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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.1085 of 2003

- 1] The State of Maharashtra,
Through Collector, Jalgaon.
- 2] The Special Land Acquisition
Officer, III Upper Tapi Project,
Hatnur, Jalgaon, District : Jalgaon.

Appellants..
(Ori.Respondents)

Versus

Vijay Gajmal Marathe,
Age : 28 years, Occupation :
Agril., R/o : Chopda, Patil Gadhi.
Taluka Chopda, District : Jalgaon.

...Respondent..
(Ori.Claimant)

....

Shri K.N.Lokhande, AGP for appellants.
Shri V.B.Garud, Advocate for respondent.

FIRST APPEAL NO.1086 of 2003

- 1] The State of Maharashtra,
Through Collector, Jalgaon.
- 2] The Special Land Acquisition
Officer, III Upper Tapi Project,
Hatnur, Jalgaon, District : Jalgaon.

Appellants..
(Ori.Respondents)

Versus

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Gulab Bandu Sutar,
Age : 32 years, Occupation :
Agril., R/o : Gujar Ali, Chopda,
Taluka Chopda, District Jalgaon.

...Respondent..
(Ori.Claimant)

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Shri A.M.Phule, AGP for appellants.
Shri V.B.Patil, Advocate for respondent.

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FIRST APPEAL NO.1087 of 2003

- 1] The State of Maharashtra,
Through Collector, Jalgaon.
- 2] The Special Land Acquisition
Officer, III Upper Tapi Project,
Hatnur, Jalgaon, District : Jalgaon.

Appellants..
(Ori.Respondents)

Versus

Suklal Bhikari Rajput,
Age : 59 years, Occupation :
Agril., R/o : Gujar Ali,
Taluka Chopda, District Jalgaon.

...Respondent..
(Ori. Claimant)

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Shri S.P.Deshmukh, AGP for appellants.
Shri V.B.Patil, Advocate for respondent.

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FIRST APPEAL NO.1088 of 2003

- 1] The State of Maharashtra,
Through Collector, Jalgaon.

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- 2] The Special Land Acquisition
Officer, III Upper Tapi Project,
Hatnur, Jalgaon, District:Jalgaon.

Appellants..
(Ori.Respondents)

Versus

- 1] Bhika Manku Patil,
Age : 30 years,
- 2] Vishwanath Manku Patil,
Age : 26 years, Occupation
:Both Agri.,Both R/o Gartad,
Taluka Chopda, District :
Jalgaon.

...Respondents..
(Ori.Claimants)

....

Shri K.N.Lokhande, AGP for appellants.
Shri V.B.Patil, Advocate for respondents.

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CORAM: M.S. SONAK, J.

DATE: 17.01.2018

ORAL JUDGMENT :

1] Heard learned counsel appearing for the parties.
They agreed that all these appeals can be disposed of by
common judgment and order since they arise out of one and
the same acquisition proceedings.

2] In all these cases, except in First Appeal
No.1088/2003, the Land Acquisition Officer (LAO) has

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determined the compensation in respect of the acquired land at Rs.340/- per Are. In First Appeal No.1088/2003, the LAO has determined the compensation at the rate of Rs.340/- per Are. The Reference Court has enhanced the compensation in all the First Appeals, except First Appeal No.1088/2003, from Rs.340/- per Are to Rs.516/- per Are. In First Appeal No.1088/2003, the Reference Court has enhanced the compensation to Rs.516/- per Are insofar as Jirayat lands are concerned and Rs.1032/- per Are insofar as Bagayat lands are concerned.

3] Learned AGPs submit that there was no sufficient evidence to order any enhancement. They submit that two of the sale instances relied upon by the claimants i.e. Exhibits 23 and 29 were rightly rejected by the Reference Court. They, however, submit that the Reference Court erred in placing reliance upon the sale instance at Exhibit 44. Without prejudice, they submit that even the sale instance at Exhibit 44 indicated the rate of Jirayat land at approximately Rs.480/- per Are. They submit that the subject matter of the sale instance at Exhibit 44 were the lands, which were better than the acquired lands. On this basis, the learned AGPs submit that the

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Reference Court has erred in determining the rate of Rs.516/- per Are. They submit that there was no proper evidence that a portion of the acquired lands in First Appeal No.1088/2003 was Bagayat land and, therefore, there was no justification whatsoever for enhancing compensation from Rs.340/- per Are to Rs.1032/- per Are insofar as Bagayat lands are concerned. For all these reasons, they submit that these First Appeals may be allowed and the impugned awards be set aside.

4] Learned counsel for the respondents submit that the award made by the Reference Court is in fact on a very conservative basis. They submit that on account of poverty and social reasons, the respondents would themselves not institute cross-appeals or file cross-objections. They submit that the compensation amount in the present case is well within the limits prescribed by the State Government itself in its Government resolution dated 3.11.2016, which records the policy decision of the State not to pursue the appeals of this nature. They submit that generally, Bagayat lands are entitled to compensation which is twice the compensation awarded in respect of Jirayat lands. Since the awards are well

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supported by the evidence on record, they submit that there is no case made out to interfere with the impugned awards.

5] At the outset, a reference is required to be made to the Government resolution dated 3.11.2016, as amended from time to time, which records the policy decision of the State Government that the State Government and acquiring bodies will not institute or pursue appeals in which enhanced compensation is less than four times the ready reckoner rate prevalent on the date of issue of Section 4 notification. In this case, there is no dispute that the rate of Rs.340/- per Are, as determined by the LAO, corresponds broadly to the ready reckoner rate as prevalent on the date of issue of Section 4 notification i.e. 20.3.1985. The enhanced compensation awarded in the present case is Rs.516/- per Are in respect of Jirayat land and portion of the Bagayat land, which is the subject matter of First Appeal No.1088/2003, the compensation awarded is Rs.1032/- per Are. This means that enhanced compensation is well within the limits prescribed in the Government resolution dated 3.11.2016, as amended from time to time.

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6] Normally on this basis, the State Government was required to make a statement that they will not pursue these appeals. However, it is noticed that the learned AGPs have considerable difficulty in obtaining instructions not to pursue the appeals and the difficulties are compounded if without instructions they refrain from pursuing such appeals. In these circumstances, the learned AGPs were permitted to argue these appeals on merits and their contentions are now being considered. If necessary instructions were to be issued to the learned AGPs to act in accordance with Government's own policy decision, as reflected in its own Government resolution dated 3.11.2016, valuable judicial time could have been saved. However, rather than wasting further time by adjourning the matters to obtain instructions and considering that these matters pertain to the year 2003, the same are being decided on merits as well.

7] The material on record clearly establishes that the market rate at the time of issuance of Section 4 notification was in the range of Rs.516/- per Are insofar as Jirayat lands are concerned. There is also a thumb

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rule that unless any evidence is produced to the contrary, the Bagayat lands may be assessed at twice the rate of the Jirayat lands. In this case, the Reference Court has relied upon a sale instance in respect of Gut No.247 from village Gartad Tq.Chopada in respect of land admeasuring 52 Are where the consideration was Rs.25,000/-. This sale deed is dated 22.3.1985 i.e. almost two years prior to the date of issuance of Section 4 notification. The rate as per this sale deed comes to approximately Rs.480/- per Are in respect of Jirayat lands. If escalation of 10% p.a. on compound basis is to be taken into consideration, no fault can be found with the determination made by the Reference Court.

8] Since there is no dispute that the acquired lands are from the neighbouring village and from the same Taluka, there is really no infirmity in the approach of the Reference Court in taking into consideration the sale instance at Exhibit 44 and on such basis determining the compensation at the rate of Rs.516/- per Are in respect of Jirayat lands and Rs.1032/- per Are in respect of Bagayat lands. In most of these appeals, the lands acquired were Jirayat lands. Only a portion of the

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acquired property in First Appeal No.1088/2003 was Bagayat land. Thus construed, there is really no reason to interfere with the impugned awards in these first appeals.

9] The First Appeals are dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)