

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1685 OF 2004

The State of Maharashtra
Through the Collector,
Beed, District Beed

...Appellant

versus

1. Baban s/o Bhanudas Thombare
Age major, Occ. Agriculture
R/o. Deolgaon Ghat, Tal. Ashti
District Beed.
 2. Tulshiram s/o Bhanudas Thombare
Age major, Occ. and R/o. As above
 3. Chandrakant w/o. Jagannath Thombare
Age major, Occ. and R/o. As above
- ...Respondents

WITH
FIRST APPEAL NO. 1686 OF 2004

The State of Maharashtra
Through the Collector,
Beed, District Beed

...Appellant

versus

1. Govardhan s/o Asaram Thombare
Age 20 years, Occ. Education
R/o. Deolgaon Ghat, Tal. Ashti
District Beed.
 2. Machindra s/o Asaram Thombare
Age 22 years, Occ. and R/o. As above
 3. Bhaginath s/o Mahadu Thombare
Age major, Occ. and R/o. As above
 4. Lahu s/o Mahadu Thombare
Age major, Occ. Education
R/o. As above
- ...Respondents

WITH
FIRST APPEAL NO. 1687 OF 2004

The State of Maharashtra
Through the Collector,
Beed, District Beed

...Appellant

versus

1. Gangadhar s/o Ramchandra Thombare
Age 20 years, Occ. Agriculture
R/o. Deolgaon Ghat, Tal. Ashti
District Beed.

2. Rangnath s/o Ramchandra Thombare
Age major, Occ. and R/o. As above

...Respondents

WITH
FIRST APPEAL NO. 1688 OF 2004

The State of Maharashtra
Through the Collector,
Beed, District Beed

...Appellant

versus

Ramrao Krishnaji Thombare
Age major, Occ. Agriculture,
R/o. Deolgaon Ghat, Tal. Ashti
District Beed.

...Respondent

WITH
FIRST APPEAL NO. 1689 OF 2004

The State of Maharashtra
Through the Collector,
Beed, District Beed

...Appellant

versus

1. Ramnath s/o Manik Thombare
Age major, Occ. Agriculture,
R/o. Deolgaon Ghat, Tal. Ashti
District Beed.

2. Nandu s/o Manik Thombare
Age minor U/g. of Kamalbai
Manik Thombare
Age major, Occ. Agriculture
R/o. As above
3. Saheba s/o Rajaram Thombare
Age major, Occ. Agriculture
R/o. As above
4. Bansi s/o Rangnath Thombare
Age major, Occ. & R/o. As above ...Respondents

WITH
FIRST APPEAL NO. 1690 OF 2004

The State of Maharashtra
Through the Collector,
Beed, District Beed ...Appellant

versus

Dagdu s/o Sakharam Shinde
Age major, Occ. Agriculture,
R/o. Deolgaon Ghat, Tal. Ashti
District Beed. ...Respondent

WITH
FIRST APPEAL NO. 1691 OF 2004

The State of Maharashtra
Through the Collector,
Beed, District Beed ...Appellant

versus

Bhausahab s/o Nathu Thombare
Age major, Occ. Agriculture,
R/o. Deolgaon Ghat, Tal. Ashti
District Beed. ...Respondent

WITH
FIRST APPEAL NO. 1692 OF 2004

The State of Maharashtra
Through the Collector,
Beed, District Beed

...Appellant

versus

1. Ashok s/o Vishwanath Thombare
Age 19 years, , Occ. Agriculture,
R/o. Deolgaon Ghat, Tal. Ashti
District Beed.
 2. Uttam s/o Vishwanath Thombare
Age 25 years, , Occ. & R/o. As above
- ...Respondents

WITH
FIRST APPEAL NO. 1693 OF 2004

The State of Maharashtra
Through the Collector,
Beed, District Beed

...Appellant

versus

Sakharam s/o Bhairu Thombare
Age major, Occ. Agriculture,
R/o. Deolgaon Ghat, Tal. Ashti
District Beed.

...Respondent

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Mr. S.B. Yawalkar, A.G.P. for the appellants
Mr. Nilesh R. Avhad h/f Smt. Asha Rakh, advocate for the respondents
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CORAM : V. K. JADHAV, J.
DATED : 30th MAY, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award dated 15.4.2004 passed by the 2nd Ad-hoc Additional District Judge, Beed in L.A.R. No. 68 of 1996 and other connected References, the appellant-State has preferred these appeals. Since all these appeals arise out of the

common judgment and award, the same are decided by this common judgment.

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

The lands owned and possessed by the respondents original claimants situated at village Deolgaon Ghat, Tq. Ashti, District Beed came to be acquired for construction of percolation tank No.3 at Deolgaon Ghat. On 8.2.1990, a notification under Section 4 of the Land Acquisition Act was published and on 15.3.1992 the Special Land Acquisition Officer had declared the award. Being aggrieved by the inadequacy of the amount of compensation, granted by the S.L.A.O., the respondents-original claimants had preferred References, as detailed above. The learned 2nd Ad-hoc Additional District Judge, Beed by its impugned judgment and award dated 15.4.2004 partly allowed the Reference petitions and awarded the compensation for the acquired lands at the rate of Rs.450/- per R and further awarded compensation for the fruit bearing trees. Aggrieved by the same, the State has preferred these appeals.

3. The learned A.G.P. for the appellant submits that the award passed by the S.L.A.O. reflects true and correct market value of the acquired land. The Reference Court has not correctly appreciated the documentary evidence adduced by the parties which resulted into causing manifest injustice. The learned A.G.P. submits that there is

considerable difference between the assessment of the acquired lands and the assessment under the lands under sale instances. The learned A.G.P. submits that the compensation awarded by the S.L.A.O. is just and proper and the same is based on true market value prevailing at the relevant time.

4. I have also heard learned counsel for the respondents-original claimants. Learned counsel for the respondents-original claimants submits that the Reference Court has correctly placed reliance on sale deed at Exh.37 and awarded just and reasonable compensation to the claimants. The Reference Court has deducted 40% of the market value covered under sale instance at Exh.37 and accordingly awarded compensation for the acquired land at the rate of Rs.450/- per R. The S.L.A.O. has not considered a report of Government Horticulturist while awarding the compensation for the fruit bearing trees. The S.L.A.O. Shri Rambhau Rathod has deposed before the Reference court that since the lands in which trees are standing, came to be acquired, a report from the Government Horticulturist was called for. Even he has produced a copy of report of Government Horticulturist and the same is marked at Exh.72. There is apparent mistake committed by the S.L.A.O. while awarding the compensation for the standing trees in the acquired lands by considering the fuel value and instead of awarding compensation for

the standing trees as per column No.11, erroneously awarded compensation as per column No.10 of the award. The witness No.5 for the claimants S.L.A.O. Rambhau Rathod has admitted the same. Learned counsel submits that the impugned judgment and award passed by the Reference Court is proper, correct and legal and thus calls for no interference.

5. It appears from the oral evidence adduced by the respondent-claimants that the claimants have placed reliance on the sale instance at Exh.37 and also other two sale instances. So far as other two sale instances dated 21.4.1982 and 24.6.1982, are concerned, the Reference Court has not considered the same for the reason that there is considerable distance between the acquired lands and the land under the said sale instances. However, it appears that the Reference Court has rightly considered the sale instance at Exh.37 wherein the purchaser Smt. Latabai had purchased 20 R land with share in the well and trees standing in the said land, on 6.12.1991 at the rate of Rs.750/- per R. The Reference Court has concluded that the acquired agriculture lands are dry/Jirayat lands. In the sale instances at Exh.37 since purchaser Smt. Latabai had purchased 20 R of land for consideration of Rs.15,000/- with share in the well and trees, the Reference Court has deducted 40% of the market value covered under the sale instances. After deducting the said amount

from the market value of the land covered under the sale instance, the Reference court has awarded compensation for the acquired land at the rate of Rs.450/- per R. On careful perusal of the sale instance at Exh.37, it appears that the land purchased by said Smt. Latabai is situated within the revenue jurisdiction of village Deolgaon Ghat, Tq. Ashti, District Beed. Furthermore, date of notification under Section 4 of the Land Acquisition Act is dated 8.2.1990 and date of sale instance of Exh.37 is dated 9.12.1991. The Appellant-State has not examined the S.L.A.O. to substantiate its contention that the S.L.A.O. has awarded just and reasonable compensation after considering the sale instance of said area. I do not find any error in the impugned judgment and award thereby awarding compensation at the rate of Rs.450/- per R for the acquired lands.

6. So far as the compensation awarded for the standing trees in the acquired lands are concerned, the Government Horticulturist's report was called while determining the compensation for the trees standing in the acquired lands. The said report is placed before the Reference court and the same is marked Exh.72. It appears that the S.L.A.O. has awarded compensation for fruit bearing trees as per fuel value and not as per the report of the Government Horticulturist. The report at Exh.72 unmistakably points out that the fruit bearing trees like Tamarind, Mango, Lemon, Jujube were standing in the

lands acquired for the said project. As per the Horticulturist's report Exh.72, the market value of the standing trees is fixed as per column No.11 of the report. However, it appears that the S.L.A.O. has paid compensation for the trees as per fuel value as mentioned in the column No.10. Even the S.L.A.O. Mr. Rambhau Rathod has also admitted the same. Learned Judge of the Reference court therefore rightly held that the S.L.A.O. has awarded inadequate compensation in respect of the fruit bearing trees. Thus, the Reference Court after considering entire evidence on record has awarded just and reasonable compensation.

7. In the light of above discussion and since no other point is urged by learned A.G.P., I do not find any merits in the appeals and they are liable to be dismissed with costs. The first appeals are therefore, dismissed with costs.

(V. K. JADHAV, J.)

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