

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2416 OF 2008

- 1 The Special Land Acquisition Officer,
Minor Irrigation Department,
Jalgaon.
- 2 The Executive Engineer,
Minor Irrigation Department,
Jalgaon.

... Appellants

... Versus ...

Smt. Lalibai Dasu Naik,
Age 65 yrs., Occ. Agricultural work,
R/o Malkheda, Tq. Jamner,
Dist. Jalgaon.

... Respondent

...

Mr. B.V. Virdhe, AGP for appellants

Respondent – served.

...

WITH

FIRST APPEAL NO.2417 OF 2008

- 1 The State of Maharashtra
Through The Special Land Acquisition Officer,
Minor Irrigation Department, Jalgaon.
- 2 The Executive Engineer,
Minor Irrigation Department,
Jalgaon.

... Appellants

... **Versus** ...

Rajmal Jaising Naik,
Age 30 yrs., Occ. Agricultural work,
R/o Malkheda, Tq. Jamner,
Dist. Jalgaon.

... **Respondent**

...

Mr. B.V. Virdhe, AGP for appellants

Respondent – served.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 31st JULY, 2020

COMMON JUDGMENT :

1 Both these appeals are arising out of same project and same Notification under Section 4 of the Land Acquisition Act, 1894. Though the learned reference Court has given separate Judgments, yet, they were pronounced on the same day, and therefore, these two appeals are decided by this common Judgment. The acquiring body i.e. Government has preferred the present appeal challenging Judgment and Award passed in L.A.R. No.618/2005 and 622/2005 respectively decided by Joint Civil Judge Senior Division, Jalgaon on 10.10.2006 (the Court is referred as “reference Court” hereinafter).

2 The lands in both the appeals were acquired for the project “Percolation Tank, Minor Irrigation Tank” at Kalamsara, village Ambadi, Tq. Jamner, Dist. Jalgaon. Notification under Section 4 of the Land Acquisition Act came to be published on 30.05.1999. The Special Land Acquisition Officer (hereinafter referred to as “SLAO”) had granted compensation @ Rs.56,000/- per hectare for the land in Land Acquisition Reference No.618/2005, whereas @ Rs.60,500/- per hectare in Land Acquisition Reference No.622/2005. Jirayat land of 40 R was acquired from Gat No.114 situated at village Ambadi, Tq. Jamner, Dist. Jalgaon in L.A.R. No.618/2005, whereas bagayat land of 19 R in Gat No.3/2/1 and 22 R jirayat land from Gat No.3/2/2 was acquired in L.A.R. No.622/2005, and therefore, there is difference in the rate. Claimants in both the references were dissatisfied with the amount of compensation granted by the SLAO; preferred the reference under Section 18 of the Land Acquisition Act. The reference Court after having considered the oral and documentary evidence, which appears to be common, has determined the market value of the acquired land and it has been enhanced to Rs.1,00,000/- per hectare in L.A.R. No.618/2005 as well as for the jirayat land in L.A.R. No.622/2005. Further, it was @ Rs.2,00,000/- per hectare for bagayat land in L.A.R. No.622/2005. Accordingly, the compensation has been enhanced. Hence, present appeals by the acquiring body.

3 Heard learned AGP Mr. B.V. Virdhe for the appellants. It was contended, that the reference Court has arbitrarily enhanced the amount of compensation without there was any cogent evidence. Two sale instances were produced in both the matters at Exhs.15 and 16. However, they were of the year 1996 and 1994 respectively. Exh.15 was in respect of Gat No.3/1 from village Shendurni and the area that was sold was 57 R for Rs.2,00,000/- on 27.02.1996. Exh.16 was in respect of 81 R land from Gat No.654 from the same village i.e. Shendurni, which was for Rs.1,50,000/- and the date of sale was 09.05.1994. Though sale instances are from different villages and therefore they were not at all comparable, map has not been produced on record to show the distance between the villages nor it was brought on record by the claimants. Further, land in Exh.16 was purchased by one Ginning Presssing Society and it was a small piece of land. On that count also that sale instance was not comparable. Learned AGP, therefore, prayed for modification of the amount of restoration of the same as to the amount granted by SLAO.

4 Though in both the matters the respondents were served, they have failed to appear.

5 At the outset, from the perusal of the Judgment passed by the reference Court it can be revealed, that the reference Court has elaborately

considered the evidence on record, more particularly, the sale instances Exhs.15 and 16. The points, which were considered, were the location of the land acquired and language that of sale instances. It has been specifically observed that though two lands are situated in different village, yet, they are in close vicinity and they are having similar potentiality and the market value. In fact, it has come on record that the distance between the Ambadi, where the acquired lands are situated, are at about 10-12 k.ms. from village Shendurni, from where the sale instances are. It cannot be stated that those two sale instances could not have been taken for comparison, for the simple reason, that though the opportunity was available to the Government to place on record the sale instances from village Ambadi in recent past of the Notification under Section 4 of the said Act on 30.05.1999, no such effort has been taken. Another fact also to be noted, that from the side of the claimants a Judgment in L.A.R. No.468/2000 dated 24.04.2000 was placed on record, in which market value of jirayat land was recorded; yet, the reference Court in the present references had not taken those into consideration, on the point that the evidence in that matter was different. Therefore, there appears to be a reasonable view taken by the reference Court. There was no evidence in rebuttal by the Government. In other words, it can be said that there is nothing shown by the appellants, that the enhancement made by the reference Court is arbitrary or on excessive side. On the contrary, it appears

that the factors, which ought to have been considered by SLAO, were not considered by him, and therefore, the interference was required by the reference Court. When a detailed and reasonable Judgment has been given, this Court would be very much slow in interfering with it.

6 Another fact now is required to be taken, that the Government has adopted a policy vide Government Resolution dated 03.11.2016 read with corrigendum dated 25.02.2017 and it is decided, that if the reference Court determines the market value as less than four times of the market value fixed by SLAO, then State Government may not prosecute the appeal further. Therefore, in view of the said policy the Government ought not to have prosecuted the matter further. Here, in this case, the market value, that has been, determined by the reference Court is less than four times of the market value fixed by SLAO. Even on merits, as I have earlier noted, there seems to be no case for the interference in the impugned Judgment and Award, and therefore, the appeals deserve to be dismissed. Similar view was taken in group of petitions in First Appeal No.1521 of 2016 (The Executive Engineer vs. Ramrao Yashwant Wadikar (Died) Through L.Rs.) and other matters, in First Appeal No.2272 of 2016 (The Executive Engineer vs. Sudam Kishanrao Madale and others) and other matters, and in First Appeal No.2281 of 2016 (The Executive Engineer vs. Tulsabai w/o Nivrutti Madale

and others) and other matters, decided on 28.01.2019. Therefore, there is no hesitation in taking the same view in these appeals also.

7 For the above reasons, the appeals are hereby dismissed. No order as to costs. The amount of compensation, if deposited by the acquiring body in this Court or with the trial Court, the claimants are permitted to withdraw the same with accrued interest thereon, if not already withdrawn by them.

(Smt. Vibha Kankanwadi, J.)

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