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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.112 OF 2009 WITH
CROSS OBJECTION (ST.) NO.20197 OF 2011 WITH
CIVIL APPLICATION NO.153 OF 2012**

The State of Maharashtra ... Appellant

Vs.

Nakul Govind Patil & Ors. ... Respondents

WITH

**FIRST APPEAL NO.271 OF 2009 WITH
CROSS OBJECTION (ST.) NO.20363 OF 2011 WITH
CIVIL APPLICATION NO.168 OF 2012**

The State of Maharashtra

At the instance of Special Land Acquisition Officer ... Appellant

vs.

Anant Lahu Patil and Ors. ... Respondents

WITH

**FIRST APPEAL NO.1578 OF 2009 WITH
CROSS OBJECTION (ST.) NO.20200 OF 2011 WITH
CIVIL APPLICATION NO.169 OF 2012**

The State of Maharashtra

At the instance of Special Land Acquisition Officer ... Appellant

Vs.

Anant Lahu Patil ... Respondent

WITH

**FIRST APPEAL NO.986 OF 2010 WITH
CROSS OBJECTION (ST.) NO.15559 OF 2015 WITH**

CIVIL APPLICATION NO.118 OF 2015

The State of Maharashtra

through Special Land Acquisition Officer

... Appellant

Vs.

Anandibai Rama Pawar

... Respondent

Mr. A.R. Patil, AGP, for Appellant in all First Appeals and for Respondent in all XOBST.

Mr. Shriram S. Kulkarni, for Appellant in All XOBST and for Applicant in all CAs and for Respondents in all First Appeals.

WITH**FIRST APPEAL NO.1713 OF 2008 WITH
CROSS OBJECTION (ST.) NO.5726 OF 2010 WITH
CIVIL APPLICATION NO.148 OF 2014**

The State of Maharashtra

through Special Land Acquisition Officer

... Appellant

Vs.

Shri. Laxman Namdeo Patil and Ors.

... Respondents

Mr. A.R. Patil, AGP, for Appellant and for Respondent in XOBST.

Mr. Sachin S. Punde, for Respondents and for Appellant in XOBST and for Applicant in CA.

WITH**FIRST APPEAL NO.391 OF 2009 WITH
CROSS OBJECTION (ST.) NO.17059 OF 2009**

The State of Maharashtra

through Special Land Acquisition Officer

... Appellant

Vs.

Gopal Bhagya Patil and Ors.

... Respondent

Mr. A.R. Patil, AGP, for Appellant in FA and for Respondent in XOBST.

Mr. Sachin S. Punde, for Respondents in FA and for Appellant in XOBST and for Applicant in CA.

WITH

**FIRST APPEAL NO.409 OF 2009 WITH
CROSS OBJECTION (ST.) NO.17057 OF 2009**

The State of Maharashtra

through Special Land Acquisition Officer ... Appellant

vs.

Gopal Bhagya Patil and Ors. ... Respondents

Mr. A.R. Patil, AGP, for Appellant in FA and for Respondent in XOBST.

Mr. Sachin S. Punde, for Respondent in FA and for Appellant in XOBST and for Applicant in CA.

WITH

**FIRST APPEAL NO.421 OF 2011 WITH
CROSS OBJECTION (ST.) NO.19283 OF 2015 WITH
CIVIL APPLICATION NO.772 OF 2011 WITH
CIVIL APPLICATION NO.591 OF 2012 WITH
CIVIL APPLICATION NO.590 OF 2012 WITH
CIVIL APPLICATION NO.157 OF 2015 WITH**

The State of Maharashtra and Anr. ... Appellants

Vs.

Shri Nilkant Chander Patil ... Respondent

WITH

**FIRST APPEAL NO.422 OF 2011 WITH
CROSS OBJECTION (ST.) NO.19263 OF 2015 WITH
CIVIL APPLICATION NO.158 OF 2015 WITH
CIVIL APPLICATION NO.846 OF 2012 WITH
CIVIL APPLICATION NO.773 OF 2011**

Mr. A.R. Patil, AGP, for Appellants in FAs and for Applicant in CA No.772 of 2011, CA No.592 of 2012 and for Respondent in XOBSTs.

Mr. Sagar Mane i/by Mr. Narendra V. Bandiwadekar, for Respondent in FAs and for Appellant in XOBST and for Applicant in CA No.157 of 2015 and CA No.158 of 2015.

**WITH
FIRST APPEAL NO.1738 OF 2011 WITH
CROSS OBJECTION (ST.) NO.11181 OF 2011**

The State of Maharashtra ... Appellant

Vs.

Budhaji Chirkut Patil (Deceased)

Through his Lrs. and Ors. ... Respondents

Mr. A.R. Patil, AGP, for Appellant in FA and for Respondent in XOBST.

Mr. S.M. Kamble, for Respondent in FA and for Appellant in XOBST.

**WITH
FIRST APPEAL NO.418 OF 2011 WITH
CROSS OBJECTION (ST.) NO.19291 OF 2015 WITH
CIVIL APPLICATION NO.153 OF 2015**

The State of Maharashtra & Anr. ... Appellants

Vs.

Smt. Umabai Rama Patil (dead)

(since deceased through her legal heirs)

and Anr. ... Respondents

Mr. A.R. Patil, AGP, for Appellant in FA and for Respondents in XOBST.

Mr. Sagar Mane i/by Mr. N.V. Bandiwadekar, for Respondents in FA and for Appellants in XOBST and for Applicants in CA.

WITH
FIRST APPEAL NO.834 OF 2014 WITH
CROSS OBJECTION (ST.) NO.17358 OF 2015 WITH
CIVIL APPLICATION NO. 136 OF 2015

The State of Maharashtra ... Appellant

Vs.

Dattu Kolhya Mhatre (Deceased)

Through his Lrs. and Ors. ... Respondents

WITH
FIRST APPEAL NO.835 OF 2014 WITH
CROSS OBJECTION (ST.) NO.17361 OF 2015 WITH
CIVIL APPLICATION NO.137 OF 2015

The State of Maharashtra & Anr. ... Appellants

Vs.

Shri Dattu Kolhya Mhatre (Deceased)

Through his Lrs. and Ors. ... Respondents

WITH
FIRST APPEAL NO.836 OF 2014 WITH
CROSS OBJECTION (ST.) NO.17365 OF 2015 WITH
CIVIL APPLICATION NO.138 OF 2015

The State of Maharashtra

through Special Land Acquisition Officer & Anr. ... Appellants

Vs.

Shri Dattu Kolhya Mhatre (Deceased)

Through Lrs. and Ors.

... Respondents

WITH

**FIRST APPEAL NO.837 OF 2014 WITH
CROSS OBJECTION (ST.) NO.17363 OF 2015 WITH
CIVIL APPLICATION NO.139 OF 2015**

The State of Maharashtra & Anr.

... Appellants

Versus

Dattu Kolhya Mhatre (Deceased)

Through his Lrs. and Ors.

... Respondents

Mr. A.R. Patil, AGP, for the Appellants in FAs and for Respondents in XOBST.

Mr. Shriram S. Kulkarni, for Respondents in FA and for Appellants in XOBSTs and for Applicants in CA.

**CORAM : A.S. OKA &
K.R. SHRIRAM, JJ.**

DATE : 27th AUGUST, 2015

PC.

. These Appeals can be conveniently disposed of by a common judgment. These Appeals arise out of the same notification dated 24th September, 1986 under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (for short “the said Act”) in respect of the lands in village Koli Kopar, Taluka Panvel, District Raigad. In some of the Appeals, there is a common Judgment delivered by the Reference Court.

2. Late in the 1960s, the State Government took a decision to set up a satellite city of New Bombay with a view to reduce congestion in the city of Mumbai. On 3rd February 1970, notifications under Sub-section (1) of Section 4 of the said Act were issued notifying various lands for acquisition for the purposes of setting up a twin city of New Bombay. The said notifications were in relation to the large tracts of lands situated in 96 villages forming part of Taluka Panvel, District Raigad and Taluka Thane, District Thane. There were further acquisitions in relation to the same villages for the same purpose on the basis of the notification dated 24th September, 1986 under Sub-section (1) of Section 4 of the said Act.

3. The claimants did not accept Awards made under Section 11 of the said Act and at their instance, references under Section 18 were made to the Civil Court. References were partly allowed. Enhancement in market value was granted by the impugned Awards. The State Government has preferred Appeals against the Awards. There are Appeals as well Cross-objections filed by the claimants for enhancement. In some of the Appeals, applications have been made by the claimants for grant of extension of time to file Cross-objections. In some of the Appeals, there are applications made for amendment of claims in the Reference and/or in Cross-objections. Claims made by the

claimants in Appeals and Cross-objections are for the market value at the rate of Rs.2,000/- per square metre and more. There are some applications made by the City and Industrial Development Corporation of Maharashtra Limited (for short "CIDCO") for intervention. There is no dispute that in view of the law laid down by a Division Bench of this Court applications made by the CIDCO are not maintainable.

4. As far as Civil Applications for amendment of claims and/or for enhancement of the claims in Appeals/Cross-objections are concerned, the law laid down by the Apex Court in the case of Ambya. Kalya Mhatre V. State of Maharashtra¹ will be applicable. The Apex Court held that it is open for the claimants to amend the claim or to incorporate a claim of higher market value by amending the Reference Applications even after expiry of a period of limitation and that the claims can be enhanced even in the Appeals arising out of Awards made in References under the said Acts. In those Appeals or Cross-objections, where there are no applications for amendment, market value has been claimed at the rate of Rs.2,000/- per square metre. In view of the law laid down by the Apex Court, the applications made by the claimants for enhancement of the claims will have to be allowed. Amendment will have to be carried out within a period of eight weeks. It follows that deficit Court fee, if any, will have to be paid within a period of eight

1 (2011) 9 SCC 325

weeks from today. Applications made for extension of time to file Cross-objections deserve to be allowed considering the issue of the market value of the acquired lands is at large in the Appeals of the State Government which are already admitted.

5. The learned counsel appearing for the claimants has placed reliance on a Judgment and Order of this Court dated 2nd and 6th July, 2015 in First Appeal Nos.1310 of 2005 and other connected matters. It is pointed out that the said Appeals arose out of the Awards made in References under Section 18 in relation to the lands at village Wadghar, Taluka Panvel, District Raigad which were notified under Section 4(1) of the said Act under the same notification dated 24th September, 1986. The submission is that village Koli Kopar is adjacent to village Panvel and it is at a close distance of the Panvel Municipal limits. The contention is that the market value of the lands in village Wadghar fixed under the said Judgment of this Court will be applicable to village Koli Kopar as well as the said village is adjacent to the village Wadghar. It is contended that as some of the lands in village Koli Kopar were notified under Section 4(1) of the said Act on 3rd February, 1970, from the year 1970 till the year 1986, there was an overall development in the village Koli Kopar. The submission is that considering the proximity of the village Koli Kopar and village Wadghar to the Panvel town, the rate of

Rs.1725/- per square meter fixed by this Court for the village Wadghar will have to be applied by allowing Appeals/ Cross-objections filed by the claimants. The submission is that in all respects, the lands in village Koli Kopar and Wadghar were comparable on the relevant date and therefore, market value of the lands in village Koli Kopar will have to be determined on the basis of the market value of the adjoining village Wadghar. The learned AGP invited our attention to the evidence of the claimants as well as the expert valuer examination by the claimants. His submission is that the lands in village Koli Kopar have several negative factors as compared to the lands in village Wadghar. He has invited our attention to cross-examination of the claimants' witness as well as the cross-examination of expert valuer Mrs. Manjiri Joshi. He urged that even assuming that the market value of the acquired lands in village Koli Kopar can be fixed on the basis of the market value of the adjoining village Wadghar, deduction of at least 30% to 40% will have to be made after taking into account the various negative factors in relation to the lands as village Koli Kopar. He submitted that there are no sale instances of the comparable lands produced by the claimants. He, therefore, urged that the Appeals preferred by the State Government must succeed and the claim made by the claimants by way of Cross-objection/ Appeals deserves to be dismissed.

6. We have given careful consideration to the submissions. Since reliance is placed on the decision of this Court dated 2nd and 6th July, 2015 in First Appeal No.1310 of 2005, we must make a reference to the said decision. As stated earlier, the said decision is in respect of the lands at village Wadghar, Taluka New Panvel, District Raigad which was notified under Sub-Section (1) of Section 4 of the said Act under the notification dated 24th September, 1986. In the said Appeals reliance was placed by the claimants on a decision of the Apex Court by which market value of the lands at village Wadghar acquired on the basis of notification dated 3rd February, 1970 was fixed. The Division Bench observed that in case of the acquisition based on 3rd February, 1970 notification in relation to the lands in village Roadpali, the rate of Rs.25/- has been fixed by the Apex Court and relying upon the said decision in case of village Roadpali, for the acquisition on the basis of notification dated 3rd February, 1970 in relation to the lands at village Wadghar, the rate fixed for the lands in village Roadpali has been applied by the Apex Court.

7. This Court considered the location of villages in particular, the villages Roadpali and Wadghar. In paragraph 25, this Court noted a positive factor in respect of the lands in village Wadghar that the village

Wadghar is close to the limits of the Panvel Municipal Council and in fact, the village and the boundary of Panvel Municipal Council was separated by a river. The Division Bench considered the various relevant factors in paragraph 27 of the Judgment which reads thus :-

“27. The scenario which emerges from the aforesaid discussion can be summarized as under :

- (I) The first phase of acquisition commenced for the New Bombay Project on the basis of the notification dated 3rd February 1970. The acquisition extended to the vast tracts of lands in 96 villages in Taluka Panvel, District Raigad and Taluka Thane, District Thane including the villages Wadghar and Roadpali;
- (II) Thereafter, phase wise development commenced for setting up the city of New Bombay;
- (III) The second major acquisition in respect of the lands in villages out of 96 villages was commenced under the notification dated 24th September 1986;
- (IV) As observed by the Apex Court in the case of Avinashi Dhavaji Naik, there is a possibility of the price of lands sky rocketing considering the work of development and potentiality;
- (V) In the case of Sabhia Mohammed Yusuf Abdul Hamid Mulla (since deceased through Lrs.), the Apex Court quoted with approval the observations made by this

Court in the case of Nama Padu Hudar that industrial growth in and around the area started in rapid strides from the year 1965 onwards and it increased by leaps and bounds;

- (VI) The Apex Court in the case of Ambaji Dharma Pardeshi and others held that the market value of the lands in village Wadghar acquired on the basis of the notification dated 3rd February 1970 was the same as the market value of the lands at village Roadpali notified on 3rd February 1970. As stated earlier, in both the villages, there was acquisition during the subsequent phase on the basis of the notification dated 24th September 1986.
- (VII) As far as the village Roadpali is concerned, the decision of the Division Bench of this Court in the case of State of Maharashtra Vs. Tribak Joma Thakur (deceased through Lrs.) which holds that the market value of the lands at village Roadpali as on 24th September 1986 was Rs.1725/has become final as of today;
- (VIII) The market value of the lands in village Wadghar and Roadpali acquired for New Bombay project as of 24th September 1986 will be more or less the same considering the test applied by the Apex Court in the case of Ambaji Dharma Pardeshi by determining the market value of the acquired lands at village Wadghar on the basis of the market value of the lands at village Roadpali in case of the acquisition based on 3rd February 1970 notification.”

8. Based on the reasons recorded in paragraph 27 and earlier paragraphs and based on the decision of the Apex Court in relation to the market value of the lands at village Wadghar and the decision of the Division Bench of this Court fixing market value in respect of the lands in village Roadpali notified on the basis of the notification dated 24th September, 1986 that this Court found that lands in village Wadghar were comparable with the lands in village Roadpali as of 24th September, 1986.

9. Depositions of the claimants in the present cases and depositions of the expert valuer disclose that in view of the notification issued on 3rd February, 1970, there were practically no sale transactions of lands in village Koli Kopar. It is not even the case of the State Government that there were sale instances of the year 1986 in relation to the lands at village Koli Kopar. There is no dispute that villages Koli Kopar and Wadghar are adjacent to each other.

10. Therefore, the determination of the market value of the lands in village Koli Kopar can be made on the basis of the market value of the acquired lands in adjacent village Wadghar as of 24th September, 1986.

11. For determining the market value of the lands at village Koli Kopar positive and negative factors will have to be considered. In the Reference subject matter of First Appeal No.986 of 2010, claimant Smt. Anandibai Raja Pawar was examined by filing affidavit in lieu of examination-in-Chief. In the cross-examination she admitted that till 1986, there was no industrial unit started in Kopar. She also admitted that till the year 1986, there were no constructions beyond the gaathan area in Kopar village. She stated that the acquired lands were used for paddy crop. She also admitted that people of Kopar were dependent on Panvel for market, hospital and other facilities. She admitted that till the year 1986, the agriculture was the main business of the villagers of Kopar. She admitted that there was no sale transaction in the village after the notification of 1970. Mrs. Manjiri Joshi, the expert valuer was examined as a witness. Though in her valuation report, she claimed that the distance between village Koli Kopar and Panvel is 320 meters, from the perusal of the Development Plan of the Navi Mumbai prepared by CIDCO, it can be seen that village Kopar is away from Panvel and in fact in between the village Koli Kopar and Panvel town, the village Wadghar is situated. Now coming to the deposition of Smt. Manjiri Joshi, in the cross-examination, she admitted that in the year 1986, there were no building activities in Kopar excluding the gaathan area. She admitted that there were no industrial units in the year 1986 in village Kopar.

She admitted that independent source of electricity and water facility was not available to the acquired lands. She admitted that acquired lands were surrounded by agricultural lands except on the southern side. She admitted that distance between village Roadpali and Koli Kopar was 7 to 8 kilometers. In response to the question whether in comparison to village Kalamboli there was no development in village Koli Kopar, she admitted that village Koli Kopar is not yet developed. She admitted that towards the western side of village Koli Kopar, there is a creek. She admitted that towards the western side of the village Kopar upto the creek, there is no development as such. If evidence of the claimants as well as Smt. Manjiri Joshi is perused, it appears to us that there was hardly any development in village Kopar as compared to villages Roadpali and Wadghar as well as the town of Panvel. Smt. Joshi admitted that MIDC industrial area does not touch the boundary of village Koli Kopar and that in the said village there is no reservation for MIDC.

12. There are positive factors as far as village Wadghar is concerned. It is separated from the municipal limits of Panvel only by river. As noted in the Judgment of this Court in First Appeal No.1310 of 2005, proximity of Panvel municipal town was a positive factor as far as the village Wadghar is concerned. Moreover, for deciding the market

value as of 3rd February, 1970 the lands in village Wadghar and Roadpali were treated on par by the Apex Court. Thus, as compared to the lands in villages Wadghar and Roadpali, there are several negative factors in relation to village Kopar. Therefore, for balancing the said negative factors, we are of the view that a deduction of 20% will have to be made from the market value of Rs.1725/- fixed for the lands in village Wadghar as of 24th September, 1986.

13. The Apex Court in its several decisions has held that for determination of the market value in terms of Section 23 of the said Act, some guess work is always inherent. However, the guess work is to be made after consideration of positive and negative factors. Hence, after deducting 20% from Rs.1725/-, the market value for lands at village Koli Kopar will have to be fixed at Rs.1380/- per square meter. It is obvious that the claimants will be entitled to statutory benefits under Section 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894.

14. Hence, we dispose of the Appeals/Cross-objections by passing the following order :-

ORDER

- (i) Civil Applications made by the original claimants for enhancement of the claim in Appeals/Cross-

objections/ original References are hereby allowed. Amendment shall be carried out within a period of 8 weeks from today. Deficit Court fee on Appeals/Cross-objections shall be paid within a period of 8 weeks from today. In those Appeals/Cross-objections in which deficit Court fee has not been paid within the stipulated time, the decree in the said Appeals/ Cross-objections shall not be drawn and consequently, the Reference Court shall not implement directions given under the Judgment and order;

- (ii) Civil Applications filed by the CIDCO for intervention are rejected. Civil Applications filed for extension of time for filing Cross-objections are allowed. Cross-objections be accordingly registered;
- (iii) Appeals and Cross-objections preferred by the original claimants are partly allowed. The impugned Judgment and Awards are modified by directing that the claimants will be entitled to market value in respect of the lands at village Koli Kopar at the rate of Rs.1380/- per square meter. In addition to the market

value, the claimants will be entitled to statutory benefits under Sections 23(1-A), 23(2) and 28 of the said Act of 1894;

- (iv) The Appeals preferred by the State Government are hereby dismissed. There will be no order as to costs in Appeals preferred by the State Government;
- (v) Claimants will be entitled to proportionate costs throughout in their Appeals and Cross-objections;
- (vi) The Reference Court shall carry out the exercise of computing compensation payable in terms of the modified Awards within a period of four months from the date on which writ of this order along with R & P is received by it. Before determining the compensation amount payable, an opportunity of being heard shall be granted by the Reference Court to both the parties;
- (vii) Within a period of four months from the date on which adjudication of the amount due and payable is made by the Reference Court, the State Government

shall deposit the excess amount with the Reference Court;

(viii) Writ of the Judgment along with Record and Proceeding be forwarded to the Reference Court as expeditiously as possible;

(ix) All other pending applications which are not dealt with above stand disposed of;

(K.R. SHRIRAM, J)

(A.S. OKA, J)