

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

7 FIRST APPEAL NO.:356 OF 2015

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
GOPAL VITHALRAO PANDE

WITH

FIRST APPEAL NO.:354 OF 2015

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
REKHABAI GOPALRAO PANDE

WITH

FIRST APPEAL NO.:355 OF 2015

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
KALWATI GANPATI BOLEGAVE

AND

FIRST APPEAL NO.:357 OF 2015

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
MALLIKARJUN GANPATI BOLEGAVE AND ANOTHER

...

AGP for Appellants : Mr. A. M. Phule.

Advocate for Respondents/ Claimants: Mr.V.G. Kodale, h/f Mr. V. D. Gunale.

...

CORAM : **V. K. JADHAV, J.**

DATE : 24th July, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the common judgment and award passed by the learned Civil Judge Senior Division, Udgir dated 5th February, 2013 in LAR No.785 of 2010 (Old No.547 of 2005) and other connected reference petitions, the Respondent / State preferred these appeals.

3 Brief facts giving rise to the present appeals are as follows:

- a) The Respondents / Claimants owners and possessors of the agricultural lands situated at village Tiruka, Taluka Jalkot, District Latur. The State has acquired the said lands for the purpose of construction of percolation tank Dongargaon No.3 at village Tiruka, Taluka Jalkot. Section 4 notification was published in the official Gazette on 24th December, 2002. The Special Land Acquisition Officer has awarded the compensation for the acquired lands at the rate of Rs.310/- per Are and Rs.400/- per Are vide award dated 7th May, 2004. Being dissatisfied with the compensation

awarded by the Special Land Acquisition Officer, the Respondents / Claimants preferred the aforesaid land acquisition reference petitions. It has been contended that the Special Land Acquisition Officer has not taken into consideration the relevant factors such as, quality, productivity and fertility of the lands for assessing proper market value. Even the Special Land Acquisition Officer has not considered the sale instances of other lands in the vicinity, which occurred on or around the date of publication of notification. It has been contended that the acquired lands having deep black cotton soil and as such, the market value of the acquired lands was higher than the value assessed by the Special Land Acquisition Officer.

- b) The Appellant / State has strongly resisted those reference petitions on the ground that the acquired lands were of medium quality and located in interior area. The Special Land

Acquisition Officer has properly assessed the value of the acquired lands and as such, awarded just and reasonable compensation.

c) The Respondents / Claimants adduced oral and documentary evidence in support of their contentions. However, Appellant / State has not adduced any evidence.

d) The learned Civil Judge Senior Division, Udgir vide common judgment and award dated 5th February, 2013, partly allowed the said reference petitions and thereby directed Appellant / State to pay the compensation for the acquired lands at the rate of Rs.3,000/- per Are.

Hence, these appeals.

4 The learned AGP submits that the Respondents / Claimants have mainly placed their reliance on the sale-deed Exhibit 17, which is in respect of sale of land admeasuring 31 Ares situated at village Sonawala, Taluka Jalkot for a consideration of Rs.1,50,000/- on 23rd October, 2010. The Reference Court for justifiable reasons, discarded the said sale instance. The learned AGP submits that the

Reference Court has observed that the land under sale instance is situated at village Sonawala Jalkot, which is not a neighboring village of village Tiruka. There is no evidence on record to show that the land under sale instance, located in the same vicinity of the acquired lands. The learned AGP submits that, however, the Reference Court has given importance to the judgment and award passed by the Reference Court in LAR No.2048 of 2010. Certified copy of the judgment and award passed by the Reference Court in LAR No.2048 of 2010 is produced on record and the same is marked as Exhibit 18. The learned AGP submits that the agricultural lands of village Tiruka came to be acquired by the Government for the purpose of construction of percolation tank No.5 at village Tiruka and Section 4 notification was published on 3rd February, 2005. The learned counsel submits that Section 4 notification in respect of the acquired lands in the present matters came to be published in the year 2002 and as such, the Reference Court has committed error while relying upon the judgment and award passed in LAR No.2048 of 2010.

5 The learned counsel for Respondents / original Claimants submits that though the Reference Court has not considered the sale instance Exhibit 17 on the ground that the land under sale instance is situated at a different village, however, rightly considered the judgment

and award passed by the Reference Court in LAR No.2048 of 2010. The learned counsel submits that the agricultural lands of same village Tiruka, Dongarkonali and Patoda (Kh) came to be acquired for the purpose of construction of percolation tank No.5 at village Tiruka and the Reference Court determined the market value of those agricultural lands at Rs.3,250/- per Are. The learned counsel submits that even the Reference Court has considered the aspect that Section 4 notification in respect of the land acquired, which is the subject matter of LAR No.2048 of 2010, published in the year 2005 and Section 4 notification in the present matters was published in the year 2002 and therefore, reduced the amount as awarded by the Reference Court in LAR No.2048 of 2010 and awarded the compensation at the enhanced rate of Rs.3,000/- per Are. The learned counsel submits that even this Court in First Appeal No.787 of 2015 and other connected appeals, which were preferred by the State against the judgment and award passed in LAR No.2048 of 2010, by order dated 29th July, 2015 dismissed the said appeals and as such, the judgment and award passed in LAR No.2048 of 2010 has now attained the finality. In view of the same, there is no substance in the appeals preferred by the Appellant / State and as such, these appeals also liable to be dismissed.

6 It appears that the Reference Court has not awarded the same rate as awarded by the Court in LAR No.2048 of 2010. The Reference Court has rightly discarded the sale instance Exhibit 17, however, considered the judgment and award passed in LAR No.2048 of 2010 Exhibit 18 on the ground that same pertains to the agricultural lands acquired from the same village on some later occasion for construction of percolation tank. Even considering Section 4 notification in respect of the acquisition of the agricultural lands in respect of those two percolation tanks, the Reference Court has reduced the compensation compare to the compensation awarded by the Reference Court in LAR No.2048 of 2010.

7 On perusal of the order passed by this Court in First Appeal No.78 of 2015 and other connected appeals, it appears that this Court had an occasion to deal with the compensation for the acquired land from same village though under different notification and considered the sale instance dated 23rd October, 2002 and accordingly confirmed the order passed by the Reference Court. In the instant case, Section 4 notification was published on 24th December, 2002, and as such, the sale instance dated 23rd October, 2002, which has been considered in LAR No.2048 of 2010, would be relevant even for

the present acquisition of the agricultural lands.

8 In view of the above and since the judgment and award passed in LAR No.2048 of 2010 has now attained the finality, I do not find any substance in the appeals preferred by the State. Hence, the following order:

ORDER

- I. **First Appeal No.356 OF 2015** (The State of Maharashtra and another Vs. Gopal Vithalrao Pande), **First Appeal No.354 OF 2015** (The State of Maharashtra and another Vs. Rekhabai Gopalrao Pande), **First Appeal No.355 OF 2015** (The State of Maharashtra and another Vs. Kalwati Ganpati Bolegave) and **First Appeal No.357 OF 2015** (The State of Maharashtra and another Vs. Mallikarjun Ganpati Bolegave and another), are hereby dismissed with costs.
- II. All the appeals are accordingly disposed of.

[V. K. JADHAV, J.]