

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

FIRST APPEAL NO. 4247 OF 2017

1. Rameshwar S/o. Bhaurao Gaikwad,
Age: 50 Years, Occupation: Agriculture,
2. Daulat S/o. Bhagaji Gaikwad (Deleted)
Age: 48 Years, Occu. Agriculture,
R/o. Vaijapur, Tq. Vaijapur,
Dist. Aurangabad. ..Appellants

Versus

1. The State of Maharashtra,
Through the Collector, Aurangabad,
District Aurangabad.
2. The Executive Engineer,
Narangi Medium Project Nandur,
Nandur Madhmeshwar Project,
Yeola Road, Vaijapur,
Dist. Aurangabad.
3. Daulat S/o. Bhagaji Gaikwad
Age: 48 Years, Occu: Agriculture,
R/o. Vaijapur, Dist. Aurangabad. ..Respondents

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Mr. Dattatraya R. Jayabhar, Advocate for Appellants.

Mr. P.M. Kulkarni, AGP for the Respondent-State.

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CORAM : P.R. BORA, J.

DATED : 09th JANUARY, 2019.

ORAL JUDGMENT:-

1. Heard Shri Jayabhar, the learned counsel appearing for the appellant and Shri Kulkarni, the learned AGP appearing for the respondent-State.

2. The appellant has preferred the present

appeal against the judgment and award passed by the Court of Civil Judge Senior Division, Vaijapur District Aurangabad (hereinafter referred to as the 'Reference Court') in L.A.R. No.250 of 2010 (old L.A.R. No.199 of 2001) decided on 24.10.2016.

3. The land which is the subject matter of the present appeal was acquired for 'Narangi Medium Project' at Vaijapur. Total 4 H 15 R land was acquired. The land was situated at village Vaijapur, Taluka Vaijapur. The notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') was published in that regard in the official gazette on 21.03.1994 and the award under Section 11 came to be passed on 30.09.1996. The SLAO had offered compensation at the rate of Rs.625/- per R. Dissatisfied with the amount of compensation so offered by the SLAO, the appellant filed the application under Section 18 of the Act which was adjudicated by the Civil Court at Vaijapur. In the reference application, the appellant-claimant had claimed the compensation at the rate of Rs.3,000/- per R. The learned Reference Court however, after having considered the evidence on record held the appellant-claimant

entitled for the compensation at the rate of Rs.1,500/- per R and accordingly enhanced the amount of compensation. The Reference Court has also awarded the statutory benefits as well as interest as provided under the provisions of the Act. According to the appellant, even the Reference Court did not award the adequate compensation and hence he has preferred the present appeal.

4. Shri Jayabhar, the learned counsel appearing for the appellant submitted that two sale instances were placed on record by the appellant. One at Exhibit-37 and another at Exhibit-38. The learned counsel taking me through both the aforesaid documents brought to my notice that the land which was the subject matter of Exhibit-37 was admeasuring 80 R situated at village Vaijapur and was sold by registered sale deed on 20.07.1993 for the consideration of Rs.2,00,000/- i.e. at the rate of Rs.2,500/- per R. The learned counsel further pointed out that the land which was the subject matter of Exhibit-38 was admeasuring 20 R and was sold by registered sale deed executed on 15.12.1993 at the rate of Rs.50,000/- i.e. Rs.2,500/- per R.

5. The learned counsel submitted that the Reference Court must have determined the market value of the acquired land on the basis of the aforesaid two sale instances. The learned counsel submitted that the Reference Court has grossly erred in discarding the aforesaid sale instances and in not determining the market value of the subject land on the basis of the aforesaid sale instances. The learned counsel submitted that the Reference Court has also erred in not awarding any compensation towards the trees etc. The learned counsel submitted that the Reference Court must have determined the market value of the acquired land at the rate of Rs.2,500/- per R. The learned counsel, therefore, prayed for allowing the present appeal by determining the market value of the acquired land at the rate of Rs.2,500/- per R and to enhance the amount of compensation accordingly.

6. The learned AGP Shri Kulkarni opposed the submissions advanced on behalf of the appellant. The learned AGP inviting my attention to the discussion made by the learned Reference Court in Para-11 of its judgment submitted that the claimants have relied upon the earlier judgment in

L.A.R. No.500 of 2010 arising out of the same acquisition proceedings and have prayed for enhancing the amount of compensation in tune with the said judgment. The learned AGP further pointed out that the Reference Court had accepted the request made by the claimants and had accordingly enhanced the amount of compensation by determining the market value of the acquired land at the rate of Rs.1,500/- per R. The learned AGP submitted that considering the evidence as aforesaid in fact the appellant was estopped from raising any objection for the impugned award. The learned AGP on the aforesaid grounds prayed for dismissal of the appeal.

7. I have given due consideration to the submissions made by the learned counsel for the appellant and the learned AGP for the respondent-State. I have perused the impugned judgment as well as the evidence on record. In the memo of appeal, there is no such ground raised that the observations as are made by the Reference Court in Para-11 of the judgment are incorrect. Even during the course of arguments it is not the contention of the appellant that no such submission was made by

the learned counsel appearing for the claimants before the Reference Court as are recorded in Paragraph 11 of the impugned judgment. Moreover, from the record it is quite evident that the certified copy of the judgment in L.A.R. No.500 of 2010 was placed on record by the claimants themselves and was therefore marked at Exhibit-41.

8. In view of the fact that the claimant himself has prayed for determining the market value at the rate of Rs.1,500/- per R as was determined in the award passed in L.A.R. No.500 of 2010, it does not appear to me that there is any scope for the appellant to agitate or to make a grievance that the Reference Court has not awarded the appropriate amount of compensation. The Reference Court has determined the market value as was prayed by the claimants at the rate of Rs.1,500/- per R and has accordingly enhanced the amount of compensation. Having considered the evidence on record and more particularly the sale instances at Exhibit-37 and 38, I have no doubt in my mind that the Reference Court has correctly determined the amount of compensation. I, therefore, do not see any reason to cause interference in the judgment

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and award passed by the Reference Court. The appeal being devoid of any substance deserves to be dismissed and is accordingly dismissed.

(P.R. BORA, J.)

Mujaheed//