

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 22 OF 2009

The State of Maharashtra, through the Collector, Latur.	...	Appellant
Vs.		
Shrimant s/o Madhavrao Sagar, Age: 45 years, Occ. Agril., R/o Kokalgaon, Tq. Nilanga, Dist. Latur.	...	Respondent

with

FIRST APPEAL NO. 15 OF 2009

The State of Maharashtra, through the Collector, Latur.	...	Appellant
Vs.		
Rajeshwar s/o Sangram Patil, Age: 28 years, Occ. Agril., R/o Nadi-Hatterga, Tq. Nilanga, Dist. Latur.	...	Respondent

with

FIRST APPEAL NO. 19 OF 2009

The State of Maharashtra, through the Collector, Latur.	...	Appellant
Vs.		
Madhavrao s/o Sidramappa Shetkar, Age: 52 years, Occ. Agril., R/o Nadi-Hatterga, Tq. Nilanga, Dist. Latur.	...	Respondent

with

FIRST APPEAL NO. 16 OF 2009

The State of Maharashtra, through the Collector, Latur.	...	Appellant
Vs.		
Balchandra s/o Nilkanthappa Shetkar, Age: 55 years, Occ. Agril., R/o Nadi-Hatterga, Tq. Nilanga, Dist. Latur.	...	Respondent

with
FIRST APPEAL NO. 18 OF 2009

The State of Maharashtra,
through the Collector, Latur. ... Appellant

Vs.

Trimbakappa s/o Sidramappa Shetkar,
Age: 60 years, Occ. Agril.,
R/o Nadi-Hatterga, Tq. Nilanga,
Dist. Latur. ... Respondent

with
FIRST APPEAL NO. 20 OF 2009

The State of Maharashtra,
through the Collector, Latur. ... Appellant

Vs.

Shantkumar s/o Trimbakappa Shetkar,
Age: 31 years, Occ. Agril.,
R/o Nadi-Hatterga, Tq. Nilanga,
Dist. Latur. ... Respondent

with
FIRST APPEAL NO. 21 OF 2009

The State of Maharashtra,
through the Collector, Latur. ... Appellant

Vs.

1. Virendra s/o Deelip Patil,
Age: 6 years mior u/g. of mother
Laxmibai w/o Deelip Patil,
Age: 32 yrs, Occ. Agri. & Household
2. Dayanand s/o Baswantrao Patil,
Age: 27 years, Occ. Agriculture,
Both r/o Nadi-Hatterga, Tq. Nilanga,
Dist. Latur. ... Respondents

with
FIRST APPEAL NO. 17 OF 2009

The State of Maharashtra,
through the Collector, Latur. ... Appellant

Vs.

Hanmant s/o Baburao Sagar,
Age: 42 years, Occ. Agril.,
R/o Kokalgaon, Tq. Nilanga,
Dist. Latur. ... Respondent

Mr. S.P. Deshmukh, AGP for the appellant-state.
Mr. L.C. Patil, Advocate for the respondents.

CORAM : P.R. BORA, J.
DATE : 29-11-2016.

ORAL JUDGMENT :

1. Heard Shri S.P. Deshmukh, the learned A.G.P. appearing for the appellant-state and Shri L.C. Patil, the learned counsel appearing for the respondents i.e. Original claimants. Since all these appeals are arising out of a common judgment and award passed by the Civil Judge, Senior Division at Latur, I have heard the common arguments in all these appeals and I deem it appropriate to decide these appeals by common reasoning.

2. The lands which are the subject matter of the present appeals were acquired for K.T. Weir to be constructed between village Kokalgaon and Nadi-Hatterga, Tq. Nilanga, Dist. Latur. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was published in the official gazette on 29.03.1990 and the award under Section 11 came to be passed on 15.03.1994. The Special Land Acquisition Officer had assessed the market value of the acquired lands @ Rs.10,000/- to Rs.10,800/- per acre and has accordingly offered the amount of compensation to the respective claimants. Dis-satisfied with the amount of compensation so offered the claimants had preferred the applications under Section 18 of the Act to Collector, Latur, who in

turn forwarded all these applications to the Civil Court at Latur for adjudication (hereinafter referred to as the 'Reference Court'). The claimants had claimed the compensation @ Rs. 75,000/- to Rs.1,00,000/- per acre before the reference court.

3. In order to substantiate the claim so made by them the claimants, in addition to their oral evidence placed on record one sale instance. No oral evidence was adduced on behalf of the state nor any sale instance was placed on record by the state. The learned reference court, after having assessed the oral and documentary evidence brought on record before it, determined the market value of the non-irrigated lands @ Rs.40,000/- per acre and for the irrigated lands @ Rs. 50,000/- per acre and has accordingly enhanced the amount of compensation. The reference court has also granted statutory benefits as well as the interest as provided under the Act. Aggrieved by, the state has preferred the present appeals.

4. Shri S.P. Deshmukh, learned A.G.P. appearing for the state has assailed the impugned judgment and award on various grounds. The learned A.G.P. submitted that, relying upon only one sale instance that too of a land situated at different village, the reference court has determined the market value of the acquired lands. The learned A.G.P further submitted that, though, it is assumed that, there was no sale instance available pertaining to the

lands situated at village Killari and therefore, the sale instance relating to the land of the adjacent village was required to be considered, even then the market value determined by the reference court relying upon the said sale instance cannot be sustained. The learned A.G.P. submitted that, the sale instance which has been relied upon by the reference court is admittedly of the post notification period. The learned A.G.P. submitted that, the notification under Section 4 of the Act was issued on 29.03.1990, whereas, the sale deed at exhibit-12 which has been relied upon by the claimants and which has been accepted by the learned reference court was executed on 11.06.1990.

5. The learned A.G.P. further submitted that, the reference court has also failed in appreciating that the land which was the subject matter of exhibit-12 was irrigated land. The learned counsel inviting my attention to para 10 of the impugned judgment submitted that, as observed by the reference court the land which was the subject matter of exhibit-12 was having a pipe line laid therein meaning thereby that it was an irrigated land. The learned A.G.P. submitted that, in the circumstances, the same rate could not have been given by the learned reference court for the dry lands. The learned A.G.P. submitted that, when land at exhibit-12 was an irrigated land and was sold after the issuance of Section 4 notification, at the most same rate could have been awarded by the reference court for the irrigated lands. The learned A.G.P.

submitted that, the reference court has not provided any explanation as to on what ground it has determined the market value of the acquired lands holding the same to be irrigated land @ Rs. 50,000/- per acre. The learned A.G.P. submitted that, from the evidence on record, it is apparently revealed that the reference court has determined the market value of the acquired lands on higher side for which there was no evidence on record. The learned A.G.P., therefore, prayed for modification of the award by re-determining the market value of the acquired lands in view of the evidence on record.

6. Shri L.C. Patil, the learned counsel appearing for the respondents i.e. original claimants supported the impugned judgment and award. The learned counsel submitted that, though, the reference court has made certain discussion as about the pipe line laid in the land which was the subject matter of exhibit-12 there is no further evidence on record showing that the said land was fully irrigated land. The learned counsel submitted that, in the circumstances, the reference court has rightly awarded the same rate for the acquired lands which were dry and has also determined the market value of the other lands which were irrigated @ Rs. 50,000/- per acre. The learned counsel submitted that, the reference court has not committed any error in determining the market value of the acquired lands and accordingly in enhancing the amount of compensation. The learned counsel further

submitted that, amount as awarded by the reference court has been already recovered by the respective claimants in the execution proceedings filed by them. The learned counsel, therefore, prayed for dismissal of the appeals.

7. I have carefully considered the submissions advanced by the learned A.G.P. and the learned counsel appearing for the respondents i.e. original claimants, I have also perused the impugned judgment and the evidence on record. Perusal of the impugned judgment reveals that, there was only one sale instance before the reference court for consideration so as to determine the market value of the acquired lands. The said sale instance was produced on record by the claimants. The claimants have also examined one Manik Eknath Shinde, in order to prove the said sale deed. The evidence of said Manik Eknath Shinde reveals that he was attesting witness to the sale deed which was executed in respect of survey nos. 163 and 164 ad-measuring 4 acres. The evidence of said witness further reveals that, the sale deed was executed on 11.06.1990 before the Registrar and the said land was sold for the consideration of Rs.1,55,000/-. In the cross-examination, said Manik Eknath Shinde has admitted that the lands of village Pokalgoan are inferior in quality than the land of Killari. The said witness further admitted that, the land situated at the western side of Killari are superior than the land situated on the eastern side the said witness has further admitted that the acquired

lands were towards the eastern side of village Killari. In the cross-examination of the said witness it has also come on record that the land which was the subject matter of exhibit-12 was a dry land. In the further cross-examination, it is nowhere put to the said witness that, it was an irrigated land and he was telling a lie that the said land was dry land. The said witness has also further stated that, the prices of the land within 10 kilometers of village Killari are similar. I have also perused the sale deed at exhibit-12, it carries a clear averment on top of the said sale deed that the said sale deed pertains to a dry land. After having considered the evidence of PW1 Manik Eknath Shinde, it appears that, though, the reference court on the basis of existence of pipe line in the land which was the subject matter of exhibit-12 has held the said land to be irrigated land, infact there was no concrete evidence showing that the said land was irrigated land. On the contrary as mentioned by me herein-above the sale deed of the said land clearly mentions that, it was a dry land and the attesting witness examined by the claimants had also in clear terms testified that it was a dry land. It appears that, though, such discussion is not made by the reference court, ultimately, the reference court has determined the market value of the acquired land at the same rate i.e. @ Rs.40,000/- per acre and has accordingly enhanced the said rate by Rs.10,000/- while determining the market value of the irrigated lands to the tune of Rs. 50,000/- per acre.

8. For the reasons stated above, it does not appear to me that, the reference court has determined the market value of the acquired lands arbitrarily or on higher side. In the circumstances, I do not see any reason to cause any interference in the judgment and award so passed. In the result all these appeals fail and are accordingly dismissed.

(P.R. BORA)
JUDGE