

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3338 OF 2018

Jagan s/o Vishwanath Wagh,
Age : 42 years, Occu : Agril.,
R/o : At Dadeadgaon Post. Ramgavan,
Taluka : Ambad, District Jalna.

...Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through the Collector, Jalna.
2. The Special Land Acquisition Officer,
Minor Irrigation Work) Jalna,
(At Present: Office of Sub Divisional Officer,
Ambad @ Special Land Acquisition Officer,
Ambad, District: Jalna.
3. The Executive Engineer,
Zilla Parishad, Jalna.

...Respondents
(Orig. Respondents)

Mr A.H. Koralkar Advocate for Appellant
Mr B.V. Virdhe, AGP for Respondent Nos.1 and 2
Mr S.S. Tope, Advocate for respondent No. 3

AND
FIRST APPEAL NO. 3339 OF 2018

Dynoba s/o Abaji Polkale,
Age : 61 years, Occu : Agril.,
R/o : At Dadeadgaon Post. Ramgavan,
Taluka : Ambad, District Jalna.

...Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through the Collector, Jalna.

2. The Special Land Acquisition Officer,
Minor Irrigation Work) Jalna,
(At Present: Office of Sub Divisional Officer,
Ambad @ Special Land Acquisition Officer,
Ambad, District: Jalna.

3. The Executive Engineer,
Zilla Parishad, Jalna.

...Respondents
(Orig. Respondents)

Mr A.H. Koralkar Advocate for Appellant
Mr B.V. Virdhe, AGP for Respondent Nos.1 and 2
Mr S.S. Tope, Advocate for respondent No. 3

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 28.10.2021

PRONOUNCED ON : 09.02.2022

JUDGMENT :

1. Heard finally at admission stage with consent of both the sides.
2. Feeling aggrieved by the impugned Judgment and Award passed in LAR No. 175/2004 and 181/2004 by the reference Court/ District Judge-3 at Jalna, the original claimants have preferred these appeals seeking enhancement of compensation mainly on the ground of parity.

Sr. No.	First Appeal No.	Name of the appellants	Land Acquired
01.	3338/2018	Jagan vishwanath Wagh LAR No. 175/2004	54 R out of Gut No. 73 situated at village Ramgavan, Tal. Ambad, Dist. Jalna.
02.	3339/2018	Dynoba Abaji Polkale LAR No. 181/2004	1 H and 50 R from Land Gut No. 73 situated at village Ramgavan, Tal. Ambad, Dist. Jalna.

3. The above said lands of the respective appellants came to be acquired for the purpose of Ramgavan Project at village Ramgavan, Tal. Ambad, Dist. Jalna. The notification under section 4 of the Land Acquisition Act came to be issued on 06.05.1999 and it was published in the gazette. The Land Acquisition Officer passed the Award on 24.03.2000.

4. Feeling aggrieved by the amount of compensation determined by the Land Acquisition Officer, the appellants/original claimants had preferred the reference under section 18 of the Land Acquisition Act, 1894 before the reference Court. Both the references came to be dismissed at the hands of the reference Court.

5. In the above background, the appellants/original claimants have knocked the doors of this Court by preferring respective appeals.

6. Heard Mr A.H. Koralkar, learned counsel for the appellants, Mr B.V. Virdhe, learned AGP for respondent Nos. 1 and 2 and Mr S.S. Tope, learned counsel for respondent No. 3 at length.

7. Mr Koralkar, learned counsel for the appellants invited my attention to the copy of Judgment and Award passed in LAR No. 183/2004 by the reference Court with connected LAR Nos. 1800/2010 and 2641/2010. He pointed out that the reference Court was pleased to allow the land references arising out of same village which are acquired under the same notification and same project by awarding compensation @ Rs. 1000/- per R for Girayat land in LAR No. 183/2004, 1800/2010 and

2641/2010. He submitted that the same treatment needs to be given to the references filed by the respective appellants/claimants when their lands came to be acquired for the same project and under same notification. Mr Koralkar, learned counsel submitted that the reference Court has committed an error in dismissing both the references. He pointed out that the learned reference Court has relied upon the same evidence which is produced by the appellants whereby reference Court was pleased to enhance the compensation @ Rs. 1,000/- per R. in LAR No. 183/2004. The appellant is entitled to get the same market value. There was no reason for the reference Court to take a different view when the reference Court was pleased to allow sister land references arising from same notification and award. He submitted that the Rule of parity comes into picture. He submitted that both the appeals need to be allowed by applying rule of parity.

8. Mr Koralkar, learned counsel for the appellants has placed his reliance on following citations :-

- (i) ***Bhagwan Bapusaheb Bhosale (deceased) through Lrs. Vs. State of Maharashtra reported in [1995 LAC 9 (Bom)].***
- (ii) ***Mohd. Mustak Mohamad Ismail Vs. Special Land Acquisition Officer, Collector Office, Amravati and others (First Appeal No. 164/2006 decided on 14.06.2017) Bench at Nagpur.***
- (iii) ***Hanmabai w/o Iranna Patil (deceased – Through her LR's) Dattatraya s/o Iranna Patil Vs. State of Maharashtra and another reported in 2009 (4) Mh.L.J. 805.***

9. Mr B.V. Virdhe, learned AGP for respondent Nos. 1 and 2/State supported to the impugned Judgment and Award passed by the reference Court in respective LARs. He submitted that the reference Court has rightly dismissed both the land acquisition references by assigning cogent reasons. There is no need to interfere with the decision rendered by the reference Court in both the matters. There is no merit in the appeals.

10. Mr S.S. Tope, learned counsel for respondent No. 3 also supported to the impugned Judgment and Award passed by the reference Court in respective LARs. He submitted that the appellants are not entitled to get compensation on the ground of parity. Mr Tope, learned counsel for respondent No. 3 submitted that the market value determined in respect of small parcels of lands cannot be equalized with the market value of large extent of lands. He submitted that only because of lands situated in the same village or same area with different potentialities will not command the same market value. He submitted that there is no hard and fast rule of parity or equality in determining the market value in respect of similar lands shall be followed even though the lands of the same location are acquired under same notification. Mr Tope, learned counsel submitted that the view taken by the reference Court while dismissing both the references cannot be interfered in absence of any cogent material. He urged to uphold the decision rendered by the reference Court in both the LARs.

11. Mr Tope, learned counsel for respondent No. 3 has placed reliance on following citations to support his submissions :-

- (i) ***Sub-Collector, Lao, Vijayawada Vs. Koppiseti Appala Narasamma reported in 1999 (6) ALD 651***
- (ii) ***Dharam Pal Vs. State of U.P. (First Appeal No. 302/2008 decided on 07.03.2019),***

12. Having regard to the submissions of learned counsel for the respective sides, I have gone through the impugned Judgment and Award passed in LAR Nos. 181/2004 and 175/2004. I have also gone through the copies of the Judgments passed in land acquisition reference Nos. 183/2004, 1800/2010 and 2641/2010 by the reference Court.

13. There is no dispute that the lands of respective appellants came to be acquired for the purpose of Ramgavan project at Ramgavan, Tal. Ambad, Dist. Jalna. The learned reference Court was pleased to dismiss the LAR No. 175/2004 and 181/2004 vide Judgment and Award dated 29.10.2010. It is noticed by me that the same reference Court was pleased to partly allow LAR No. 183/2004 vide Judgment and Award dated 22.12.2010.

14. On perusing the Judgment passed in LAR No. 183/2004 dated 22.12.2010, it is noticed that the reference Court was pleased to award compensation to the acquired land @ Rs.1000/- per R for Girayat land. The land involved in LAR No. 183/2004 was also acquired for the same project and under the same notification. In LAR No. 1800/2010 (Old LAR No. 182/2004) and LAR No. 2641/2010 (Old LAR No. 170/2004), the reference Court was pleased to grant compensation @ Rs.1000/- per R. The question comes why the reference Court has taken a different view and dismissed both the LARs.

15. On perusing the impugned Judgment more particularly, para Nos. 5 and 6, it is noticed that the learned reference Court has observed that no reliable and cogent evidence is placed on record by the claimants to show actual market price of the acquired land at the relevant point of time. The claimants have failed to prove that at the relevant point of time, the market value of the acquired land was in the range of Rs. 1500/- to Rs.2000/-.

16. Resultantly, both the references preferred by the respective claimants came to be dismissed practically on the same ground. However, the learned reference Court was pleased to partly allow LAR No. 183/2004 by awarding compensation @ Rs. 1000/- per R in respect of Girayat land/dry land. The approach of the learned reference Court by making discrimination is improper. Why different treatment is given by the reference Court to the proceedings of LAR No. 175/2004 and 181/2004 by dismissing the claimants. The same reference Court has allowed LAR No.183/2004 and subsequent reference Court has allowed LAR Nos. 1800/2010 and 2641/2010 in respect of the acquired land for the same project and same notification. The law on rule of parity in respect of awarding compensation in respect of acquired lands is well settled.

17. In case of ***Bhagwan Bapusaheb Bhosale (deceased) through Lrs. Vs. State of Maharashtra*** (*supra*), it is held by the Division Bench of this Court, in a reference for enhancement of compensation under section 18 of the Land Acquisition Act, 1894 that when Civil Court has awarded compensation in respect of the ten adjoining lands, it cannot

deny the enhancement benefits to the adjoining land holder.

18. In case of ***Mohd. Mustak Mohamad Ismail Vs. Special Land Acquisition Officer, Collector Office, Amravati and others*** (supra), it is held by this Court Bench at Nagpur that when the other land owners whose land is acquired for the same purpose under same award got enhanced amount of compensation as per the correct market value, the appellant should get enhanced compensation as per the correct market value even if he has not claimed in appeal. Land owner should get actual market value of land acquired and no technicalities should come in his way in getting actual market value.

19. In case of ***Ambya Kalya Mhatre (dead) through Lrs. and other Vs. State of Maharashtra reported in 2012 (1) Mh.L.J. 9***, it is held by the Apex Court that even in the absence of any reference or amendment made in the reference petition, claiming enhancement of compensation, the Court can award such enhanced amount of compensation, if it is awarded to other claimants whose lands were acquired from the same village and under the same award. In ***Hanmabai w/o Iranna Patil (deceased – Through her LR's) Dattatraya s/o Iranna Patil Vs. State of Maharashtra and another*** (supra), it is held by this Court, Bench at Aurangabad that lands acquired for same project under common Notification, claimants would be entitled to get compensation at same rate on ground of parity.

20. Having regard to the above said stock of citations, the legal position is very much clear. The land owner should get actual market

value of the land acquired and no technicalities should come in his way in getting actual market value. The claimant is entitled to get benefits of the provisions of this beneficial piece of legislation. The claimants would be entitled to get compensation at same rate by applying rule of parity.

21. I have also gone through the citation in case of ***Sub-Collector, Lao, Vijayawada Vs. Koppiseti Appala Narasamma reported in 1999 (6) ALD 651***, wherein it is held that there is no hard and fast rule that parity or equality in determining the market value in respect of similar lands shall be followed even though lands of the same location are acquired under same notification.

22. In case of ***Dharam Pal Vs. State of U.P. (First Appeal No. 302/2008 decided on 07.03.2019)***, it is held that the compensation cannot be determined by blindly following the previous award/judgment. It has to be considered only a piece of evidence and not beyond that. The Court has to apply the judicial mind and is supposed not to follow the previous awards without due consideration of the facts and circumstances and evidence adduced in the case in question. The current value reflected by comparable sale deeds is more reliable and binding for determination of compensation in such cases award/judgment relating to an acquisition made before 5 to 10 years cannot form the safe basis for determining compensation. The previous awards/Judgments are only basis of evidence at par with comparative sale transactions.

23. It is necessary to follow the Division Bench decision of this Court in case of ***Bhagwan Bapusaheb Bhosale (deceased) through***

Lrs. Vs. State of Maharashtra (*supra*) as well as decision of Single Bench in case of **Mohd. Mustak Mohamad Ismail Vs. Special Land Acquisition Officer, Collector Office, Amravati and others and Hanmabai w/o Iranna Patil (deceased – Through her LR's) Dattatraya s/o Iranna Patil Vs. State of Maharashtra and another** (*supra*) to apply rule of parity.

24. The appellants are entitled to get compensation @ Rs.1000/- per R in respect of their acquired lands by applying rule of parity.

25. The view taken by the learned reference Court while dismissing the references is found improper, incorrect and illegal having regard to the decision of Division Bench of this Court in case of **Bhagwan Bapusaheb Bhosale (deceased) through Lrs. Vs. State of Maharashtra**. The claim of enhancement of compensation filed by the respective appellants/original claimants cannot be denied when the reference Court has allowed the claim of enhancement in respect of adjoining lands which were acquired for the same project and under the same notification.

26. The appeals need to be allowed.

ORDER

- (i) First Appeal No. 3338/2018 preferred by Jagan Vishwanath Wagh and First Appeal No. 3339/2018 preferred by Dynoba Abaji Polkale are hereby allowed.
- (ii) The impugned Judgment and Award passed in LAR Nos. 175/2004 and LAR No. 181/2004 by the reference Court/District Judge-3 at Jalna are hereby quashed and set aside.

- (iii) The appellants/original claimants are entitled to get compensation in respect of their acquired lands stated in para No. 2 @ Rs. 1000/- per R along with all the statutory benefits and interest over the enhanced amount of compensation. However, the appellants shall not be entitled to get interest in respect of delayed period in prosecuting the appeals.
- (iv) No order as to costs.
- (v) The Award be drawn up accordingly.
- (vi) The appeals are accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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