

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

First Appeal No. 778 of 2005

- 1) Rangnath s/o Jagannath,
Age 45 years,
Occupation : Agriculture.
- 2) Prabhakar s/o Jagannath,
Age 40 years
Occupation : Agriculture
- 3) Sudhakar s/o Jagannath,
Age 35 years
Occupation : Agriculture.

All r/o Nevpur, Taluka Kannad,
District Aurangabad.

.. Appellants.

Versus

- * The State of Maharashtra.
Through Special Land Acquisition Officer,
Nevpur Medium Project,
Aurangabad.

.. Respondent.

With

First Appeal No. 779 of 2005

- * Bhikan Mhatarji Suradkar,
Age 37 years,
Occupation : Agriculture.
R/o Nevpur, Taluka Kannad,
District Aurangabad.

.. Appellant.

Versus

- * The State of Maharashtra.
Through Special Land Acquisition Officer,
Nevpur Medium Project,
Aurangabad. **.. Respondent.**

With

First Appeal No. 781 of 2005

- * Ganesh s/o Sitaram Kathar,
Age 35 years,
Occupation : Agriculture.
R/o Nepur, Taluka Kannad,
District Aurangabad. **.. Appellants.**

Versus

- * The State of Maharashtra.
Through Special Land Acquisition Officer,
Nevpur Medium Project,
Aurangabad. **.. Respondent.**

With

First Appeal No. 782 of 2005

- * Pandurang Shama Suradkar,
Age 40 years,
Occupation : Agriculture.
R/o Nepur, Taluka Kannad,
District Aurangabad. **.. Appellants.**

Versus

- * The State of Maharashtra.
Through Special Land Acquisition Officer,

Nevpur Medium Project,
Aurangabad.

.. Respondent.

With

First Appeal No. 783 of 2005

* Gayabai Bhikan Suradkar,
Age 34 years,
Occupation : Agriculture.
R/o Nepur, Taluka Kannad,
District Aurangabad.

.. Appellants.

Versus

* The State of Maharashtra.
Through Special Land Acquisition Officer,
Nevpur Medium Project,
Aurangabad.

.. Respondent.

With

First Appeal No. 883 of 2005

1) Bhaskar s/o Chotiram Salunke,
Age 40 years,
Occupation : Agriculture.

2) Balu s/o Chotiram Salunke,
Age 35 years
Occupation : Agriculture

Both r/o Nepur, Taluka Kannad,
District Aurangabad.

.. Appellants.

Versus

* The State of Maharashtra.
Through Special Land Acquisition Officer,
Nevpur Medium Project,
Aurangabad. **.. Respondent.**

Shri. A.P. Bhandari, Advocate, for appellants.

Shri. K.N. Lokhande, Assistant Government Pleader, for
respondent.

With

First Appeal No. 2648 of 2009

* The State of Maharashtra.
Through Special Land Acquisition Officer,
Nevpur Medium Project,
Aurangabad. **.. Appellant.**

Versus

1) Rangnath s/o Jagannath,
Age 40 years,
Occupation : Agriculture.

2) Prabhakar s/o Jagannath,
Age 35 years
Occupation : Agriculture

3) Sudhakar s/o Jagannath,
Age Major,
Occupation : Agriculture.

All r/o Nepur, Taluka Kannad,
District Aurangabad.

.. Appellants.

With

First Appeal No. 2650 of 2009

- * The State of Maharashtra.
Through Special Land Acquisition Officer,
Nevpur Medium Project,
Aurangabad. **.. Appellant.**

Versus

- * Ganesh s/o Sitaram Kathar,
Age 30 years,
Occupation : Agriculture.
R/o Nepur, Taluka Kannad,
District Aurangabad. **.. Appellants.**

With

First Appeal No. 2651 of 2009

- * The State of Maharashtra.
Through Special Land Acquisition Officer,
Nevpur Medium Project,
Aurangabad. **.. Appellant.**

Versus

- * Bhikan Mhatarji Suradkar,
Age 37 years,
Occupation : Agriculture.
R/o Nepur, Taluka Kannad,
District Aurangabad. **.. Appellant.**

With

First Appeal No. 2663 of 2009

* The State of Maharashtra.
Through Special Land Acquisition Officer,
Nevpur Medium Project,
Aurangabad. **.. Appellant.**

Versus

1) Bhaskar s/o Chotiram Salunke,
Age 40 years,
Occupation : Agriculture.

2) Balu s/o Chotiram Salunke,
Age 35 years
Occupation : Agriculture

Both r/o Nepur, Taluka Kannad,
District Aurangabad. **.. Appellants.**

Shri. K.N. Lokhande, Assistant Government Pleader, for
appellant.

Shri. A.P. Bhandari, Advocate, for respondents.

CORAM: T.V. NALAWADE, J.

DATE : 16th FEBRUARY 2016

JUDGMENT:

1) First Appeal No.778 of 2005 is filed against
judgment and award of Land Acquisition Reference
No.691 of 1996. First Appeal No.779 of 2005 is filed
against judgment and award of Land Acquisition
Reference No.700 of 1996. First Appeal No.781 of 2005 is

filed against judgment and award of Land Acquisition Reference No.727 of 1996. First Appeal No.782 of 2005 is filed against judgment and award of Land Acquisition Reference No.726 of 1996. First Appeal No.783 of 2005 is filed against judgment and award of Land Acquisition Reference No.693 of 1996. First Appeal No.883 of 2005 is filed against judgment and award of Land Acquisition Reference No.698 of 1996. All these appeals are filed by the original claimants.

2) First Appeal No.2648 of 2009 is filed against judgment and award of Land Acquisition Reference No.691 of 1996. First Appeal No.2650 of 2009 is filed against judgment and award of Land Acquisition Reference No.727 of 1996. First Appeal No.2651 of 2009 is filed against judgment and award of Land Acquisition Reference No.700 of 1996. First Appeal No.2663 of 2009 is filed against judgment and award of Land Acquisition Reference No.698 of 1996. All these appeals are filed by the State.

3) The lands of the appellants are acquired by the State Government. It appears that judgments of the LAR Nos.692/1996 and 728/1996 were not challenged though these two matters were decided under the same decision by the Reference Court. Both the sides are heard.

4) The notification under section 4 of the Land Acquisition Act was published on 2-4-1992 though possession was already taken i.e. on 25-9-1991 after negotiations with the owners. The Special Land Acquisition Officer prepared groups of the lands on the basis of land revenue and he gave rate of Rs.280 to 350 per R for dry lands of one group. He gave rate of Rs.472 to 600 per R for semi irrigated lands shown in other group and he gave rate of Rs.560 to 800 per R for perennially irrigated lands. The award of the Special Land Acquisition Officer was challenged in the aforesaid references by original claimants. The Reference Court granted compensation but only in respect of the trees and to some extent the compensation is enhanced. The report at Exhibit 18 prepared on the basis of joint measurement in respect of the trees was used by the Reference Court. The

Reference Court gave Rs.1000/- per lemon tree in LAR No.691/1996, amount of Rs.200/- per mango tree was given in respect of seven small mango trees in LAR No.700/1996. In some references the compensation of Rs.432 per tree in respect of 14 *bor* trees was given. In LAR No.698/1996 the Special Land Acquisition Officer had given compensation in respect of one mango tree and the Reference Court gave compensation in respect of one more tree on the basis of the record and it is Rs.3367/-. In LAR No.727/1996 when the Special Land Acquisition Officer had not given compensation in respect of mango tree the Reference Court gave the value as Rs.3367/- for this mango tree. Thus the Land Acquisition References were allowed to give compensation in respect of only trees and only in aforesaid four References. The Reference Court refused to give interest in respect of the period from 10-8-1999 to 7-10-2002 by holding that no interest was shown by the claimants to prosecute the matter during this period.

5) The claimants have challenged the decisions of the Reference Court as the compensation is not enhanced

in respect of the land and interest is refused in respect of some period. The State challenged the decisions as compensation is given in respect of aforesaid trees in some matters and as the interest is given in respect of the period starting the date of possession upto the date of notification under section 4 of the Land Acquisition Act.

6) It appears that evidence on sale instance was given in one matter but the claimants gave oral evidence in all their matters. The contention of the claimants is that their lands except land of claimant from LAR No.692/1996 were irrigated lands. No such claim was made by the claimant of that proceeding and he had specifically contended that it was his jirayat land. In some matters the Special Land Acquisition Officer has given value of semi irrigated land for some portion. In one matter the Special Land Acquisition Officer has given rate of the bagayat land in respect of some portion and the rate of semi irrigated land in respect of some portion (Survey No.330). This finding is not disturbed by the Reference Court by holding that the finding of the Special Land Acquisition Officer with regard to the nature of quality of the land is

on the basis of the record. No convincing evidence was given before the Reference Court to prove that the lands were irrigated.

7) Both the sides gave evidence to prove the market rate on the date of the notification under section 4 of the Land Acquisition Act. Sale instances at Exhibits 25 and 26 were proved by the claimants. One sale instance was of different village and there were factors like adjacent land of the purchaser and selling of the share of vendor in water of the well situated in other land. The other sale instance was from the same village, the village from where the lands were acquired. This sale instance was in respect of Survey No.302 of village Nevpur and dated 5-11-1986. 74 R was sold for consideration of Rs.60,000/- and this rate of Rs.810/- per R for bagayat land was given. One more matter like LAR No.725/1996 was already decided in which the Reference Court had considered and relied on the sale instance at Exhibit 26 and aforesaid rate was given. In the present matter the Reference Court has refused to place reliance on the sale instances by considering the date on which notice was

published in local news papers regarding the acquisition. In view of the provisions of the Land Acquisition Act particularly Section 4(1) the date of publication in official gazette is relevant though publication of notice in local news papers is also mandatory. In view of this circumstance, the Reference Court could have considered sale instance at Exhibit 26. In view of this circumstance, this Court holds that rate of Rs.846 per R can be given to bagayat land, rate of Rs.423 per R can be given to dry/jirayat land and rate of Rs.635 can be given in respect of semi irrigated land. To that extent the references mentioned in the appeals can be allowed.

8) There is force in the challenge of the State that interest could not have been given in respect of the period from 25-9-1991 to 2-4-1992 as there is no provision in the Act to give interest in respect of such period. Thus, the appeals filed by the original claimants and the appeals filed by the State need to be partly allowed. In the result, following order is passed :-

8) The appeals of the original claimants are partly allowed. The judgments and awards of the Reference Court are modified as follows :-

(A) Rate of Rs.846/- per R is given for bagayat land and that is as per the area mentioned by the Special Land Acquisition Officer as bagayat land in his award. Rate of Rs.635/- per R is given in respect of semi irrigated land and the rate of Rs.423/- per R is given in respect of jirayat land in all the matters. This rate is to be given irrespective of the groups prepared by the Special Land Acquisition Officer.

(B) 12% component given by the Special Land Acquisition Officer is maintained though it is not mentioned by the Reference Court in its judgment and award.

(C) 9% interest will be available on the compensation for the period of one year from the date of publication of notification under section 4 of the Act in the official gazette.

(D) Interest at the rate of 15% per annum will be payable from 30-11-1993 i.e. the date of award till the date of realization.

9) The appeals of the State like First Appeal Nos.2648 of 2009, 2650 of 2009, 2651 of 2009 and 2663 of 2009 are partly allowed. The judgments and awards of the Reference Court of awarding interest in respect of the period from 25-9-1991 to 2-4-1992 i.e. the date of possession till the date of publication of notification under section 4 of the Land Acquisition Act are hereby set aside. Interest will not be payable in respect of that period. Awards are to be modified accordingly.

(T.V. NALAWADE, J.)

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