

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

FIRST APPEAL NO.984 OF 2012

1. The State of Maharashtra
Through Collector, Jalgaon.
2. The Special Land Acquisition Officer,
Minor Irrigation, Jalgaon.
3. The Executive Engineer,
(M.I.W.) Jalgaon.

.. APPELLANTS
(Ori. Respondents)

VERSUS

1. Ananda Santosh Patil (deceased)
Through Legal Heirs,
- A. Ramsing Ananda Patil (deceased)
- i. Kusumbai Ramsing Patil,
Age : 50 years, Occu : Household,
- ii. Nalubai Ramsing Patil,
Age : 48 years, Occu : Household,
- iii. Bhagwan Ramsing Patil ,
Age : 30 years, Occu : Agriculture,
- iv. Rahulsing Ramsing Patil,
Age : 21 yeas, Occu : Agriculture,
- v. Deepak Ramsing Patil,
Age : 19 yeas, Occu : Education,
- vi. Bhushan Ramsing Patil,
Age : 15 yeas, Occu : Education,
- vii. Archana Ramsing Patil,
Age : 17 years, Occu : Education,

(Appeal Dismissed
against R-1 (ii)&(iii)
as per order dt.10.9.13)

All R/o. Shewage, Tq. Bhusawal,
Dist. Jalgaon.

.. Respondents
(Orig. Claimants)

....

Shri P.G. Borade, AGP for the Appellants - State.

Shri A.B. Kale, Advocate for Respondents No.1(A), 1(IV),
1(V), 1(VI), 1(VII).

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CORAM: P. R. BORA, J.
Date : 28.08.2018

ORAL JUDGMENT :

1. Heard finally with consent of the learned Counsel appearing for the parties.

2. The Appellant - State has preferred the present appeal against the Judgment and Award passed in Land Acquisition Reference No.1632 of 1998 passed by Joint Civil Judge, Senior Division, Jalgaon (hereinafter referred to as the 'reference Court') on 08.10.2008.

3. The agriculture land belonging to the respondents (hereinafter referred to as the 'claimants') admeasuring 1-Hec. 38-R situated at village Shevage Bd., Tal. Bodwad, Dist. Jalgaon was acquired for the purpose of Yengaon Dam.

The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was published in the Official Gazette on 23.12.1993. The Award under Section 11 of the Act was declared by the Special Land Acquisition Officer (hereinafter referred to as the 'SLAO') on 13.02.1996. The SLAO offered the compensation to the claimants at the rate of Rs.31,000/- per hectare for the *jirayat* land. The total compensation including the compensation awarded for the fruit bearing trees was to the tune of Rs.2,01,688/-.

4. Dissatisfied with the compensation so offered, the claimants filed an application under Section 18 of the Act for enhancement of the compensation to Collector Jalgaon, who in turn forwarded the said application to the District Court for its adjudication. The claimants had claimed the compensation at the rate of Rs.1,00,000/- per hectare. The State resisted the demand of enhancement by filing its written-statement. To substantiate the claim, one Rahul Ramsing Patil deposed before the reference Court on behalf of the claimants. The claimants also examined one Ravindra Ghanshyam Chaudhary, the government approved valuer, for bringing on record the

valuation of the trees standing in the land acquired for the construction of the dam. No evidence was adduced on behalf of the State.

5. The learned reference Court after having assessed the oral and documentary evidence brought on record by the parties, partly allowed the Reference Application and held the claimants entitled for the enhanced compensation of Rs.74,460/- with all statutory benefits and the interest as provided under the provisions of the Act. Aggrieved by, the State has preferred the present appeal.

6. Shri P.G. Borade, the learned Assistant Government Pleader assailed the impugned Judgment on various grounds. The learned AGP submitted that, the reference Court has erred in determining the market value of the subject land on the basis of the sale-deed dated 25.11.1993 (Exh-16), which cannot be said to be of a comparable land. The learned AGP further submitted that, the reference Court has also erred in accepting the valuation of the trees in toto as was certified by the valuer namely Ravindra Chaudhary. The learned AGP further

submitted that, the SLAO had rightly determined the market value of the subject land and there was no reason for the reference Court to cause any interference in the Award so passed. The learned AGP, therefore, prayed for setting aside the impugned Award and to restore the Award passed by the SLAO under Section 11 of the Act.

7. Shri A.B. Kale the learned Counsel appearing for the claimants supported the impugned Judgment and Award. The learned Counsel submitted that, the claimants had brought on record the sale instance of the comparable land and the reference Court has rightly considered the said sale instance for determining the market value of the subject land. The learned Counsel further submitted that, in absence of any contrary evidence, there was no reason for the reference Court to disbelieve or discard the valuation report given by the Government approved valuer Shri Chaudhary. The learned Counsel submitted that, there is no substance in the appeal filed by the State. He, therefore, prayed for dismissal of the appeal.

8. I have given due consideration to the submissions

advanced by the learned AGP appearing for the State and Shri A.B. Kale the learned Counsel appearing for the claimants. I have perused the impugned Judgment and the evidence on record.

9. The claimants had relied upon the sale instance dated 25.11.1993 to substantiate their claim for enhancement of the amount of compensation. The claimants placed on record the certified copy of the said sale deed (Exh.16). It was pertaining to land Gut No.236/3 admeasuring 1 Hector situated at village Bodwad, which was sold by one Krishna Motiram Mali to Sureshlal Onkar Agrawal by registered sale deed executed on 25.11.1993 for the consideration of Rs.1 Lakh. As has come on record, village Shevage and village Bodwad are adjacent to each other. In such circumstances, the learned reference Court has rightly taken into account the said sale instance for determining the market value of the subject land. Admittedly, no oral or documentary evidence was adduced by the State Government. It is, thus, evident that the oral evidence of one of the claimants and the sale-deed placed on record at Exh.16 was the only material available before the reference Court for determining

the market value of the acquired land. The reference Court has recorded a clear finding that, the sale-deed placed on record at Exh.16 was of a comparable land and the reference Court, therefore, determined the market value of the subject land on the basis of the said sale instance.

10. Perusal of the impugned Judgment reveals that, the reference Court did not blindly accept the contention of the claimants or did not determine the market value at the rate of Rs.One Lakh per hectare, though in the sale instance relied upon by the claimants, the land which was the subject matter of the said sale deed, had received the value of Rs.One Lakh per hectare. The trial Court considered all plus - minus factors and ultimately reached to the conclusion that, the market value of the subject land was liable to be determined at the rate of Rs.50,000/- per hectare for *Jirayat* land. The learned reference Court determined the value of 51 jujube (ber) trees on the basis of the valuation report duly proved by the claimants by examining the Government approved valuer Shri Chaudhary. As has been observed by the reference Court, nothing has come on record in the cross examination of the said witness so as to take

any contrary view as regards to the valuation made by the said expert. Moreover, it is noticed that, the trial Court has exerted for determining the market value on the basis of the judicial pronouncements in that regard.

11. After having considered the entire material on record, it does not appear to me that, the reference Court has committed any error in determining the market value of the subject land as well as the trees existing in the said land. I do not find any substance in the objections raised by the State in exception to the impugned Judgment and Award. The appeal, therefore, fails and stands dismissed, however without any order as to the costs.

. Pending Civil Application, if any, stands disposed of.

[PR. BORA]
JUDGE