

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

FIRST APPEAL (ST) NO. 17820 OF 2013

1. The State of Maharashtra,
Through the Collector,
Osmanabad.
2. The executive Engineer,
Public Works Division, Osmanabad. ...Appellants

versus

Sahebrao Yashwantrao Mali,
Age: 48 years, Occ: Agri.,
R/o. Ter, Tq. & Dist. Osmanabad. ...Respondent

WITH

FIRST APPEAL (ST) NO. 17848 OF 2013

1. The State of Maharashtra,
Through the Collector,
Osmanabad.
2. The executive Engineer,
Public Works Division, Osmanabad. ...Appellants

versus

Digambar Nagu Mali (died)
His L.Rs.

1. Laxmibai w/o Digambar Mali
Age: 75 years, Occ: Household,
R/o. Ter, Tq. & Dist. Osmanabad.
2. Bhimabai w/o Digambar Mali,
Age: 70 years, Occ: Household,
R/o. As above.
3. Prakash s/o Digambar Mali,
Age: 58 years, Occ: Agri.,
R/o. As above.
4. Shivaji s/o Digambar Mali,
Age: 52 years, Occ: Agri.,
R/o. As above.

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5. Bhimrao s/o Digambar Mali,
Age: 51 years, Occ: Household,
R/o. As above.
6. Vinayak s/o Digambar Mali,
Age: 51 years, Occ: Agri.,
R/o. As above.
7. Arjun s/o Digambar Mali,
8. Ambadas s/o Digambar Mali,
Age: 33 years, Occ: Agri.,
R/o. As above.
9. Shamal w/o Kalyan Khadbade,
Age: 45 years, Occ: Household,
R/o. Shiradhon, Tq. Kallam,
Dist. Osmanabad.
10. Prabhavati w/o Gorakh Mali,
Age: 42 years, Occ: Household,
R/o. Karajkheda, Tq. & Dist. Osmanabad.
11. Shashikala w/o Bankat Mali,
Age: 30 years, Occ: Household,
R/o. Menda, Tq. & Dist. Osmanabad. ...Respondents

WITH**FIRST APPEAL (ST) NO. 17851 OF 2013**

1. The State of Maharashtra,
Through the Collector,
Osmanabad.
2. The executive Engineer,
Public Works Division, Osmanabad. ...Appellants

versus

Laxman Bapu Mali (died)

His L.Rs.

1. Vithabai w/o Laxman Mali
Age: 75 years, Occ: Household,
R/o. Ter, Tq. & Dist. Osmanabad.
2. Gayabai w/o Laxman Mali,
Age: 70 years, Occ: Household,
R/o. As above.

3. Popat s/o Laxman Mali,
Age: 70 years, Occ: Agri.,
R/o. As above.
4. Madhukar s/o Laxman Mali,
Age: 45 years, Occ: Agri.,
R/o. As above.
5. Subhadra w/o Shivaji Gore,
Age: 43 years, Occ: Household,
R/o. As above.
6. Sudhakar s/o Laxman Mali,
Age: 40 years, Occ: Agri.,
R/o. As above.
7. Bhaskar s/o Laxman Mali,
Age: 38 years, Occ: Agri.,
R/o. As above.

...Respondents

.....
Mr. P.P. More, A.G.P. for appellants
.....

CORAM : N.W. SAMBRE, J.**DATE : 21st JULY, 2015****ORAL ORDER :**

Heard.

2. The appeals are taken out for final disposal at admission stage.

3. In the present matter, pursuant to the notification under Section 4 of the Land Acquisition Act issued on 19/04/1990, the land of the claimants-respondents was acquired after passing award

under Section 11 of the Land Acquisition Act on 23/06/1994. Against offer of Land Acquisition Officer, pursuant to the award passed by the Land Acquisition Officer at Rs.18,000/- to Rs. 23,000/- per Hectar, the claimants-respondents sought enhancement by preferring the References under Section 18 of the Land Acquisition Act to the tune of Rs.10,000/- per Are.

4. So as to support their case, the claimants alleged that the village Ter, from where the land in question was acquired was having population of about 20,000 and facilities like Rural hospital, District Co-operative Bank, Marathwada Gramin Bank, Government Rest House, Irrigation Department, M.S.E.B., office, post office, police station, S.T. bus stand, primary as well as high school from 1 to 12th standard were available. It is further stated that the said place was well connected by the roads with the district headquarters and other districts. It is further claimed that there are various important temples like Jain, Narsinha, so also, museum of Archeology Department, sugar factory adjacent to the village and Terna medium project.

5. So as to support the claim, the claimants have entered into witness box and led common evidence in all matters.

6. The acquiring body resisted the claim by filing written statement at Exhibit-5 and Exhibit-17 in L.A.R. No. 136/1997, 147/1997 and 137/1997 respectively.

7. It is claimed by the acquiring body that quality or fertility of the land acquired and comparable sale instances in the vicinity were rightly taken into account by Land Acquisition Officer while awarding the compensation and further stated that the land has non agriculture potentiality.

8. Based on the pleadings of the parties, the Reference Court has framed issues at Exhibit-6 and ordered that the case for enhancement of compensation @ Rs.700/- per Are was made out. As such, the present appeals under Section 54 of the Land Acquisition Act by the State Government.

9. Learned A.G.P., while questioning the legality and validity of the award passed by the Reference Court. would urge that the enhancement granted by the Reference Court is without any basis and without considering the observations of the Land Acquisition Officer. He would urge that non agriculture potentiality of the land under acquisition was wrongly appreciated and sought setting aside the judgment delivered by the Reference Court.

10. Upon analysis of the submissions of the respective parties, it is required to be noted that it has been brought on record through oral evidence that at village Ter, there is museum of Archeology Department, so also civic amenities and other facilities were available viz. railway station, post office, rural hospital etc.

11. Apart from above, what is required to be taken note of is, the claimants have produced two sale deeds at Exhibits-23 and 28 so as to support the claim for enhancement. It is required to be noted that the claimant Sahebrao deposed in support of enhancement and has also deposed in support of sale instances produced vide Exhibits-23 and 28, so also the sale instances at Exhibits-24 and 25. Apart from above, he has also deposed that the Reference Court has granted enhancement in L.A.R. Nos.141/1999, 114/1999 and 289/1998 on 25/11/2010 at Exhibit-29.

12. The Reference Court based on the theory of sale instances, particularly having back ground of Section 51A of the Land Acquisition Act accepted the evidence in the form of sale deeds to be appropriate for deciding the claim of enhancement. The Reference Court then has proceeded to analyze the sale instances, particularly in the back ground of 7/12 extract of acquired land Block No. 955 at

Exhibit-15. It was brought on record that the land in question was meant for sugar cane cultivation. The Reference Court then proceeded to analyze N.A. order at Exhibit-26 which was in relation to Block No. 955 to the extent of 91 Are and noted that Block No. 955 is adjacent to the acquired land Block No. 962 and 995. Apart from above, the Reference Court then proceeded to analyze the sale instances at Exhibits-23, 24, 25 and 28. The Reference Court then noted that Exhibit-24 is dated 07/03/2001, Exhibit-25 is dated 29/07/2009, whereas notification under Section 4 of the Land Acquisition Act was published on 19/04/1990. The sale instances at Exhibits-24 and 25, which took place after about 11 and 19 years were ignored, whereas Exhibit-23 was found to be more helpful, as the same was executed after three years of notification under Section 4 of the Land Acquisition Act. Relying upon the judgment of this Court in the matter of **Akkalkot Municipal Council, Solapur vs. Vasantrao Tulshiram Kharade and others** reported in **2009 LAC 565 (Bom)**, the sale instance which was subsequent to notification under Section 4 of the Land Acquisition Act by three years was taken into account and the Reference Court upon analyzing thereof ordered enhancement of the compensation. While considering the sale instance at Exhibit-23 which was rather three years subsequent to the notification under Section 4 of the Land Acquisition Act, the Reference Court has made 30% deductions from the same and fixed

the value of the land at Rs.10,500/-. However, considering the sale instance at Exhibit-23 dated 30/08/1993 Reference Court further proceeded to adjust the amount and declared that the land acquired should be granted enhanced compensation @ Rs. 7000/- per Are. The amount of Rs.7000/- per Are as is reached, is based upon the sale instance Exhibit-23 which was executed three years after the notification under Section 4 of the Land Acquisition Act. The Reference Court has given appropriate reasons for reaching to such conclusion.

13. As such, in my opinion, the enhancement as is granted is based on sale instance method.

14. The enhancement is, as such, justifiable. No illegality could be established before this Court by learned A.G.P. The appeals fail, same stands dismissed.

15. In view of dismissal of first appeals, civil application for stay stand disposed of.

[N.W. SAMBRE, J.]