

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

First Appeal No. 02637 of 2017

District : Parbhani

1. Panchfulabai w/o. Eknathrao
Solanke,
Age : 70 years,
Occupation : Agriculture.
 2. Atmaram s/o. Eknathrao
Solanke,
Age : 43 years,
Occupation : Agriculture.
 3. Rukminibai w/o. Vinayakrao
Jadhav (Died) through L.R.,
Panchafulabai w/o. Eknathrao
Solanke,
Age : 70 years,
Occupation : Agriculture.
 4. Angad s/o. Subhasrao Solanke,
Age : 26 years,
Occupation : Nil.
- All R/o. Kupta,
Taluka Sailu,
Dist. Parbhani.

.. Appellants
(Original
claimants)

versus

1. The State of Maharashtra,
Through Collector, Parbhani,
Office of Collector,
Parbhani.
2. The Special Land Acquisition
Officer (M.K.V.),
Parbhani.

3. The Executive Engineer,
Lower Dudhna Project,
Majalgaon Right Bank Canal,
Division No.10, Parbhani,
Dist. Parbhani.

.. Respondents
(Original
respondents
no.01 to 03)

.....

*Mr. Sachin V. Kuptekar & Mr. Krushna S. Solanke,
Advocates, for the appellants.*

*Mr. A.M. Phule, Assistant Government Pleader, for
respondents no.01 and 02.*

Mr. Anil M. Gaikwad, Advocate, for respondent no.03.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04TH SEPTEMBER 2019

ORAL JUDGMENT :

01. Present appeal has been filed by the original claimants for enhancement in the compensation granted by the learned reference Court i.e. Joint Civil Judge (Senior Division), Parbhani, in L.A.R. No. 164 of 2011, dated 05-11-2015.

02. Before turning to the case that has been put forward by the claimants, it is necessary to see the admitted facts. The State Government acquired certain lands from village Kupta, Taluka Sailu, District Parbhani. As regards the present claimants are concerned, land admeasuring 03 hectares 03 R from Gut no.226 of the said village

was acquired for Lower Dudhana Project. Section 4(1) notification of the Land Acquisition Act came to be published on 04-02-2007 and the award was passed by the Special Land Acquisition Officer [**For short, "SLAO"**] under Section 11 of the Land Acquisition Act [**For short, "the Act"**] on 30-04-2008. After the notice under Section 12(2) was issued, they had withdrawn the amount which was granted to them as compensation, under protest, on 06-09-2008. However, they were dissatisfied with the amount of compensation that was granted by the SLAO; they have filed reference under Section 18 of the Act.

03. The claimants had come with a case that the Land Acquisition Officer had not considered the situation of the land, quality and other aspects which are required to be considered while arriving at or determining the market value. They contended that the acquired land is abutting to Kupta-Parbhani and Kupta-Manwat road and then it joins the National Highway No.222 at Pedgaon. It was also not considered properly that there is well in the land and the quality of the land was fertile. It used to give high yield to the claimants. According to them, the compensation ought to have been at the rate of Rs. 2,00,000/- per acre and the rate granted by SLAO i.e. at the rate of Rs.

1,400/- per R is meager.

04. Respondents no.01 and 02 filed written statement and separate written statement by respondent no.03 at Exhibit 15. All of them have denied the averments in the petition regarding the quality and dissatisfaction of the claimants in respect of fixation of compensation. The respondents have supported the rate given by SLAO and it is stated that it was as per the prevailing market value.

05. It appears from the record, that the matter was considered in group and evidence was led only in one matter. Taking into consideration the evidence, as regards present reference is concerned, it came to be partly allowed and the reference Court has granted rate of Rs. 2,500/- per R considering the land acquired in this matter as dry land and therefore, being dissatisfied with the said reference, this appeal has been filed.

06. Heard learned Advocate Mr. S.V. Kuptekari appearing for the appellants. Heard learned AGP Mr. A.M. Phule appearing for respondents no.01 and 02. So also, heard learned Advocate Mr. A.M. Gaikwad appearing for respondent no.03.

07. It has been submitted on behalf of the appellants, that the land belonging to the claimants was fully irrigated. There was entry of well in the 7/12 extract and they had taken sugarcane crop. Therefore, the learned reference Court ought to have considered and awarded the rate which has been granted by it to the fully irrigated land i.e. at the rate of Rs. 5,000/- per R. Even the SLAO had not considered the land acquired from the present claimants to be dry land. The said instance has not been properly considered and if it would have been considered which was for dry land, the claimants were entitled for higher amount.

08. Per contra, learned Assistant Government Pleader for the State as well as learned Advocate representing the acquiring body submitted that the reference Court has considered the evidence properly. It has been observed by the reference Court, that no proper evidence was led to prove the quality of the land and therefore, the categories taken into consideration by the reference Court as dry land, semi-irrigated and irrigated were proper.

09. At the outset, it can be said that the respondents are not challenging the rates fixed by the reference Court. After considering the evidence on record, the reference Court has fixed

the rate at Rs. 2,500/- per R for dry land, Rs. 3,750/- per R for semi-irrigated land and Rs. 5,000/- per R for irrigated land. As regards the present claimants are concerned, it appears that though affidavit in chief was given, yet, then a *Pursis* has been passed at Exhibits 25 and 26, that the oral as well as documentary evidence in L.A.R. No.169 of 2011 should be read in the present case also. Under such circumstance, it appears that there was no cross to the witness whose affidavit in chief was presented. The record also shows that the 7/12 extract of the acquired land was not duly produced and exhibited in this case. 7/12 extract of 2007-08 has been produced on record but it has not been exhibited and further it can be seen that when the notification under Section 4 of the Act was issued on 04-02-2007, 7/12 extract of 2007-08 could not have been the proper document which could have been relied by the Court of law. What was required to be produced by the claimants was such cogent and documentary evidence to prove that the land was irrigated prior to 04-02-2007. Even if for the sake of arguments we take the 7/12 extract of the year 2007-08, it does not show that it was fully irrigated land. Though there is entry of 'well' in 'other rights' column of 7/12 extract, yet, crops of cotton, jawar and soyabean are taken in the major portion. Under such circumstance, we

are required to consider the award that was passed by the SLAO and as regards the acquired land in this case, admeasuring 03 hectares 03 R from Gut no.226, it was found by the SLAO that it was semi-irrigated and he had granted the compensation for that category of land. So, at least, it was expected from the reference Court, that the enhanced rate ought to have been granted for the same category of land for which the land was treated before the SLAO. Therefore, definitely case is made out to hold that the claimants were entitled to get compensation at the rate of Rs. 3,750/- per R by holding that their land was of semi-irrigated nature. To that extent, the appeal deserves to be allowed.

10. Hence, the following order :-

(a) The appeal is partly allowed.

(b) The judgment and award passed by the Joint Civil Judge (Senior Division), Parbhani, in L.A.R. No. 164 of 2011, dated 05-11-2015, to the extent of granting compensation to the acquired land at the rate of Rs. 2,500/- per R is hereby set aside and modified that the said acquired land i.e. 03 hectares 03 R from Gut no.226 situated at village Kupta, Taluka Sailu, District Parbhani, the

claimants are entitled to get compensation at the rate of Rs. 3,750/- per R.

(c) It is clarified that the interest as granted under different sections of the Land Acquisition Act by the learned reference Court is maintained and it should be at the said rate on the enhanced amount.

(d) There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

.....