

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3194 OF 2016.

The Executive Engineer,
Minor Irrigation Division,
Sinchan Bhavan, Anandnagar,
Osmanabad.

**...APPELLANT
(Ori.Resp.No.2)**

VERSUS

1. The State of Maharashtra
through Collector,
Osmanabad.
2. Nivrutti Parappa Shinde,
Age:60 years, Occu.: Agri.,
R/o. Ghatangri, Tq. & Dist.
Osmanabad.

**...RESPONDENTS
(Ori.Resp.No.1 &
Ori.Claimant)**

WITH

FIRST APPEAL NO.3195 OF 2016

The Executive Engineer,
Minor Irrigation Division,
Sinchan Bhavan, Anandnagar,
Osmanabad.

**...APPELLANT
(Ori.Resp.No.2)**

VERSUS

1. The State of Maharashtra
through Collector,
Osmanabad.
2. Bhagwat Mahadeo Shinde,
Age:55 years, Occu.: Agri.,
R/o. Ghatangri, Tq. & Dist.
Osmanabad.

3. Shivdas Baji Shinde,
(Died) his L.Rs.

3A) Anruth S/o. Shivdas Shinde,

3B) Somnath S/o. Shivdas Shinde,
R/o. Ghantangri, Tq.& Dist.
Osmanabad.

...RESPONDENTS
(Ori.Resp.No.1 &
Ori.Claimant)

WITH

FIRST APPEAL NO.3196 OF 2016

The Executive Engineer,
Minor Irrigation Division,
Sinchan Bhavan, Anandnagar,
Osmanabad.

...APPELLANT
(Ori.Resp.No.2)

VERSUS

1. The State of Maharashtra,
through Collector,
Osmanabad.

2. Anatrao S/o. Pandurang Shinde,
Age:55 years, Occu.:Agri.,
R/o.Ghatangri, Tq. & Dist.
Osmanabad.

...RESPONDENTS
(Ori.Resp.No.1 &
Ori.Claimant)

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Mr.G.B. Rajale, Advocate for Appellant.

Mr.G.O. Wattamwar, AGP for Respondent 1.

Mr.J.R. Patil, Advocate for Respondent No.2.

CORAM : P.R.BORA, J.

DATE : 20th September, 2016.

ORAL JUDGMENT:

1) Heard. By consent of the learned Counsel appearing for the parties, taken up for final disposal.

2) Since all these appeals are arising out of the common judgment and award passed by the 4th Joint Civil Judge, Senior Division, at Osmanabad on 30th April, 2012 in LAR No.232/2006 with the connected References, common arguments were heard in all these matters and I deem it appropriate to decide all these appeals by a common reasoning.

3) The lands, which are the subject matter of the present appeals, were acquired for the purpose of submergence of Bedki Nala Tank to be constructed at village Ghatangri, Tq. And District Osmanabad. Notification under Section 4 of the Land Acquisition Act, 1894 (for short, the Act) in that regard was published on 29th April, 1993, whereas Award under Section 11 of the Act

came to be passed on 31st January, 1998. The Special Land Acquisition Officer (for short SLAO) had fixed the market value of the acquired lands at @ Rs. 15000/- per acre and has accordingly offered the amount of compensation to the respective claimants. Dissatisfied with the amount of compensation so offered, the claimants preferred applications under Section 18 of the Act to Collector, Osmanabad, which were in turn forwarded to the Civil Court (hereinafter referred to as Reference Court) for adjudication.

4) Before the Reference Court, the claimants had claimed compensation @ Rs.1,00,000/- per acre. In order to substantiate the claim so raised by them, the claimants have adduced their own oral evidence and had also placed on record one sale instance (Exhibit-29). The acquiring body did not adduce any oral or documentary evidence. The learned Reference Court, after having assessed the oral and

documentary evidence brought before it, determined the market value of the acquired land @ Rs. 40,000/- per acre and accordingly enhanced the amount of compensation. The claimants had also claimed separate compensation towards the trees and wells etc. However, the said claim was rejected by the Reference Court. The Reference Court has made entitled the claimants for statutory benefits and the interest under the provisions of the Act. Aggrieved by the same, the acquired body has filed the present appeals.

5) Shri Rajale, learned Counsel appearing for the acquiring body, has assailed the impugned judgment and award on the ground that the Reference court, without considering the fact that the sale instance, which was relied upon by the claimants, was pertaining to the land situated at village Ambejawalgi, whereas the acquired lands were from village Ghatangri. The learned Counsel further submitted that the land, which was the subject matter of Exhibit-29, was

an irrigated land and was also superior to the acquired lands in quality.

6) Learned Counsel further submitted that, ignoring all these aspects, the Reference court has determined the amount of compensation on higher side. Learned counsel, therefore, prayed for setting aside the judgment and award and to re-determine the amount of compensation by re-evaluation of the evidence on record. Alternatively, the learned Counsel submitted that the compensation be fixed at the same rate which the SLAO has offered to the claimants.

7) Shri Patil, learned Counsel appearing for the original claimants in all these matters, has supported the impugned judgment and award. The learned Counsel submitted that the Reference Court has very conservatively enhanced the amount of compensation. According to the learned Counsel, the claimants were, in fact, entitled for some more compensation than awarded by the

Reference court. The learned Counsel, therefore, prayed for dismissal of the appeals.

8) I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and other material on record. After having gone through the impugned judgment and the other material on record, apparently it does not appear to me that any interference may be required in the impugned judgment and award.

9) Admittedly, the acquiring body did not adduce any oral or documentary evidence and the only evidence, which was before the Reference Court was the oral testimony of the respective claimants and the sale instance at Exh.29. The Reference Court has elaborately analyzed the evidence which was brought on record and considering the plus and minus factors, as determined the amount of compensation. The sale

deed at Exh. 29 is a crucial document in the present matter. It was the sale deed executed on 2nd September, 1991 for the land situated at village Ambejawalgi admeasuring 94 Ares for the consideration of Rs. 2,00,000/-. Admittedly, the said land was irrigated land. In the impugned judgment, the Reference Court has elaborately discussed as to in what way the market value of the acquired lands has been determined on the basis of the said sale deed. Since the land, which was the subject matter of Exh.29, was from village Ambejawalgi, which was at the distance of 4 kms from village Ghatangri, some deductions are made by the Reference Court. The Reference Court has further observed that in view of the fact that the acquired lands were jirayat land, same rate as was received to the land involved in the sale instance at Exh.29, could not have been awarded for the said lands. After having considered all these plus and minus factors, the Reference Court has determined the market value of the acquired land @ Rs. 40,000/- per acre.

10) Para 12 of the impugned judgment further reveals that the judgment passed in LAR Nos. 261/2003 and 321/2003 by the 3rd Joint Civil Judge, Senior Division, Osmanabad, was also taken into account by the Reference Court while determining the market value of the acquired lands. In the said matters, the compensation was awarded @ Rs. 40,000/- per acre for the dry land. It is further brought to my notice that the lands, which were the subject matter in the said Reference Application were also from village Ghatangri and were acquired by the same notification for the same project of submergence of Bedki Nala Tank. Nothing has been brought on record by the appellants whether any appeal has been preferred against the judgment and Award passed in aforesaid LAR Nos.261/2003 and 321/2003. It appears that considering the fact that in the earlier matters pertaining to the lands acquired for the same purpose vide the same notification, the concerned Reference Court has awarded the compensation @ Rs.40,000/- per acre,

the Reference Court found it appropriate to award the compensation at the same rate.

11) After having considered the discussion made by the Reference Court, it does not appear to me that the reference Court has committed any apparent error in determining the market value of the acquired lands at the aforesaid rate. The impugned judgment further reveals that the References Court has objectively assessed the entire evidence on record. Even though the claimants were persuasive in claiming the compensation towards trees, wells and structures etc. in absence of any cogent and sufficient evidence therefor, the Reference Court has rejected all the claims in that regard.

12) After having considered the entire material on record, it does not appear to me that any interference is called for in the impugned judgment and order passed by the Reference Court. It further appears to me that the Reference Court has adequately determined the market value of the

acquired lands and the market value so determined by the Reference Court cannot be, in any way, said to be arbitrary or on higher side.

13) The appeals are devoid of any merit and deserve to be dismissed and are accordingly dismissed. Pending Civil Applications, if any, stand disposed of.

sd/-
(P.R.BORA)
JUDGE

title -Kodgire
bdv/Jt.