

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2743 OF 2008

1. The State of Maharashtra,
Through Collector, Latur
 2. The Addl. Collector,
Earthquake Div. Latur
- = **APPELLANTS**
(Orig. Respondents)

VERSUS

Nilkanth S/o. Namdeorao Rathod
Age : Major, Occu. Agri.
R/o. Talani Tanda, Tq. Ausa,
Dist. Latur

= **RESPONDENT**
(Ori. Claimant)

WITH

**CROSS OBJECTION ST.NO. 20315 OF 2016
IN
FIRST APPEAL NO.2743 OF 2008**

Nilkanth S/o. Namdeo Rathod
Age : 82 years, Occu. Nil,
R/o. Talani Tanda, Tq. Ausa,
Dist. Latur

= **APPELLANT**
(Ori. Claimant)

VERSUS

1. The State of Maharashtra,
Through Collector, Latur
Tq. and Dist. Latur
 2. Additional Collector,
Earthquake, Latur
Dist. Latur
- = **RESPONDENTS**

**WITH
FIRST APPEAL NO.2739 OF 2008**

1. The State of Maharashtra,
Through Collector, Latur
 2. The Addl. Collector,
Earthquake, Div. Latur
- = **APPELLANTS**
(Orig. Respondents)

VERSUS

Lalu @ Lalsing S/o. Nilkanth,
Rathod, Age : Major, Occu. Agri.,
R/o. Talani- Tandi, Tq. Ausa,
Dist. Latur

= **RESPONDENT**
(Ori. Claimant)

**WITH
CROSS OBJECTION ST.NO. 26453 OF 2012
IN
FIRST APPEAL NO.2739 OF 2008**

Lalu @ Lalsing S/o. Nilkanth,
Rathod, Age 56 Yrs. Occu. Agri.,
R/o. Talani- Tandi, Tq. Ausa,
Dist. Latur

= **APPELLANT**
(Ori. Claimant)

VERSUS

1. The State of Maharashtra,
Through the Collector,
Latur, Dist. Latur
 2. Additional Collector,
Earthquake Div., Latur,
Dist. Latur
- = **RESPONDENTS**

**WITH
FIRST APPEAL NO.2740 OF 2008**

1. The State of Maharashtra,
Through Collector, Latur
 2. The Addl. Collector,
Earthquake, Div. Latur
- = **APPELLANTS**
(Orig. Respondents)

VERSUS

Motiram S/o. Ramju Rathod,
 Age : Major, Occu. Agri.,
 R/o. Talani Tandi, Tq. Ausa,
 Dist. Latur

= **RESPONDENT**
(Ori. Claimant)

WITH

CROSS OBJECTION ST.NO. 26455 OF 2012
IN
FIRST APPEAL NO.2740 OF 2008

Motiram S/o. Ramju Rathod,
 Age : 58 Yrs., Occu. Agri.,
 R/o. Talani Tandi, Tq. Ausa,
 Dist. Latur

= **APPELLANT**
(Orig. Claimant)

VERSUS

1. The State of Maharashtra,
Through Collector, Latur
2. The Addl. Collector,
Earthquake, Div. Latur

= **RESPONDENTS**

WITH

FIRST APPEAL NO.2744 OF 2008

1. The State of Maharashtra,
Through Collector, Latur
2. The Addl. Collector,
Earthquake, Div. Latur

= **APPELLANTS**
(Orig. Respondents)

VERSUS

Smt. Sarubai W/o. Fulchand Rathod,
 Age: Major, Occu.: Agri & Household,
 R/o. Talani-Inanda, Tq. Ausa,
 Dist. Latur

= **RESPONDENT**
(Ori. Claimant)

**WITH
CROSS OBJECTION ST.NO. 26451 OF 2012
IN
FIRST APPEAL NO. 2744 OF 2008**

Smt. Sarubai W/o. Fulchand Rathod,
Age: 57, Occu.: Agri & Household,
R/o. Talani-Inanda, Tq. Ausa,
Dist. Latur

= **APPELLANT
(Ori. Claimant)**

VERSUS

1. The State of Maharashtra,
Through Collector, Latur

2. The Addl. Collector,
Earthquake, Div. Latur

= **RESPONDENTS**

**WITH
FIRST APPEAL NO.2741 OF 2008**

1. The State of Maharashtra,
Through Collector, Latur

2. The Addl. Collector,
Earthquake, Div. Latur

= **APPELLANTS
(ORI. RESPONDENTS)**

VERSUS

Bhaskar S/o. Tulshiram Gade,
Age:55 years, Occu. Agri,
R/o. Tapse-Chincholi, Tq. Ausa,
Dist. Latur

= **RESPONDENT
(ORI. CLAIMANT)**

**WITH
FIRST APPEAL NO. 2738 OF 2008**

1. The State of Maharashtra,
Through Collector, Latur

2. The Addl. Collector,
Earthquake, Div. Latur

= **APPELLANTS**

(ORI. RESPONDENTS)

VERSUS

Harischandra S/o. Tulshiram Gade,
 Age: 50 years, Occu. Agri.,
 R/o. Banegaon, Tq. AUSA,
 Dist. Latur

= **RESPONDENT**
(Ori. Claimant)

WITH**FIRST APPEAL NO. 2742 OF 2008**

1. The State of Maharashtra,
 Through Collector, Latur

2. The Addl. Collector,
 Earthquake, Div. Latur

= **APPELLANTS**
(ORI. RESPONDENTS)

VERSUS

Shesherao S/o. Tulshiram Gade,
 Age: 45 years, Occu. Agri.,
 R/o. Tapse-Chincholi, Tq. AUSA,
 Dist. Latur

= **RESPONDENT**
(ORI. CLAIMANT)

Mr.S.N. Ganachari, AGP for Appellants;
 Mr. M.L. Dharashive Advocate for Respondent/claimant.

CORAM : P.R.BORA, J.**DATE : 28th June, 2017.****ORAL JUDGMENT:**

1) The State has filed the present appeals taking exception to the common Judgment and Award passed by the Court of Civil Judge, Senior Division, Latur (for short the Reference Court)

on 19th September, 1998 in LAR No.405/1997 with connected LARs.

2) The lands, which are the subject matter of the present appeals, were acquired for the purpose of rehabilitation of village Talani Tanda, which was affected due to earthquake of the year 1993. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was issued in that regard on 3rd August, 1994, whereas the award under Section 11 came to be passed on 24th November, 1995. The Special Land Acquisition Officer had offered compensation @ Rs.240/- per Are i.e. @ Rs.24,000/- per hectare. Dissatisfied with the amount of compensation so offered, the claimants preferred the applications under Section 18 of the Act to Collector, Latur, who in turn forwarded the Reference Applications to the Reference Court for their adjudication.

3) Before the Reference Court the claimants

had claimed the compensation @ Rs.60,000/- per acre for dry land, whereas Rs.1,00,000/- per Acre for irrigated land. In order to substantiate the claim so raised by them, in addition to the evidence of the claimants themselves, one sale instance was placed on record and was relied upon by the claimants. No oral or documentary evidence was adduced on behalf of the State. The learned Reference Court, after having considered the oral as well as documentary evidence brought on record, determined the market value of the acquired lands @ Rs.40,000/- per Acre for the dry land and Rs.50,000/- per acre for the irrigated land and accordingly enhanced the amount of compensation.

4) In four matters, the claimants have filed the Cross-objections and have sought enhancement in the amount of compensation awarded by the Reference Court.

5) Shri Ganachari, learned AGP appearing

for the State, assailed the judgment on various grounds. The learned AGP submitted that the Reference Court placing reliance on a single sale instance has determined the market value of the acquired lands on much higher side. The learned AGP submitted that the Reference Court has failed in appreciating that the sale instance which was relied upon by the claimants was pertaining to a comparative small piece of land and the said land was admittedly at the distance of 2-3 kms from the acquired lands. The learned AGP further submitted that in such circumstances, the said sale instance could not have been relied upon by the Reference Court to determine the market value of the acquired land.

. The learned AGP further submitted that in Para 6 of the judgment, some of the observations which are made by the Reference Court and on the basis of which the amount of compensation has been determined by the said Court, are apparently unsustainable. The learned Counsel pointed out that the sale instance which

was relied upon by the claimants was admittedly pertaining to irrigated land; whereas the subject lands were all non-irrigated lands. The learned AGP pointed out that the based on the sale instance at Exh.16, giving rise of 10% each in the market value, the Reference Court held the market value of the irrigated land @ Rs.68,900/- and on the basis of it while deciding the market value of the dry land, deducted the said amount only by $1/4^{\text{th}}$ and determined it @ Rs.51,675/-.

. The learned AGP submitted that it is well settled that the price of the irrigated land is always held to be double of the market value of the non-irrigated land. The learned AGP further submitted that applying the same principle in the present matter, the Reference Court ought to have determined the market value of the acquired lands half of Rs.68,900/- i.e. Rs.34450/- per acre since the subject lands were dry lands. The learned AGP further submitted that the Reference Court has not made

any discussion as to under what circumstances or on what grounds it has held the market value of the dry land @ Rs.40,000/- per acre, when it ought to have been determined to the tune of Rs. 34,450/- per acre. The learned AGP further submitted that the mistake so committed by the Reference Court needs to be corrected.

. The learned AGP submitted that having regard to the fact that the subject lands were at the distance of more than 2 kms from the land, which was the subject matter of sale instance at Exh.16, on that count also some deductions were required to be made by the Reference Court while determining the amount of compensation. The learned AGP submitted that having regard to the evidence on record, the Reference Court could not have awarded the compensation for the acquired lands at the rate more than Rs.30,000/- per Acre. The learned AGP, therefore, prayed for allowing the appeals.

6) Shri Dharashive, learned Counsel

appearing for the Respondents i.e. original claimants, resisted the submissions advanced on behalf of the State. The learned Counsel submitted that the Reference Court in fact has awarded less compensation than expected by the claimants. The learned Counsel submitted that the Reference Court has failed in appreciating that in the nearby village the compensation was awarded to the claimants therein on the basis of square feet and the same criterion must have been applied while awarding the compensation in the present matters.

. The learned Counsel submitted that admittedly the subject lands were acquired for the purpose of rehabilitation, which is indicative of the fact that the acquired lands were having N.A. potentials and were capable of being used for erecting residential houses. The learned Counsel submitted that in such circumstances, the Reference Court must have considered the N.A. potentials of the acquired lands and must have accordingly determined the

market value of the said lands.

. The learned Counsel appearing in the matters wherein the original claimants have filed the cross objections, submitted that the amount of compensation, as has been awarded in the said matters, is inadequate and unjust. The learned Counsel submitted that the Reference Court has failed in appreciating the evidence which has been placed on record by the claimants and the same has resulted in award of unjust compensation to the said claimants. The learned Counsel, therefore, prayed for allowing the cross objections and to adequately enhance the amount of compensation in the said matters.

7) I have carefully considered the submissions advanced by the learned AGP and learned Counsel appearing for the original claimants. I have also perused the impugned judgment and the other material placed on record. It is not in dispute that oral and documentary evidence was adduced only on behalf of the

original claimants and no oral or documentary evidence was adduced by the State or by the acquiring body. It is thus evident that the only evidence which was before the Reference Court for determination of the market value of the acquired lands, was sale deed placed on record by the original claimants.

. As has been noted earlier, the said sale instance is at Exh. 16 in the record of the trial court and the same was commonly relied upon in all these matters. The land which was the subject matter of Exh. 16 was admeasuring 3 acres and 15 Ares and was sold by registered sale deed executed on 24th April, 1992 for the consideration of Rs.1,79,500/-. The per acreage rate of the said land comes to Rs.53,000/- per acre. The subject land was from village Talani Tanda from where the subject lands were acquired by the State. The learned Reference Court in Para 6 of the judgment has elaborately discussed the evidence in the form of sale instance placed on record by the claimants.

. The Reference Court has observed that the land, which was the subject matter of sale instance at Exh. 16, was sold in the year 1992, i.e. prior to about three years of issuance of Section 4 notification in the present mater. The learned Reference Court, therefore, found it appropriate to give increase in the market value of the said land @ Rs. 10% per year and accordingly held the market value as on the date of issuance of Section 4 notification to the tune of Rs.51,675/- per acre for dry land. The learned Reference Court thereafter having considered the other evidence on record and more particularly the details provided in the award under Section 11 of the Act, determined the market value of the acquired lands @ Rs.40,000/- per acre for dry land and Rs.50,000/- per acre for the irrigated land.

8) As has been discussed by the Reference Court, if the market value of the subject lands was to be decided on the basis of Exh.16, having

regard to the fact that the land, which was the subject matter of Exh. 16, was sold in the year 1992, i.e. prior to about three years of issuance of Section 4 notification, it was required to give 10% increase in the price received to the said land for every year, and after giving the said increase, the market value of the irrigated land as on the date of issuance of Section 4 notification was fixed at Rs.68,900/-. To the aforesaid extent, apparently there appears no mistake on the part of the Reference Court.

9) However, the further observation made by the Reference Court that for ascertaining the price of the dry land, $1/4^{\text{th}}$ of the price payable for irrigated land has to be decreased out of the price determined for the irrigated land, appears to be wholly unsustainable. It is now well settled that the market value of the irrigated land is ordinarily held to be double of the market value of the Jirayat land vice versa while determining the price of the Jirayat land on the

basis of the market value of irrigated land it has to be determined at half of the said rate and by applying the said principle, the market value of the acquired lands could not have been determined by the Reference Court more than Rs.34,450/-, per acre whereas the Reference Court has determined the market value of the acquired land @ Rs.40,000/-. Apparently, it therefore, appears that the Reference Court determined the market value of the acquired lands on bit higher side. Accordingly to the said norm the Reference Court has awarded Rs. 5,550/- more per acre.

10) However, it does not appear to me that now there is any propriety in decreasing the amount of compensation on the said basis when the lands were acquired in the year 1994 and the Reference Court had passed the award in the year 1998. After the long lapse of more than 19 years, it would be wholly unjust now to ask the landholders, whose lands were acquired for the rehabilitation purposes, to repay the said amount

or to deprive them of the said amount, which was granted in their favour prior to about 19 years.

. The total land, which was acquired for the purpose of rehabilitation was to the extent of 674 Are, i.e. around 17 acres, the total difference calculated @ Rs.5,550/- would, thus, come to less than Rs.95,000/-. Having regard to the facts, as aforesaid, it is difficult to record a finding that the Reference Court has determined the market value on higher side and that the hike given by the Reference Court was unreasonable or in excess. I, therefore, do not see any reason for causing any interference in the impugned Judgment and Award.

11) In so far as the cross objections are concerned, apparently there appears no merit in the cross objections so filed. The learned Counsel though urged that in the nearby village the compensation was given on per square feet basis, before the Reference Court, neither there was any such pleading nor any such evidence was

adduced by the claimants. The claimants have relied upon the sale instance at Exh. 16 and the compensation has been awarded on the basis of the said sale instance. When the sale instance relied upon by the claimants has been accepted and fully relied upon by the Reference Court, it does not appear to me that any case is made out by the claimants for seeking enhancement in the amount of compensation so awarded by the Reference Court.

12) For the reasons stated as above, the first appeals filed by the State as well as the Cross objections filed in four matters by the original claimants, deserve to be dismissed and are accordingly dismissed, however, without any order as to costs. Pending civil application, if any stands disposed of.

(P . R . BORA)
JUDGE

bdv/