

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 255 OF 2003

1. Mohd. Ishaq Raj Mohammad
(Died Thr LRs')
- 1(a) Rahima Bee w/o Mohd. Ishaq
Age : 75 years, Occ. : Household,
R/o. : Sanjay Nagar, Galli No. B/13,
Baijipura, Aurangabad
- 1(b) Mohammad Moosa,
Age : 54 years, Occ. Business,
R/o. : Sanjay Nagar, B/13, Baijipura,
Aurangabad
- 1(c) Mohammad Mushtaq,
Age : 51 years, Occ. : Business,
R/o. : Plot No. 28, Arif Colony, Aurangabad
- 1(d) Mohammad Mumtaz,
Age : 48 years, Occ. : Business,
R/o. : Galli No. 15, Indra Nagar, Baijipura,
Aurangabad
- 1(e) Mohammad Mukhtar,
Age : 44 years, Occ. : Business,
R/o. : Indra Nagar Road, Baijipura,
Aurangabad
- 1(f) Mohammad Quadir,
Age : 40 years, Occ. : Business,
R/O. : Indra Nagar Road, Baijipura,
Aurangabad
- 1(g) Naseem Begum w/o Shaikh Naeem,
Age : 46 years, Occ. : Household,
R/o. : C/13, Sanjay Nagar, Baijipura, Aurangabad

- 1(h) Rehana Begum w/o Shaikh Shafi,
Age : 42 years, Occ. : Household,
R/o. : B/13, Sanjay Nagar, Baijipura,
Aurangabad
- 1(i) Rizwana Begum w/o Shaikh Sherif,
Age : 37 years, Occ. : Household,
R/o. : C/14, Sanjay Nagar, Baijipura,
Aurangabad
- 1(j) Farzana Begum w/o. Mohd. Saleem,
Age : 34 years, Occ. : Household,
R/o. : Sanjay Nagar, Baijipura, Aurangabad
2. Mohd. Ayub Raj Mohammad,
Age : 50 years, Occ. : Business & Agri.,
R/o. : Bombay

... Appellants
(Ori. Claimants)

VERSUS

1. State of Maharashtra
Thr Special Land Acquisition Officer,
Aurangabad

... Respondent
(Ori. Defendant)

...
Ms. Fatima S. Kazi h/f. Mr. S.S. Kazi – Advocate for Appellants
Mr. B.V. Virdhe – AGP for Respondent, State

....

CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 20th June, 2023
PRONOUNCED ON : 10th July, 2023

JUDGMENT :

1. The appellants – claimants, feeling aggrieved by the judgment and award dated 19th August, 2000 in Land Acquisition Reference No. 61 of 1990 passed by the learned Senior Division, Aurangabad

(hereinafter referred to as “*the learned Reference Court*”) have preferred this appeal for enhancement of compensation. It is significant to note that, the learned Reference Court has dismissed the Land Acquisition Reference of the present appellants – claimants and justified the quantum of compensation awarded by the Special Land Acquisition Officer under the award dated 24th January, 1990.

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

The land gut No. 227 to the extent of 55 Are situated at village Diggar, Tq. Kannd owned by the appellants was acquired for Palashi Medium Project by the concerned Land Acquisition Officer. Notification under Section 4 of the Land Acquisition Act to that effect was published in Government Gazette on 6th March, 1986 and it was also published in daily newspaper “Nawamaratha” on 29th February, 1986. The village publication was made on 25th January, 1987. Thereafter, the Land Acquisition Officer passed an award on 24th January, 1990 and categorized the land of appellants in Group – V as the assessment was above Rs.5/-. The Land Acquisition Officer considered the land as Jirayat and granted compensation at the rate of Rs.320/- per Are equivalent to

total compensation amount of Rs.17,600/- for 55 Are. The Land Acquisition Officer also granted statutory benefits to the appellants. However, the appellants were not satisfied with the said amount of compensation and hence by filing the Land Acquisition Reference No. 61 of 1990, they sought enhancement of the compensation and claimed rate of Rs.1250/- per Are on the ground that, their land was Bagayat land having water facilities as per the share in Well from another gut number. They also claimed that, there were three Mango trees in their field which could have benefited them for atleast 60 years in future. As such, they had claimed total compensation of Rs.99,00,650/-. However, the learned Reference Court considering the material on record dismissed their claim under the impugned judgment and award and hence this appeal.

3. Learned Counsel for the appellants – claimants submits that, the concerned Special Land Acquisition Officer has granted very meagre rate of compensation by ignoring the fact that, the land under acquisition was having water facilities and Mango trees. She pointed out that, the comparable sale-deed which is at Exh.66 had in fact shown rate of Rs.1250/- per Are, which could have been

granted by the learned Reference Court. She also pointed out that, the 7/12 extract produced by the appellants had in fact indicated that, Bagayat crops like Sugarcane were being taken from the land under acquisition but it was ignored by the learned Reference Court. As such, she claimed enhancement of the compensation.

4. On the contrary, learned A.G.P. strongly opposed the submissions made on behalf of the appellants and supported the impugned judgment and award. He pointed out that, the Special Land Acquisition Officer considering all the aspects, has granted proper compensation and therefore, the learned Reference Court rightly dismissed the claim of appellants. According to him, Sugarcane crop which was found in the land under acquisition was of 1989 and there is no evidence at all that such crop was taken by the appellants at the time of notification under Section 4 of the Land Acquisition Act. He relied upon the judgment of Hon'ble Apex Court in the case of *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Anr.*, reported in 1988 AIR 1652 and submitted that, the appellants – claimants must stand on their own legs by adducing cogent evidence in respect of their contentions in enhancement of the compensation. As such,

he prayed for dismissal of appeal.

5. Heard rival submissions and also perused entire evidence on record and the impugned judgment. It is significant to note that, the appellants – claimants are claiming higher rate of compensation than that of Special Land Acquisition Officer, to the tune of Rs.1250/- per Are. Besides, they are also claiming compensation in respect of three Mango trees to the tune of Rs.36,000/-. Thus, it appears that they are claiming Rs.99,00,650/-. However, the Hon'ble Apex Court had made it clear by making observations in the case of *Chimanlal Hargovinddas* (supra) that, the learned Reference Court must treat the land reference case as fresh proceeding and therefore, must decide the same on the basis of material produced before it, irrespective of the observations of Special Land Acquisition Officer. Therefore, the evidence adduced by the appellants – claimants before the learned Reference Court needs to be scrutinized.

6. It appears that, the appellants – claimants had mainly relied upon the 7/12 extract produced on record for enhancement of the compensation and for treating the land under acquisition as Bagayat land. Admittedly, in 7/12 extract at Exh.57 there is entry

of Sugarcane crop in the Crop Inspection Column. However, the same appears to be of the year 1989 – 1990 whereas the notification under Section 4 of the Land Acquisition Act is issued in the year 1987. It is significant to note that, the appellants could have produced such 7/12 extract showing the entry of sugarcane crop for the year 1986 – 1987 but they failed to do so. Further, it is also important to note that, the appellants also did not produce on record any receipt of Sugar Factory to show that, they had supplied the Sugarcane to that factory. There is no documentary evidence as to what crops were being taken in the acquired land at the time of actual acquisition of the land. Moreover, no Talathi has been examined by the appellants to show that they were taking Sugarcane crop at the time of acquisition or notification under Sections 4 and 6 of the Land Acquisition Act. Thus, there is no satisfactory and reliable evidence on record of taking Sugarcane crop in the said land.

7. Admittedly, the said 7/12 extract at Exh. 57 indicates entry regarding 1/4th right of water in the Well situated in gut No. 200. However, merely based on such entry it cannot be inferred that the appellants were regularly receiving the water from the said Well for

taking Bagayat crops in their land. They have not produced any document such as bill of electricity to show that they were taking water from said Well through electric motor. Further, it is extremely important to note that, there is no record of gut No. 200 being acquired for the aforesaid project so that there would have been any instance for comparison. On the contrary, the award shows that, the land gut No. 200 was not at all acquired. Thus, it cannot be inferred that, the land under acquisition was Bagayat land, by merely relying upon the entry regarding share in the Well.

8. It is important to note that, the appellants had also filed one copy of sale-deed (Exh.66) wherein the land mentioned therein was sold at higher price i.e. around Rs.1000/- per Are. However, it seems that the land mentioned in the said sale-deed was of village Shafepur which according to Vendee, was at a distance of 5 Kilometers from the land under acquisition. As such, this sale-deed cannot be considered as comparable sale instance mainly because it was for a smaller portion and belonged to another village. There is also one copy of sale-deed on record pertaining to the land of village Diggar dated 20th March, 1989 wherein the rate of sale is mentioned around of Rs.1100/- per Are. However, this

sale-deed is executed much after the date of notification i.e. after about five years. As such, this sale-deed also cannot be considered for determination of real market value of the acquired land at the time of acquisition. Thus, it can be seen that the appellants – claimants have not produced any cogent piece of evidence being comparable sale instance for enhancement of compensation.

9. Lastly, the appellants have claimed the compensation in respect of three Mango trees to the extent of Rs.36,000/- by claiming that, they would have got yield from those trees for 60 years. However, it is extremely important to note that, the appellants have not produced any reliable evidence such as Report of Agricultural Valuer on record. On the contrary, it is evident from the award itself that, the concerned Land Acquisition Officer had relied upon the valuation of trees in the lands under acquisition obtained from the Deputy Director of Horticulture Department, Aurangabad. Nothing is there on record by the appellants – claimants to prove otherwise. Therefore, considering all these facts it appears that, the learned Reference Court has in fact appreciated the evidence adduced by the appellants – claimants on record in proper perspective and rightly rejected their claim of

enhancement. In view of the same, I find no substance in this appeal and the same stands dismissed.

10. No order as to costs.

[SANDIPKUMAR C. MORE]
JUDGE