

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 475 OF 2016

VIMAL BAPU WAHADNE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 476 OF 2016

KARBHARI TRIMBAK WAHADNE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 477 OF 2016

CHANDRAKANT HARI MANDLIK AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 478 OF 2016

BHASKAR SADASHIV WAHADNE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 479 OF 2016

DAGDU BHAURAO NAWALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 480 OF 2016

PRAYAGABAI SHANKAR WAHADNE (DIED) THROUGH L.RS.
PRABHAKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 481 OF 2016

LAXMAN SONYABAPU WANI AND OTHERS

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VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 482 OF 2016

SACHIN BHAGWAT JANRAO AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 483 OF 2016

BABURAO TRIMBAK WAHADNE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the appellants: Mr. Abhishek B. Kale
AGP for the respondent No.1; Mr. B.A. Shinde
Advocate for respondent No.2: Mr. M. N. Navandar

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CORAM : V. K. JADHAV, J.
DATED : 5th APRIL, 2017

PER COURT:-

1. By consent of parties, heard finally at admission stage.
2. Being aggrieved by the common judgment and award passed by the learned C.J.S.D. Kopargaon, dated 5.11.2015 in L.A.R. Nos. 45 of 2007 and 46 of 2007 and common judgment and award passed by the learned C.J.S.D. Kopargaon, dated 5.11.2015 in L.A.R. Nos. 47 of 2007, 44 of 2007, 48 of 2007, 49 of 2007, 50 of 2007, 52 of 2007 and 54 of 2007, respectively, the original claimants have preferred these first appeals.

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

a) The agricultural lands owned and possessed by the appellants-claimants, situated at Mauje Nathupatlachiwadi Tq. Rahata, District Ahmednagar came to be acquired by the Government for Puntamba-Shirdi Railway line under award dated 31.7.2004. Section 4 notification was published on 21.11.2002. The Special Land Acquisition Officer has awarded the compensation for the acquired lands by classifying the said lands as dry land and seasonal irrigated land. The S.L.A.O. has awarded the compensation at the rate of Rs.1360/- per Are for the dry land and Rs.2040/- per Are for seasonal irrigated land.

b) Being aggrieved by inadequate compensation awarded by the S.L.A.O. the appellants/claimants preferred Reference petitions as detailed above, for enhancement of compensation. The claimants have claimed enhanced compensation at the rate of Rs.6000/- per Are for acquired lands. According to the claimants, the acquired lands are irrigated lands. The claimants have also claimed compensation for severance of acquired lands on account of said Puntamba - Shirdi railway line, as the said land is divided into two parts.

c) The respondent State and acquiring body has strongly resisted those reference petitions on the ground that the S.L.A.O. has awarded compensation after conducting proper enquiry. The S.L.A.O. has considered the price of the adjacent land and also considered the fertility and quality of the lands. It has been specifically denied that the acquired lands were having yield capacity to grow bagayat crops.

d) The appellants-claimants and the respondent acquiring body led their oral and documentary evidence in support of their rival contentions. Learned C.J.S.D. Kopargaon, by its impugned judgment and award passed in the respective land acquisition reference petitions, rejected all reference petitions.

4. Learned counsel for the appellants/claimants submits that though the reference court has discussed at length about sale instance at Exh. 18 and 19 respectively, relied upon by the appellants-claimants, without assigning any reason, the reference court has dismissed all reference petitions seeking enhanced rate of compensation. Learned counsel submits that the reference court has not considered the evidence adduced by the appellants-claimants. So far as the severance of acquired land due to laying down of railway track is concerned, though the claimants have deposed about

it, the reference court has not considered the same. The reference court has erroneously observed that the applicants have not led any evidence to prove severance of land due to acquisition.

5. Learned counsel for the respondent acquiring body submits that considering entire evidence on record, reference court has rightly rejected reference petitions. The appellants/claimants have failed to prove that the acquired lands are either perennial or seasonal irrigated lands. The S.L.A.O. has rightly classified the acquired lands as Jirayat class 3. The appellants/claimants have also not led any evidence to prove severance of land due to acquisition. The Reference Court has therefore, rightly held that the appellants-claimants are not entitled for compensation for the same. There is no substance in the appeals and all appeals are liable to be dismissed.

6. The common evidence in all above Land Acquisition References came to be recorded in L.A.R. No. 52 of 2007. The appellant/claimant Sachin Bhagwat Janrao has examined himself before the Reference Court and further all the appellants/claimants relied on sale deeds dated 2.7.1999 and 7.3.2000 at Exh. 18 and 19 respectively. The appellant/claimant Sachin has deposed about the facility of irrigation for the acquired lands on the basis of certificate issued by Irrigation Department, marked at Exh.26. On perusal of

the said certificate Exh.26, it appears that Irrigation Department has certified that the acquired lands are coming in the benefit zone of one Kalbhairav Co-operative Water user society of Godavari right canal. The Reference Court has discarded said certificate Exh.26 on the ground that the same is not helpful to the claimants to prove that the acquired land is Bagayat land. The Reference Court has observed that merely because the land comes within the benefit zone of said Kalbhairav Co-operative Water Users' society, it cannot be held that the acquire land is Bagayat land or there was irrigation facility available to it. The appellants/claimants have also not produced 7x12 extract on record. In view of above, in my opinion, the appellants-claimants may be given one more opportunity to prove that the irrigation facility was available to the acquired land in view of the certificate Exh.26 issued by the Irrigation Department of the Government. The same is essential for the reason that the Reference Court has observed that the S.L.A.O. has erroneously determined the market rate of the acquired land as per ready reckoner.

7. The respondent/acquiring body has examined witness Rohit Taware, Executive Engineer (Construction) and he has admitted in his cross examination that because of the acquisition of land for the railway track, the severance of acquired land is possible. He has further admitted in his cross examination that there is railway

crossing gate at a distance of 1.5 to 2.00 kilometers on the said railway track and as such, the agriculturist, whose land is acquired for the said project has to cross the railway line by using the said railway crossing gate. He has also admitted that it is difficult for such agriculturist to cultivate the remaining portion of his land due to said severance. However, he has shown his ignorance whether the present appellants/claimants are suffering because of the severance of the lands due to laying down of railway track.

8. It thus appears that the learned Judge of the Reference Court has dismissed the reference petitions on inadequate material, which resulted into failure of justice and thus remand is called for proper adjudication of the case. Therefore, the matters are required to be remanded to the reference Court with certain direction with liberty to the parties to adduce their evidence in support of their rival contentions.

9. In view of above submissions, without going into the merits of the matters, all above reference petitions, which are subject matter of these appeals, are remanded to the reference Court with certain directions. Hence, following order:-

O R D E R

- I. First appeal No. 475 of 2016 (Vimal Bapu Wahadne vs. State of Maharashtra and others), First appeal No. 476 of 2016 (Karbhari Trimbak Wahadne vs. State of Maharashtra and others), First appeal No. 477 of 2016 (Chandrakant Hari Mandlik and others vs. State of Maharashtra and others), First appeal No. 478 of 2016 (Bhaskar Sadashiv Wahadne vs. State of Maharashtra and others), First appeal No. 479 of 2016 (Dagdu Bhaurao Nawale vs. State of Maharashtra and others), First appeal No. 480 of 2016 (Prayagabai Shankar Wahadne (Died) Through L.Rs. Prabahkar and others vs. State of Maharashtra and others), First appeal No. 481 of 2016 (Laxman Sonyabapu Wani and others vs. State of Maharashtra and others), First appeal No. 482 of 2016 (Sachin Bhagwat Janrao and Anr vs. State of Maharashtra and others) and First appeal No. 483 of 2016 (Baburao Trimbak Wahadne vs. State of Maharashtra and others), are hereby partly allowed. No costs.
- II. The common judgment and award passed by the learned C.J.S.D. Kopargaon, dated 5.11.2015 in L.A.R. Nos. 45 of

2007 and 46 of 2007 and common judgment and award passed by learned C.J.S.D. Kopargaon, dated 5.11.2015 in L.A.R. Nos. 47 of 2007, 44 of 2007, 48 of 2007, 49 of 2007, 50 of 2007, 52 of 2007 and 54 of 2007 are hereby quashed and set aside and the matters are remanded to the Reference Court with following directions:-

- “a) Re-admit the said reference petitions under its original numbers and the Reference Court shall proceed to determine the same.
- b) The evidence, if any, recorded during the course of original trial shall be the evidence during the trial after remand.
- c) The claimants are at liberty to adduce evidence to substantiate the averments made in reference petitions about status of acquired lands as irrigated lands and to further substantiate their contentions for severance of the acquired lands due to acquisition for the purpose of laying down the railway track.
- d) The respondent/acquiring body is also at liberty to lead oral and documentary evidence in rebuttal.
- e) The reference court shall decide all reference petitions within six months from the date of receipt of record and proceedings.

- f) The parties shall appear before the reference court on 07.06.2017.
- g) Record and proceedings be returned to the reference court forthwith."

III. All first appeals are accordingly disposed of.

(V. K. JADHAV, J.)

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