

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

**FIRST APPEAL NO. 1780 OF 2019**

1. Waman s/o Bhimaji Jamdar  
Age: 52 years, Occ. Agril.,

2. Sukhdeo s/o Bhimaji Jamdar  
Age: 45 years, Occ. Agril.,

Both R/o: Takli Waghdera, Tq. Khultabad,  
Dist: Aurangabad

... **Appellants**  
(Ori. Claimants)

**Versus**

1. The State of Maharashtra  
Through the Special land Acquisition Officer,  
Jaikwadi Prkalp No.II,  
Collector Office, Aurangabad

New Office Address is -  
The Dy. Collector (Land Acquisition)  
& Sub Divisional Officer,  
Sub Divisional Office, Kannad,  
Tal. Kannad, Dist. Aurangabad

2. The Executive Engineer  
Minor Irrigation (Local Sector)  
Aurangabad

... **Respondents**

....

Mr. N. J. Pahune Patil, Advocate for appellants  
Mr. S. N. Kendre, AGP for respondents State

....

**CORAM : R. G. AVACHAT, J.**

**RESERVED ON : 20<sup>th</sup> DECEMBER, 2021**

**PRONOUNCED ON : 01<sup>st</sup> APRIL, 2022**

**ORDER :-**

. This is an appeal under Section 54 of the Land Acquisition Act, 1894 (for short, 'the Act').

The challenge herein is to the judgment and award dated 06.09.2013, passed by the 3<sup>rd</sup> Joint Civil Judge, Senior Division, Aurangabad in Land Acquisition Reference (L.A.R.) No.435 of 2004, granting enhancement of compensation. Feeling to have not been adequately compensated, the present appeal has been preferred for further enhancement in the amount of compensation.

2. Facts giving rise to the present appeal are as under:

The agricultural land admeasuring 77 Are in Gut No.415, situated at village Takli Waghdara, Taluka Khultabad, District Aurangabad, was acquired for construction of percolation tank. The acquired land belonged to the appellant. Notification under Section 4 of the Act was published on 11.03.1999. The award came to be passed on 22.10.2002. The Land Acquisition Officer (L.A.O.) awarded compensation at the rate of Rs.545/- per Are. The Reference Court enhanced it to Rs.1050/-. The Land Acquisition Officer offered compensation considering it to be a dry land. The appellants claimed the acquired land to have been perennially

irrigated. They have, therefore, prayed for grant of compensation at the rate not less than Rs.2,000/- per *Are*.

3. The learned Advocate for the appellants would submit that the 7/12 extract of the land was placed on record. There is entry therein indicating existence of a way. It has now been recognised proposition that compensation for acquisition or irrigated land has to be at a rate double the market price of unirrigated land. A sale instance dated 02.01.1997 was placed on record. The same indicate that the land admeasuring 1 Hectare 21 *Are* was sold for Rs.97,000/- i.e. at the rate of Rs.801/- per *Are*. Since the notification under Section 4 of the Act was published two years after the sale instance, there has to be addition in price of the land at the rate 10% p.a. By such rise, the rate would come to Rs.969/- per *Are*. The appellants, therefore, would be entitled for compensation at least the rate of Rs.969/- per *Are*. The learned Advocate therefore urged for allowing the appeal in toto.

4. The learned AGP would on the other hand submit that the land acquired was unirrigated. A just and reasonable compensation was in fact offered by the Land Acquisition Officer.

The appellants should have been content with the enhancement granted by the reference Court. The learned AGP supports the impugned judgment and award.

5. Considered the submissions advanced. Perused the evidence relied on. Gone through the impugned judgment and award.

The land in Gut No.415 admeasured 3 Hectare 47 *Ares* only 77 *Are* thereof was acquired for construction of percolation tank. The acquired land belonged to the appellants. The Land Acquisition Officer after having paid visit to the land, considered it to be unirrigated and offered compensation at the rate Rs.545/- per *Are*. The reference Court enhanced it to Rs.1050/-. The appellant claimed it to be perennially irrigated land. 7/12 extract of the land Gut No.415 is on record. There is entry indicating existence of well therein. 7/12 extract is for the year 2005-2006. The Court is required to consider status of the land as on the date of Section 4 notification i.e. 10.05.1999. The sale instance dated 02.01.1997 was relied on to indicate the land admeasuring 1 Hectare 21 *Are* (121 *Are*) was sold for Rs.97,000/-. From the recitals of the sale-deed, it doesn't indicate the quality of land. The reference Court considered

it as unirrigated land. The appellants claimed it to be perennially irrigated land. The 7/12 extract of the land comprised in the sale instance was not placed on record.

It is evident from the 7/12 extract of the land Gut No.415 that crops like sugarcane, cotton etc., are being raised. This Court is therefore inclined to consider the acquired land to have at least been seasonally irrigated and proposed to enhance the compensation to the rate of Rs.1,400/- per *Are*.

6. Needless to mention the appellants have restricted their claim in appeal to Rs.1,500/- per *Are*. True, compensation more than one claimed may be granted, provided a case therefore is made out. In the fitness of things, this Court is inclined to allow the appeal partly in terms of the following order.

### **ORDER**

- (i) The appeal is partly allowed, enhancing the amount of compensation to Rs.1,400/- per *Are*.
- (ii) Rest of the terms of the impugned award to stand unaltered.

[ R. G. AVACHAT, J. ]