



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1510 OF 2018

1. Shivaji s/o Manikrao Malode
2. Vishnu s/o Manikrao Malode
3. Smt. Chaturabai Manikrao Malode (Deceased)
Through LR's
- 3-A. Ashok Manikrao Malode
- 3-B. Laxmibai Vishnu Vankhede
- 3-C. Shivaji Manikrao Malode
- 3-D. Vishnu Manikrao Malode
- 3-E. Hirabai Tejrav Pawar

... APPELLANTS
(Ori. Claimants)

VERSUS

1. The State of Maharashtra
Through the Special Land Acquisition Officer
Krushna Khore Vikas Mahamandal
Collector Office, Aurangabad
2. The Executive Engineer
Minor Irrigation (Local Sector), Aurangabad
3. The Collector,
Collectorate, Aurangabad

... RESPONDENTS

Mr. N. J. Pahune Patil, Advocate for the appellants
Mr. S. V. Hange, AGP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 25th JANUARY, 2024

P.C. :-

1. This appeal takes exception to the judgment and award dated 02/05/2016 passed in LAR No. 74/2013 by Jt. CJSD, Aurangabad.

2. Parties are referred to as claimants and respondents for sake of convenience.

3. The facts which led to the filing of the appeal can be narrated in short as under:

(i) Claimants owned land bearing Gut No. 206 at village Malodechiwadi (Pal), Tq. Phulabri, Dist. Aurangabad admeasuring 4H 31R. Respondents /State had issued notice under Section 4 of Land Acquisition Act which was published in the village on 12/05/1998 and the same was considered as validation date by SLAO. SLAO declared the final award in Land Acquisition File NO. AR-86/98 awarding compensation at the rate of Rs.560/- per R. Being aggrieved and dissatisfied with the said award the Land Reference No. 74/2013 came to be filed. Reference Court by passing impugned judgment and award directed compensation of Rs.3,150/- per R to the claimants with 30% solatium and interest.

ii) This appeal is filed by claimants with specific contention that admittedly the land acquired had a well. It is their further case that once well exists in the land it becomes perennially irrigated land. The objection is raised to the impugned judgment and award on the ground that by ignoring the said fact the reference Court has treated the said land as non irrigated land and has decided the compensation at the rate of

3,150/- per R.

4. Learned counsel for the claimants placed reliance on the award passed by the SLAO wherein the valuation of land is determined of non irrigated land and treating this as base value, semi irrigated land is valued at one and half times and irrigated land double of the said valuation. Thus, it is his contention that this Court is not required to go into any other evidence in order to decide the issue of enhancement of the compensation. It is his further submission that the impugned judgment and award has not been challenged by the respondents and as such the findings recorded by the reference Court with regard to the existence of the well which was acquired and compensation was paid to that extent cannot be interfered with now. He relied upon the judgment of the Hon'ble Apex Court in case of *Chindha Fakira Patil (Dead) Through LR's Versus Special Land Acquisition Officer, Jalgaon, (2011) 10 Supreme Court Cases 787*.

5. Learned AGP sought to oppose the appeal with the contention that mere existence of the well will not be sufficient to treat the land as perennially irrigated land and in absence of any other evidence led by claimants the land cannot be treated so.

6. Admittedly, the impugned judgment and award passed by the Reference Court in LAR No. 74/2013 has not been challenged by the respondents. As far as claimants are concerned, the same is challenged only to the extent of the determination of value of the land which according to the claimants is perennially irrigated land. Hence, except for the dispute about the valuation of the land rest of the findings recorded by the Reference Court stand confirmed for want of challenge.

7. There is no dispute about the fact a well existed in Gut No. 206. The same can be ascertained even from the award passed by SLAO as well as the impugned judgment and award of the Reference Court. In absence of any other evidence to show that a well in question did not have water for all through out the year, it cannot be held that it is not the perennially irrigated land. Admittedly, no such evidence is brought on record by respondents.

8. In the present case, from the award passed by SLAO it is clear that the mode of valuation of the land adopted by SLAO shows that valuation is determined only in respect of dry land and the valuation of the irrigated land is determined by adopting appropriate multiplier. Once the Court comes to the conclusion that it is perennially irrigated land even as per the the award passed by the SLAO the valuation of the irrigated land

shall be double to the dry land. The reference Court has held that the land acquired of the claimants is non irrigated land and hence the valuation was held at the rate of Rs.3,150/-. The said finding recorded by the reference Court is not consistent with the material evidence on record.

9. Hon'ble Apex Court in case of *Chindha Fakira Patil* (cited supra) has granted double of the compensation to the irrigated land as compared to dry land. As such it is held that the land acquired of the claimants is perennially irrigated land and by following the mode adopted for the valuation by the SLAO the claimants are entitled for double of the amount determined by the Reference Court. Thus, the claimants would be entitled for compensation on valuation of land @ of Rs.6300/- per R.

10. In the result impugned award stands modified in following terms:-

- (i) The claimants would be entitled to receive compensation @ Rs.6,300/- per R.
- (ii) Rest of the award remains unchanged.
- (iii) Appeal stands allowed in above terms.

(R. M. JOSHI, J.)

ssp