

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

FIRST APPEAL NO.19 OF 1994

Shivajirao s/o. Ambadasrao Belkunde
(Died) through L.Rs.

1. Chandrakant s/o. Shivajirao Belkunde,
Age:45 years, Occu: Agri.,
2. Gautam S/o. Shivajirao Belkunde,
Age:39 years, Occu: Agri.,
3. Shrimati Kalwati w/o. Shivajirao Belkunde,
Age:60 years, Occu: Agri.,
4. Dayanand s/o. Shivajirao Belkunde
(Died)through his L.Rs.
 - 4.1 Rajeshri w/o. Dayanand Belkunde
Age:47 years, Occu:Agri.,
 - 4.2 Balaji s/o. Dayanand Belkunde
Age:28 years, Occu:Agri.,
 - 4.3 Ram s/o. Dayanand Belkunde
Age:26 years, Occu:Agri.,
5. Sow. Prabhavati w/o. Sopan Shinde
Age:50 years, Occu:Agri.,
6. Sow. Chaya w/o. Govind Yadav
Age:37 years, Occu: Agri.,

All R/o. Khed (Nagur), Tq. Omerga.

**...Appellants
(Claimants)**

VERSUS

The State of Maharashtra through
The Collector Osmanabad

...Respondent

...

MR. C.G. Solshe, Advocate for Appellants.

MR. K.N. Lokhande, AGP for Respondent

...

CORAM: P.R. BORA, J.

RESERVED ON : 04.08.2016

PRONOUNCED ON : 15.09.2016

JUDGMENT :

1. The Appellants have filed the present appeal, seeking enhancement in the amount of compensation awarded by the Civil Judge, Senior Division, Osmanabad (herein after referred to as the reference Court) in L.A.R. No.100 of 85 decided on 20-11-1989 along with the L.A.R. No. 99 of 1985.

2. Two different lands owned by the present Appellant; the one Survey No.10/1 admeasuring 4 hector 39 R, and other Survey No. 10/3 admeasuring 41 R, were acquired for Terna Lower Dam Project. The notification under Section 4 of the Land Acquisition Act, 1894

(herein after referred to as the "Act") in that regard was published in the Government Gazette on 02-12-1982. Possession of the aforesaid lands was taken prior to the issuance of the notification under Section 4 of the Act. The award under Section 11 of the Act came to be passed on 31st March, 1984. The Special Land Acquisition Officer ("S.L.A.O." in short) fixed the market value of the acquired land at the rate of Rs.11,000/- per hectare and accordingly determined the amount of compensation to be offered to the Appellants. Being dis-satisfied with the amount of compensation so offered, the Appellants presented the Applications to the Collector, Osmanabad to make a Reference under Section 18 of the Act for enhancement of the amount of the compensation. The learned Collector Osmanabad accordingly referred the said reference applications to the Civil Court

for adjudication.

3. The Applicants had claimed the compensation for their acquired lands at the rate of Rs.25,000/- per acre before the reference Court. In order to substantiate their claim, the Appellants-claimants brought on record four sale instances. No evidence was adduced on behalf of the State. The Reference Court on its assessment of the oral and documentary evidence brought before it, determined the market value of the acquired lands at the rate of Rs.6,000/- per acre i.e. Rs.15,000/- per hectare and accordingly awarded the compensation to the Claimants along with the Statutory benefits and the interest under the provisions of the Act. According to Appellants, the reference court did not award adequate enhancement in the amount of

compensation. The Appellants-Claimants have, therefore, preferred the present Appeal.

4. Shri. C.G. Solshe, learned counsel appearing for the Appellants, submitted that the reference Court has failed in properly appreciating oral as well as documentary evidence adduced by the Appellants-Claimants. The learned counsel further submitted that the Reference court has not considered the sale instances brought on record in proper perspective. The learned counsel further submitted that the Reference court has also not considered that the acquired lands were of superior quality and the Appellants were taking both the crops, Kharip as well as Rubbi in the said lands.

5. The learned counsel further submitted that in certain other matters pertaining to the

acquisition for the same Lower Terna Project, which were carried up to the High Court in First Appeals, the High court has awarded the compensation to the Appellants in the said Appeals at the rate of Rs.17,000/- per acer. The learned counsel has placed on record the copies of the said Judgments, one of such Judgment is delivered on 8th January 2008 in First Appeal No.574/1992 with First Appeal No.38 of 1993 (Coram: R.M. Borde J.) and the other is delivered on 12th February, 2015 in First Appeal No.3050 of 2008 with First Appeal No.135 of 2000 (Coram: M.T. Joshi J.).

6. The learned A.G.P. Shri. K.N. Lokhande supported the impugned Judgment. He submitted that the Reference Court has rightly determined the amount of compensation and as such, no interference is warranted in the impugned

Judgment and award. He therefore, prayed for dismissal of the Appeal.

7. I have carefully considered the submissions made on behalf of the parties. The learned A.G.P. has not disputed the fact that the lands which were the subject matter of the Appeals decided by this Court, copies of which are placed on record were also acquired for Lower Terna Dam Project. It was however, his submission that the said lands, were of different villages. It was brought to my notice that the lands which were the subject matter in First Appeal No.574 of 1992 with First Appeal No.38 of 1993 were situated at village Makani whereas the lands which were the subject matter in First Appeal No.3050 of 2008 with First Appeal No.135 of 2000 were of village Bhatangli. The learned A.G.P. submitted that

the lands which are the subject matter of the present Appeals are of the village Khed-Nagur. The learned A.G.P. submits that, the village Makani is near to Lohara which has now become a taluka place and village Khed-Nagur is at a quite long distance from Lohara and as such, the same rate as has been awarded for the lands at village Makani and Bhatangali, can not be awarded for the lands at village Khed-Nagur.

8. I am however, not convinced with the argument so advanced by the Assistant Government Pleader. In the case of **Union of India vs. Bal Ram and Another, reported in (2010) 5 Supreme Court Cases 747.** The Hon'ble Apex Court has held that, if the purpose of acquisition is same, there may be not any justification to make in distinction between the land which are identical and similar

though, lying in different villages. In the instant case, as I have mentioned earlier, it is not in dispute that lands, which were subject matter in the decided appeals, were also acquired for the Terna Lower Dam Project. There is no serious dispute that the nature and quality of lands which are the subject matter of the present appeal is as similar to the lands, which were subject matter of the decided appeals. In the circumstances, as held by the Apex Court in the Judgment cited (supra), there may not be any justification for making any distinction between the lands which are identical and similar though, lying in different villages.

9. This Court [Coram R.M. Borde J.] while deciding the First Appeal No.574 of 1992 with First Appeal No.38 of 1993 has determined the

market value of the lands which were subject matter of the said appeals at Rs.17,000/- per acre. The said lands were also acquired for Terna Lower Dam Project, vide notification under Section 4 of the Act, issued on 02-12-1982. In view of the facts as aforesaid that the lands which are the subject matter of the present appeal were also acquired vide the same notification dated 02-12-1982, issued under Section 4 of the Act and were acquired for the same project, it would be appropriate to determine the market value of these lands at the rate of Rs.17,000/- per acre, as has been determined by this Court in First Appeal No.574 of 1992 with First Appeal No.38 of 1993. The Appeal, thus, deserves to be allowed to the aforesaid extent. Hence, the following order.

O R D E R

1. The Appeal is partly allowed.

2. The amount of compensation is enhanced from Rs.6,000/- per acre to Rs.17,000/- per acre and appellants are held entitled to receive the enhanced amount of compensation with statutory benefits and the interest, as provided under relevant provisions of the Land Acquisition Act, 1894.

3. The impugned award is modified accordingly. No order as to the costs.

[P.R. BORA, J.]