

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.456 OF 2004

The Spl. Land Acquisition
Officer, U.T.P., Jalgaon

= **APPELLANT**
(Orig. Respondent)

VERSUS

- 1) Shri. Manji Kalu More,
(Deceased)

HEIRS

- 1) Prabhakar Manji More
Age:58 years,
- 2) Chhabildas Manji More
Age:56 years,
(Deceased L.Rs.)
 - 2-A) Vijay Chabildas More,
Age:34 years,
 - 1-2-A-a) Latabai w/o. Vijay More,
Age: years
 - 1-2-A-b) Radhakisan s/o. Vijay More,
Age:11 years, R/o. as above.
 - 1-2-A-c) Sonal d/o. Vijay More,
Age:13 years, R/o. as above.
 - 1-2-A-d) Laxmibai w/o. Chhabildas More,
Age:40 years,
R/o. Rammandir Chowk,
at Post Tq. Parola,
Dist. Jalgaon.
**(As per Court's order dated
18-12-2009 in C.A. No.13415/
2009)**
 - 2-B) Raju Chabildas More,
Age:32 years,
 - 2-c) Laxmibai Chabildas More,
Age:52 years,
All R/o. Ram Mandir Chowk,
Parola Tq. Parola,
Dist. Jalgaon.
 - 2-D) Pradip Chhabildas More,

- Age:26 years,
2-E) Mandabai Suresh Ahire,
Age:30 years,
2-F) Sunandabai Rajendra Baviskar,
Age:25 years,
R/o. Delwadi Post. Kundan
Tq. Palghar, Dist. Thane.
**(L.Rs. brought on record as
per Court's order dated
25-4-2008 in C.A.No.11078/2005)**
- 3) Bhaskar Manji More,
Age:54 years,
4) Nadarbai Manji More,
Age:75 years,
5) Himmat Popat More,
Age:36 years,
6) Madhukar Popat More,
Age:34 years,
7) Sadashiv Popat More,
Age:27 years,
8) Sushilabai D/o. Popat More,
Age:30 years,
- 9) Shevantabai Popat More,
Age:67 years,
(deceased L.Rs.)
- 9-A) Dagubai Popat More,
Age:60 years,
9-B) Himmat Popat More,
Age:39 years,
9-C) Madhukar Popat More,
Age:37 years,
9-D) Sadashiv Popat More,
Age:30 years,
9-E) Sushilabai Popat More,
Age:33 years,
At Post Tq. Parola,
Ram Mandir Chowk, Parola
Dist. Jalgaon.
**(L.Rs. brought on record
as per Court's order dated
25.4.2008 in C.A.No.11078/2005.)**
- 10) Dagubai Popat More,
Age:57 years,
11) Onkar Kalu More,

Age:55 years,

All R/o. Parola, Tq. Parola,
Dist. Jalgaon.

- 2) Nemidas Bhikasa Choukshi Trust
General Mukhtyar Shri
Nandkishor Narsingh Gujarathi,
Age:60 years, Occu.: Pensioner,
R/o. Parola, Gujarathi Galli,
Tq. Parola, Dist. Jalgaon.

= **RESPONDENTS**
(Ori. Claimants)

WITH

FIRST APPAL NO.453 OF 2004

The State of Maharashtra
Through The Special Land
Acquisition Officer, U.T.P.,
Jalgaon.

= **APPELLANT**
(Orig. Respondent)

VERSUS

- 1) Shri Sitaram Vana Kumbhar,
Age:45 years, Occu: Farmer,
R/o. Bhokarbhari, Tq. Parola,
Dist. Jalgaon.

= **RESPONDENT**
(Ori. Claimant)

WITH

FIRST APPEAL 454 OF 2004

The Spl. Land Acquisition
Officer, U.T.P., Jalgaon

= **APPELLANT**
(Orig. Respondent)

VERSUS

- 1) Suresh Budha Shimpi
Age:45 years, Occu.: Farmer,
2) Thagubai Budha Shimpi,

Both Resident of Bhokarbari,
Tq. Parola, Dist. Jalgaon.

2. Thagubai Budha Shimpi
(Died) L.Rs.
2/A) Shantaram Budhaji Shimpi
2/B) Suresh Budhaji Shimpi,

Both R/o. at and Post and
Tq. Parola Gujrathi Galli,
Parola, Near Chavan Hospital,
Parola, Dist. Jalgaon.

(L.Rs. of deceased respondent
brought on record as per Court
order dated 5-2-10 passed in
CA 10789/2004.)

= **RESPONDENTS**
(Ori. Claimants)

WITH

FIRST APPEAL NO.455 OF 2004

The Spl. Land Acquisition
Officer, U.T.P. Jalgaon

= **APPELLANT**
(Orig. Respondent)

VERSUS

Dwarkabai Bhagwan Badgujar,
Age:50 years, Occ: Farmer,
Resident of Bhokarbari,
Tq. Parola, Dist. Jalgaon.

= **RESPONDENT**
(Ori. Claimant)

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Mr. Mukul Kulkarni, Advocate for Appellant/s.
Mr. G.O. Wattamwar, AGP for Respondents.

CORAM : P.R.BORA, J.

RESERVED ON : 18th August, 2016.

PRONOUNCED ON: 21st September, 2016

JUDGMENT:

1) Since in all these appeals challenge is to the common Judgment and Award passed by Civil Judge, Senior Division, Amalner on 12th March, 2002 in LAR Nos. 73/1992; 74/1992; 76/1992; 77/1992 and 79/1992, common arguments were heard in all these matters and I deem it appropriate to decide these appeals by a common reasoning.

2) The lands, which are the subject matter of the present appeals were acquired for Bhokarbari irrigation project. The acquired lands were of village Bhokarbari. Notification under Section 4 of the Land Acquisition Act, 1894 (for short, the Act) in that regard was published in the Government Gazette on 7th June, 1987; whereas Award under section 11 of the Act came to be passed on 28th August, 1990. The Special Land Acquisition Officer had determined the market value of the acquired lands at the rate ranging from Rs.11,000/- to Rs.14,000/- per hectare and

has accordingly offered the amount of compensation to the respective claimants.

. Since the amount so offered was not agreeable to the claimants, all of them had preferred applications under Section 18 of the Act to Collector, Jalgaon, who in turn, forwarded all such applications for adjudication to the civil court at Jalgaon (herein after referred to as Reference Court). The claimants had claimed compensation @ Rs.1,00,000/- per hectare before the Reference Court.

. In order to substantiate the contentions raised in their respective applications, the claimants in each of the reference applications, had deposed before the Reference Court and the claimants had also placed on record certain sale instances. The State had also examined the Circle Inspector viz. Gorakh Borkar to support the contentions raised in its written statement and has also placed on record certain sale instances.

. The learned Reference Court after having assessed the oral and documentary evidence brought on record by the parties, determined the market value of the acquired lands @ Rs.289/- per Are, i.e.Rs.28,900/- per hectare. Aggrieved by, the State has preferred the present appeals.

3) Shri Wattamwar, learned AGP, assailed the impugned judgment on various grounds. The learned AGP submitted that the sale instance at Exh.38, which has been relied upon by the Reference Court while determining the market value of the acquired lands, was pertaining to irrigated land and as such, the market value of the acquired lands, which are admittedly non-irrigated lands, could not have been determined on the basis of the said sale instance.

. The learned AGP further submitted that, when, for the irrigated land admeasuring 1 hectare and 21 Ares, the consideration was received to the tune of Rs.35,000/-, in no case, the market value of the acquired lands, which are

the non-irrigated lands, could have been determined by the Reference Court @ Rs.28,900/- per hectare. The learned AGP further submitted that the Reference Court has awarded compensation at the same rate even to the potkharab lands.

. The learned AGP also objected to the order passed by the Reference Court awarding the interest from the date of possession of the land instead of granting the same from the date of award. The learned AGP, therefore, prayed for setting aside the impugned Judgment and Award and to re-determine the amount of compensation on the basis of the evidence brought on record by the State.

4) Shri Mukul Kulkarni, learned Counsel appearing for the claimants in all these matters resisted the submissions advanced by the learned AGP. The learned Counsel submitted that no interference is required in the impugned Judgment and Award since the Reference Court has awarded a very reasonable amount of compensation.

5) I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and the evidence on record. The record shows that in every reference application, the respective claimants have adduced their oral evidence in order to support the contentions raised by them in their respective applications.

. In addition to their own oral evidence, the claimants had commonly placed reliance on the sale instance at Exh.28, which was brought on record in the proceedings of LAR No.77/1992. The sale instance at Exh.28 was pertaining to the land admeasuring 20 Ares out of Gut No.216/2/5 situated at village Mhasve. The sale deed was executed on 12th February, 1987 and the consideration was received to the tune of Rs.15,500/- ,i.e. Rs. 77,500/- per hectare. It was the contention of the claimants that village Mhasve and Bhokarbari are at the very short distance from each other and quality and

potentiality of the lands at both the villages was quite similar to each other. The claimants had, therefore, claimed the compensation at the said rate. Whereas the State had also brought on record one sale instance at Exh.38 executed on 10th January, 1986 in relation to Gut No.116/3 admeasuring 1 hectare and 21 Ares for the consideration of Rs.35,000/-.

. As noted herein above, according to the State, the land which was the subject matter of sale deed at Exh.37 was irrigated land. Perusal of the judgment reveals that the Reference Court preferred not to rely upon the sale instance brought on record by the claimants at Exh.26. The Reference Court has observed that the sale instance at Exh.26 was pertaining to the land situated at village Mhasve, which was not adjoining village of village Bhokarbari. The Tribunal has further observed that village Vanjari Kh. was the adjoining village of Bhokarbari and after crossing the boundaries of village Vanjari kh, there is village Mhasve. It

was further observed by the Reference Court that the sale instance at Exh.26 was pertaining to the small piece of land admeasuring 20 Ares.

. The Reference Court preferred to rely upon the sale instance brought on record by the State at Exh.38. The land which was the subject matter of the sale deed at Exh.38 was of village Bhokarbari, i.e. from the same village where the acquired lands were situated. It was 1 hectare and 21 Ares land and was sold by the registered sale deed executed on 10th January, 1986 for the consideration of Rs.35,000/- i.e. @ Rs.28,926/- per hectare. From the observations made by the Reference Court in the impugned judgment, it is further revealed that though it was the contention of the State before the Reference Court that the land which was the subject matter of Exh.38 was irrigated land, in fact, the same was non-irrigated land.

6) The Reference Court has further observed

that the land Gut No.287, which was the subject matter of LAR No.74/1992, the land Gut No.310/1, which was the subject matter of LAR No.76/1992, the Gut No.291, which is the subject matter of LAR No.77/1992 and Gut No.296 which is the subject matter of LAR No.79/1992, were all Jirayat lands. In the circumstances, the Reference Court determined the market value of the acquired lands @ Rs.289/- per Are on the basis of sale instance at Exh.38.

. In some of the acquired lands, the existence of well is noticed by the Reference Court. The Reference Court has, however, examined the 7/12 extracts of each of the said lands. And has recorded its observation that none of the 7/12 extract of the acquired land was demonstrating that any cash crop was being taken from the said lands. The Reference Court has further observed that from the entries in the 7/12 extracts of all these lands, it was revealed that the respective land holders were cultivating dry crops in kharip season in the said lands. The

Reference Court in para Nos. 22 to 26 of its judgment has elaborately discussed the aforesaid aspect and has ultimately recorded a finding that all the acquired lands were jirayat lands.

7) After having gone through the elaborate discussion made by the Reference Court, it does not appear to me that the Reference Court has committed any error in determining the market value as aforesaid. There seems no substance in the objections raised by the appellant State that the Reference Court has determined the compensation of the non-irrigated land by applying rates received to the irrigated land.

. It is further revealed that the Reference Court has awarded separate compensation towards the fruit bearing trees existing in some of the acquired lands and has also awarded additional compensation for the wells existing in some of the acquired lands. From the material on record it does not appear to me that the compensation awarded by the Reference Court

towards the fruit-bearing trees as well as towards the wells in the acquired lands is, in any way unreasonable or arbitrary. On the contrary, from the discussion made by the Reference Court, it is quite evident that the compensation is awarded by the Reference Court after considering the entire evidence on record and after making the objective assessment of the said evidence. I, therefore, do not find any reason to cause any interference in the amount of compensation so awarded by the Reference Court towards the fruit bearing trees and the wells in some of the acquired lands.

8) The another objection which was raised by the State was that the Reference Court awarded the compensation to the potkharab land at the same rate, as was awarded to the non-irrigated lands.

. The record reveals that in LAR No. 73/1992, the potkharab land is 10 Ares; in LAR No. 74/1992 it is 20 Ares; in LAR No. 76/1992 it is 1 Are, whereas in LAR No. 77/1992, it is 6

Ares. As per the settled norms for potkharab land, the Reference Court should have awarded the compensation @ Rs.146/- per Are. Thus, the Reference Court has awarded the excess amount to the tune of Rs.5402/- to the claimants in the aforesaid Referemce Applications. Considering the fact that quantum of the amount is meager and further considering the fact that the acquisition is of the year 1985, I am not inclined to cause any interference in the compensation so awarded by the Reference Court. Thus, there appears no substance in the appeals filed by the State.

11) In the result, the following order, -

ORDER

. All the aforesaid First appeals are dismissed without any order as to costs. Pending Civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE