

(1999) 03 BOM CK 0047

In the Bombay High Court

Case No : F. A. No. 235 of 1983 & F.A. No. 235 of 1983

State of Maharashtra

APPELLANT

Vs

Shankaraji Appa Patil

RESPONDENT

Date of Decision : 24-03-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 54

Citation : (2000) 2 BomCR 651

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : K.K. Tated, for the Appellant;

Judgement

R.M. Lodha, J.—By this first appeal the State of Maharashtra seeks to challenge the award dated 11-3-1982 passed by the Extra Assistant Judge, Solapur, in Land Acquisition Reference No. 19 of 1980.

2. Mr. Tated, the learned Assistant Government Pleader challenged the impugned award during the course of argument on the sole ground that since the land was treated as Bagayat land by the Court below, no separate compensation could have been awarded for the well.

3. The brief facts are:--

Respondent herein Shankaraji Appa Patil was owner of land Gat No. 58/1 at village Borale, Taluka Mangalwedha. The said land was acquired for construction of a percolation tank in the village. Notification u/s 4 was published on 27-11-1976 and thereafter declaration was made u/s 6 of the Land Acquisition Act. The Land Acquisition Officer thereafter passed the award on 28-11-1978. The Land Acquisition Officer treated the acquired land as Jirayat inferior and awarded compensation at the rate of Rs. 2,000/- per hectare. The pot kharab area was valued at Rs. 200 per hectare. The compensation for well fixed at Rs. 2,314/- by the Land Acquisition Officer. Dissatisfied by the Award by the Land Acquisition Officer on 28-11-1978 reference was made at the instance of the

claimant. In the reference the Court below held that the land in question was inferior Jirayat as well as Bagayat land. He accordingly awarded compensation at the rate of Rs. 2,500/- per hectare for inferior Jirayat and Rs. 5,000/- per hectare for Bagayat. Accordingly the market value of the land was valued by the Court below at Rs. 9,320/-. The Court below was not satisfied with the contention of the claimant for enhancement of compensation of well. In view of the said findings, the Extra Assistant Judge enhanced the compensation by Rs. 4,066.40 and accordingly directed the present appellant to pay to the claimant or deposit in Court for payment to the claimant a sum of Rs. 4,066.40 together with interest at 4% per annum on the said amount from the date of taking possession of the land until payment or deposit of amount in Court.

4. Since the Assistant Government Pleader during the course of argument only challenged the impugned award with regard to the payment of compensation for well it may be observed straightway that the Land Acquisition Officer awarded compensation for the well in the sum of Rs. 2,314/-. The State Government was not aggrieved by the award of compensation for the well in the sum of Rs. 2,314/- and it was only the claimant who wanted enhancement. The Court below was not satisfied with the contention of the claimant for enhancement and therefore, maintained the compensation of Rs. 2,314/- awarded by the Special Land Acquisition Officer for the well. Since the award of compensation for the well in the sum of Rs. 2,314/- by the Special Land Acquisition Officer was not challenged by the State Government, it is not open to the State Government to challenge in the first appeal that the said amount of Rs. 2,314/- for the well could not have been awarded since the land has been treated by the Court below as Bagayat land. Moreover it is not that the entire land has been treated as Bagayat land by the Court below. Part of the land has been treated as inferior Jirayat and part of the land as Bagayat.

5. For all these reasons, no interference is called for in the impugned award passed by the Court below.

6. The first appeal is accordingly dismissed with no order as to costs.

7. First appeal dismissed.