

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

FIRST APPEAL NO.382 OF 1994

The State of Maharashtra,
through Collector, Osmanabad

..Appellant
(Orig.Respondent)

Versus

1. Sudhir Suresh Pimple,
Age 13 years, Occu. Education,
Minor

2. Suhas Suresh Pimple,
Age 15 years, Occu.Education,

Both the minor u/g of mother
respondent No.3

3. Prathiba w/o Suresh Pimple,
Age 35 years, Occu.Service
& Agri., R/o Wagholi,
Taluka and District Osmanabad

..Respondents
(Orig.Claimants)

- WITH -

FIRST APPEAL NO.383 OF 1994

The State of Maharashtra,
through Collector, Osmanabad

..Appellant
(Orig.Respondent)

Versus

Kailas Maruti Pimpale,
Age 33 years, Occu.Agriculture,
R/o Wagholi, Taluka and
District Osmanabad

..Respondent
(Orig. Claimant)

Mr P.P. More, Assistant Government Pleader for appellant
Mr A.B. Kale, Advocate h/f Mr S.B. Wakure, Advocate for respondents

- WITH -

CIVIL APPLICATION NO.6080 OF 2014
AND
CIVIL APPLICATION NO.9521 OF 2014
IN

CROSS OBJECTION ST.NO.27308 OF 1994
- WITH -
CROSS OBJECTION ST.NO.27308 OF 1994

Sudhir Suresh Pimple,
Age 13 years, Occu. Education,
Minor and two others

Applicants/
..Objection Petitioners

Versus

The State of Maharashtra,
through Collector, Osmanabad

..Respondent

- WITH -

CIVIL APPLICATION NO.9524 OF 2014
IN
CROSS OBJECTION ST.NO.27305 OF 1994
WITH
CROSS OBJECTION ST.NO.27305 OF 1994

Kailas s/o Maruti Pimple

.. Applicants/
Objection Petitioners

Versus

The State of Maharashtra,
through Collector, Osmanabad

..Respondent

Mr A.B. Kale, Advocate h/f Mr S.B. Wakure, Advocate for
applicants/objection petitioners
Mr P.P. More, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 13th August 2015

ORAL JUDGMENT

Heard.

2. These appeals are filed by the State Government under the provisions of Section 54 of the Land Acquisition Act (hereinafter referred to as "the Act" for brevity), questioning the legality of findings recorded by learned reference Court (learned Civil Judge, Senior Division, Osmanabad) in Land Acquisition Reference No.190 of 1992 and 187 of 1992.

3. The brief facts, as are necessary for deciding the present appeals are as under :

4. The respondents in First Appeal No.382 of 1994 are the owners of land Gut No.101/1 admeasuring 4 hectare, 14, whereas the respondent in First Appeal No.383 of 1994 is the owner of land Gut No.101/2, admeasuring 4 hectare 17 R and Gut No.103 admeasuring 37 R, situated at village Wagholi, District Osmanabad, which were acquired for the irrigation project at Kajala.

5. Section 4 notification was published on 27/04/1989 and objection pursuant to Section 9, sub-sections (3) and (4) of the Act was preferred by the respondents before the Special Land Acquisition Officer (hereinafter referred to as "S.L.A.O." for brevity) claiming compensation at the rate of Rs.30,000/- per acre. The respondents-land owners claimed additional compensation for well, trees, pipeline etc. While claiming compensation, the issues as were canvassed by the respondents were, the irrigation facilities and fertility of land, the location of the land from the district headquarters Osmanabad, the availability of school, Bank, etc.

6. Pursuant to the claim, the S.L.A.O. awarded amount, which since was felt inadequate, the references came to be filed. It appears that the S.L.A.O. Awarded compensation for land, for trees, well and the pond in the land together with solatium.

7. Before the learned reference Court, enhanced compensation of Rs.30,000/- per acre was claimed with the compensation for the fruit bearing trees and other attachments.

8. The claim for compensation was resisted by filing written statement at Exh.7 and the reference Court framed issues at Exhs.8, 10 and 11. The learned reference Court, while dealing with the issues has observed that the respondents-claimants have proved that they are entitled to receive enhanced compensation at the rate of Rs.26,000/- per acre.

9. In support of the claim petitions, the respondents-claimants examined themselves and one Tryambak Kadam, who was working in the office of S.L.A.O., Tanaji Chavan, who was working in Horticulture department.

10. Learned reference Court noted that the S.L.A.O., instead of valuing the land on the basis of sale instances, has taken recourse to revenue assessment and as such ordered enhanced compensation.

11. The compensation awarded was Rs.3,81,275/- towards the fruit bearing trees and Rs.26,000/- per acre for the acquired lands.

12. Learned Assistant Government Pleader, while arguing the present appeals would urge that the reference Court committed an error by enhancing the compensation on the ground that the compensation, as awarded based on the revenue assessment method was correct. He would then urge that the sale instance as is taken

into account was in relation to the irrigated land, whereas the lands in question are dry crop lands. It is also urged that the evidence of the witnesses, namely, Kailas at Exh.21, Tryambak at Exh.30 and Tanaji at Exh.31 was not appreciated correctly.

13. In addition to above, learned Counsel for the respondents would urge for dismissal of appeals on the ground that the order delivered by the reference Court is in accordance with the pleadings, evidence as was brought on record.

14. It is required to be noted that the land owners - respondents herein have filed cross objections claiming compensation at the rate of Rs.35,000/- per acre, based on the judgment delivered by this Court in exercise of powers under Section 54 of the Act in another matter in which the land owner's land was acquired for the same purpose.

15. As there was delay in filing the Cross Objection St.No.27308 of 1994, the Cross Objectors filed Civil Application bearing No.6080 of 2014 for condonation of delay. For the reasons stated therein, Civil Application No.6080 of 2014 stands allowed and delay caused in filing the Cross Objection St.No.27308 of 1994 is condoned.

16. It is required to be noted herein that in the said matter, Section 4 notification was issued on 5th December 1988 and award was delivered on 6th November 1991.

17. The total land acquired was 4 hectares, 13-R from Gut No.101/2, and 37-R, which is subject matter of First Appeal No.382 of 1994, along with the well in Gut No.101/02 and 103 with pipeline. The compensation awarded by the S.L.A.O. was Rs.10,000/- per acre and the learned reference Court enhanced the compensation to Rs.26,000/- per acre as against the claim of Rs.30,000/- per acre.

18. As observed herein above, as regards the oral evidence, as is brought on record, though the issue of limitation was sought to be raised in present appeals, however, it is an admitted fact on record that the reference was forwarded by the S.L.A.O. with an endorsement that the reference was filed within limitation. The amount of compensation, as has been awarded was withdrawn on 22nd November 1991, whereas reference under Section 18 of the Act was filed on 13th December 1991. The above facts, in clear terms, takes to the only inference that the reference was filed within limitation.

19. It is further required to be noted herein that Exh.17 is the award in respect of the acquired land in which the S.L.A.O. has valued the land on the basis of revenue assessment, by making the groups of the land. The S.L.A.O. in his award has specifically mentioned about availability of the facilities like market, bus stand, etc. with the quality of land being a black cotton soil and land being irrigated one. The revenue record depicts the cultivation of crops like sugarcane, ground nut, hybrid jowar, wheat etc. In order to establish the claim for higher compensation, the land owners have produced sale deed Exh.19 dated 11th December 1989, which was for a consideration of Rs. 1

lakh. The sale instance in question was after issuance of Section 4 notification, which is dated 5th December 1988. Another sale instance Exh.20 is the sale-deed in respect of land Survey No.90/2, situated at village Wagholi for land admeasuring 21-R and executed on 1st December 1984 for a consideration of Rs.13,000/-. The said land was adjacent to the land of one Nilawanti Magar, wherein facility of water from the well was available for irrigation purpose. Said sale instance was taken into account by learned reference Court, for reaching to a conclusion for awarding enhanced compensation of Rs.26,000/- per acre, by adding the difference of amount keeping in mind the date of sale instance and date of issuance of Section 4 notification. In my opinion, the said sale instance was properly proved by the parties to the proceedings, which was formed to be the basis for granting enhanced compensation.

20. Learned Assistant Government Pleader then would urge that the compensation granted for the trees was also on higher side. It is required to be noted that while lodging the claim under Section 9 of the Act, it was brought on record that there were nine mango trees, 130 custard apple trees, 42 black berry trees, 11 lemon trees, one almond, two tamarind and one Ramphal tree. The said fact was fortified in the joint measurement. It is required to be noted herein that the land owners have examined Tanaji Chavan, a person working in Horticulture department to prove his claim for the trees. It is also brought on record that in the well, water was available, which was used for irrigation purpose and the said fact is very much taken note

of by the S.L.A.O. based on the revenue entry of Gut No.101. Tryambak and Tanaji who were examined at Exhs.30 and 31 and who have also produced the revenue and other record in relation to claim, have proved the existence of fruit bearing trees and as such, the reference Court awarded the compensation based on its valuation. It is further required to be noted that the comparable sale instance method, particularly based on Exh.20, a sale-deed of 21-R land which was for dry crop land and executed on 1st December 1984 appears to be the basis for granting compensation in the present case, wherein the fertility of land and availability of irrigation facilities was taken into account. In my opinion, the enhancement as ordered by the learned reference Court, which is sought to be assailed in the present appeals at the behest of State Government, for the reasons stated herein above, does not call for any interference and as such, both the appeals at the behest of appellant – State Government are dismissed.

21. The Cross Objections, as are filed by the land owners are based on the judgment and order dated dated 3rd September 2007 delivered by this Court in Civil Application No.4622 of 1999 in First Appeal Stamp No.8903 of 1999 and Civil Application No.4623 of 1999 in First Appeal St.No.8900 of 1998. Learned Counsel for the respondents -land owners, while seeking enhanced compensation, has urged that in other land acquisition references, an appeal was preferred, particularly in Land Acquisition Reference No.188 of 1992 and 201 of 1992, in which the land was acquired for the same project, for which the lands in the present appeals were acquired. It is brought to my

notice that for the same cause and similarly situated land, the reference Court has granted compensation of Rs.35,000/- per acre relying upon the sale instances in the said references. There were three sale instances, which were relied upon for awarding the compensation for which Section 4 notification and the purpose for which the land was acquired is the same. In the said case, compensation of Rs.35,000/- per acre was awarded by the reference Court, which was subject matter of challenge before this Court in the above referred First Appeal Stamp numbers. This Court by its order dated 3rd September 2007, was pleased to dismiss the said appeals by refusing to condone the delay and ordered that the enhanced compensation be awarded at the rate of Rs.35,000/- per acre.

22. Based on the same, in my opinion, the respondents-land owners who are objectors in Cross Objections are also entitled for the enhanced compensation at the rate of Rs.35,000/- per acre, though they have sought enhanced compensation at the rate of Rs.1 lakh per acre. The enhancement as is required to be granted is based on the reference decided by the learned reference Court in L.A.R.Nos.188/1992 and 201/1992, in which the acquired land was having similar facility as that of the present land owners for the same project.

23. Hence, the present Cross Objections filed in the appeals are allowed with observation that the land owners-respondents herein are entitled to the enhanced compensation at the rate of Rs.35,000/- (Rs.Thirty-five thousand) per acre. The land owners are entitled to the

other statutory benefits, i.e. solatium, interest etc., as ordered by the reference Court. In the circumstances, there shall be no order as to costs.

24. In view of order passed in First Appeals, Civil Applications No.9521 of 2014 and 9523 of 2014 for production of additional record in Cross Objections do not survive and stand disposed of.

(N.W. SAMBRE, J.)

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