

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1065 OF 2016

The State of Maharashtra,
through Collector,
Osmanabad,

...APPELLANT
(Ori. Respondent)

VERSUS

Govind Pandhari Lomate,
Age:28 years, Occu.:Agri.,
R/o. Tadgaon, Tq. Kallam,
Dist. Osmanabad.

...RESPONDENT
(Ori. Claimant)

WITH

FIRST APPEAL NO.1066 OF 2016

The State of Maharashtra,
through The Collector,
Osmanabad,

...APPELLANT
(Ori. Respondent)

VERSUS

1. Shivaji S/o. Sahebrao Lomate,
Age:35 years,
2. Janardhan S/o. Sahebrao Lomate,
Age:30 years,
Both Occu.:Agril,
R/o. Tadgaon, Tq. Kallam,
Dist. Osmanabad

...RESPONDENT
(Ori. Claimant)

WITH

FIRST APPEAL NO.1067 OF 2016

The State of Maharashtra,
through The Collector,
Osmanabad,

...APPELLANT

(Ori. Respondent)

VERSUS

1. Ramhari S/o. Kundlik Lomate,
Age:45 years,
2. Shrihari S/o. Kundlik Lomate,
Age:40 years,
3. Shriram S/o. Kundlik Lomate,
Age:37 years,
4. Kakasaheb S/o. Kundlik Lomate,
Age:33 years,

All Occu.: Agril.,
R/o. Tadgaon, Tq. Kallam,
Dist. Osmanabad.

...RESPONDENT
(Ori. Claimant)

WITH**FIRST APPEAL NO.1068 OF 2016**

The State of Maharashtra,
through The Collector,
Osmanabad,

...APPELLANT
(Ori. Respondent)

VERSUS

Kalyan S/o. Murlidhar Lomate,
Age:30 years, Occu.:Agril.,
R/o. Tadgaon, Tq. Kallam,
Dist. Osmanabad.

...RESPONDENT
(Ori. Claimant)

WITH**FIRST APPEAL NO.1069 OF 2016**

The State of Maharashtra,
through The Collector,
Osmanabad,

...APPELLANT
(Ori. Respondent)

VERSUS

Chandrakant S/o. Murlidhar Lomate,
Age:45 years, Occu.: Agril.,
R/o. Tadgaon, Tq. Kallam,
Dist. Osmanabad.

...RESPONDENT
(Ori. Claimant)

WITH**FIRST APPEAL NO.1070 OF 2016**

The State of Maharashtra,
through The Collector,
Osmanabad,

...APPELLANT
(Ori. Respondent)

VERSUS

1. Kalidas S/o. Babasaheb Lomate,
Age:22 years, Occu.: Agril.,
R/o. Tadgaon, Tq. Kallam,
Dist. Osmanabad.

...RESPONDENT
(Ori. Claimant)

...

Mr. S.N. Morampalle, AGP for Appellant/s.
Mr. V.V. Ingale, Advocate for Respondent/s.

CORAM : P.R.BORA, J.

RESERVED ON : 12th AUGUST,2016

PRONOUNCED ON: 29th SEPTEMBER,2016

JUDGMENT:

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

2) The State of Maharashtra has filed the present appeals, challenging the common Judgment and Award passed by Joint civil Judge, Senior Division, at Osmanabad on 28.6.2007 in LAR No.53/1992 with connected Land Acquisition References.

. Since all these appeals arise out of common Judgment and Award passed by the court below, common arguments were heard of the parties 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 construction of percolation tank at village Tadgaon, Tq. Kallamb, District Osmanabad. Notification in that regard under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was published in the Government Gazette on 21st July, 1988 whereas Award under Section 11 of the Act came to be passed on 31st December, 1990.

Special Land Acquisition Officer (for short, S.L.A.O.) had fixed the market value of the acquired lands @ Rs.7,800/- per acre and has accordingly determined the amount of compensation to be offered to the respective claimants. Dissatisfied with the amount so offered, the land-holders preferred the applications under Section 18 of the Act to the Collector, Osmanabad, who in turn forwarded the said applications for adjudication to the Civil Court at Osmanabad (hereinafter referred to as the Reference Court).

4) Before the Reference Court the claimants had claimed the compensation @ Rs.40,000/- per acre. In order to substantiate the claim so made, each of the claimants deposed before the Reference Court on oath. In so far as evidence as about the sale instance is concerned, common evidence was adduced on behalf of the claimants. The claimants had relied upon three sale instances. Sale instance at Exh.21 pertains to

sale of the agricultural land admeasuring 9 Ares, which was duly registered on 2nd April, 1986 and the amount of consideration received to the vendor was Rs.9,000/-. One Subhadrabai Salunke had sold the said land to one Kalawatibai Salunke. Sale instance at Exh. 22 was executed on 29th December, 1988. Vide the said sale deed, Ganpat Gundiba Khot and Shivdas Kondiba Khot had sold the said land by registered sale deed to Janak Namdeo Giri for the consideration of Rs.10,000/-. Whereas the land, which is the subject matter of sale deed at Exh. 23 was admeasuring 3 $\frac{1}{2}$ Ares and was sold for the consideration of Rs.7,000/- by a registered sale deed executed on 17.6.1988. The land involved in the sale deed at Exh.21 was situated at village Ghargaon. The land which was the subject matter of Exh.22, was of village Mauje Pimpri Shiradhod, whereas the land which was the subject matter of Exh.23 was of village Mauje Dhorala. The lands which are the subject matter of the present appeals are from village Tadgaon, Tq. Kallamb District Osmanabad.

5) The learned Reference Court, after considering the oral and documentary evidence brought before it, determined the market value of the acquired lands @ Rs.20,000/- per acre and accordingly enhanced the amount of compensation. The Reference Court also made the claimants entitled to the statutory benefits under the Act, i.e. 12% component, 30% solatium and interest under Section 28 and 34 of the Act. Aggrieved by the Award so passed, the State of Maharashtra has preferred the present appeals.

6) Shri Morampalle, learned AGP appearing for the State, criticized the the impugned judgments on various grounds. The learned AGP submitted that the sale instances, which are relied upon by the Reference Court while determining the amount of compensation, cannot be said to be comparable sale instances so as to determine the market value of the acquired lands. The learned AGP further submitted that none of the sale instances relied upon by the claimants

is of the lands situated at village Tadgaon or of the adjacent village.

7) The learned AGP further submitted that the S.L.A.O. Had determined the market value of the acquired lands by taking into account overall circumstances and by actually visiting the acquired lands and as such, the Reference Court should not have interfered in the price so fixed by the S.L.A.O and the compensation so offered by him. The learned AGP, therefore, prayed for setting aside the impugned Judgment and Award and to confirm the Awards passed by the S.L.A.O.

8) Shri Ingale, learned counsel appearing for the respondents – original claimants, resisted the submissions advanced by the learned AGP. The learned Counsel submitted that in the companion matters bearing LAR Nos.68/1992, 50/1992, 60/1992 and 67/1992, arising out of the same project, which were subsequently decided by the same Court, the compensation is determined @

Rs.30,000/- per acre. The learned counsel submitted that the Awards passed in the said matters are also challenged by the State by filing First Appeal Nos.956/2016 and connected appeals. The learned counsel submitted that in fact in the present matters also, the Reference Court must have awarded the compensation @ Rs.30,000/- per acre. The learned Counsel, therefore, prayed for dismissal of the appeals.

. The learned Counsel further submitted that in case this court rejects the appeals filed by the State bearing First Appeal No.956/2016 and connected appeals and confirms the Awards passed by the Reference Court in the said matters, the respondents in the present matters shall also be extended the benefit thereof and the market value of the lands of the respondents in the present appeals shall also be determined @ Rs.30,000/- per acre and amount of compensation be enhanced in the present appeals. The learned counsel submitted that this court can pass such order invoking the provisions under Order 41 Rule 33 of

the Code of Civil Procedure. In support of his contention, the learned counsel relied upon the unreported judgment of this court (Coram:Sunil P.Deshmukh,J.) in First Appeal No.315/1994 with connected appeals on 19th November, 2014.

9) After having carefully considered the submissions advanced by the learned AGP and the learned Counsel appearing for the respective parties and after having gone through the impugned judgment and the evidence on record, apparently, I do not see any reason to cause any interference in the impugned Judgment and Award. Admittedly, no oral or documentary evidence was adduced by the appellant – State. Whatever evidence was available on record was from the side of the respondents – claimants. There were three sale instances placed on record of the Reference Court respectively at Exhibits-21 to 23. All the sale instances were of the period prior to issuance of Section 4 notification pertaining to the acquired lands. The price

received to the lands which were the subject matters of the respective sale instances was Rs.1,000/- in two matters and Rs.2,000/- per Are in one matter. As has come on record, village Ghargaon, village Mauje Pimpri Shiradhod and village Tadgaon are adjacent to each other and within the distance of 5 kms from each other. In the circumstances, it does not appear to me that the Reference Court has committed any error in determining the market value of the acquired lands @ Rs.20,000/- per acre, i.e. at the rate of Rs.500/- per Are.

10) From the discussion made by the Reference Court, it is quite evident that the evidence which was brought before it was objectively assessed by the Court and considering the plus and minus factors attached to the acquired lands, ultimately, the market value of the acquired lands was fixed by the Reference Court. Since the Reference Court has awarded a very reasonable amount by way of compensation and

the compensation assessed by the Reference Court is based on the evidence on record, I do not see any reason to cause any interference in the impugned Judgment and Award. Appellant/State has failed in pointing out any error on the part of the Reference Court in determining the market value of the acquired lands @ Rs.20,000/- per acre. Similarly, there appears no substance in the objection raised by the appellant that on account of trees, compensation awarded by the Reference Court is on higher side. The appeals filed by the State are without any merit and deserve to be dismissed and accordingly are dismissed, however, without any order as to costs. Pending Civil Application, if any, stands disposed of.

11) The provisions of Order 41 Rule 33 cannot be invoked in the present matters in view of the fact that the lands, which are the subject matters of the present appeals and the lands which are the subject matters in First Appeal

Nos. 956/2016 to 959/2016, were acquired under different notifications and there are two separate Awards under Section 11 of the Act in respect of the lands involved in these two groups of appeals. Moreover, there are two separate judgments delivered by the Reference Court. The request so made by the respondents, therefore, cannot be accepted and deserves to be rejected.

(P. R. BORA)
JUDGE

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