

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL 596 OF 2001

1. Yadav s/o Narsu Manale,
Age 61 years, Occu : Agriculture,
R/o : Malegaon (Jevri), Taluka Nilanga,
District Latur.
2. Vinayak s/o Yadav Manale,
Age 34 years, Occu : Agriculture,
R/o : Malegaon (Jevri), Taluka Nilanga,
District Latur.
3. Janardhan s/o Yadav Manale,
Age 39 years, Occu : Agriculture,
R/o : Malegaon (Jevri), Taluka Nilanga,
District Latur.

... Appellants
(Ori Claimants)

Versus

The State of Maharashtra,
Through the Collector, Latur,
District Latur.

... Respondent
(Ori Respondent)

WITH
FIRST APPEAL NO. 640 OF 2001

Udhav s/o Venkatrao Solanke,
Age 43 years, Occu : Agriculture,
R/o Malegaon (Jevri), Taluka Nilanga,
District Latur.

... Appellant
(Ori Claimant)

Versus

The State of Maharashtra,
Through the Collector, Latur,
District Latur.

... Respondent
(Ori Respondent)

.....
Advocate for the appellants : Mr. V. D. Gunale
AGP for respondent/State : Mr. G. O. Wattamwar
.....

CORAM : V. K. JADHAV, J.
DATED : 15th JUNE, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the common judgment and award passed by learned Civil Judge Senior Division, Nilanga dated 03.03.2001 in Land Acquisition Reference No. 329 of 1998 along with connected references, the original claimants in L.A.R. No. 333 of 1998 (old No. 869/92) have preferred First Appeal No. 596 of 2001, whereas, the original claimant in L.A.R. No.330 of 1998 (old No.514/92) has preferred First Appeal No. 640 of 2001.

2. Brief facts giving rise to the present appeals are as follows:

a) The lands of the above appellants/claimants situated in village Malegaon (Jevri) were acquired by the State Government by notification under Section 4 of the Land Acquisition Act, published on 12.05.1988 and the Special Land Acquisition Officer, by his award declared on 14.01.1992, was pleased to award compensation at the rate of Rs.12,000/- and Rs.14,000/- per hector. Being dissatisfied by the same, all the claimants preferred reference petitions under Section 18 of the Land Acquisition Act claiming compensation at the rate of Rs.30,000/- per acre corresponding to Rs.75,000/- per hector.

b) According to the claimants, the acquired lands were situated

near village Malegaon Jevri which is having population of 5000. There are schools, market facilities in the village. Furthermore, Taluka Headquarter Nilanga is only at the distance of 10 kilometers. The village is also situated in the command area of Ambulga Sugar factory and Medium Project of Aurad Shahajani. The acquired lands were dry lands as well as seasonally irrigated and bagayat lands. Some of the claimants were using water from well and stream by laying down pipe line and were raising bagayat crops. It is contended that the Special Land Acquisition Officer has considered only low price data for determining the market value by capitalization method and the sale deeds of low prices were only considered for determining the market price by comparable sale instances.

c) Respondent State has strongly resisted the Land Acquisition References by filing written statement. It is denied that the acquired lands were seasonally irrigated and bagayat lands and the claimants were using water from stream or well through pipe line. It is also denied that the acquired lands were fertile and black cotton soil lands. According to the State, Land Acquisition Officer has visited the spot and has considered the quality and fertility of the lands and after comparing the same, has awarded most reasonable compensation as per the prevailing market prices.

d) On the basis of the aforesaid pleadings, the reference court has

framed the issues and on the basis of the evidence on record, the reference court has partly allowed the references and awarded compensation for the acquired lands at the fixed rate of Rs.27,500/- p.h. with statutory benefits. Being aggrieved by the same, the original claimants have preferred two separate appeals for enhancement of compensation. Since both these appeals arise out of the same acquisition proceedings and are decided by the reference court by common judgment and award, these appeals are being decided by this common judgment.

3. Learned counsel for the appellants submits that the reference court has not considered the sale instances produced on record and relied by the appellants/claimants. Learned Judge of the reference court has erroneously discarded the sale deed Exh.31 which truly reflects the market price prevailing in the area. The appellants/claimants have also relied on certified copy of the judgment in LAR No. 249/1993 dated 02.05.1998. It was in respect of the lands from Malegaon Jevri acquired under notification dated 30.03.1991. In the present case, the notification was dated 28.09.1988. Though the prices fixed by the reference court as on 30.03.1991 cannot be a guiding factor to fix the price of lands as on 28.09.1988, the reference court should have extended the benefit to the agriculturists by considering the award passed in the said LAR No.249/1993. As per certified copy of the judgment delivered in LAR

No.249/1993 Exh.24, learned Judge has fixed the market value of the acquired land at the rate of Rs.30,000/- per acre as on 30.03.1991. However, in the present case, learned Judge of the reference court has not considered the said judgment and on the basis of copy of Index-II register, awarded compensation. Learned counsel submits that even though the reference court has observed that the acquired lands are irrigated lands and that the Special Land Acquisition Officer ought to have assessed acquired lands as irrigated lands or lands having irrigation potentials, dismissed the LAR No. 330 of 1998 without recording any reasons.

4. Learned AGP submits that learned Judge of the reference court has rightly discarded the sale deed Exh.31. The purchaser has admitted that the land purchased by him vide sale deed Exh.31 was adjacent to his dry land. The reference court has considered that the sale deed Exh.31 discloses that the land purchased was having source of water as the purchaser in the said sale instance purchased the land along with 1/3rd share in the well. The contents of the sale deed, however, disclose that there was ample water in the well to irrigate both the lands. It further appears from the contents of the sale instance Exh.31 that the purchaser had purchased that land for the purpose of irrigation of his adjacent land. Learned AGP submits that the reference court has therefore, rightly discarded the sale instance Exh.31 with the observation that the sale is showing excessively high

price. Learned AGP submits that so far as the judgment delivered in LAR No.249/1993, the reference court, in that reference, has placed reliance on the same sale instance which is discarded by the reference court in this group of references. The reference court has elaborately discussed that point and with reasons refused to award same rate as determined by the court in said LAR No.249/1993. Learned AGP submits that there is no substance in the appeals and the appeals are thus liable to be dismissed. Learned AGP submits that the reference court has awarded interest from the date of possession and the same is thus required to be corrected in view of the authoritative pronouncement of Full Bench of this Court in the case of ***State of Maharashtra vs. Kailash Shiva Rangari***, reported in ***2016 (3) Mh.L.J. 457***.

5. On careful perusal of sale instance Exh.31, it appears that the purchaser therein purchased that land for the purpose of irrigation of his adjacent land. Further, the contents of the sale instance Exh.31 disclose that the land under purchase is having source of water and the purchaser has purchased the land along with 1/3rd share in the well. Learned Judge of the reference court has therefore, rightly observed that the market price shown in the sale deed included the price of share in the well. Furthermore, the land under said sale instance fetched more price for the reason that the adjacent land is also owned and possessed by the purchaser. Learned Judge of the

reference court has therefore, rightly discarded the sale instance Exh.31 which is certainly showing excessively high price. Furthermore, learned Judge of the reference court has observed that the said purchaser purchased the land from his distant relative and the certified copy of Index-II register discloses that the said distant relative of the purchaser entered into four sale transactions during the period of 1986-87 and 1987-88. The reference court has observed that the said vendor has sold lands three times and purchased once. It is the part of record that the said vendor purchased the land ad-measuring 54 Gunthas in the year 1987 and sold the same for the same price to one Chandrakala Jadhav in the year 1988. In the backdrop of this, learned Judge of the reference court has correctly come to the conclusion that the sale instance Exh.31 is not a genuine sale instance and the same must have been brought into effect for creating evidence.

6. Learned Judge of the reference court has rightly discussed the oral and documentary evidence placed on record in paragraph No. 15 of the impugned judgment and held that the Special Land Acquisition Officer ought to have assessed the acquired lands as irrigated lands or lands having irrigation potentials.

7. So far as the judgment delivered in LAR No.249/1993 is concerned, learned Judge of the reference court in the said LAR has

fixed market value at the rate of 30,000/- per acre as on 30.03.1991. Learned Judge of the reference court, in that matter, has solely relied on the same sale deed which came to be produced in the present group of matters. In view of this, learned Judge of the reference court is justified in discarding the said judgment delivered in LAR No.249 of 1993 wherein, no discussion is made about the excessive price of the said sale deed coupled with the other circumstances. Consequently, learned Judge of the reference court has considered the record of the land acquisition proceedings, more particularly copy of the Index-II register. It appears that in the earlier notification in respect of the same project, the Land Acquisition Officer has accepted the sale instance as genuine sale dated 07.01.1983 wherein, land Survey No.57 ad-measuring 1H. 1R. was sold for Rs.14,851/- . Learned Judge of the reference court has considered 10% increase per year till the date of notification in the present matter i.e. till 28.09.1988 and observed that the rate as on 28.09.1988 is Rs.25,652/- p.h.. In the similar manner, learned Judge of the reference court has considered one more sale instance which is of the year 1986 for consideration of Rs.22,989/- p.h. By giving rise of 10% per year in the above two sale instances, the market value comes to Rs.25,632/- and Rs.29,068/- p.h. respectively as on the date of notification in the present matter i.e. on 28.09.1988. It further appears that the learned Judge of the reference Court, without any reason, carved out the average of the

said two sale instances and awarded compensation at the rate of Rs.27,500/- p.h.. Instead, learned Judge of the reference court ought to have considered the sale instance of higher consideration and awarded compensation at the rate of Rs.29,068/- rounded to Rs.29,000/- p.h. Thus, the impugned judgment and award is required to be modified to that extent.

8. Learned Judge of the reference court, in paragraph No. 13 and 14 of the impugned judgment, has concluded that the acquired lands were situated near the water storage of percolation tank and therefore, they were having irrigation potentials. The reference court has further, in unequivocal terms, held that the Special Land Acquisition Officer ought to have acquired the said lands as irrigated lands. In the backdrop of this, it appears that without recording any reason, by considering some incorrect entries in 7/12 extract, the reference court has dismissed LAR No. 330 of 1998. The claimant in the said LAR No. 330 of 1998 is also entitled for the same rate of compensation as concluded by me in the foregoing paragraphs.

9. So far as the interest part is concerned, it appears from the operative part of the impugned judgment that learned Judge of the reference court has awarded interest under Section 28 of the Land Acquisition Act. Furthermore, the State has not preferred any appeal, nor submitted any cross objection to the extent of the submission as

made by learned AGP on behalf of the State. In light of the above discussion, I proceed to pass the following order :

ORDER

- I. First Appeal No. 596 of 2001 and First Appeal No. 640 of 2001 are hereby partly allowed with proportionate costs.
- II. The impugned judgment and award with reference to LAR No.333 of 1998 (Yadav s/o Narsu Manale and others vs. The State of Maharashtra) and LAR No. 330 of 1998 (Udhav s/o Venkatrao Solanke vs. The State of Maharashtra) is hereby modified in the following manner:

“The compensation for the acquired land is fixed at the rate of Rs.29,000/- p.h. and the respondent is directed to pay enhancement of compensation to the claimants at the above rate after excluding the compensation earlier paid.”
- III. Needless to say that the claimants are entitled for all the statutory benefits as directed in the operative part of the order passed by the reference court.
- IV. Rest of the judgment and award stands confirmed.
- V. Award be drawn up in tune with the above modification.
- VI. Both the appeals are accordingly disposed of.

(V. K. JADHAV, J.)