

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

FIRST APPEAL NO.800 OF 2015

The Executive Engineer,
Minor Irrigation, Zilla Parishad,
Through Sub-Divisional Engineer,
Minor Irrigation, Z.P. Osmanabad,
District Osmanabad

..Appellant
(Orig.Respdt.No.2)

Versus

1. Kumpabai w/o Gopinath Rakh,
Age 49 years, Occu. Household
and agriculture, R/o Uttami
(Kayapur), Taluka and District
Osmanabad
2. The State of Maharashtra,
Through Collector, Osmanabad,
District Osmanabad
3. The Special Land Acquisition
Officer (P.T. & M.I.W.) No.1,
Osmanabad, Taluka and
District Osmanabad

..Respondents
(R-1 Orig.Claimant
R-2 & 3 Original
R-1 and 3)

WITH

FIRST APPEAL NO.801 OF 2015

The Executive Engineer,
Minor Irrigation, Zilla Parishad,
Through Sub-Divisional Engineer,
Minor Irrigation, Z.P. Osmanabad,
District Osmanabad

..Appellant
(Orig.Respdt.No.2)

Versus

1. Dada s/o Tuka Rakh,
Age 70 years, Occu.Agriculture,
R/o Uttami (Kayapur), Taluka
and District Osmanabad

2. The State of Maharashtra,
Through Collector, Osmanabad,
District Osmanabad
3. The Special Land Acquisition
Officer (P.T. & M.I.W.) No.1,
Osmanabad, Taluka and
District Osmanabad

..Respondents
(R-1 Orig.Claimant
R-2 & 3 Original
R-1 and 3)

WITH
FIRST APPEAL NO.802 OF 2015

The Executive Engineer,
Minor Irrigation, Zilla Parishad,
Through Sub-Divisional Engineer,
Minor Irrigation, Z.P. Osmanabad,
District Osmanabad

..Appellant
(Orig.Respdt.No.2)

Versus

1. Navnath s/o Shripati Rakh,
Age 55 years, Occu.Agriculture,
R/o Uttami (Kayapur), Taluka
and District Osmanabad
2. Sadashiv s/o Harishchandra Rakh,
Age 38 years, Occu. Agriculture,
R/o Uttami (Kayapur), Taluka
and District Osmanabad
3. The State of Maharashtra,
Through Collector, Osmanabad,
District Osmanabad
4. The Special Land Acquisition
Officer (P.T. & M.I.W.) No.1,
Osmanabad, Taluka and
District Osmanabad

..Respondents
(R-1 Orig.Claimant
R-2 & 3 Original
R-1 and 3)

WITH
FIRST APPEAL NO.803 OF 2015

The Executive Engineer,
Minor Irrigation, Zilla Parishad,
Through Sub-Divisional Engineer,
Minor Irrigation, Z.P. Osmanabad,
District Osmanabad

..Appellant
(Orig.Respdt.No.2)

Versus

1. Sukhdeo s/o Sitaram Bondar,
Age 71 years, Occu.Agriculture,
R/o Uttami (Kayapur), Taluka
and District Osmanabad
2. The State of Maharashtra,
Through Collector, Osmanabad,
District Osmanabad
3. The Special Land Acquisition
Officer (P.T. & M.I.W.) No.1,
Osmanabad, Taluka and
District Osmanabad

..Respondents
(R-1 Orig.Claimant
R-2 & 3 Original
R-1 and 3)

Mr S.B. Gastgar, Advocate for appellant
Mr V.P. Latange, Advocate for respondent No.1 in F.A. No.800/2015,
801/2015 and 803/2015 and for respondents No.1 & 2 in F.A.No.802/2015
Mr P.P. More, A.G.P. for respondents No.2 and 3 and for respondent No.4
in F.A.No.802 of 2015

CORAM : N.W. SAMBRE, J.

DATE : 21st July 2015

PER COURT

1. The present appeals under Section 54 of the Land Acquisition Act are by the acquiring body.
2. The Special Land Acquisition Officer issued Section 4 notification on 18th June 2005 whereas the possession was taken on 21st January 2001. The award under Section 11 of the Land Acquisition Act (hereinafter referred to as 'the Act' for brevity) came to be passed on 9th April 2006.

3. The claimants-land owners were not agreed with the offer of the Land Acquisition Officer as such they filed reference under Section 18 which came to be allowed by the 5th Joint Civil Judge, Senior Division, Osmanabad by judgment and order dated 28th June 2012, by enhancing the compensation at the rate of Rs.1,06,000/- per acre from Rs.790 per R i.e. Rs.79,000/- per hectare. As such, present appeal.

4. Mr Gastgar, learned Counsel for the appellant has raised two fold contentions (i) that the reference under Section 18 of the Act was barred by limitation and as such, the learned reference Court has committed error in entertaining the reference; and (ii) that the award of compensation is though based on sale instances, however, the same was not properly appreciated. So as to canvass his contention, he has invited attention of this Court to the issue No.2 answered by reference Court which pertains to limitation.

5. It is required to be noted here that the award under Section 11 of the Act came to be delivered on 9th April 2006. The notice under Section 12 (2) of the Act dated 9th June 2008 came to be received by the claimants on 9th June 2008, which is dated 31st May 2008.

6. In view of above, in my opinion, having regard to the language of proviso to Section 18 (2) (b) of the Act, claim as was forwarded under Section 18 was well within limitation.

7. Apart from above, the enhancement is questioned on the ground of improper appreciation of evidence as regards the sale instance.

8. Taking shelter of Section 51 of the Act, the reference Court enhanced the compensation based on the sale deeds Exh.22 and 23.

9. It is required to be noted that the claimants examined Kumpabai Rakh PW-1, who deposed in favour of the claimants. According to her, the compensation to which the claimants were entitled for Rs.1,50,000/- per acre but they were paid Rs.79,000/- per hectare. In support of their claim, the claimants placed on record copy of E-statement and alleged that an income to the tune of Rs.40,000/- to Rs.50,000/- per acre per year was earned by them. It is further claimed that the claim was restricted to the tune of Rs.1,00,000/- lac as such, relied on sale instances Exhs. 22 and 23. Sale instance at Exh.22 was by one Dhondiba Bondar who sold 7-R land on 23rd July 2002 for Rs.25,000/-. Vide Sale deed Exh.23 one Bhaskar Bondar and Madhukar Bondar sold their 93-R land with well for Rs.3,20,000/-. It was further established that both these lands were situated at village Uttami Kayapur Taluka and District Osmanabad. As stated herein before, the certified copies of sale deeds are accepted by the reference Court pursuant to the scheme of Section 51-A of the Act. As such, the reference Court proceeded to analyse the entitlement of the claimants, particularly in the background of the date of Section 4 notification.

10. The Court then after relying upon the judgment of this Court in the matter of **State of Maharashtra Vs. Santram Mahadu Pingale**, reported in **2008 (5) MLJ 52** carried out certain deductions and has awarded compensation at the rate of Rs.1,09,000/- per acre for non-irrigated land. In my opinion, the award of the compensation delivered by the reference Court is based on the proper appreciation of evidence.

11. No case for interference in appellate jurisdiction is made out. The appeals fail, stand dismissed.

(N.W. SAMBRE, J.)

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