

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

FIRST APPEAL NO.140 OF 2021

1. Uttam Raghunath Patil,
Age:57 years, Occ. Agri.,
2. Bhausahab Raghunath Patil,
Age : 52 years, Occ. Agri.,

Both r/o. Bhamre, Tq. Chalisgaon,
Dist. Jalgaon

..Appellants

Vs.

1. Special Land Acquisition Officer,
M.I.W. Jalgaon
2. Executive Engineer,
Minor Irrigation Division,
Jalgaon

..Respondents

Mr.V.S.Khairnar and Mr.G.N.Kulkarni, Advocates for appellants
Mr.S.N.Morampalle, AGP for respondent no.1
Mr.S.R.Patil, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
RESERVED ON : OCTOBER 13, 2021
PRONOUNCED ON : APRIL 18, 2022**

ORDER :-

This is an appeal under Section 54 of the Land Acquisition Act, 1894 ("Act of 1894", for short). The challenge herein is to the judgment and order dated 10.01.2012 passed by learned Civil Judge, Senior Division, Jalgaon, in Land Acquisition Reference (LAR) No.945 of

2005, whereby the amount of compensation in respect of the land acquired came to be enhanced to Rs.75,000/- per hectare for Jirayat land and Rs.10,000/- per hectare for Potkharab land (uncultivated land). Having not been satisfied with the enhancement of the compensation, the original land owners have preferred present appeal.

2. The facts, giving rise to the present appeal, are as follows:-

The land ad-measuring 1 H 54 R in Gut Nos.83 and 84, situated at village Bhamre Bk. each with Potkharab land ad-measuring 0.06 R and 0.07 R, respectively, came to be acquired for minor irrigation project at village Sarve Khajole, Dist. Jalgaon. Notification under Section 4 of the Act was published in official gazette on 05.09.1996. Award under Section 11 of the Act of 1894 was passed on 17.04.1998.

3. Heard learned counsel for the parties.

4. Learned counsel for the appellants – land owners would submit that it was the claim of the appellants – land owners that the lands were perennially irrigated. There was a well in the land gut

no.83. Two sale instances (Exhs.13 and 14) were relied on. Without assigning cogent reasons, the Reference Court discarded the sale instance (Exh.14), whereunder 1 H land was sold for Rs.88,000/-. Learned counsel would submit that in a group of LARs decided on 28.09.2000, compensation was awarded at the rate of Rs.1,25,000/- per hectare for unirrigated land, whereas, for irrigated land the rate awarded was Rs.2,50,000/- per hectare. The appellants are, thus, entitled for enhancement of compensation equal to that of granted vide the judgment and award dated 28.09.2000 passed in LAR No.590 of 1999 and connected matters.

5. Learned AGP for the respondent-State and learned counsel for the acquired body would, on the other hand, submit that the Reference Court had granted compensation equal to that of one claimed in the reference itself. The lands were unirrigated. In the reference application, there is no mention of existence of well. 7/12 extract of both the lands indicate that the crops raised were Jirayat crop. According to learned counsel, the amount of compensation awarded by the Reference Court was, in fact, more than the market price of the land acquired. Both of them, therefore, urged for dismissal of the appeal.

6. Considered the submissions advanced. Perused the evidence relied on and the authorities placed on record.

7. Admittedly, the land ad-measuring 1 H 60 R (1 H 54 R plus 6 R Potkharaba) and the land ad-measuring 1 H 61 R (1 H 54 R plus 7 R Potkharaba) in Gut Nos.84 and 85, respectively, were acquired for minor irrigation project at village Sarve Khajole, Dist. Jalgaon. Notification under Section 4 of Act of 1894 was published in September, 1996. The award was passed on 17.04.1998. The Land Acquisition Officer awarded compensation considering both the lands to be unirrigated. The appellants, therefore, preferred the Land Acquisition Reference under Section 18 of Act of 1894. Perusal of the reference, undoubtedly, indicates that there is no mention of existence of a well in any of these two lands. Admittedly, the appellants were served with various statutory notices required to be issued during acquisition proceedings. It appears that to none of these notices, the appellants raised any objection for considering the land to be unirrigated. In the reference application itself, the appellants claimed compensation at the rate of Rs.75,000/- per hectare for Jirayat land and Rs.10,000/- per hectare for Potkharaba

land. The Reference Court, relying on this demand, granted the same. If, however, we peruse clause (3) of the reference application, it speaks of a claim of the claimants in addition to the compensation awarded by the Land Acquisition Officer. Under that column, the claim was made for Rs.75,000/- per hectare. This is, therefore, to be taken as a claim in addition to and/or over and above what was granted by the Land Acquisition Officer. Be that as it may.

8. 7/12 extract of the lands acquired are on record. In land gut no.83, existence of a well is shown. The appellants, in oral evidence, reiterated the same. However, there is no well in the land gut no.84. The crops taken in both these lands indicate to be unirrigated crops. Exhibit-20 is a copy of the judgment and award passed in a group of references arising out of acquisition of the lands from the very village and for the very purpose under the same acquisition proceedings. The Reference Court granted compensation at the rate of Rs.1,25,000/- per hectare for Jirayat land and Rs.2,50,000/- per hectare for irrigated land. On the principle of parity, the appellants-land owners are, therefore, entitled to compensation at the same rate. It is observed that the land gut no.83 is only treated to be irrigated land in view of existence of a

well therein. For want of cogent and reliable evidence, it cannot be observed that the land in gut no.84 was irrigated on the water of the well in land gut no.83. The crop pattern negates the claim of the appellants. Before the reference court itself, the appellants-land owners had relied on the common judgment in a group of LARs. The Reference Court ought to have enhanced the compensation equal to that of granted in said group of LARs.

9. Since those appeals were allowed on the ground of parity and the claim based on the sale instances (Exh.13 and 14) being lesser than one granted in the group of LARs, same are not taken into consideration. It has, however, to be observed that the sale instance (Exh.13) is of the year 1993, whereunder, 1 H 25 R unirrigated land was sold for Rs.88,000/-; whereas, the sale instance (Exh.14) pertain to the land from the very village itself namely, Bhamre Khurd. There is evidence to suggest that the sale instances from the vary village, Bhamre Bk., was very much available for being relied on. The sale instance (Exh.14) is, therefore, not relied on.

10. For the reasons herein above, the appeal is partly allowed in terms of the following order:-

- (i) The amount of compensation granted by the Reference Court under the impugned award in respect of land gut no.83 is enhanced to Rs.2,50,000/- per hectare, except for Potkharaba land.
- (ii) The amount of compensation granted by the Reference Court under the impugned award in respect of land gut no.84 is enhanced to Rs.1,25,000/- per hectare, except for Potkharaba land.
- (iii) The rate of compensation in respect of Potkharaba land to stand unaltered.
- (iv) Rest of the terms of the impugned award also to stand unaltered.
- (v) Interest on the enhanced amount of compensation shall be awarded from the date of the award, provided the appellants shall not be entitled for interest and any other monetary benefits for the period from the date of the impugned judgment and award to the date of registration of the present appeal, since there was delay of little over seven years in preferring the present appeal.

[R.G.AVACHAT, J.]