court has awarded it at half of the price of the irrigated land, considering the fact that the acquired Pot Kharab land is only to the extent of 6 Are and the acquisition had taken place in the year 1983, I am not inclined to cause any interference in the said compensation. After considering the evidence on record, it does not appear to me that any case is made out for causing any interference in the Judgment and award impugned in the present appeals. In the result, the following order:-

ORDER

- I) First Appeal Nos.1154 of 2007 and 3118 of 2009 are dismissed, however, without any order as to costs.
- II) Civil Application No.2477 of 2000 in First Appeal No.1154 of 2007 stands disposed of.
- III) Civil Application No.2342 of 2000 in First Appeal No.3118 of 2009 stands disposed of.

(P.R.BORA)
JUDGE