

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 782 OF 2002

Ambadas s/o Bhikurao Choure
Age 60 years, Occ. Agriculture
R/o. Sonegaon, Tq. Patoda
District Beed

...Appellant

versus

The State of Maharashtra,
(Copy to be served on Government
Pleader of the High Court of
Judicature at Bombay,
Bench at Aurangabad)

...Respondents

WITH
FIRST APPEAL NO. 783 OF 2002

Prabat Bala Choure
(Since deceased, through his L.Rs.)

1. Manik s/o Prabhakar @ Prabhat Choure
Age 58 years, Occ. Agriculture
2. Bhagwant s/o Prabhakar @ Prabhat Choure
Age 53 years, Occ. Agriculture
3. Madhukar s/o Prabhakar @ Prabhat Choure
Age 50 years, Occ. Agriculture
All R/o. Sonegaon, Tq. Patoda
District Beed

...Appellants

versus

The State of Maharashtra,
(Copy to be served on Government
Pleader of the High Court of
Judicature at Bombay,
Bench at Aurangabad)

...Respondents

.....
Mr. S.L. Bhapkar, advocate for the appellant
Mr. K.D. Mundhe, AGP for the respondent-State
.....

CORAM : V. K. JADHAV, J.
DATED : 18th APRIL, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the common judgment and award dated 22.4.1999, passed by the V Additional District Judge, Beed, in L.A.R. No. 69 of 1989 and other connected References, the original claimants in L.A.R. No. 94 of 1989 and 72 of 1989, prefer these two first appeals.

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

The respondent State has acquired the lands of the appellants for percolation tank at village Belewadi Sonegaon, Tq. Patoda, District Beed. The lands came to be acquired on 31.5.1985 and the notification under Section 4 of the Land Acquisition Act came to be issued in Government Gazette on 17.10.1985. The Special Land Acquisition Officer after making enquiry into the matter, fixed the market value of the acquired land at the rate of Rs.100/- per R. Being aggrieved by the same, the claimants had preferred aforesaid Land Acquisition References and the learned V Additional District Judge, Beed by its impugned judgment and award dated 22.4.1999 granted the compensation at the rate of Rs.300/- per R. The claimants, being aggrieved by the said judgment and award, preferred these first

appeals.

3. Learned counsel for the appellants-original claimants submits that the Reference court has considered the previous judgment (Exh.38) in L.A.R. No.235 of 1989 alongwith connected References with observation that though the reference petitions arise from different award but cover the same village Belewadi and the lands are acquired for the same percolation tank. It appears from the said judgment in L.A.R. No. 235 of 1989 that the sale instance, as referred in the References under appeals were relied upon and the court after considering similar characteristics of the acquired land and the land comprised in the sale transaction, concluded the market value of irrigated land, ranging between Rs.500 per R to Rs.1000/- per R and fixed the value at the rate of Rs.400/- per R. Learned counsel submits that even though the Reference Court has observed the same but for no reason reduced the rate of the acquired land of Rs.300/- per R instead of awarding rate of Rs.400/- per R.

4. Learned A.G.P. submits that so far as the common judgment delivered in L.A.R. No.235 of 1989 is concerned, the notification under Section 4 in that case is dated 23.7.1987 and the notification under section 4 in the present appeals is dated 17.10.1985. The learned A.G.P. further submits that in the said L.A.R. No. 235 of

1989 two sale instances were considered those are of dated 12.7.1984 and 29.4.1985. Learned A.G.P. submits that considering the date of notification in L.A.R. No. 235 as 23.7.1987, the Reference Court has awarded Rs.400/- per R, however, considering the date of Section 4 notification in the present matter, the Reference Court has reduced the rate and accordingly awarded compensation @ Rs.300/- per R. The learned A.G.P. submits that the impugned judgment and order calls for no interference. There is no substance in the appeals and the appeals therefore liable to be dismissed.

5. The certified copy delivered in L.A.R. No. 235 of 1989 is produced before the Reference Court and the same is marked at Exh.38. On careful perusal of the same, it appears that the Reference Court, after considering said two sale instances i.e. sale instance dated 12.7.1984 and sale instance dated 29.4.1985 awarded compensation at the rate of Rs.400/- per R with observation that the court proposed to fix the market value of the land at Rs.400/- per R for all the lands.

6. So far as the present appeals are concerned, the Reference Court has discussed the same in para 18 of the impugned judgment and award. The Reference Court has observed that on earlier occasion considering the similar characteristics of the acquired land

and the land comprised in the said sale instance, concluded that the market value of the irrigated land in the year 1985 ranged between Rs.500/- per R. to Rs.1000/- per R and accordingly fixed the market value of Rs.400/- per R for Jirayat land. It also appears from the judgment delivered in L.A.R. No. 235 of 1989 that the land under sale instance is at a distance of 3/4 kilometers from the acquired land. In the backdrop of this position, I do not find any reason as to why the Reference Court has reduced the compensation amount from Rs.400/- per R to Rs.300/- per R. The Reference court has observed in para 18 of the impugned judgment that the market value of dry land for the relevant year is reduced by 10% than the irrigated land and thus the market value ought to have been reduced to Rs.300/- per R. These observations go without any reason. Considering the market value of the irrigated land in the year 1984-85, ranging between Rs.500/- to Rs.1000/- per R, the reference court in L.A.R. No. 235 of 1989 fixed the market value for Jirayat land at Rs.400/- per R. Admittedly, the State has not preferred any appeal against the judgment and award in L.A.R. No. 235 of 1989 and the said award is now attained finality. In view of this, the appellants in this case also entitled for compensation @ Rs.400/-per R for their acquired lands. Hence, I pass the following order:-

O R D E R

- I. Both the first appeals are hereby partly allowed.
- II. The impugned judgment and award dated 22.4.1999 to the extent of L.A.R. No. 94 of 1989 and L.A.R. No. 72 of 1989 is modified in the following manner;-

The claimants are entitled for compensation at the rate of Rs.400/- per R.

- III. The rest of the judgment and award to the extent of L.A.R. No. 94 of 1989 and L.A. R. No. 72 of 1989 stands confirmed.
- IV. The award be drawn up in tune with the modified award.
- V. First appeals are disposed of accordingly.

(V. K. JADHAV, J.)

rlj/