

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 783 OF 2004

1. Ranga Rama Gaikwad (died)
Through LR's,
- 1-A) Babruwan Ranga Gaikwad,
Age : 50 years, Occu. : Agriculture,
- 1-B) Dilip Ranga Gaikwad,
Age : 52 years, Occu. : Agriculture,
both R/o. : village Samdarga,
Tq. Ausa, Dist. Latur
- ... Appellants**

VERSUS

The State of Maharashtra,
Through Collector, Latur,

... Respondent

...

Mr. C.C. Despande – Advocate for Appellants
Mr. B.V. Virdhe – AGP for Respondent, State

....

CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 2nd February, 2023
PRONOUNCED ON : 30th March, 2023

JUDGMENT :

1. The appellant – Ranga Rama Gaikwad, who was original claimant has filed this appeal challenging the judgment and award dated 5th July, 2001 passed by the Joint District Judge, Latur (hereinafter referred to as “*the learned Reference Court*”) in L.A.R. No. 418 of 1993 on the ground of quantum. During the pendency

of this appeal, the appellant/original appellant – Ranga Rama Gaikwad died and his legal representatives, who are the present appellant Nos.1-A and 1-B are brought on record.

2. The backgrounds facts of the case are as under :

The appellants are agriculturist and resident of village Samdarga, Tq. Ausa, Dist. Latur. Their agricultural land bearing survey No. 57, Block No. 352 situated at Samdarga village, Tq. Ausa, Dist. Latur, had been acquired to the extent of 5 Acres and 4 Gunthas for the purpose of percolation tank of the said village by the State acquiring body i.e. present sole respondent. On 10th November, 1987 the notification under Section 4 of the Land Acquisition Act was published and possession of that land was taken by the State acquiring body in the year 1989. The Land Acquisition Officer, Latur passed an award and granted the compensation to the original claimant at the rate of Rs.8,400/- per acre equivalent to Rs.21,000/- per hectare. Thereafter, the original claimant had filed aforesaid land Reference under Section 18 of the Land Acquisition Act. On 5th July, 2001 the learned Reference Court enhanced the aforesaid compensation at the rate of Rs.45,000/- per hectare equivalent to Rs.18,000/- per acre against

the claim of original appellant of Rs.40,000/- per acre. Hence, this appeal is filed for claiming the compensation at the rate of Rs.40,000/- per acre.

3. Learned counsel for the appellants/claimants submits that, the compensation awarded by the learned Reference Court is not proper mainly because it did not consider the comparable sale instance at Exhibit – 21 i.e. sale-deed dated 9th October, 1986 in respect of land admeasuring 24 Gunthas sold for the consideration of Rs.15,000/-. As such, he pointed out that the market price of the land in the vicinity of village Samdarga was Rs.25,000/- per acre but the same was not considered by the learned Reference Court. Further, according to him the original appellant was taking crops like Jowar, Wheat, etc., in the acquired land and getting annual income of Rs.15,000/- but this fact also not considered by the learned Reference Court and treated the land under acquisition as Jirayat land. He further pointed out that, the acquired land of appellants was at a distance of 5 Kilometers from Tq. Ausa and it was adjacent to Latur – Osmanabad highway, but these aspects are also not considered by the learned Reference Court.

4. On the contrary the learned A.G.P. strongly opposed the submissions made on behalf of the appellants and supported the impugned judgment. According to him, the learned Reference Court has properly appreciated the material on record and rightly decided the compensation rate to the tune of Rs.18,000/- per acre. He pointed out that, there was no evidence adduced by the appellants to show that their land was Bagayat land. On the contrary, the crops which were being taken by the appellants in the acquired land indicate that, it was Jirayat land. Further, he also pointed out that, no evidence was adduced by the appellants to show that their land was adjacent to Latur – Osmanabad highway. With these submissions he prayed for dismissal of the appeal. The learned A.G.P. also relied on the following judgments :

- (a) **Special Land Acquisition Officer, M.I.W., Jalgaon Vs. Chindha Fakira Patil (deceased) Heirs Dharma Chindha Patil reported in 2007(2) Mh.L.J.**
- (b) **Special Land Acquisition Officer (III), Jalgaon and Anr. Vs. Bhagwat Vithal Sonwane reported in 2009(4) Mh.L.J.**
- (c) **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona reported in 1988(2) R.R.R. 136 : 1988 AIR (Supreme Court) 1652**
- (d) **Ranvir Singh and Anr. Vs. Union of India reported in AIR 2005 SUPREME COURT 3467**
- (e) **State of Maharashtra Vs. Bhaskar Namdeo Wagh and Ors., reported in 2008(6) ALL MR 555**

(f) **Navanath and Ors. Vs. State of Maharashtra reported in (2009) 14 SCC 480.**

5. Heard rival submissions and also perused the impugned judgment along-with the record and proceedings of the original land Reference.

6. Admittedly, the Special Land Acquisition Officer has given rate of Rs.8,400/- per acre in his award whereas, the learned Reference Court has enhanced the same by granting Rs.18,000/- per acre. It is significant to note that, the appellant/original claimant had in fact demanded compensation at the rate of Rs.40,000/- per acre. The Hon'ble Supreme Court in the case of **Navanath and Ors. Vs. State of Maharashtra** (*supra*) has given list of factors to be considered for determination of compensation and the same are as follows :

- i) nature and quality of land, whether irrigated or non-irrigated
- ii) facilities for irrigation like existence of well, etc.
- iii) presence of fruit bearing trees
- iv) location of the land
- v) closeness to any road or highway
- vi) evenness thereof whether there exist any building or structure

7. It is also observed by the Hon'ble Apex Court in the said judgment that the High Court merely on conjectures and surmises cannot interfere with the compensation granted by the learned Reference Court and, re-determine the value since, each case must be considered on its own facts. Further, this court in the case of **Special Land Acquisition Officer M.J.W., Jalgaon Vs. Chindha Fakira Patil** (*supra*) has observed that, burden of proof of material that will led court to determine the market price is upon the claimant. Further, the Hon'ble Apex Court in the case of **Ranvir Singh and Anr. Vs. Union of India** (*supra*) has observed that, market value of fully developed land cannot be compared with wholly under developed land although they may be situated adjoining or at limited distance.

8. All these observations made by this court as well as Hon'ble Apex Court clearly indicate that, the learned Reference Court must determine the compensation on the basis of material produced before it and on its objective analysis. Further, the learned Reference Court should not utilize the material considered by the Land Acquisition Officer, unless it is proved before it and Court has to treat reference as an original proceeding and determine the

market value afresh on the basis of material produced before it. Admittedly, the rate awarded by the Land Acquisition Officer was found erroneous by the learned Reference Court and it granted compensation at the rate of Rs.18,000/- per acre. It is significant to note that, the appellant had produced only one comparable sale instance i.e. Exhibit – 21, sale-deed dated 9th October, 1986. After going through the sale-deed, it is evident that 24 Gunthas land of the village was sold for the consideration of Rs.15,000/- and thus, prevailing rate of the land at the relevant time was nearly of Rs.25,000/- per acre. However, it appears that there was well in the said land survey No.70 and, therefore, it was treated as Bagayat land. It is now settled that, rate of compensation of Bagayat land must be double than that of Jirayat land. However, there is nothing brought on record by the appellant/original claimant that his land was having irrigation facilities like well. Moreover, evidence is led that, the claimant used to raise crops like Udid, Jowar, Wheat, Groundnuts, etc., in the acquired land. There is no existence of well in the acquired land but its fertility or category either Jirayat or Bagayat can be determined from the crops being taken from the said land.

9. This Court in the case of **State of Maharashtra Vs. Bhaskar Namdeo Wagh and Ors.** (*supra*) has made following observations :

“The Reference Court for determining as to in which category the given land falls such as Bagayat or Jirayat, it has relied upon the nature of the crops, having regard to the crop entries in the revenue record. The agricultural lands wherein Jawar, Bajari etc. are shown to have been cultivated, such lands have been treated as Jirayat lands; whereas lands wherein sugarcane, onion, groundnuts etc., are cultivated by irrigation, such lands have been treated as Bagayat lands. We do not find anything wrong with the classification of lands into Bagayat and Jirayat.”

10. It is nowhere mentioned that, the appellant was taking crops like sugarcane, onion, etc. in his lands which are Bagayat crops. On the contrary, 7/12 extract of the acquired land indicates that, the claimant was taking crops like Udid, Jowar, etc. Thus, as per the aforesaid observations of this court, the land of appellant must be treated as Jirayat land and the learned Reference Court therefore, rightly held that the land of appellant was in the category of Jirayat land. Moreover, it is extremely important to note that, though the land in comparable sale instance was treated as Bagayat land but the market price of the same was amount Rs.25,000/- per acre and therefore, the rate of Jirayat land at the relevant time comes to Rs.12,500/- per acre. However, the learned

Reference Court has definitely awarded more rate than the aforesaid rate while determining the compensation.

11. Further, it is significant to note that, though it is claimed by the learned counsel for the appellants that, the acquired land was at a distance of 5 Kilometers from Tq. Ausa and adjacent to Latur – Osmanabad highway but no evidence to that effect is laid before the learned Reference Court. Therefore, considering all these aspects it appears that, the learned Reference Court by taking into consideration all the factors as observed by the Hon'ble Apex Court in the case of **Navanath and Ors. Vs. State of Maharashtra** (*supra*) has determined the reasonable rate of compensation which is in consonance with the material on record. Therefore, I do not find any reason to interfere with the same. In the result, the appeal stands dismissed.

[**SANDIPKUMAR C. MORE**]
JUDGE