



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

FIRST APPEAL NO. 1865 OF 2009

1] Pandit s/o. Narayan Chidrawar [Died]
through his L.Rs.

1/1] Prakash s/o. Pandit Chidrawar
Age 60 years, Occup. Agriculture.

1/2] Subhash s/o. Pandit Chidrawar
Age 58 years, Occup. Agriculture.

1/3] Laxman s/o. Pandit Chidrawar
Age 57 years, Occup. Agriculture.

All are R/o. Digras (B)
Tq. Kandhar, District Nanded

1/4] Sow. Shobhabai w/o. Vasant
Dhampalwar, Age 45 years
Occup. Agriculture & Household
R/o. Cidco, Nanded.

1/5] Sow. Mangalbai w/o. Ashok
Cheulwar, Age 40 years,
Occup. Agriculture & Household
R/o. Chakur, District Latur

1/6] Sow. Shantabai w/o. Digambar
Vattamwar, Age 38 years,
Occup. Agriculture & Household
R/o. Jawala [Arni]
District Yavatmal.

1/7] Sow. Sakuntalabai w/o. Nagnath Moralwar
Died through L.Rs.

1/7A Nagnath s/o. Mukund Moralwar
Age 55 years, Occ. Business

1/7B Laxmikant s/o. Nagnath Moralwar
Age 25 years, Occ. Education

1/7C Sou. Nutun w/o. Gajanan Deogaonkar
Age 27 years, Occ. Household. .. **APPELLANTS**

VERSUS

1] The State of Maharashtra
Through Collector, Nanded.

2] The Special Land Acquisition Officer
Small Percolation Tank
Irrigation Office No.1,
Nanded.

3] The Executive Engineer
Small Irrigation Division
Jangamwadi, Nanded. .. **RESPONDENTS**

...

Mr.G.N.Chincholkar, Advocate for the appellants

Mrs.Priya R. Bharaswadkar, AGP for the respondent-State

...

CORAM : ARUN R. PEDNEKER, J.

Date : 05.03.2024.

ORDER :

1] By way of present First Appeal, the appellant is
challenging the judgment and award dated 22.01.2009
passed by the Civil Judge Senior Division, Kandhar, District

Nanded in LAR No. 451/2004 [New] LAR No.56/2004 [Old].

Brief facts leading to filing the present First Appeal can be summarized as under :

2] The appellants are the original claimants and their land Gat No. 76 admeasuring 1 Hector 76 R. situated at village Digras (Bk), Taluka Kandhar, District Nanded was acquired for small tank [Laghu Pazar talav] at village Digras (Bk), Taluka Kandhar, District Nanded. The acquired land consists of fruit bearing trees.

3] Notification under Section 4 of the Land Acquisition Act was published on 12.06.2001. Notification under Section 6 of the Land Acquisition Act [for short 'said Act'] was published on 16.10.2001. Award under Section 12 (2) of the said Act was published on 02.01.2003. The Land Acquisition Officer granted compensation @ Rs.21,880/- per acre i.e. Rs.54,700/- per hectore. The claimants filed LAR No.56/2004 [Old] LAR No.451/2004 [New] and claimed compensation @ Rs.90,000/- per acre for seasonal irrigated land.

4] Before the Reference Court, the appellants have produced sale deed [Exh.24] of Rs.1,00,000/- for 60 R. land [i.e. Rs.60,000/- per acre] for dry land on 22.03.1999. The appellants have also examined PW-2 for the purpose of rate of dry land in the village. The appellants have also examined PW-1 and PW-3 to show the income of the fruit bearing trees in the land.

5] *Per contra*, there was no evidence led by the State in the matter.

6] The trial Court considered the evidence at Exh.24 i.e. sale deed and held that there is no evidence to show that the appellants' land was Bagayat land. The trial Court held that it appears from the documents i.e. E-statement produced by the appellants that the land of the appellants is dry land. After considering the evidence on record, the trial Court has come to the conclusion that the Land Acquisition Officer has granted inadequate compensation to the land acquired. The Reference Court, by judgment and award dated 22.01.2009, partly allowed the

reference and enhanced the compensation of Rs.6,000/- per acre [i.e. Rs.54,700/- per hector] and also granted Rs.3,000/- for 10 Bor trees and Rs.4,500/- for 15 Sitaphal trees. Against the said order, the present First Appeal is filed.

7] The learned counsel for the appellants has taken thorough sale deed at Exh.24 dated 22.03.1999 admeasuring 1.5 acres. The sale is prior to the notification under Section 4 which was issued in the year 2001. The evidence of PW2, purchaser of the land at Exh.24, in his deposition has stated that the land purchased is a dry land and distance between the land, which is acquired for the purpose of tank is one to one and half furlang. Both the lands i.e. the land under sale deed and acquired land are of one and same quality and fertile land. At the time of sale deed, the market price of land in the village Digras (Bk.) was Rs.60,000/- per acre. In the cross examination, the said witness deposed that the said witness purchased the dry crop land and there is well in the purchased land. He has

specifically denied the contention that the land purchased by him is of superior quality than the land acquired of the claimant. He has also denied that his purchased land is far away from the acquired land of the claimant. Considering the deposition of PW-1, the appellants – claimants have claimed that the acquired land and the land at Exh.24 is similar to that of the acquired land and are situated in the same village and having similar quality.

8] The claimants further stated that the acquired land is situated on the bank of river and that acquired land is fertile and of superior quality and of good quality. The appellants – claimants have to take seasonal irrigated Rabi and Kharif crops from the said acquired land. The appellants – claimants further stated that the population of their village is near about 5000 to 6000. There are facilities of electricity, water tap scheme, Gramin Bank, Gram Panchayat, Seva Sahakari Society, Post Office, Schools, Cement Concrete Road etc. in their village and the said village is situated on State High Way i.e. Kandhar to Udgir.

In the cross examination, PW-1 stated that the said witness has produced water tax receipt showing Zilla Parishad Cess to prove the nature of the land as irrigated and certified copy of the same are already marked as Exh.20. The said witness also filed copy of the written objection raised by the land owner, affected persons in response to the notice under Section 9 (3) (4) of the Land Acquisition Act, which is marked as Article-A. The land of the appellant is irrigated land. It is further stated in the cross examination that the acquired land was irrigated by canal water.

9] Perusal of the record, it can be seen that the appellants have produced water tax receipt showing Zilla Parishad Cess to prove irrigated land, so also, produced Article-A, which shows that objection was raised that the land of the appellants is seasonal irrigated land. *Prapatra-E* relied by the Reference Court cannot be based for holding the acquired land is non irrigated land.

10] Perusal of evidence on record, specifically evidence of PW-2, PW-1 and water tax receipt and Article-A

would indicate that the land of the appellants is very similar to land at Exh.24 and it is noticed that there is a well in the land at Exh.24 whereas the land of the appellants is on the bank of river and that the Zilla Parishad receipt is showing the water cess and that canal water was used to irrigate the land. The receipt produced by the appellants is not disputed by the State and that it is used for cultivation. There is no such suggestion put to the witness in the cross examination.

11] In view of the evidence that the land of the appellants is seasonally irrigated land and the land at Exh.24 is also dry land and there is a well in the land at Exh.24, both the lands can be considered as same value. There is no differentiation between the lands so as to affect price to the land of the appellants, except the small reduction could be made for construction of the well in the land of the appellants.

12] The land sold in Exh.24 is 1.5 acres of land and has a well in it.

13] Since in the well at Exh.24, there is no evidence that the well was cement constructed well. Thus, even if the reduction of Rs.25,000/- is made towards well, the price of the land would be Rs.75,000/- for 1.5 acres of land i.e. Rs.50,000/- per acre of land. Applying above principle to the acquired land, the appellants would be entitled to get Rs.50,000/- per acre for the acquired land.

14] As regards trees are concerned, the appellants have produced evidence of PW-3 to show that the said witness have earned yearly income from per Mango trees Rs.1000/-, Tamrind trees Rs.1000/-, Jambhool trees Rs.1000/-, Jujubi trees Rs.500/-, Bibi trees Rs.500/- and custured [Sitafal] trees of Rs.500/- and that would sell the same in the market. However, there is no evidence coming by way of cost of maintaining trees. Thus, compensation granted of Rs.500/- for 10 Bori trees cannot be said to be exorbitant, so also, for Sitaphal trees Rs.300/- per tree may be at lower side. Therefore, the appellants would be entitled

to get compensation of Rs.500/- per tree for 15 Sitaphal. In view of the same, I pass the following order :

ORDER

i] The appellants are entitled to get compensation of Rs.50,000/- per acre for the acquired land.

ii] As far as 15 Sitaphal trees are concerned, the compensation is increased from Rs.300/- to Rs.500/- per trees.

iii] All statutory benefits and interest to be worked out accordingly.

iv] First Appeal is allowed in above terms.

[ARUN R. PEDNEKER]
JUDGE

DDC