

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

FIRST APPEAL NO. 23 OF 2005

1. The State of Maharashtra .. Appellants
Through Collector, Collectorate,
Nanded.
2. The Special Land Acquisition Officer,
P.T. & M.I.W., II, Nanded.
3. The Executive Engineer
Medium Project Talni, Office
Nanded, Dist. Nanded.

Versus

Ganpati s/o. Saibu Shirole .. Respondent
Age. 40 years, Occ. Agriculture,
R/o. Jigla, Tq. Biloli,
Dist. Nanded.

**WITH
FIRST APPEAL NO. 24 OF 2005**

1. The State of Maharashtra .. Appellants
Through Collector, Collectorate,
Nanded.
2. The Special Land Acquisition Officer,
P.T. & M.I.W., II, Nanded.
3. The Executive Engineer
Medium Project Talni, Office
Nanded, Dist. Nanded.

Versus

Parbhata s/o. Hanmantu Wasmate .. Respondent
Age. 70 years, Occ. Agriculture,
R/o. Lohgaon, Tq. Biloli,
Dist. Nanded.

Mr. S.B. Yawalkar, AGP for the appellants.
None for the respondents.

CORAM : A.M. BADAR, J.
RESERVED ON : 18.11.2015
PRONOUNCED ON : 21.11.2015

J U D G M E N T :-

1. Both these appeals are decided by this common judgment as they are arising out of same notification under section 4 of the Land Acquisition Act, 1894 and the lands under acquisition are from the same village.

2. In First Appeal No.23 of 2005 the State has challenged the judgment and award dated 30.08.2004 in LAR No.68 of 2004, passed by learned Civil Judge, Senior Division, Biloli filed by the claimant and thereby enhancing compensation in respect of acquired land at the rate of Rs. 92,500/- per hectare.

3. In First Appeal No. 24 of 2005, the State has challenged the judgment and award dated 02.07.2004 in LAR No.58 of 2004, passed by learned Civil Judge, Senior division, Biloli filed by the claimant and thereby enhancing compensation in respect of acquired land at the rate of Rs. 83,000/- per hectare.

4. Facts leading to institution of both these appeals are thus :-

a. For Talni Medium Project in Tq. Biloli, the State has decided to acquire lands from village Jigla in Tq. Biloli. Accordingly, notification under section 4 of the Land Acquisition Act was issued on 22.03.1997 and proceedings for acquisition of lands were taken up. Ultimately, 51 R, 38 R and 78 R from Survey No.47/2, Survey No.47/3 and Survey No.48/2 respectively owned by the claimant in LAR No.68 of 2004 (F.A. No.23 of 2005) came to be acquired. The Land Acquisition Office passed award on 21.02.2000 and assessed market value of the

acquired land at the rate of Rs. 77,370/-, Rs. 77,460/- and Rs. 77,760/- per hectare respectively on the basis of assessment of land revenue on the acquired land.

b. So far as LAR No.58 of 2004 (F.A. No.24 of 2005) is concerned, land admeasuring 24 R from Survey No.45/5 of village Jigla was put up for acquisition vide same notification under section 4 of the Land Acquisition Act, 1894 and ultimately the Land Acquisition Officer passed award offering compensation to the claimant therein at the rate of Rs.78,600/- per hectare. This award was also based on assessment of land revenue on the acquired land.

c. By the impugned judgment and award of the Reference Court, compensation for acquired land in LAR No.68 of 2004 (F.A. No.23 of 2005) came to be fixed at Rs.92,500/- per hectare and compensation for the acquired land in LAR No.58 of 2004 (F.A.No.24 of 2005) was fixed at Rs.83,000/- per hectare.

5. Learned Asstt. Government Pleader (A.G.P.) appearing for the appellant/State contended that learned Reference Court committed error by relying on sale instance of different village such as Talni, Kinala, Ramtirth and Lohgaon while fixing market value of the land of the claimants. In submissions of learned A.G.P., sale instances at Exhs.14,15 & 16 in LAR No.68 of 2004 and sale instances at Exhs. 18 & 20 in LAR No.58 of 2004 are from different villages and there was no evidence to show that the land covered by those sale instances were having similar advantage in situation, quality and fertility. He further argued that sale instance at Exh.17 though of village Jigla was of post notification period and as such ought not to have been considered by the learned Reference Court. Learned A.G.P. therefore prayed for quashing and setting aside impugned awards of the Reference Court.

6. None appeared for the respondents though served.

7. With the assistance of learned A.G.P. I have carefully perused the record and proceedings in LAR No.68 of 2004 and LAR No.58 of 2004. The evidence adduced by the claimants therein is also perused by me.

8. It is seen that in LAR No.68 of 2004, claimant examined his son Pundlik apart from P.W.2-Hanumant Kerba and P.W.3-Laxman Patil for proving sale-deeds. In LAR No.58 of 2004, claimant examined himself apart from adducing evidence of P.W.2-Digambar and P.W.3-Venkat. In LAR No.68 of 2004, sale-deed at Exh.14 to 17 were relied by the claimants whereas in LAR No.58 of 2004 sale-deeds at Exh.18 & 20 were relied. Perusal of impugned judgment and award in LAR No.68 of 2004 goes to show that learned Reference Court has refused to rely on sale instances relied by the claimants. It was specifically observed in para 27 of the impugned judgment and award that sale instances at Exh.14 to 17 give average value of Rs.1,18,473/- per hectare and award of that amount would be somewhat costly affair taking into consideration over

all contingencies. It needs to be mentioned here that sale-deed at Exh.17 in LAR No.68 of 2004 is from village Jigla itself but it is dated 06.07.1999 i.e. subsequent to notification under section 4 of the Land Acquisition Act. It is seen from that sale-deed that per hectare price of the land under the sale-deed was Rs.1,20,370/- per hectare. Other sale-deeds at Exhs.14 to 16 were from adjacent village such as Talni, Kinala and Ramtirth. Those were also reflecting market value of the land thereunder more than Rs.1.40 lakhs per hectare.

9. Learned Reference Court considered the aspect that market value of the land at village Jigla as well as near about villages was certainly more than what was awarded by the Land Acquisition Officer. As such, with reasonable guess-work, learned Reference Court in LAR No.68 of 2004 awarded lumpsum increase at the rate of Rs.15,000/- per hectare to the value of the land assessed by the Land Acquisition Officer and in such manner estimated market value of the market land at Rs.92,500/-

per hectare on the date of notification under section 4 of the Land Acquisition Act. The approach adopted by the learned Reference Court seems to be perfectly legal and as per evidence available on record. It cannot be said that learned Reference Court has awarded exorbitant compensation by assessing the evidence on record in perverse manner.

10. So far as LAR No.58 of 2004 is concerned, learned Reference Court has considered sale-deed at Exh.18, which is dated 07.05.1997 where-under land of village Kinala was sold at the rate of Rs.1,49,468/- per hectare and sale-deed at Exh.20, which is dated 31.05.1997 of village Lohgaon, which was also depicting similar market value of the land. These two villages are adjacent to village Jigla, where the land of the claimant was situated. Learned Reference Court made necessary deductions considering the fact that the land under sale-deed relied by the claimants was located in different village. Some addition was also made as per settled

norms for determining compensation of the acquired land and ultimately enhanced the compensation for the acquired land from Rs.78,600/- per hectare to Rs.83,000/- per hectare. No perversity can be found in determination of the market value of the acquired land in LAR No.58 of 2004 by the impugned award.

11. In the result, both the appeals bearing First Appeal No.23 of 2005 and First Appeal No. 24 of 2005 are dismissed with no order as to costs.

[A.M. BADAR, J.]