

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

FIRST APPEAL NO.814 OF 2002

1. Tukaram s/o Lahanu Thorat
2. Ghansham s/o Lahanu Thorat

Both Age: Major, occu.Agril.
R/o Daula Wadgaon, Tq.Ashti,
District Beed.

.. APPELLANTS

Versus

The State of Maharashtra

.. RESPONDENT

...

Mr. SD Jaybhar, Adv. h/for Mr. DR Jaybhar, for
Appellants;

Mr. AM Phule, AGP Advocate for Respondent-State.

CORAM : P.R. BORA, J.

DATED : 10th October, 2018.

ORAL JUDGMENT:-

1. Original claimants in LAR No.673/1989 have preferred the present appeal, seeking enhancement in the amount of compensation awarded in the said reference application by the Additional District Judge, Beed (herein after referred to as the Reference Court) vide, the common judgment and award passed by the said court on 26.11.1998. The appellants are herein after referred to as the claimants.

2. The land, which is the subject matter of the present appeal, belonging to the claimants, was acquired for the purpose of construction of percolation tank at village Daula Wadgaon, Tq. Ashti, District Beed. Notification under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as the said Act) in that regard was published in the official gazette on 11th April, 1985 and Award under Section 11 came to be passed on 5th August, 1988. The Special Land Acquisition Officer had offered the compensation, ranging between Rs.80 to Rs.90 per Are.

3. Dissatisfied with the amount of compensation so offered, the claimants preferred an application under Section 18 of the Act to Collector, Beed, which was in turn forwarded for its adjudication to the reference court. In the reference application, the claimants had claimed the compensation @ Rs.600/- per Are for the acquired land. In order to substantiate the contentions raised in the Reference Application, the claimants had deposed before the court and have also placed on record certain sale instances. The

learned Reference Court, after having assessed the oral and documentary evidence brought on record, determined the market value of the acquired land @ Rs.300/- per Are and enhanced the amount of compensation accordingly.

4. In the present appeal, it is the contention of the claimants that the Reference Court has also not awarded just and fair compensation. The present appeal is, therefore, filed for seeking enhancement in the amount of compensation.

5. Shri Jaybhar, learned counsel appearing for the appellants – claimants, submitted that the sale instance brought on record by the claimants at Exhibit-18 was of the comparable land and as such, the Reference Court must have determined the market value of the acquired land on the basis of the said sale instance. The learned counsel further submitted that though in para 9 of the judgment, the reference court has observed that the subject land was of high quality land and was having irrigation facility through well, while determining

the market value, has ignored its own finding. The learned counsel brought to my notice the discussion made by the reference court in para 12 of the judgment to urge that considering the observations made in the said para, the reference court must have determined the market value of the acquired land @ not less than Rs.600/- per Are. The learned counsel, therefore, prayed for enhancement in the amount of compensation to that extent.

6. Learned AGP Shri Phule has supported the impugned judgment and award. The learned AGP submitted that having regard to the evidence on record, the learned reference court has rightly determined the market value of the acquired land @ Rs.300/- per Are and no interference is required in the well-reasoned judgment passed by the reference court.

7. The learned AGP read out the cross-examination of the witness examined by the claimants and more particularly the admissions given by the said witness in his cross-examination.

The learned AGP also invited my attention to the 7/12 extracts of the acquired land filed on record by the claimants. The learned AGP further submitted that though the claimants are claiming that the acquired land was having irrigation facility, from the crops statement, it is quite evident that the acquired land was being used and cultivated as non-irrigated land.

8. It was also contended by the learned AGP that in fact, the reference court should not have relied upon the sale instance at Exhibit 18 for the reason that it is pertaining to the small piece of land; whereas the acquired land was a big chunk of land. The submission was further made by the learned AGP, that the price which was received to the land, which was subject matter of Exh.18, cannot be, in all respect, held as basis for determining the market value of the acquired land since the land involved in Exh.18 was a small piece of land admeasuring 30 Ares, whereas the acquired land is admeasuring more than 1 hectare and 49 Ares. In the circumstances, the learned AGP prayed for dismissal of the appeal.

9. I have given due consideration to the submissions made by the learned counsel appearing for the appellants claimants and learned AGP appearing for the respondent State. I have perused the impugned judgment as well as the evidence on record. Perusal of the impugned judgment reveals that the reference court has relied upon the sale instance at Exh.18. The land, which was the subject matter of the said sale deed, was admeasuring 30 Ares, situated at village Daula Wadgaon. It was sold by registered sale deed executed on 29th March, 1985 for the total consideration of Rs.20,000/- i.e.@ Rs.666/- per Are. The learned reference court, on the basis of the said sale deed, has determined the market value of the acquired land @ Rs.300/- per Are.

10. Though it was sought to be contended by the learned counsel for the claimants that in para 9 of the judgment, the reference court has observed that the acquired land was also having irrigation facility, but the same has not been considered while determining the market value of the acquired land, I am not convinced with the submission so

made. The reference court has also taken into account the crops statement of the acquired land and on that basis has determined the market value of the acquired land. I have also perused the 7/12 extracts of the acquired land. The said extracts demonstrate that the crops, like *Bajara*, *Mug*, *Jawar* etc. only were taken in the said land. From the crops statement it is quite evident that the land has to be categorized as non-irrigated land.

11. It appears to me that the criterion which has been applied by the reference court appears to be sound. The reference court has considered that the land at Exh.18, which was cultivated as irrigated land when had received the price of Rs. 666/- per Are, the market value of the acquired land, which was dry land, was liable to be determined at half of the said price and accordingly rate of Rs.300/- per Are has been determined by the reference court. It does not appear to me that the reference court has committed any error in determining the market value of the acquired land @ Rs. 300/- per Are. No case is made out by the appellants claimants for any enhancement

in the amount of compensation.

12. The appeal, therefore, fails and is dismissed accordingly however, without any order as to costs. Pending civil application, if any, stands disposed of.

(P.R. BORA)
JUDGE

bdv