

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD**

FIRST APPEAL NO. 486 OF 2002

The State of Maharashtra .. Appellant

Versus

Sopan Hari Nemade .. Respondent

**WITH
FIRST APPEAL NO. 487 OF 2002**

The State of Maharashtra .. Appellant

Versus

Sunder Bakshi Wagh .. Respondent

**WITH
FIRST APPEAL NO. 929 OF 2002**

The State of Maharashtra
through S. L. A. O. Jalgaon .. Appellant

Versus

Vishwanath Supdu Surwade .. Respondent

**WITH
FIRST APPEAL NO. 931 OF 2002**

The State of Maharashtra
through S. L. A. O. Jalgaon .. Appellant

Versus

Deoram Hari Nemade .. Respondent

**WITH
FIRST APPEAL NO. 1929 OF 2013**

The State of Maharashtra

.. Appellant

Versus

Kashinath Shrawan Nemade
Died through his legal heirs

.. Respondent

Shri P. P. More, A.G.P. for the Appellant in all matters.

Shri A. B. Kale, Advocate for Respondent in all matters.

CORAM : S. V. GANGAPURWALA, J.

DATE : 20TH AUGUST, 2015.

PER COURT :

. Mr. More, the learned Assistant Government Pleader submits that, respondents/claimants being aggrieved by the compensation awarded by the Special Land Acquisition Officer filed references under Section 18 of the Land Acquisition Act before the Reference Court. The Reference Court partly allowed said references. Aggrieved thereby State has filed the present appeals. According to the learned A. G. P. the notification under Section 4 of the L. A. Act has been published in the Official Gazette on 05th October, 1989. However, personal service under Section 4 of the L. A. Act is made upon claimants on 11.01.1990. The learned counsel submits that, the S. L. A. O. had considered the sale deeds of the same village while arriving at compensation payable to claimants at a rate of Rs. 25,000/- per hectare. The learned A. G. P. submits that, the Reference Court while enhancing the compensation amount relied on the sale deed of

another village i. e. Talwel when the sale deeds of the same village were available. It was inappropriate for the Reference Court to rely on the sale deed of the separate village. The Reference Court was under impression that, Section 4 notification has been served upon claimants on 18.01.1990 and the sale deed Exh. 28 is executed on 11.01.1990. The same is incorrect. The notice is served upon claimants of notification under Section 4 on 11.01.1990 itself. As such reasonings given by the Reference Court for considering Exh. 28 is absolutely erroneous. The learned A. G. P. further submits that, the Reference Court awarded compensation at the rate of Rs. 90,000/- per hectare to claimants possessing Bagayat lands, for Jirayat lands it awarded compensation at the rate of Rs. 60,000/- per hectare. The compensation for the Jirayat land has to be half of the bagayat land. The said aspect is also not considered by the Reference Court. According to the learned A. G. P. the Reference Court has failed to consider that, the land under sale deed Exh. 28 is not similarly situated with that of acquired land and is of a different village. The learned A. G. P. submits that, on the basis of improper reasonings the Reference Court has allowed the references and awarded exorbitant compensation amount.

2. Mr. Kale, the learned counsel for the claimants submits that, even the S. L. A. O. has considered sale deeds of the said village Talwel while arriving at quantum of compensation amount.

Exhibit 28 is the sale deed for 55R land. The consideration is Rs. 54,000/- As such the market value of the said land can be said to be Rs. 98,000/- for one hectare. The said land is jirayat land. It has come in the evidence that said land is Jirayat land. According to the learned counsel, the Reference Court has properly considered all the aspects of the matter, so also in L. A. R. No. 251 of 1998 the compensation to the fruit bearing trees has also been properly considered while considering the valuation report.

3. With the assistance of the learned A. G. P. and the learned counsel for the respondents, I have gone through the judgment and submissions. It appears that, the S. L. A. O. had awarded compensation at the rate of Rs. 25,000/- per hectare probably relying on the sale deed of 1996 of village Ozarkheda that too of a Jirayat land. The sale deed at Exh. 28 is of village Talwel which is adjacent village and has common boundary with village Ozarkheda. The same is considered by the Reference Court while discussing the evidence. Even the S. L. A. O. has considered the sale deeds of village Talwel while fixing the compensation amount. The sale deed at Exh. 28 is of the same date i. e. the date when the claimants were served with notice of notification under Section 4 i. e. 11.01.1990. As such, said sale deed can be considered. It has to be observed that, the Reference Court has not awarded the same compensation amount as per the sale deed Exh. 28. The Reference Court has observed that,

there is no well in the land under sale deed Exh. 28 and the said land is Jirayat land, still for jirayat land, the Reference Court has awarded compensation at the rate of Rs. 60,000/- as against the sale consideration of Exh.28, which would come to Rs. 98,000/- per hectare and for bagayat land it has awarded Rs. 90,000/- per hectare and for the pot kharab land Reference Court has awarded Rs. 300 per R. The Reference Court has considered the sale instance in a plausible manner. The plausible reasons have been given by the Reference Court. In reference in respect of fruit bearing tress in L. A. R. No. 251 of 1998 valuation report is considered and modest amount is awarded by the Reference Court while granting compensation. Considering the above, first appeals are dismissed. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Aug. 15