

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

FIRST APPEAL NO.3678 OF 2018

**VINAYAKRAO MADHAVRAO DESHMUKH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr. N.J. Pahune Patile, Advocate for the Appellants
Mr. P.M. Kulkarni, AGP for Respondent Nos.1 and 2
Mr. P.S. Shinde, Advocate for Respondent No.3

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CORAM : SHRIKANT D. KULKARNI, J.

DATE : 15th MARCH, 2022

FINAL ORDER:-

1. Heard finally at admission stage, with the consent of both the sides.
2. This appeal is directed against the impugned judgment and award passed in L.A.R. No.632 of 2010 (Old L.A.R. No. 870/2007) by 3rd Joint Civil Judge, Senior Division, Jalna. The center of controversy in the appeal revolves around the nature of the acquired land. The reference Court has determined the acquired land under the category of *Jirayat* land. According to the contention of the appellants / claimants, the acquired land was *Bagayat* land on the basis of well and pipeline situated in the said acquired land.

3. Heard Mr. N.J. Pahune Patil, learned counsel for the appellants / claimants, Mr. P.S. Shinde, learned counsel for respondent no.3 / acquiring body and Mr. P.M. Kulkarni, learned AGP for respondent nos. 1 and 2.

4. Mr. Pahune Patil, learned counsel for the appellants / claimants seeks leave to place on record 'Statement-E'.

5. Leave granted. The copy of 'Statement-E' is taken on record and marked as 'X' for identification.

6. Mr. Pahune Patil, learned counsel for the appellants / claimants invited my attention to page no. 117 of the Statement-E, which relates to the valuation of the well. He pointed out that at Sr. No. 250, the name of claimant Vinayk Madhavrao finds place. The S.L.A.O. has determined valuation of the well at Rs. 43,775/- + Solatium, interest and total compensation determined at Rs. 77,488/-. He also invited my attention to page no. 123 of Statement-E, relating to valuation of pipeline. He pointed out that at Sr. No. 250, the name of Vinayak Madhavrao appears and the acquiring body has paid compensation of Rs.6,958/- towards the valuation of pipeline, which was existing in the acquired land. By taking help of the above said material, Mr. Pahune Patil

vehemently submitted that the acquired land was *Bagayat* land. There was well in the acquired land and the pipeline was constructed therein, whereby Gat number was irrigated. The reference Court has committed an error in classifying the acquired land in the category of *Jirayat* land, which has resulted in granting inadequate compensation. He submitted that the reference Court has awarded compensation in respect of the acquired land at the rate of Rs.2,000/- per R by making category under the dry land. He submitted that the compensation needs to be doubled and accordingly the rate of compensation may be awarded at Rs.4,000/- per R. He, therefore, urged to allow the appeal.

7. Mr. PM. Kulkarni, learned AGP for respondent nos. 1 and 2 and Mr. PS. Shinde, learned counsel for respondent no.3 / acquiring body have strongly opposed to allow this appeal. They submitted that there is no *iota* of evidence before the reference Court to treat the acquired land as *Bagayat* land. No issue was framed by the reference Court for awarding compensation under the head of well and pipeline. In absence of any evidence and in absence of issue, compensation cannot be awarded. Both of them urged to dismiss the appeal. Mr. PS. Shinde, learned counsel for

respondent no.3 / acquiring body in the alternate submitted that the matter may be remanded back to the reference Court.

8. It is not in dispute that the land admeasuring 1 H 74 R along with well, pipeline and fruit trees belonging to the appellants / claimants came to be acquired for the construction of irrigation project. The notification under Section 4 of the Land Acquisition Act, came to be published on 18.12.1997. The possession of the acquired land was taken by the acquiring body on 15.09.1998 i.e. after the notification under Section 4, but before passing of the award. The Special Land Acquisition Officer has passed the final award in Land Acquisition file no. CR-11/96 on 19.11.2001. The Special Land Acquisition Officer seems to have awarded the compensation in respect of the acquired land at the rate of Rs. 666/- per R.

9. In the above background, I have considered the submissions advanced by both the sides. On perusing the award and Statement-E, it is evident that there was well in the acquired land belonging to the claimant Vinayak Madhavrao Deshmukh. The S.L.A.O. has awarded compensation in respect of well at Rs. 77,488/-. It is not enough, the S.L.A.O. seems to have awarded

compensation in respect of the pipeline, which was laid in acquired land. The S.L.A.O. has awarded the compensation in respect of pipeline at Rs. 6,958/-. On perusing the examination in chief on affidavit of the claimant, more particularly para 1, it is evident that the claimant had stated about the existence of the well and pipeline in his Gat no. 250, which came to be acquired. The oral evidence of the claimant is also well supported by the documentary evidence. The same picture finds place in 7/12 extract of the acquired land. On perusing the same, it is evident that the entry of well existing in the acquired land of the claimant Vinayak Madhavrao Deshmukh. It seems to be his independent well. As per the statement of claimant, there was pipeline in the acquired land. Only because nature of crops were falling in the category of non-irrigated, it does not mean that the acquired land was non-irrigated land. It is the choice of the land owner which crops he should take.

10. The 7/12 extract placed on record by the claimant vide Exhibit 13, reveals that there was well in the acquired land belonging to the claimant Vinayak Madhavrao Deshmukh. There was a pipeline to irrigate the acquired land. As such, the finding recorded by the reference Court classifying the acquired land as

dry land is certainly improper and incorrect. The learned reference Court seems to have not taken pains to go through the 7/12 extract and copy of the Statement-E and arrived at incorrect conclusion. The appellants / claimants ought to have received the compensation in respect of their acquired land by treating the acquired land as irrigated land / *Bagayat* land.

11. It is well settled position of law that irrigated land / *Bagayat* land would get a double rate of compensation in comparison to the dry land / non-irrigated land. Mr. Pahune Patil, learned counsel for the appellants / claimants has placed his reliance on the following stock of citations.

(i) ***State of Maharashtra and another Vs. Baliram Girdhar Patil*** reported in ***2006(6) Mh.L.J. 82***,

(ii) ***Chindha Fakira Patil (D) through L.Rs. Vs. The Special Land Acquisition Officer, Jalgaon*** reported in ***AIR 2012 SC 481***,

(iii) ***Rama Nagu Gayakwad (D) thr. L.Rs. and another Vs. The State of Maharashtra***, reported in 217 (2) ***ALL MR 338*** (Aurangabad Bench).

(iv) ***The Administrator Vs. Padmakar Haribhau Muley and ors.*** reported in ***2020 (4) ALL MR 384***.

12. I have gone through the above referred citations relied upon by Mr. Pahune Patil, learned counsel for the appellants / claimants. In case of *State of Maharashtra and another Vs. Baliram Girdhar Patil* (supra), it is held by this Court (Bench at Aurangabad) as under.

“Broadly speaking, the market price of the agricultural lands can be considered on the basis of nature of the land whether an irrigated land or non-irrigated land/dry crop/jirayat land and its productivity. So far as the irrigation is concerned, it may be seasonal or perennial source of water to the land concerned. Apart from these two categories/classes of lands, potkharaba land/non-cultivable land can be considered by the Special Land Acquisition Officer while determining the market value of the land concerned. For classification, the quality, fertility with other factors of jirayat land can be considered. However, it does not stand to a reason as to how the assessment of land can be made a basis for grouping of the agricultural lands. Here one more aspect requires consideration. Use of the manure, chemical or otherwise, is the order of the day. Such use of the manure undoubtedly improves the fertility of the agricultural land. In my view, therefore, grouping of lands made by the Special Land Acquisition Officer on the basis of assessment and

accepted by the Reference Court is not legal, proper and in accordance with the provisions of law.”

13. It is further held by this Court that the market price of the irrigated / *Bagayat* land would be double than market rate of dry land / *Jirayat* land. The same view find place in case of ***Rama Nagu Gayakwad (D) thr. L.Rs. and another Vs. The State of Maharashtra*** (supra).

14. Having regard to the legal position made clear by this Court referred above, the appellants / claimants are entitled to get compensation of the acquired land by classifying it under the category of *Bagayat* land / irrigated land when well irrigation facility with pipeline was available. The reference Court seems to have committed an error while recording the finding. That finding needs to be corrected at the hands of this Court while deciding the appeal. The claimants / appellants are entitled to get compensation of the acquired land at the rate of Rs.4,000/- per R along with statutory benefits available under the Land Acquisition Act, 1894. In the result, the appeal needs to be allowed.

ORDER

(i) The appeal stands allowed and the impugned judgment and award passed in L.A.R. No.632 of 2010 (Old L.A.R. No. 870/2007) is modified as under.

(a) The appellants / claimants shall be entitled to get compensation of the acquired land at the rate of Rs. 4,000/- per R along with statutory benefits available under the Land Acquisition Act, 1894.

(b) The appellants / claimants are entitled to get interest under Sections 28 and 34 of the Land Acquisition Act, 1894 in view of Full Bench decision of this Court in case of ***State of Maharashtra Vs Kailash Shiva Rangari*** reported in ***2016 (4) ALL MR 513***.

(ii) Award be modified accordingly.

(iii) No order as to the costs.

(iv) The first appeal is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane