

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

FIRST APPEAL NO. 773 OF 2004

1] Baburao s/o Hanmantrao Jadhav,
Age : 55 years, Occu:Agril,
R/o Bhakaskheda, Tq.Udgir
Dist.Latur..

2] Anajrao s/o Baburao Jadhav,
Age : 30 years, Occu.Agril.,
R/o Bhakaskheda, Tq.Udgir
Dist.Latur..

APPELLANTS
[Orig.Claimants]

VERSUS

1] The State of Maharashtra
Through the Collector
Latur

2] The Executive Engineer
L.M.P Division Latur,
District Latur.

.. RESPONDENTS

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Mr. S.S.Pawar, Advocate for the appellants
Mr. S.N.Morampalle,AGP for respondent Nos.1 and 2.

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**CORAM : MANGESH S. PATIL, J.
RESERVED ON :10.12.2019
PRONOUNCED ON :18.12.2019**

JUDGMENT :-

Heard both the sides.

2] This is an Appeal under Section 54 of the Land Acquisition Act, 1894 by the original claimants being aggrieved and dissatisfied by the judgment and

order passed by the Reference Court in a Reference preferred by them under Section 18 of that Act.

3] Briefly stated the claim of the appellants is to the effect that they are joint owners of the land Gat No.23 admeasuring 37 Are of village Bhakaskheda, Tq. Udgir, Dist.Latur. Apart from their land, two other lands Gat Nos.22 and 15 were acquired by the State Government by issuing Notification under Section 4 of the Land Acquisition Act dated 3/3/1994. The public purpose stated was for rehabilitation of village Bhakaskheda which went in submergence. By following necessary procedure the lands were acquired by Award dated 30/5/1998. The Special Land Acquisition Officer determined market price at the rate of Rs.15059/- per Acre. At the same time, in respect of the other land owners of Gat Nos.22 and 15 viz. Prakash Vitthalrao Jadhav and Vyankat Kashiram Jadhav, the compensation was determined @ Rs.20/- per sq.metre.

4] The present appellants as well as the other two land owners filed Reference under Section 18 bearing Land Acquisition Reference Nos.3067/2001 and 3068/2001. The References were sent to the Court of Civil Judge, Senior Division, Ahmedpur and by the impugned judgment and award the Reference Court allowed both the References partly. By discussing the material before him, the learned Judge enhanced the compensation awarded by 3 times. The compensation awarded to the appellants was increased to Rs.48840/- per Acre and Rs.60/- per Sq.metre in respect of the lands of the other claimants Prakash and Vyankat. In addition it also granted them other statutory benefits. Hence this appeal.

5] The learned advocate for the appellants vehemently submitted that the Land Acquisition Officer as well as the Reference Court has without there being any material difference has discriminated while assessing compensation payable to the appellants and the one payable to the other claimants Prakash and Vyankat. The only reason quoted by them to make such a distinction is that the latter had obtained Non Agricultural use permission which the former had not. The learned advocate would submit that though there was such a distinction between the two cases that would be of little significance as far as while considering potentiality of the land for Non Agricultural use. Since the land of the appellants is adjacent to the lands particularly the land Gat No.22, merely because the appellants had not obtained any such certificate they could not have been deprived of getting a fair compensation at par with that of the compensation awarded to the other two claimants. The learned advocate would submit that the State having not challenged the judgment and order to the extent of the other two claimants, the appellants are entitled to be treated equally.

6] The learned advocate would submit that the Reference Court has relied upon the testimony of the appellant no.2 who was examined as Witness No.2 in Land Acquisition Reference of the other two claimants Prakash and Vyankat. But ironically the appellants were not to given any benefit similar to the one received by Prakash and Vyankat. If the compensation was to be paid to these two persons by treating their land as having benefit of being Non Agricultural lands, there was no sufficient basis for the Reference Court to not to take similar view in respect of the adjoining land of the appellants.

7] The learned advocate therefore, prayed that the appeal may be allowed

and appellants may be awarded compensation at the same rate at which claimants Prakash and Vyankat have received in Land Acquisition Reference No.3068 of 2001 particularly when both these Land References were decided by the learned Judge by the impugned common judgment and award.

8] The learned A.G.P for the respondents submits that the distinction being drawn by the Land Acquisition Officer and the Reference Court in respect of the appellants' claim and that of Prakash's and Vyankat's is not without any distinction. Admittedly, the appellants have not obtained any permission for Non Agricultural use which the latter had. The Reference Court while enhancing the compensation in both the cases has merely maintained the parity by awarding the compensation 3 times of what was determined by the Land Acquisition Officer. There is no error and the appeal may be dismissed.

9] I have carefully gone through the record and the proceeding. It is apparent that admittedly all the 3 land Gat Nos.15,22 and 23 of same village have been acquired for the same project under the same notification. The award is also same and even the References preferred by the claimants have been decided together by the impugned judgment and award. There is no record to show that the impugned judgment and award to the extent it decides the claim of the other 2 claimants Prakash and Vyankat has not become final.

10] Admittedly the land Gat Nos.22 and 23 are adjoining. During the cross examination of appellant no.2 Arjun (P.W.No.1) nothing has been elicited to demonstrate as to how their land Gat No.23 is disadvantageously located than the land Gat No.22 of Prakash. Even the Reference Court has not considered

and demonstrated as to how the land of the appellants has any limitation as compared to the land of Prakash and Vyankat. He has also not discussed as to how and why the appellants' lands would not have the same potential which the other two lands Gat Nos.15 and 22 had. It is under these circumstances, it was expected of the Judge of the Reference Court to have gone into all these aspects if he was to perpetuate the distinction and apparent discrimination being made by the Land Acquisition Officer while assessing compensation in respect of appellants' land and that of Prakash's and Vyankat's.

11] True it is that Prakash and Vyankat had obtained N.A. permission which the appellants had not. However, when the lands are adjoining, such permission from the Collector under the land laws for change of user is insignificant while assessing its worth on the basis of potentiality of its use for non agricultural purpose. Though the law may require such a permission from the Collector for development of any land. But absence of such permission, in my considered view, would not materially affect potential of land and its worth, though some time and money may have to be spent for obtaining such a permission. The Reference Court has clearly ignored this aspect. In my considered view the learned Judge has miserably failed to bring about parity between the appellant and the other 2 claimants Prakash and Vyankat while determining the compensation and the distinction made by the Special Land Acquisition Officer has been allowed to be perpetuated.

12] When the Reference Court was considering these two claims under the same award jointly and was deciding the References together, it should have come out with some plausible reason to demonstrate that the distinction between the two cases so far as valuation is concerned, is clear and visible,

based on the material placed before it. Since there is no such material to make out any distinction except the absence of N.A. permission in respect of appellants' land , as is mentioned hereinabove, it is not that significant in the facts circumstances of the case. The impugned judgment and award will have to be modified and the appellants would be entitled to get compensation at par with the compensation awarded to the other claimants Prakash and Vyankat.

13] Since the land of the appellants is an agricultural land, as has been recognized in the case of Chimanlal Hargovinddas V/s Special Land Acquisition Officer, Poona and another; AIR 1988 S.C. 1652, 25% of the land which will have to be used for allied developments like road, drainage, garden etc. will have to be deducted. The compensation accordingly for the appellants' lands which is 37 Are will have to be assessed by deducting its $\frac{1}{4}^{\text{th}}$ i.e. 9.25 Are. Applying the rate of Rs.60/- per Sq.ft. which was applied in case of Prakash and Vyankat, the compensation would come to Rs.1,66,500/- (3700 sq.meters – $\frac{1}{4}^{\text{th}}$ i.e. 925 meters = 2775 sq.mts X 60). Obviously this will be inclusive of the amount of compensation determined by the Land Acquisition Officer, Rs.25191/- which the appellants have already received. Needless to state that the appellants would be entitled to receive statutory benefits and interest under different provisions of the Land Acquisition Act on this amount. The appellants would be entitled to claim interest under Sections 28 and 34 of the Land Acquisition Act from the date of the award.

14] The appeal is partly allowed in above terms.

[MANGESH S. PATIL, J.]