

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

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981 FIRST APPEAL ST. NO.24773 OF 2015
WITH CA/12029/2015 IN FAST/24773/2015

EXECUTIVE ENGINEER NIMNA DUDHNA PROJECT, SELU
VERSUS
UTTAM SAKHARAM CHAVAL DIED THR LRS SITABAI UTTAMRAO
CHAVAL AND OTHERS

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Advocate for Applicant : Mr.Sangle Shirish G.
AGP for Respondents: Mr. A. M. Phule

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1108 FIRST APPEAL ST. NO. 28212/2013

BHAGWANTRAO DADARAO CHAVALDIED LRS AASHABAI AND OTHERS
VERSUS

THE STATE OF MAHARASHTRA AND OTHERS
WITH
FIRST APPEAL ST. NO. 34813/2013

UDDHAV BHAGWANRAO CHAWAL
VERSUS
STATE OF MAHARASHTRA AND OTHERS
WITH
FIRST APEPAL ST. NO. 34815OF 2013

DNYANOBA APPASAHEB KASBE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
1110 FIRST APPEAL ST. NO.4089/2014

BANSI MOKINADRAO CHAVAL
VERSUS
THE STTE OF MAHARASTRA AND OTHERS
WITH
FIRST APPEAL ST. NO.6063/2014

PRASARAM TATYARAO CHAWAL , DIED
THROUGH LEGAL HEIRS - MANDUDORIBAI PARASRAM CHAWAL
AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL ST. NO 6042/2014

PRAKASH RAOSAHEB CHAWAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
1111 FIRST APPEAL ST. NO.6059/2014

YAMUNABAI TUKARAM CHAVAL DED THRO. L.RS. SHIVAJI TUKARAM
CHAVAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
1112 FIRST APPEAL ST. NO.7441/2014

DEORAO ANANDRAO NIRMAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
FIRST APPEAL ST. NO. 7439/2014
SUBHASH RAVSAHEB CHAWAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicants : Mr. Kakade Deepak M.
AGP for Respondents: Mr. B. V. Viradhe, Mr. A. M. Phule
Advocate for Respondents 2 and 3 : Mr. Ruturaj Patil

CORAM : S. V. GANGAPURWALA, J.

DATE : 16th October, 2015

ORAL JUDGMENT:

1. All these appeals are in respect of references decided by the Reference Court, wherein the lands are acquired vide notification U/Sec. 4 of the Land Acquisition Act (for short "L. A. Act") dated 13.07.1995 for the purpose of lower Dudhna project. The lands acquired in all these references are from village

Wanjola, Tq. Mantha. Reference Court has partly allowed the references. The present appeals are filed for enhancement of compensation amount.

2. The sale instances relied are the same. The lands acquired are for the same project and from the same village and vide the same notification U/Sec. 4 of the L. A. Act. As such, to avoid rigmarole, it would be appropriate to decide all the appeals by a common judgment.

3. The paper book is provided comprising of all the sale instances, claim petition, depositions, roznama, etc.

4. The learned counsel for respective appellants submit that, five sale instances are produced before the Reference Court of adjoining villages. The sale instances of the same village were not available, as there was ban on the sale transactions. The learned counsel submit that, all the sale instances were in respect of the lands of the same vicinity i. e. they were of adjoining villages which were also affected by the acquisition of the same project. The learned counsel submits that, said sale instances can be said to be

exemplar sale instances. There was no impediment to rely on the said sale instances. According to the learned counsel except one sale instance dated 15.04.1994 all other sale instances are in respect of Jirayat land. The sale instance dated 31.05.1995 is of village Mantha. The land in the said sale transaction is sold at the rate of Rs. 1,850/per R. Whereas the sale instance dated 14.06.1995 is in respect of village Revalgaon, wherein land is sold at the rate of Rs. 2,000/per R. The highest sale exemplar is required to be considered while awarding compensation amount. According to the learned counsel, there was no impediment for the Reference Court to consider the said sale instances. The lands of the claimants are situated on the bank of river Dudhna. They are black cotton soil lands. The evidence to that effect has been led. According to the learned counsel, the Reference Court instead of awarding the compensation at the rate at which the sale transactions have taken place prior to Sec. 4 notification of the L. A. Act, has awarded paltry compensation at the rate of Rs. 1,200/per R for dry land Rs. 1,600/per R for seasonally irrigated land and Rs. 1,800/per R for perennially irrigated land. The learned counsel submit that, the claimants be awarded compensation at a higher rate.

5. According to the learned counsel in respect of lands acquired from village Rani Vahegaon for the same project vide notification U/Sec. 4 of the L. A. Act dated 31.03.1996 the Reference Court had awarded compensation at the rate of Rs. 2,500/per R. The appellants be awarded at least the said rate. Even the appeals filed by the State with applications for condonation of delay have been rejected i. e. applications for condonation of delay have been rejected *inter alia* the appeals are not entertained. The learned counsel also have given copies of the order passed by Division Bench of this Court wherein the lands from the same village Wanjola were acquired vide notification U/Sec. 4 dated 13.07.1995 for the same project in which this Court considered the compensation awarded at the rate of Rs. 1,500/per R for Jirayat land, Rs. 1,800/per R for seasonally irrigated land and Rs. 2,100/per R for perennially irrigated land as reasonable. The learned counsel submit that, if Rs. 1,500/per R is awarded for Jirayat land, for perennially irrigated land twice the Jirayat land is required to be awarded.

6. Mr. Sangle, Mr. Patil, the learned counsel for acquiring body in respective appeals, so also the learned

Assistant Government Pleader for the Respondent/State in respective appeals submit that, in fact acquiring body had filed appeals against the award impugned in the present appeals. However, the acquiring body has withdrawn the appeals in view of the policy decision taken and it is after the appeals were withdrawn by the acquiring body the claimants have filed present appeals by getting delay condoned. According to the learned counsel the Reference Court has considered various sale instances. Even the sale instance in respect of village Mangrul is at the rate of Rs. 960/per R. The said sale instance is just four months prior to the notification U/Sec. 4 of the L. A. Act. If the said sale instance is considered, the market rate of the acquired land was Rs. 960/per R, still the Reference Court has awarded compensation at the rate of Rs. 1,200/per R. The learned counsel submit that, each case will have to be considered on the basis of evidence led in that particular case. In the judgment of the Reference Court decided in L.A.R. No. 91/2000 with other connected references, wherein the Court had awarded compensation at the rate of Rs.1,500/,Rs. 1,800/and Rs.2,100/per R respectively for Jirayat, Seasonal irrigated and perennially irrigated lands, the Reference Court has considered the evidence led in those

references and considering evidence in those references, this Court in appeals filed by the State had not condoned the delay, that does not mean that the judgment of the Reference Court is confirmed. According to the learned counsel, the said judgment cannot be considered in the present matters.

7. Mr. Sangle, the learned counsel further submits that, in appeals filed by the State against the judgment delivered by the Reference Court granting compensation at the rate of Rs. 1,200/, Rs. 1,600/and Rs. 1,800/per R for Jirayat, seasonally irrigated and perennially irrigated lands, the appeals were dismissed, however, this Court on application for review filed by the acquiring body had specifically clarified that the said order would not be a precedent.

8. With the assistance of learned counsel for respective parties, I have gone through the judgment delivered by the Reference Court, so also the judgment and order delivered by the Division Bench of this Court in Civil Application No. 3346 of 2005 with other connected civil applications.

9. The lands in the present references are acquired

vide notification U/Sec. 4 of the L. A. Act dated 13.07.1995 for the purpose of lower Dudhna project from village Wanjola. The award is passed on 31.03.1999. In Civil Application No. 3346 of 2005 with other connected civil applications in the respective appeals, the Division Bench of this Court was also considering the lands acquired from village Wanjola acquired vide notification dated 13.07.1995 for the purpose of lower Dudhna project, wherein also award was passed on 31.03.1999. As such, lands acquired in the present appeals are from the same village and vide the same notification U/Sec. 4 dated 13.07.1995 and for the same purpose of lower Dudhna project, as the lands involved in Civil Application No. 3346 of 2005 in First Appeal Stamp No. 25415 of 2003 with other connected appeals. The References in the said matters were decided earlier. In the said references the Reference Court had granted compensation for the lands acquired from village Wanjola at the rate of Rs. 1,500/per R for Jirayat land, Rs. 1,800/per R for seasonally irrigated land and Rs. 2,100/per R for perennially irrigated land. The Division Bench of this Court while considering said judgment and award of Reference Court had made following observations in the said judgment.

"By referring to the 7/12 extracts, the nature of the crops, those were grown and also availability of irrigation facility, the learned Judge has arrived at a conclusion that the lands were capable of yielding annual income of about Rs.10,000/- and, therefore, in the light of judgment of the Supreme Court in the matter of Union of India V/s Shanti Devi (AIR 1983 Supreme Court, 1190), the market price of the land could be calculated at the rate of 12 times of the annual income and thus, Rs.1,20,000/- per Acre i.e. Rs.3,000/- per Are. Having arrived at a conclusion that market price of the land can be Rs.2775/- per Are on the basis of comparable sale instances and Rs.3,000/- per Are on the basis of capitalisation method, the Judge has granted market price at Rs.1500/- per Are for Jirayat land and Rs.2100/- for irrigated land. We are, thus, unable to find that the enhancement awarded by the Reference Court is exorbitant or unjust. On the contrary, the same appears to be reasonable or at the most, it may be marginally above what is just and proper. This we treat as additional ground for not condoning the delay."

10. In respect of the lands from other villages i. e. Rani Vahegaon though acquired for the same project were acquired by subsequent notification U/Sec. 4 dated 31.03.1996. In the said matter, the Reference Court awarded compensation at the rate of Rs. 2,500/per R and

even the appeals filed by the State along with condonation of delay applications are rejected.

11. I would not rely on the said judgment as it is in respect of separate notification and in respect of a different village, as another village may have some additional advantage and disadvantage.

12. There are sale deeds produced on record by present claimants of adjoining villages which are ranging from Rs. 960/per R to Rs. 3,823/per R. The same sale instances were relied in Reference bearing L. A. R. No. 91 of 2000 with other connected references decided by the Reference Court. The Court had awarded compensation at the rate of Rs. 1,500/, Rs. 1,800/and Rs. 2,100/per R for Jirayat, Seasonally irrigated and perennially irrigated lands. The said judgment stands confirmed by the Division Bench of this Court vide order dated 01.03.2007 referred to above.

13. The said order is passed by the Division Bench of this Court. As the present acquisitions are also from the same village, vide the same notification U/Sec. 4 and for the same project. It would be safe to rely on the said judgment of the Division Bench of this Court, wherein

compensation is awarded at the rate of Rs. 1,500/, Rs. 1,800/and Rs. 2,100/per R for Jirayat, seasonally irrigated and perennially irrigated lands respectively stands confirmed. The same would also be in consonance with the principle of parity.

14. As far as categorization of lands is concerned, the Reference Court has considered and accepted the categorization of the lands into Jirayat, Seasonally irrigated and perennially irrigated as done by the Special Land Acquisition Officer in the award. The same is accepted.

15. Considering the above, the appeals of the claimants are partly allowed. The judgment and award passed by the Reference Court is modified to the extent that the respondents are jointly and severally liable to pay compensation to appellants at the rate of Rs. 1,500/per R for Jirayat lands, Rs. 1,800/per R for Seasonally irrigated lands and Rs. 2,100/per R for perennially irrigated lands as categorized by the Reference Court in the award. The rest of the statutory benefits awarded by the Reference Court are upheld and maintained.

16. First Appeal St. No. 24773 stands dismissed.

17. The appellants shall not be entitled for the statutory benefits in respect of the delayed period while filing appeals. In the event the appellants have paid less court fees, then the appellants shall pay the deficit court fees accordingly.

18. Civil applications also stand disposed of.

(S. V. GANGAPURWALA, J.)

JPC