



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 FIRST APPEAL NO. 1912 OF 2020
WITH
CIVIL APPLICATION NO. 5346 OF 2024
IN FA/1912/2020

PRAKASH BHURA RATHOD AND ORS
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...
Advocate for Appellant : Mr. Patil Vinod Prakash
AGP for Respondents 1 & 2 : Mrs. A.S. Mantri
Advocate for Respondent 3 : Mr. A.D. Pawar
...

CORAM : KISHORE C. SANT, J.
Dated : July 30, 2024

PER COURT :-

1. Heard the parties.
2. This appeal arises out of common judgment and award dated 11.12.2018 passed by the learned 2nd Jt. Civil Judge, Senior Division, Jalgaon in LAR No. 673/2010. The limited grievance of the appellants is that their land though is irrigated, while considering the nature of land, the same is considered as Jirayat/dry land and compensation was accordingly awarded.
3. The learned advocate for the appellants relied upon the 7/12 extract of the land showing that there is well situated in the land, there is electricity connection. Though it also reflects that there are some fruit bearing trees, the same is not believed by the learned Trial Judge. He points that the 7/12 extract is not considered only for the reason that only photocopy of the

extract was on record and thus, the same is not proved. He further submits that though trees are shown in the panchanama executed in 2001, that was also not considered by the court, though the said panchanama was on record.

4. The learned advocate for the Acquiring Body vehemently opposes the appeal, stating that the Court has rightly discarded the 7/12 extract as no original was produced. So far as trees are concerned, he submits that on one hand, it is claimed that there were 42 trees in the land and on the other hand, in 2007 in the application itself those are shown as saplings, so the case of the appellants is based on contradictory stands. He thus, prays for dismissal of the appeal. The learned AGP also opposes the appeal by adopting the arguments of learned advocate for the Acquiring Body.

5. This court has gone through the record and proceedings called by this Court. No doubt it appears that in the panchanama, some trees are shown along with one well. There is no reference of the electricity connection for the meter. The fact of the electricity connection is not considered by the Court only for the reason that the no meter number is mentioned on the electricity bill which was issued on 29.1.2007. It appears that the Court lost the site that for agriculture, no meters are given. From the bill, it is clearly seen that in the column of the meter number, it is specifically written as 'UNMETERED'. It is brought to the notice of this Court that no meter is installed for agricultural land and the bills are charged in lump-sum depending on the capacity of electric motor. The meter reading is not as per the consumption of electricity units.

6. So far as holding that 7/12 extract is not proved, this Court finds that, that was too technical approach. Though it was for the appellants to produce the same on record and get it proved, for that reason itself he should not have been **non suited**. The appellants, therefore, to prove the said 7/12 extract has already filed Civil Application No. 4356/2024. This Court has allowed that application by separate order. Since oral evidence is not required to prove 7/12 extract, this Court has no difficulty in accepting the 7/12 extract of the land and to read the same in evidence.

7. There is one more aspect pointed out that to the other lands from the same Gat number i.e. Gat No. 234/2 and 235/2 the Court has considered the land to be Bagayat/irrigated lands. However, only in the case of Gat No. 234/5 i.e. the land of the appellants is considered to be Jirayat/dry land, though the above lands are adjoining lands. There is also evidence to show that there is well situated in the land of present appellants/original claimants. Reference Court ought to have considered this aspect as well. Considering that the party loses it's valuable property, this Court has thus no difficulty in accepting the case of the appellants so far as the nature of land is concerned.

8. So far as the case of the appellants in respect of trees is concerned, this Court is not in position to accept the case of the appellants that there were trees when the possession was taken. On this aspect, the Trial Court has discarded the evidence of the valuer. This Court does not find any error committed by the Trial Court while discarding the evidence of valuer and

has rightly considered in the award that there is no mention of the trees in the land and refused to grant compensation for trees. Thus, this Court finds that the award needs to be modified only to the extent of treating the land of the appellants as Bagayat/irrigated land instead of Jirayat/dry land. The award is thus modified. Hence, the following order.

ORDER

- (I) The appellants are entitled to get the compensation at the rate of 5,60,000/- per H. along with all statutory benefits.
- (II) With this, appeal is partly allowed and disposed of. No order as to costs.
- (III) In view of the disposal of the appeal, civil applications, if any, also stand disposed of.

(KISHORE C. SANT, J.)

ssc/