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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.408 OF 2019

1. Pandurang Motiram Rathod APPELLANTS
Age - 34 years, Occ - Agriculture
2. Motiram Balu Rathod,
Age - 65 years, Occ - Agriculture
Both R/o Belora, Taluka - Jintur
District - Parbhani

VERSUS

1. The State of Maharashtra RESPONDENTS
Through Collector
Parbhani, District - Parbhani
2. Special Land Acquisition Officer,
M. K. V. Parbhani, District - Parbhani
3. The Executive Engineer
Minor Irrigation, Local Sector,
Division, Jalna

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Mr. D. A. Madake h/f Mr. S. P. Rathod, Advocate for appellants
Mr. D. J. Patil, AGP for respondents - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd SEPTEMBER, 2024

JUDGMENT :

1. This appeal, filed by the appellants - claimants, under section 54 of the Land Acquisition Act, challenges the Judgment and Award passed by learned Civil Judge, Senior Judge, Parbhani in Land Acquisition Reference No. 42 of 2013.
2. Facts, which give rise to this First Appeal, which are not

disputed, are that, land admeasuring 1 Hectare 55 *Are* of the appellants – claimants, from Gut No. 51 of village Belora, Taluka – Jintur, District – Parbhani, was acquired by the respondents for the purpose of construction of Percolation Dam No.1.

Special Land Acquisition Officer awarded compensation of Rs.2,31,122/- i.e. Rs.1050/- per *Are*, to the claimants. In the Reference, the Reference Court enhanced it to Rs.2,55,750/-.

The only point pressed into service by the appellants in this First Appeal is that in spite of there being a well in the acquired land of the appellants, the Reference Court has wrongly treated the acquired land as seasonally irrigated land, ignoring the ratio in ***“Chindha Fakira Patil (D) Through LRS V.s The Special Land Acquisition Officer, Jalgaon 2012 AIR SCW 270***. In the connected Land Acquisition Reference, though the claimant in LAR No. 41 of 2013 was not having well in his acquired land and was taking water from the well of the adjoining land holder, his land is treated as irrigated land and compensation @ Rs.3,400/- per *Are* is awarded to him. Whereas, the appellants / claimants are awarded compensation @ Rs.2,700/- per *Are*, by treating their land as seasonally irrigated land.

3. Learned AGP supported the impugned Judgment and Award, contending that taking into consideration the crops taken

by the claimants in the acquired land, the Reference Court is justified in holding that the acquired land of the claimants was seasonally irrigated land.

4. Heard learned advocate for appellants - claimants and learned AGP for respondents, at length. Perused the Record and Proceedings and the impugned Judgment and Award.

5. Admittedly, there was well in the acquired land of the claimants for which the Special Land Acquisition Officer has awarded separate compensation to them. Crops like cotton, toor, moong, black gram/ udid, soybean etc., were being taken by the claimants in the acquired land. Though this is the position on record, the Reference Court has treated the acquired land as seasonally irrigated land, holding that dry crops like Moong, Soybean etc. were being taken by the claimants.

6. In "**Chindha Fakira Patil**" (*Supra*), the Apex Court has observed that when there is a well in the acquired land, mere fact that the claimants had not cultivated sugarcane or wheat cannot lead to infer that the land was not irrigated land. Findings recorded by the Reference Court are contrary to the above ratio.

7. Fact remains that in connected Land Acquisition Reference No. 41 of 2013, Reference Court, by accepting the fact that the

claimant therein was obtaining water for irrigation from the well of adjoining land holder, has treated his land as irrigated land and awarded compensation @ Rs.3,400/- per Are, on the ground that he was taking crops like turmeric and wheat in some portion of his acquired land. It is not in dispute that he adjacent land holder of the present appellant.

8. In the light of the above, findings recorded by the Reference Court that the acquired land of appellants is seasonally irrigated land, cannot be sustained and the same is hereby quashed and set aside. Land of the claimants - appellants is treated as irrigated land and they are held entitled for compensation @ Rs.3,400/- per Are.

9. In the result, following order-

ORDER

- A. The First Appeal is partly allowed with proportionate costs.
- B. Appellants - Claimants are held entitled for enhanced compensation of Rs.1,08,500/- (i.e. @ Rs.700/- per Are), along with the interest as awarded by the Reference Court.
- C. Rest of the Award is maintained.

**[NITIN B. SURYAWANSHI]
JUDGE**