

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 252 OF 2001

The Executive Engineer,
 Civil Construction Division No.4,
 Maharashtra State Electricity Board,
 Parali, Beed

.. Appellant

Vs.

1. The State of Maharashtra

2. Jagannath Narayan Mundhe,
 Age : 38 years, Occu.: Agri,
 R/o.: Dabi, Tq. Ambajogai,
 Dist. Beed

3. Sudam Narayan Mundhe,
 Age : 30 years, Occu.: Agri,
 R/o.: Dabi, Tq. Ambajogai,
 Dist. Beed

.. Respondents

WITH

FIRST APPEAL NO. 250 OF 2001

The Executive Engineer,
 Civil Construction Division No.4,
 Maharashtra State Electricity Board,
 Parali, Beed

.. Appellant

Vs.

1. Dagdu S/o Baliram Mundhe,
 Age : 50 years, Occu.: Agri,
 R/o.: Talegaon-Parali, Taluka Ambajogai,
 Dist. Beed

2. Kundlik S/o Baliram Mundhe,
 Age : 45 years, Occu.: and R/o
 As above .. **Orig. Claimant/Plaintiff**

3. The State of Maharashtra

.. Respondents

WITH

FIRST APPEAL NO. 251 OF 2001

The Executive Engineer,
Civil Construction Division No.4,
Maharashtra State Electricity Board,
Parali, Beed

.. Appellant

Vs.

1. Mahadeo S/o Maruti Mundhe,
Age : 40 years, Occu.: Agri,
R/o.: Talegaon-Parali, Taluka Ambajogai,
Dist. Beed

.. Orig. Claimant/Plaintiff

2. The State of Maharashtra

.. Respondents

WITH

FIRST APPEAL NO. 253 OF 2001

The Executive Engineer,
Civil Construction Division No.4,
Maharashtra State Electricity Board,
Parali, Beed

.. Appellant

Vs.

1. Bhagwat S/o Manik Mundhe,
Age : 40 years, Occu.: Agri,
R/o.: Talegaon (Parli),
Taluka Ambajogai,
Dist. Beed
2. Prakash S/o Manik Mundhe,
Age : 38 years, Occu.: Agri,
R/o.: Talegaon (Parli),
Taluka Ambajogai,
Dist. Beed
3. Sayab S/o Manik Mundhe,
Age : 36 years, Occu.: Agri,
R/o. Talegaon (Parli)
Taluka : Ambajogai,
Dist. Beed
4. Angad S/o Manik Mundhe,
Age : 36 years, Occu.: Agri,
R/o.: Talegaon (Parli),
Taluka : Ambajogai, Dist. Beed.
5. Rusharao S/o Manik Mundhe,
Age : 30 years, Occu.: Agri.,

R/o. Talegaon (Parli),
 Taluka : Ambajogai,
 Dist. Beed .. **Orig. Claimant/Plaintiff**

6. The State of Maharashtra .. Respondents

WITH
FIRST APPEAL NO. 257 OF 2001

The Executive Engineer,
 Civil Construction Division No.4,
 Maharashtra State Electricity Board,
 Parali, Beed .. Appellant

Vs.

1. Tukaram S/o Dagdu Mundhe,
 Age : 24 years, Occu.: Agri,
 R/o.: Talegaon-Parali,
 Taluka Ambajogai,
 Dist. Beed
2. Dnyanoba S/o Amrutrao Mundhe,
 Age : 30 years, Occu.: Agri,
 R/o.: Talegaon-Parali,
 Taluka Ambajogai,
 Dist. Beed
3. Govinda S/o Amrutrao Mundhe,
 Age : 24 years, Occu.: Agri,
 R/o. Talegaon-Parali,
 Taluka Ambajogai,
 Dist. Beed .. **Orig. Claimant/Plaintiff**
4. The State of Maharashtra .. Respondents

WITH
FIRST APPEAL NO. 258 OF 2001

The Executive Engineer,
 Civil Construction Division No.4,
 Maharashtra State Electricity Board,
 Parali, Beed .. Appellant

Vs.

1. Navnath Nivrati Munde,
 Age : 32 years, Occu.: Agri,
 R/o. Dabi, Parali, Dist. Beed
2. The State of Maharashtra .. Respondents

WITH
FIRST APPEAL NO. 260 OF 2001

The Executive Engineer,
Civil Construction Division No.4,
Maharashtra State Electricity Board,
Parali, Beed .. Appellant

Vs.

1. Vaijinath S/o Rama Mundhe,
Age : 22 years, Occu.: Agri,
R/o.: Talegaon (Parali), Taluka Ambajogai,
Dist. Beed .. **Orig. Claimant/Plaintiff**
2. The State of Maharashtra .. Respondents

WITH
FIRST APPEAL NO. 261 OF 2001

The Executive Engineer,
Civil Construction Division No.4,
Maharashtra State Electricity Board,
Parali, Beed .. Appellant

Vs.

1. Bhimrao S/o Shamrao Mundhe,
Age : 60 years, Occu.: Agri,
R/o.: Talegaon-Parali, Taluka Ambajogai,
Dist. Beed .. **Orig. Claimant/Plaintiff**
2. The State of Maharashtra .. Respondents

WITH
CONNECTED CIVIL APPLICATIONS

Mr. S.S. Chaoudhary, Advocate for the appellant in all matters

Mr. S.P. Daund, A.G.P. for the respondent/State

Mr. M.S. Karad, Advocate h/f Mr. S.S. Thombre, advocate for the respondent 2 and 3 (FA/252/2001), for respondent no. 1 and 2 (FA/250/2001), for respondent no.1 (FA/258/2001).

Mr. N.P. Bangar, Advocate for respondent no. 1 (FA/251/2001), Respondent no. 1 to 5 in (FA/253/2001), respondent no. 1 to 3 in (FA/257/2001), for respondent no.1 (FA/260/2001)

First Appeal No. 261/2001, abated as against R.No.1 vide Courts order dated 02.12.2003

CORAM : M.T. JOSHI, J.
RESERVED ON : 25/02/2015
PRONOUNCED ON : 01/04/2015

JUDGMENT :

1. Heard both sides.
2. Aggrieved by the enhancement granted in compensation in the land acquisition reference proceedings under the Land Acquisition Act, the present appeals are preferred by the acquiring body - the then Maharashtra State Electricity Board.
3. Lands of the present respondents of village Talegaon were acquired as detailed in the proceedings by the present appellant - acquiring body for the construction of ash tank of Thermal Power Station at Parali Vaijnath. The notification under section 4 of the Land Acquisition Act was published by the State on 23/10/1986. The Land Acquisition Officer offered compensation at the rate of Rs.50,000/- per hectare. According to the land owners, the true market price of the land at the time of notification was around Rs.2,00,000/- to Rs.2,50,000/- per hectare and,

therefore, the proceedings were filed.

4. Before the learned reference Court, previous judgments of the reference Court, various sale instances were relied on by both the sides. Ultimately, the learned reference Court relied over the earlier judgment wherein, the notification under section 4 of the Land Acquisition Act was issued on 23/10/1986 for the same purpose. It was observed that in the earlier judgment delivered in L.A.R. no. 8 of 1990, the market price was determined at the rate of Rs.500/- per Are. Taking into consideration the various factors in the present case, the market price was determined at the rate of Rs.550/- per Are. Hence, the present appeals by the acquiring body.

5. Learned counsel for the appellants submits that the learned reference Court has wrongly taken into consideration one sale instance dated 9/4/1984. In-fact, the present appellant had produced the sale instance dated 16/4/1986 and as the notification under section 4 of the Land Acquisition Act was published on 23/10/1986, there could not have been any hitch to accept the said sale instance. It was also submitted

that though the reference Court determined the true market price at the rate of Rs.500/- per Are, the calculations, however, were made at the rate of Rs.550/- per Are wrongly and illegally.

6. On the other hand, learned counsel for the respondents submits that in-fact, the learned reference Court has granted meager enhancement and the evidence would clearly reveal that the acquired lands were having far more potential and could have fetched very higher price than the price fixed by the reference Court.

7. On the basis of this material, following point arises for my determination:-

. Whether the determination of the market price by the learned reference Court represents true market value of the acquired land ?

My finding to the said point is in the affirmative. The appeals are therefore dismissed for the reasons to follow.

R E A S O N S

8. Before the learned reference Court, from the

side of the present respondents, in all four sale instances either of village Talegaon, village Tokewadi or village Indapwadi were filed. It is an admitted fact that the project was constructed within these three villages and, therefore, those villages are adjoining to each others.

9. Exhibit 24 is the sale instance of village Indapwadi dated 04/03/1987. It would show that the land therein was sold at the rate of Rs.857/- per Are. Other sale instances, however, do not appear to have been proved by examining the witnesses though the certified copies of the sale deeds were filed on record. We have the sale instance of village Tokewadi dated 14/3/1989 which would show that the land was at the rate of Rs.1600/- per Are. Under another sale instance of village Tokewadi bearing gat no.189, 190 and 192 were jointly sold on 04/03/1986 for a price of Rs.589/- per Are. The sale instance relied on by the respondent of village Talegaon dated 16/4/1986 would show that 44 Are of land was sold for a price of Rs.250/- per Are. The learned reference Court did not rely over the sale instances which were not proved as either the vendor or

the vendee were not brought into the witness box. In view of the ratio of "**Himmat Singh Vs. State of M.P.**" **2013 DGLS (Soft) 851**, it is now clear that under the provisions of section 51-A of the Land Acquisition Act, the certified copy of the sale instances can be looked into. It would thus be clear that the sale instances of village Tokewadi dated 04/03/1986 would reveal that 2 hectare and 89 Are of land was sold at the rate of Rs.589/- per Are.

10. The learned reference Court relied over the earlier judgment in another land acquisition reference proceeding (L.A.R. No.8/1990), as detailed supra and held the market price at the rate of Rs.500/- per Are and calculated the same at the rate of Rs.550/- per Are. No doubt, the learned reference Court has committed mistake in calculating the compensation.

11. It should however be noted that on 4/3/1986, 2 hectare and 89 Are of land of village Tokewadi was sold at the rate of Rs.589/- per Are. It is now established that higher price as is evident from all the sale instances is to be accepted, however, as the learned reference Court did not rely over the said sale instance

being not "proved"; if the same is taken into consideration, the mistake of calculation at the rate of Rs.550/- per Are would not survive. In the circumstances, the following order:-

12. The appeals are hereby dismissed without any order as to costs.

13. Consequently, pending Civil Application nos.4588/2007, 11495/2005, 7318/2007, 11496/2005, 11493/2005, 11492/2005, 11497/2005 and 3811/2001 also stand disposed of.

[M.T. JOSHI]
JUDGE

arp/