

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

FIRST APPEAL NO.213 OF 2016

Santosh S/o. Vitthalrao Dakh,
Age:30 years, Occu.:Agril,
R/o. Gugli Dhamangaon,
Tq. Sailu, Dist. Parbhani,

**...APPELLANT
(Orig. Claimant)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani
2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.
3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
(Original Respondents)**

...

WITH

FIRST APPEAL NO.209 OF 2016

Sudam S/o. Nivrutti Matne,
Age:38 years, Occu.: Agri.,
R/o. Gugli Dhamangaon,
Tq. Sailu, Dist. Parbhani,

**...APPELLANT
(Orig. Claimant)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani

2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.
3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
(Original Respondents)**

...

WITH

FIRST APPEAL NO.210 OF 2016

Rambhau S/o. Madhavrao Mahajan,
Age:40 years, Occu.:Agri.,
R/o. Kundi (Bk.), Tq. Sailu,
Dist. Parbhani,

**...APPELLANT
(Orig. Claimant)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani
2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.
3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
(Original Respondents)**

...

WITH

FIRST APPEAL NO.211 OF 2016

Ramchandra S/o. Abasaheb Dakh,
Age:52 years, Occu.:Agri.,
R/o. Gugli Dhamangaon,
Tq. Sailu, Dist. Parbhani,

**...APPELLANT
(Orig. Claimant)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani
2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.
3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
(Original Respondents)**

...

**WITH
FIRST APPEAL NO.212 OF 2016**

Vinayak S/o. Ramrao Naraladkar,
Age:65 years, Occu.:Agri.,
R/o. Gugli Dhamangaon,
Tq. Sailu, Dist. Parbhani,

**...APPELLANT
(Orig. Claimant)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani
2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.
3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
(Original Respondents)**

Mr.Survase Rajhans P., Advocate for appellant.
Mr. A.M.Phule, AGP for respondent nos. 1 and 2.
Mr.S.V.Kurundkar, Advocate for respondent no.3.

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WITH

FIRST APPEAL NO. 240 OF 2016

1. Balasaheb S/o. Laxman Matne,
Age:38 years, Occu.: Agri.,

2. Sanjay S/o. Laxman Matne,
Age:35 years, Occu.: Agri.,

Both R/o. Gugli Dhamangaon,
Tq. Sailu, Dist. Parbhani

**...APPELLANTS
(Orig. Claimants)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani

2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.

3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
(Original Respondents)**

...

WITH

FIRST APPEAL NO.241 OF 2016

Laxman S/o. Eknath Dalve,
Age:28 years, Occu.:Agri.,
R/o. Gugli Dhamangaon,
Tq. Sailu, Dist. Parbhani

**...APPELLANT
(Orig. Claimant)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani
2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.
3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
(Original Respondents)**

...

**WITH
FIRST APPEAL NO.242 OF 2016**

1. Ganesh S/o. Harishchandra
Sadegaonkar,
Age:33 years, Occu.: Agri.,
2. Girish S/o. Harishchandra
Sadegaonkar,
Age:30 years, Occu.: Agri. &
Advocate,
R/o. Gugli Dhamangaon,
Tq. Sailu, Dist. Parbhani.

**...APPELLANTS
(Orig. Claimants)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani
2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.
3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
(Original Respondents)**

**WITH
FIRST APPEAL NO.243 OF 2016**

Gnyandev S/o. Nabaji Mandge,
Age:60 years, Occu.:Agri.,
R/o. Gugli Dhamangaon,
Tq. Sailu, Dist. Parbhani,

**...APPELLANT
(Orig. Claimant)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani
2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.
3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
(Original Respondents)**

...

**WITH
FIRST APPEAL NO.245 OF 2016**

Dagdu S/o. Nivrutti Matne,
Age:43 years, Occu.:Agri.,
R/o. Gugli Dhamangaon,
Tq. Sailu, Dist. Parbhani.

**...APPELLANT
(Orig. Claimant)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani
2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.

3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
(Original Respondents)**

...

**WITH
FIRST APPEAL NO.246 OF 2016**

1. Savita W/o. Shivaji Dakh,
Age:35 years, Occu.: Agri.,
2. Gajanan S/o. Shivaji Dakh,
Age: Minor,
3. Yogesh S/o. Shivaji Dakh,
Age: Minor,

Petitioner Nos. 2 & 3 u/g. of real
mother Petitioner No.1
All R/o. Gugli Dhamangaon,
Tq. Sailu, Dist. Parbhani.

**...APPELLANTS
(Orig. Claimants)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani
2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.
3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
(Original Respondents)**

...

WITH

FIRST APPEAL NO.247 OF 2016

Radhakishan S/o. Namdev Mogal,
 Age:58 years, Occu.:Agri.,
 R/o. Kundi, Tq. Sailu,
 Dist. Parbhani.

**...APPELLANT
 (Orig. Claimant)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani
2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.
3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
 (Original Respondents)**

...

WITH**FIRST APPEAL NO.248 OF 2016**

Bhagirath S/o. Maroti Kadam,
 Age:26 years, Occu.:Agri.,
 R/o. Gugli Dhamangaon,
 Tq. Sailu, Dist. Parbhani

**...APPELLANT
 (Orig. Claimant)**

VERSUS

1. The State of Maharashtra
Through the Collector, Parbhani
2. The Special Land Acquisition Officer,
(M.K.V.) Parbhani.
3. The Executive Engineer,
Majalgaon Canal Division No.10,
Parbhani, Dist. Parbhani.

**...RESPONDENTS
 (Original Respondents)**

Mr.Survase Rajhans P., Advocate for appellant.
Mr. G.O.Wattamwar, AGP for respondent nos. 1 and 2.
Smt.Ranjana Reddi, Advocate for respondent no.3.

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CORAM: P.R.BORA, J.

DATE : October 14th, 2016.

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ORAL JUDGMENT:

1. Since the present appeals are arising out of common judgment and award passed in Land Acquisition Reference No.289/2011, with connected Land Acquisition References, delivered by second Joint Civil Judge, Senior Division, Parbhani, on 29th July, 2015, common arguments were heard in all these matters and I deem it appropriate to decide all these appeals by common reasoning.

2. The lands which are the subject matter of the present appeals were acquired for the purpose of construction of Right Canal of Lower Dudhana Project. The notification under Section 4 of the Land Acquisition Act, 1894, in that regard was published in the Government gazette on 30th April, 2007, whereas award under Section

11 came to be passed on 26th April, 2010. The Special Land Acquisition Officer had fixed the market price of the acquired lands at the rate of Rs.1250/- per Are in some matters and Rs.1230/- per Are in few matters and, accordingly, offered the amount of compensation to the respective land holders. Dissatisfied with the amount so offered, the land holders (hereinafter referred to as the claimants) preferred applications under Section 18 of the Act to Collector, Parbhani who, in turn forwarded all these applications for adjudication to the Civil Court (hereinafter referred to as the Reference Court). The claimants had claimed compensation for their acquired lands before the Reference Court at the rate of Rs.5,000/- to Rs.6,000/- per Are. In order to substantiate the claim so raised by them, the respective claimants deposed before the Reference Court and two sale instances were also placed on record by the claimants.

3. The learned Reference Court, after assessing the oral and documentary evidence brought on record before it, determined the market value of the acquired lands at the rate of Rs.2500/- per Are and accordingly

proportionately enhanced the amount of compensation payable to the respective claimants. The claimants have preferred the present appeals under Section 54 of the Act seeking enhancement in the amount of compensation so awarded by the Reference Court.

4. Shri Survase, learned Counsel appearing for the claimants, submitted that the Reference Court has, for wrong reasons, discarded the sale instance Exh.21 and has placed implicit reliance on another sale instance at Exh.23 in determining the amount of compensation. The learned Counsel submitted that the claimants were fair enough in bringing on record the material which was available with them as about the sale instances occurred in the relevant period. The learned Counsel submitted that 80 R. land of village Kundi was sold by registered sale deed on 30th of June, 2009, for consideration of Rs.16,00,000/- (Rs. sixteen lacs). Learned Counsel submitted that since said land was sold by the vendor to Buldhana Urban Credit Co-operative Society, the said sale instance ought to have been considered as genuine sale instance showing real market value of the land in the said area. Learned

Counsel further submitted that merely because the said sale was of the post notification period, and was from village Kundi, the Reference Court should not have outrightly kept the same out of consideration.

5. Learned Counsel submitted that in catena of judgments, Honourable Apex Court as well as this Court has ruled that in determination of the market value of the lands, the sale instances occurred in adjoining villages can always be taken into consideration. Learned Counsel has placed reliance on the judgment of the Division Bench of this Court in the case of State of Maharashtra through S.L.A.O. CIDCO, Vs. Sahadu Aba Shete and others in First Appeal No.1469 of 2007, with connected appeals, decided on 25.9.2008. Learned Counsel, more particularly, invited my attention to the observations made by the learned Division Bench in paras 19, 20, 21 and 22 of the said judgment. Learned Counsel submitted that in the said matter also, the point at issue was whether the Reference Court should have discarded the sale instances of the adjoining village and the Division Bench has recorded a finding that the same could not have been

rejected by the Reference Court and were liable to be considered while determining the market value of the acquired land.

6. Learned Counsel further submitted that the Reference Court ought to have struck balance in between the price received to the land which was subject matter at Exh.21 and the consideration received to the land which was the subject matter of Exh.23. Learned Counsel submitted that from the evidence a reasonable inference can be drawn that villages Kundi and Gugli Dhamangaon are adjacent villages and the agricultural lands situated in both the villages are having same potentiality. Learned Counsel, therefore, prayed for enhancement in the amount of compensation in view of the evidence on record and in view of the law laid down by the Division Bench in the judgment relied upon by him.

7. Shri Kurundkar, learned Counsel appearing for the acquiring body supported the impugned judgment. Learned Counsel submitted that the Reference Court has objectively assessed the evidence brought before it and

has passed well reasoned order. Emphasis of the learned Counsel was on the issue that when the comparable sale instance from same village was available, there was no necessity for the Reference Court to look into the sale instance of the adjoining village. Learned Counsel submitted that the ratio laid down in the Division Bench judgment relied upon by the learned Counsel for the appellant may not be applicable in the facts of the present case. Learned Counsel further submitted that even otherwise the sale deed at Exh.21 could not have been considered for determination of the market value of the acquired lands for the reason that the said sale has taken place after two years of the Section 4 notification. Learned Counsel further submitted that the sale instance at Exh.21 apparently appears to be un-comparable for the reason that the price received to the said land is abnormally on higher side. Learned Counsel further submitted that in the circumstances, the Reference Court has rightly preferred not to rely upon the said sale instance. Learned Counsel further submitted that the Reference Court has properly considered the sale instance Exh.23 and has also given appropriate increase in the rate

of the land by making the observation that the said sale was effected prior to about one year of the issuance of the Section 4 notification. Learned Counsel submitted that there is no reason to cause any interference in the well reasoned judgment and order passed by the Reference Court. Learned Counsel, therefore, prayed for dismissal of the appeals.

8. Smt. Ranjana Reddy, who is appearing for the acquiring body in some of the matters, adopted the argument advanced by learned Counsel Shri Kurundkar, Smt. Ranjana Reddy, additionally, submitted that the Reference Court has also considered the fact that though it was the assertion of the respective claimants that their lands are irrigated lands, no such evidence was produced on record by any of the claimants so as to draw an inference that the acquired lands were irrigated lands. Learned Counsel further submitted that in the land which was the subject matter of Exh.23, there was a borewell whereas, as observed by the Reference Court, in none of the acquired lands existence of well was noticed. As such, according to learned Counsel, in fact, even the same

rate could not have been given for the acquired lands. Learned A.G.P. appearing for the State has supported the impugned judgment.

9. I have carefully considered the submissions made on behalf of the learned Counsel appearing for the claimants, learned Counsel appearing for the acquiring body, and the learned A.G.P. I have also perused the impugned judgment and the other material available on record. Perusal of the impugned judgment reveals that two sale instances were brought on record by the claimants in order to substantiate their claim. Exh.21 and Exh.23 are these two sale instances. The land which is the subject matter of Exh.21 was admeasuring 80 Ares, situate at Kundi and was sold by registered sale deed executed on 30th of June, 2009, by one Mohammad Anwar s/o Md.Akbar Rangrej to Buldhana Co-operative Urban Credit Society for consideration of Rs.16,00,000/- (Rs. sixteen lacs) i.e. Rs.20,000/- per Are. The land admeasuring 60.70 Are situate at Gugali-Dhamangaon, which was the subject matter of Exh.23 was sold by one Santosh Digambarrao Mogal by registered sale deed on

20th April, 2006 to one Asaram Pralhadrao Mogal for consideration of Rs.1,27,000/- i.e. at the rate of 2167/- per R. In Paragraph Nos. 15 and 16 of the judgment, the Reference Court has analyzed the aforesaid sale instances and has also assigned reasons for not relying on the sale instance at Exh.21 and for relying on the sale instance at Exh.23. The sale instance at Exh.21 had taken place admittedly two years after the issuance of Section 4 notification whereby the subject lands were acquired whereas, the sale instance at Exh.23 was effected prior to about one year of issuance of the notification under Section 4 of the Act. The Reference Court has further observed that when the sale instance prior to issuance of Section 4 notification pertaining to the same village, where the acquired land was situated was available for consideration, there was no necessity to refer to sale instance pertaining to the land situated at the adjoining village. The Reference Court has assigned one more reason for not considering the sale instance that it was executed after issuance of Section 4 notification.

10. There cannot be a dispute regarding the law laid down by the learned Division Bench in the case of State of Maharashtra through S.L.A.O. CIDCO, Vs. Sahadu Aba Shete and others (cited supra), that the market price of the acquired land can be determined on the basis of the sale instances of the lands of the neighbouring villages if the lands have similar potentials and fertility. However, in paragraph no.21 of the said judgment itself the learned Division Bench has reproduced certain observations made in the case of the State of Maharashtra Vs. Yashwant Kahnu Shirsath and others (First appeal No.896 of 2005 decided on 19th July, 2007). The said observations are as under:

"7. It is a settled principle of law that the land of the adjacent villages can be made the basis for determining the fair market value of an acquired land. This principle of law is qualified by a clear dictum of the Supreme Court itself that wherever direct evidence i.e. the instances from the same village are available then it is most desirable that the Court should consider those instances rather than relying upon sale instances of the adjoining land. "

Considering the observations as aforesaid, it does not appear to me that the Reference Court has committed any error in placing reliance on the sale instance at Exh.23

pertaining to the land situate at the same village than relying on the sale instance at Exh.21 which pertains to the land in adjacent village. Further, taking into account the fact that the land involved in sale instance at Exh.23 was sold prior to about one year of the issuance of Section 4 notification, the learned Reference Court has given appropriate increase of 12 to 14 per cent while determining the market value of the acquired lands and has thus fixed the market value of the acquired land at the rate of Rs.2500/- per Are. I do not see any infirmity in the judgment and award passed by the Reference Court. No such case is made out warranting any interference in the judgment and award so passed. The First Appeals, therefore, fail. In the result, the following order is passed:

ORDER

1. The First Appeals are dismissed, however, without any order as to costs.

(P.R.BORA)
JUDGE

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AGP/213-16fa