IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

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FIRST APPEAL ST. NO.10488/2014
WITH CA/6459/2015 IN FIRST APPEAL ST. NO.10488/2014
FIRST APPEAL ST. NO.10529/2014
WITH CA/6461/2015 IN FIRST APPEAL ST. NO.10529/2014
FIRST APPEAL ST. NO.10538/2014
WITH CA/6466/2015 IN FIRST APPEAL ST. NO.10538/2014
FIRST APPEAL ST. NO.10541/2014
WITH CA/6468/2015 IN FIRST APPEAL ST. NO.10541/2014
FIRST APPEAL ST. NO.10532/2014
WITH CA/6470/2015 IN FIRST APPEAL ST. NO.10532/2014
FIRST APPEAL ST. NO.10526/2014
WITH CA/6472/2015 IN FIRST APPEAL ST. NO.10526/2014

THE STATE OF MAHARASHTRA AD ANOTHER
VERSUS
KUSUMBAI BABANRAO SHINDE AD OTHER

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AGP for Appellants State : Mr. S. P. Deshmukh
Advocate for Respondents 1 to 3 :Mr. Naikwade Shivaji K.

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CORAM : S. V. GANGAPURWALA, J.

DATE : 16th October, 2015

PER COURT :

1. Heard learned AGP for the appellant State and Mr. Naikwade for the claimants.

2. Learned AGP submits that the reference court has granted exorbitant compensation amount. Sale transaction relied by the reference court cannot be said to be an exemplar sale transaction. According to learned AGP, the Special Land Acquisition officer, after considering all the relevant aspects of the matter, had granted just and

reasonable compensation amount.

3. Mr. Naikwade, the learned counsel for the respondents/claimants submit that the compensation granted by the reference court is on the lower side. There were sale deeds produced on record showing much higher price.

4. I have considered the submissions.

5. Lands under these references are acquired for construction of percolation tank at Neknoor. Notification under section 4 of the Land Acquisition Act was issued on 04.06.2007. The reference court has considered various sale instances produced on record so also the oral evidence. The reference court has observed as under:

> "The petitioner's witness has specifically deposed on oath that market rate of the land on that date was Rs. 10,000/- per R i.e. Rs. 4,00,000/- per acre. He was cross examined at length but nothing has come on record to disbelieve his evidence. No doubt said oral evidence cannot be relied without substantial documentary evidence like sale deeds. In support of his oral evidence, the petitioners have produced on record 3 sale transactions. First sale transaction is at Exh. 15 of the land admeasuring 40R out of gut No. 388 and consideration has been shown Rs.

4,95,000/-. It is dated 07-03-2001, the market value come to Rs. 14,875/- per R. The second sale transaction Exh. 16 is of the land admeasuring 28R out of Survey No. 337/B, for the consideration of Rs. 3,15,000/-, which is dated 28-06-2001 i.e. at the rate of Rs. 11,250/- per R. The third sale transaction Exh. 17 is of the land admeasuring 25R out of Survey No. 331/A, forl the consideration of Rs. 2,50,000/-, which is dated 08-11-2001 i.e. at the rate of Rs. 10,000/- per R. It is pertinent to note that land under first sale transactions, was purchased by Rajashri Shahu Magaswargiy Grah Nirman Sahakari Santha through chairman Sanjay Namdeo Landage, R/o Neknoor. It appears that said land was purchased for Housing society for residential or commercial purpose. The land under second sale deed was purchased by purchased and there was cart way towards southern side of purchased land. The tihird sale transaction shows that there was road proceeding towards village Kalsamber by western side of purchased land, so also there was orad proceeding to village Wadgaon by northern side of purchased land. Village map produce on record aat Exh. 30 shows that the lands sold under all these sale transaction were situated nearer to Gaothan area of village Neknoor i.e. Near Old Gaothan boundary, within expansion areas of the village Neknoor and probably the purchasers might have purchased those lands either for residential / plotting purpose or for commercial purpose. Whereas acquired lands were situated at extreme end of village Neknoor, away from village Neknoor. Moreover all these three sale transactions are of the year 2001 whereas notification under 4(1) of the L. a. Act is published on 14-06-2007. Therefore it appears that the petitioner have produced on record all these sale deeds of the year 2001 which are sold at higher rate. It is not case of the petitioners that there were no sale transactions in the year 2007 or nearer to that period. The petitioners have not given any explanation for non-production of sale transactions of the year 2007 or nearer period of the year 2007. Thus it appears that the petitioners have produced on record the sale transaction of higher rate and that too of 7 years old transactions. Therefore, I am of the view that the sale transactions produced on record cannot be considered as sale instances to determine market value of the acquired lands on the date of notification under Section 4(1) of the L. A. Act. Moreover, the S. L. A. O. has not considered sale transactions at serial No. 9, 11 and 14 in his chart/table. The transaction at serial No. 9 reveals that purchaser has purchased 21 R land out of Survey No. 41 for the consideration or Rs. 75,000/- on 17-06-2005 i.e. at the rate of Rs. 3571/- per R, if we consider 10% increase for one year the market price would come to Rs. 3928/- per R. The transaction mentioned at serial No. 11 reveals that on 01-06-2006 the purchaser has purchased 28 R land out of survey No. 450/E for the consideration of Rs. 1,00,000/- i.e. @ Rs. 3571/- per R. The sale transaction mentioned at serial No. 14 reveals that the purchaser has purchased 56 R land out of survey No. 539 on 13-08-2007 for the consideration of Rs. 2,13,000/- i.e. at the rate of Rs. 3803/- per R. These lands are situated nearby the acquired lands. So also these sale transactions at serial No. 9,11,14 are the year 2005,2006 and 2007. Considering all these circumstances, these sale transactions can be considered as comparable sale instances to determine market value of the acquired lands. The average of these three sale transactions comes to 3767 i.e. rounding to Rs. 3770/ (3928+3571+3803=11302 divided by 3=3767). It shows above sale transactions of dry lands whereas 7/12 extract of acquired land shows that the acquired land were having well and facility to irrigate land by well water, electric motor. The Petitioner were paying electricity bills. The petitioners were taking crops like cotton, Jowar, Bajri, Soyabean, Tur, etc. from acquired lands. Thus it appears that acquired lands were seasonally irrigated land by well water. Therefore if we consider 20% increase on account of quality of land as seasonally irrigated lands, then market rate comes to Rs. 4415/- (Rs. 3770+645=4415 rounding to 4400/-). Therefore considering rise in price of lands, I am of the view that there was just and market rate of the acquired lands at Rs. 4400/- per r of acquired lands. "

6. The court has considered all the relevant aspects of the matter and has awarded modest amount of compensation. In fact, the reference court could have considered highest sale exemplar while fixing the market

value. It is not the case of appellant that the said sale transactions are not genuine sale transactions.

7. Considering the above, no case for interference is made out. First appeals are dismissed. No costs.

8. Civil applications also stand disposed of.

(S. V. GANGAPURWALA, J.)

JPC