

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

FIRST APPEAL NO.:254 OF 2001

The Executive Engineer,
Civil Construction Division No.4,
Maharashtra State Electricity Board,
Parali, Beed.

... APPELLANT

VERSUS

1. Maruti S/o Daulatrao Mundhe,
Age: 50 years, Occu: Agri.,
R/o Talegaon-Dabi,
Taluka Ambajogai, Original Claimant / Plaintiff.
District : Beed.

2. The State of Maharashtra,
(Through Gov. Pleader High Court,
Aurangabad)

... RESPONDENTS

Mr. S. S. Choudhary, Advocate for the Appellant.
Mr. K. B. Jadhavar, Advocate for Respondent No.1.
Mr.S.P.Sonpawle, AGP for Respondent No.2.

WITH

FIRST APPEAL NO.:256 OF 2001

The Executive Engineer,
Civil Construction Division No.4,
Maharashtra State Electricity Board,
Parali, Beed.

... APPELLANT

VERSUS

1. The State of Maharashtra,
(Through Gov. Pleader High Court,

Aurangabad)

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| <p>2. Manik S/o Sonaji Mundhe,
Age: 70 years, Occu: Agri.,
R/o Talegaon-Dabi,
Taluka Ambajogai,
District : Beed.</p> | <p>Appeal abated as against
R.2 vide R's Courts order
dated 6-1-09.</p> <p>Original Claimant / Plaintiff.</p> <p>... RESPONDENTS</p> |
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Mr. S. S. Choudhary, Advocate for the Appellant.
Mr.S.P.Sonpawle, AGP for Respondent No.1.

AND

FIRST APPEAL NO.:259 OF 2001

The Executive Engineer,
Civil Construction Division No.4,
Maharashtra State Electricity Board,
Parali, Beed.

... APPELLANT

VERSUS

- | | |
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| <p>1. Tukaram S/o Shankar Parve,
Age: 65 years, Occu: Agri.,
R/o Talegaon-Dabi,
Taluka Ambajogai,
District : Beed.</p> | <p>Original Claimant / Plaintiff.</p> |
| <p>2. The State of Maharashtra,
(Through Gov. Pleader High Court,
Aurangabad)</p> | <p>... RESPONDENTS</p> |

Mr. S. S. Choudhary, Advocate for the Appellant.
Mr. N. P. Bangar, Advocate for Respondent No.1.
Mr.S.P.Sonpawle, AGP for Respondent No.2.

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

DATE : 13th April, 2017.

ORAL JUDGMENT:

. Being aggrieved by the common judgment and award passed by the learned II Additional District Judge, Ambajogai dated 5th March, 2001 in LAR No.6 of 1990 alongwith connected reference petitions, original Respondent No.2 / acquiring body has preferred these appeals.

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

- a) The lands under acquisition are situated at village Talegaon and Tokewadi from Tehsil Parli (Ambajogai), District Beed and the said lands have been acquired for construction of Ash Tank of Thermal Power Station, Parli vide notification under Section 4(1) of the Land Acquisition Act published in the Government Gazette on 23rd October, 1986. The lands under acquisition under these petitions are dry lands. The Special Land Acquisition Officer

has awarded the compensation within the range from Rs.236/- per Are to Rs.245/- per Are. Being aggrieved by the inadequate compensation awarded by the Special Land Acquisition Officer, the Claimants have preferred the aforesaid land acquisition reference petitions.

- b) It has been contended in the said reference petitions that though the lands under acquisition are the Jirayat lands, but those lands are black cotton soil and extremely fertile. However, the Special Land Acquisition Officer has not considered the fertility and productivity of the lands and determined the market price at very lower side. It has been contended that the Special Land Acquisition Officer has not considered the sale instance of the highest consideration from the same village and wrongly classified the lands under different groups. It has also been contended that the prevailing market value of the lands under acquisition was Rs.40,000/- to Rs.50,000/- per Acre. However, the

Special Land Acquisition Officer has determined the market price at the rate of Rs.236/- per Are to Rs.245/- per Are, which is inadequate. The Claimants have contended that the acquired lands are hardly 4 kilometers away from Parli town and 3 kilometers away from Thermal Power Station. The Special Land Acquisition Officer has not considered the potentiality of the lands to be made irrigated and further the N.A. potentiality of the acquired lands.

- c) The Appellant / acquiring body and the Respondent / State strongly resisted those reference petitions by filing the written statement. It has been contended that the Special Land Acquisition Officer has taken into consideration the prevailing market value of the lands under acquisition. In addition of the advantage and potentiality, the Special Land Acquisition Officer has also taken into consideration the sale instances of the relevant period while determining the market price. The Special Land Acquisition Officer has awarded just and

reasonable compensation. The Claimants have adduced oral and documentary evidence in support of their contentions and also placed reliance on the various sale instances. The Appellant / acquiring body and Respondent / State have not adduced any evidence.

- d) The Reference Court has awarded compensation at the enhanced rate of Rs.500/- per Are. Being aggrieved by the same, Respondent No.2 / acquiring body has preferred these appeals.

3 The learned counsel for the Appellant / acquiring body submits that the Reference Court has rightly discarded the various sale instances relied upon by the Claimants. The Reference Court has rightly discarded those sale instances on the ground that the lands under those sale instances have been sold after Section 4 notification published in respect of the acquired lands. The learned Judge of the Reference Court has observed that such sale instances cannot be considered to determine the market price. The learned counsel submits that though one sale instance dated 4th March, 1986,

which came to be executed prior to Section 4 notification in respect of the acquired lands, the Reference Court has wrongly placed its reliance even though the Claimants have not examined the vendor or vendee of the said sale instance. The said sale-deed dated 4th March, 1986 though not exhibited relied upon by the Reference Court. The learned counsel submits that the Reference Court has further placed reliance upon the chart of the sale instances considered by the Special Land Acquisition Officer while passing the award and the sale instance at serial No.16 pertaining to Block No.22, has been erroneously considered by the Reference Court even though the said sale-deed is not placed on record and the vendor and vendee of the said sale instance were not examined before the Reference Court. The learned counsel submits that the entire approach of the Reference Court is incorrect, improper and illegal.

4 The learned counsel for Respondents / original Claimants has brought my attention to the judgment and order passed by this Court in First Appeal No.252 of 2001 alongwith connected appeals mentioned therein. The lands of the Claimants in the aforesaid appeals situated at village Talegaon, came to be acquired for the same project of construction of Ash Tank of Thermal Power Station at

Parli Vajinath under the same notification under Section 4 published by the State on 23rd October, 1986. This Court had an occasion to discuss the entire evidence on record most particularly the sale instances produced before the Reference Court in the present matter. In para 9 of the judgment of said First Appeal No.252 of 2001 alongwith connected appeals, this Court has made the following observations:

“9. Exhibit 24 is the sale instance of village Indapwadi dated 04/03/1987. It would show that the land therein was sold at the rate of Rs.857/- per Are. Other sale instances, however, do not appear to have been proved by examining the witnesses though the certified copies of the sale deeds were filed on record. We have the sale instance of village Tokewadi dated 14/3/1989 which would show that the land was at the rate of Rs.1600/- per Are. Under another sale instance of village Tokewadi bearing gat no.189, 190 and 192 were jointly sold on 04/03/1986 for a price of Rs.589/- per Are. The sale instance relied on by the respondent of village Talegaon dated 16/4/1986 would show that 44 Are of land was sold for a price of Rs.250/- per Are. The learned reference Court did not rely over the sale instances which were not proved as either the vendor or the vendee were not brought into the witness box. In view of the ratio of **“Himmat Singh Vs. State of M.P.” 2013 DGLS (Soft) 851**, it is now clear that under the provisions of section 51-A of the Land

Acquisition Act, the certified copy of the sale instances can be looked into. It would thus be clear that the sale instances of village Tokewadi dated 04/03/1986 would reveal that 2 hectare and 89 Are of land was sold at the rate of Rs.589/- per Are.”

5 Furthermore, this Court has also dealt with earlier judgment in another land acquisition reference bearing LAR No.8 of 1990 and held that there is no merit in the appeal preferred by the acquiring body and accordingly dismissed the said appeal. In view of the same, there is no reason to take any other view. There is no substance in the present appeal and all the appeals are thus, liable to be dismissed. Hence, the following order:

ORDER

- I) First Appeal No. 254 of 2001 (The Executive Engineer, Civil Construction Division No.4, Maharashtra State Electricity Board Vs. Maruti S/o Daulatrao Mundhe and another), First Appeal No.256 of 2001 (The Executive Engineer, Civil Construction Division No.4, Maharashtra State Electricity Board Vs. The State of Maharashtra and

another), and First Appeal No.259 of 2001 (The Executive Engineer, Civil Construction Division No.4, Maharashtra State Electricity Board Vs.Tukaram S/o Shankar Parve and another), are hereby dismissed. No costs.

II) All the appeals are accordingly disposed of.

III) Pending civil applications stand disposed of.

[V. K. JADHAV, J.]

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