

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1377 OF 2014

1. Krushnadas s/o Goverdhandas Asar (**Died**),
through his L.R's.
- 1A. Smt.Usha w/o Krushnadas Asar (**Died**)
- 1B. Sanjay s/o Krushnadas Asar,
Age 52 years, Occupation Agriculture,
R/o. Bhatiya Galli Vaijapur,
District Aurangabad.
- 1C. Rashesh s/o Krushnadas Asar,
Age 48 years, Occ. Agri.,
R/o. Bhatiya Galli Vaijapur,
District Aurangabad.
- 1D. Nishchhal s/o Krushnadas Asar,
Age 45 years, Occ: Agri.
R/o Bhatiya Galli Vaijapur,
District Aurangabad.
- 1E. Swati w/o Vijaysingh Bhatiya,
Age 50 years, Occ: Household,
R/o. Plot No.104, Sai Section,
Ambarnath, District Thane.
- 1F. Archana w/o Ketan Bhatiya,
Age 46 years, Occ:Household,
R/o Badoda.
2. Arvind s/o Goverdhandas Asar
Age 68 years, Occ: Agri.
R/o Bhatiya Galli Vaijapur,
District Aurangabad.
- (3. Shantabai w/o Goverdhandas Asar)
Since deceased through L.Rs.

- 3A. Arvind s/o. Goverdhandas Asar,
Age 70 Occ.Agri., r/o. Bhatiya Galli, Vaijapur.
- 3B. Malti w/o Vijayshree Kapadiya.
Age 72, Occ. Household, r/o Mumbai.
- 3C. Smt.Kanchanbai w/o Navnitdas Ramiya
Age 74 Occ. Household, r/o Bhatiya Galli,
Vaijapur.
- 3D. Saroj w/o Devendra Sampat, Age 65,
Occ. Service, r/o Chembur, Mumbai 43

(LR's brought on record as per order passed on 03.08.16)

- 4. Malati w/o Vijayshree Kapadiaya,
Age 70 years, Occ: Household,
R/o. Mumbai.
- 5. Smt.Kanchanbai w/o Navnitdas Ramiya,
Age 72 years, Occ. Household,
r/o. Bhatiya Galli Vaijapur,
District Aurangabad.
- 6. Saroj w/o Devendra Sampat,
Age 63 years, Occ: Service,
R/o. Chembur, Mumbai 43

Appellant No.1-B to 1-D and
Appellants no.3 to 6
through their Power of Attorney Holder
Arvind s/o Goverdhandas Asar,
Age 58 years, Occu.Agril.,
R/o Bhatiya Galli,
Vaijapur i.e. Appellant No.2.

**...APPELLANTS
(Org.Claimants)**

VERSUS

- 1. The State of Maharashtra,
Through District Collector,
Aurangabad.

2. The Executive Engineer,
Nandur Mademeshwar Canal Division Office
Vaijapur.
3. General Manager / officer - head of
Godavari Khore Mahamandal Office Jalna
Road Dist. Aurangabad.

...RESPONDENTS

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Mr.Ajit D.Kasliwal, Advocate for the appellant.
Mr.G.O.Wattamwar, AGP for respondent State.

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CORAM: P.R.BORA, J.
Date: August 12th, 2016

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Date of reserving the judgment: 3/8/2016
Date of pronouncing the judgment: 12/8/2016

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JUDGMENT:

1. The judgment and award dated 21st of April, 2014, in LAR No.265/2010, delivered by the Civil Judge, Senior Division, at Vaijapur, district Nanded, is challenged in the present appeal.

2. The land of the appellant admeasuring 27 Ares from survey No.53 situated at Vaijapur, taluka Vaijapur was acquired for the construction of Left Bank Canal for

Narangji Medium Project, Vaijapur. Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as the Act) was published in that regard in Government gazette on 3.7.1997. The Special Land Acquisition Officer passed an award under Section 11 of the Act on 16.10.2002. The Special Land Acquisition Officer offered the compensation at the rate of Rs.1265/- per Are. Being dissatisfied with the compensation so offered the appellants presented the Reference Application under Section 18 of the Act to the Collector and the same was forwarded for adjudication to the Civil Court at Vaijapur. The appellant had claimed the compensation at the rate of Rs.47,752/- per Are. In order to substantiate his claim, the appellant had placed on record several sale instances and had also examined the relevant witnesses. The appellant had also placed on record the certified copies of the judgments in LAR No.353/2004 and LAR No.357/2004, which were pertaining to the lands which were also acquired for the same project i.e. of construction of Left Bank Canal for Narangji Medium Project, Vaijapur, alike the land which is the subject matter of the present appeal. Learned Reference Court, however, determined the market

value of the acquired land at the rate of Rs.7500/- per Are. Aggrieved thereby, the claimants have preferred the present appeal.

3. Shri A.D.Kasliwal, learned Counsel appearing for the appellants, submitted that in view of the judgment delivered in LAR No.357/2004 which was pertaining to the adjacent land, the same compensation as was awarded for the said land ought to have been awarded to the land involved in the present appeal. Learned Counsel further submitted that it was brought to the notice of the Reference Court that the State has not preferred any appeal against the judgment and award passed in LAR No.357/2004, however, inspite of that, the Reference Court has preferred not to award the compensation as was awarded to the land under acquisition in the aforesaid Land Acquisition Reference. Learned Counsel, therefore, prayed for enhancement in the amount of compensation at par with the compensation awarded in the judgment and order passed in LAR No.357/2004.

4. Learned A.G.P. has supported the impugned judgment. Learned A.G.P. submitted that the Reference Court has considered the judgment in LAR No.353/2004 as well as the judgment in LAR No.357/2004 and has stated reasons for not granting similar rate as was granted in the aforesaid matters. Learned A.G.P., therefore, prayed for dismissal of the appeal.

5. I have carefully considered the submissions advanced by the learned Counsel for the appellants and learned A.G.P. appearing for the respondent State. I have also perused the judgments delivered by the Reference Court in LAR No.353/2004 and 357/2004, certified copies of which are placed on record by the appellants. Learned A.G.P. has not disputed the fact that the State has not preferred any appeal against the judgments and orders passed in both the above Land Acquisition References. In LAR No.353/2004, the land under acquisition under acquisition was out of Survey No.58 situate at Mouje Vaijapur, taluka Vaijapur whereas the land under acquisition in LAR No.357/2004 was the part of survey

No.54 situate at Mouje Vaijapur, taluka Vaijapur. The land which is the subject matter of the present appeal is part of survey No.53 of Mouje Vaijapur, taluka Vaijapur. In LAR No.357/2004, the Reference Court has determined the market value of the land which was under acquisition in the said matter at the rate of Rs.300/- per square meter.

6. As noted hereinabove, the State has not preferred any appeal against the judgment and order passed in the aforesaid Land Acquisition Reference. On the contrary, as was informed by the learned Counsel for the appellant, the State has satisfied the award passed in LAR No.357/2004. In the circumstances, there appears substance in the contention raised by the appellants that they are entitled for the same compensation as was awarded in the aforesaid matter since their land is adjacent to the land which was the subject matter in LAR No.357/2004. Moreover, as has been noted by the Reference Court in paragraph No.26 of its judgment, the award passed under Section 11 pertaining to the land which is involved in the present appeal, carries an

averment that the land under acquisition is in the Municipal area of Vaijapur and is surrounded by residential and commercial area.

7. In the aforesaid circumstances, there was no reason for the Reference Court to take a different view and not to award the compensation as was awarded in LAR No.357/2004 and more particularly when it was brought to the notice of the said Court that the State has not preferred any appeal against the judgment and award passed in the aforesaid Reference. In LAR No.357/2004, the market value of the land under acquisition which was part of survey No.54 situate at Mouje Vaijapur, taluka Vaijapur, has been determined at the rate of Rs.300/- per square meter and accordingly, the amount of compensation has been enhanced. The land which is the subject matter of the present appeal is from survey No.53 i.e. the adjacent survey number. I, therefore, deem it appropriate to determine the market value of the land under acquisition at the rate of Rs.300/- per square meter i.e. at par with the market value determined of the land out of survey No.54. The impugned award, therefore,

needs to be modified to the aforesaid extent. Save and except the enhancement in the amount of compensation granted by this Court, the order part of the impugned judgment is maintained as it is. The modified award be accordingly prepared. The appeal stands allowed to the aforesaid extent.

(P.R.BORA)
JUDGE

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