

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 249 OF 2017
WITH
CIVIL APPLICATION NO. 4809 OF 2014

THE STATE OF MAHARASHTRA
VERSUS
PANDHARINATH TUKARAM MUSANE AND ANOTHER

WITH
FIRST APPEAL NO. 250 OF 2017
WITH
CIVIL APPLICATION NO. 4813 OF 2014

THE STATE OF MAHARASHTRA
VERSUS
GOVIND PANDURANG GURAME (DIED) THROUGH L.RS. DNYANOBA
GOVIND GURAME AND ANOTHER

WITH
FIRST APPEAL NO. 251 OF 2017
WITH
CIVIL APPLICATION NO. 4811 OF 2014

THE STATE OF MAHARASHTRA
VERSUS
SHANKAR CHIMAJI DAWALE DIED THROUGH L.RS. VISHWANATH
SHANKAR DAWALE AND ANOTHER

WITH
FIRST APPEAL NO. 671 OF 2017
WITH
CIVIL APPLICATION NO. 4815 OF 2014

THE STATE OF MAHARASHTRA
VERSUS
TUKARAM RAMCHANDRA KUNDGIR AND ANOTHER

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AGP for Appellant : Mr. P.G. Borade
Adv. for Respondent No.1 : Mr. H.B.Nandgavale h/f Mr. V.G.Sakolkar
Advocate for Respondent No.2 : Mr. P.R. Tandale

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CORAM : V. K. JADHAV, J.
DATED : 28th JUNE, 2017

PER COURT:-

1. By consent, heard finally at admission stage.
2. Being aggrieved by the common judgment and award dated 01.03.2012 passed by the learned Civil Judge, Senior Division, Udgir, in L.A.R. No.384 of 2010 and other three connected L.A.Rs, the original respondent No.1 State has preferred these appeals.
3. Brief facts giving rise to the present appeals are as follows:-
 - a) The agricultural land owned and possessed by the respondents claimants came to be acquired by the appellant State for construction of percolation tank at village Chandegaon, Tq. Udgir, District Latur. Notification under section 4 was published on 22.6.2000 and S.L.A.O. has awarded the compensation for the acquired land at the rate of Rs.411/- per R for the land falling under group-1 and at the rate of Rs.456/- per R for the land falling under group-2. Being dissatisfied with the inadequate compensation, awarded by the S.L.A.O. the respondents original claimants preferred aforesaid reference petitions. It has been contended in those reference petitions that even though the claimants have submitted their statement of claim in respect of acquired land, in response to notice issued under Section 9 of the Land Acquisition Act, the S.L.A.O. has awarded inadequate amount of

compensation for the acquired land. It has also been contended that the village Chandegaon is situated at a distance of 15 kilometers from Udgir and having all facilities like society, school up to VIIth standard, electricity, water supply, transportation etc. It has also been contended that the claimants were taking double crops every year and getting annual income of Rs.25,000/- to Rs.30,000/- per acre by excluding the cultivation expenses. According to them, the minimum market rate as on the date of notification was about Rs.1,00,000/- per acre. The acquired lands were fertile lands having black cotton soil. It has also been contended that the S.L.A.O. has awarded compensation for the acquired land on the basis of revenue assessment and S.L.A.O. has not considered the prevailing market price of the agriculture land in the said area.

b) The appellant State has strongly resisted the reference petitions by filing written statement. The appellant State has admitted the acquisition of aforesaid land for the purpose of construction of percolation tank, however, it has been contended that the S.L.A.O. after visiting the acquired land and verified the surrounding circumstances, awarded just and reasonable compensation. The S.L.A.O. has also considered the sale instance of the relevant date from the price index of concern Sub-Registrar Office and fixed the reasonable price as per the prevailing market rate as on the date of Section 4 notification.

c) The respondent acquiring body has resisted the said reference petitions mainly on the ground that the claimants have filed reference petitions against them without any cause of action and the respondent Zilla Parishad has no concern with the payment of compensation. It has been contended that respondent Zilla Parishad irrigation division is only a working agency and done the work as an agent of the Government.

d) The claimants have adduced the evidence in support of their contentions. However, the respondent State has not adduced any evidence. The learned Judge of the Reference Court by its impugned order dated 1.3.2012, partly allowed the reference petitions and thereby awarded the compensation at the enhanced rate of Rs.1200/- per R for the acquired land alongwith all permissible statutory benefits. Hence, these appeals, preferred by the original respondent-State.

4. Learned A.G.P. for the appellant State submits that the reference court has mainly placed its reliance on the sale deed Exh.17. The said sale instance is from different village. Even in para 24 of the judgment, the reference court has observed that towards east side there is percolation tank and towards north side there is river and as such, the purchaser had purchased the said land by paying more price than the prevailing market price. However, the Reference Court still then awarded the compensation at the enhanced rate of Rs.1200/- per R, without any basis.

5. Learned counsel for the respondents-original claimants submits that the said sale instance Exh.17 is from village Kaulkhed and the land under sale instance is situated after 5 to 6 block numbers from the acquired land. The appellant State has not challenged the said evidence and no evidence in rebuttal was adduced by the State. Learned counsel submits that the said sale instance Exh.17 is of the year 1995 wherein the land admeasuring 86 R out of plot No.105 situated at village Kaulkhed was purchased for consideration of Rs.1,40,000/- i.e. @ Rs.1,628/- per R. Learned counsel submits that the reference court though made addition of 10% per year from the year 1995 up to the date of issuance of section 4 notification in respect of the acquired land i.e. in the year 2000 further deducted the amount to the extent of 30% for the reason that the land under sale instance had fetched more price than the market price. Learned counsel submits that even after carrying out the said deduction of 30%, the market price of the land under sale instance comes to Rs.1708/- per R, however, the reference court has enhanced the compensation at the rate of Rs.1200/- per R. Even the Reference Court has awarded just and reasonable compensation, the State has preferred appeals. Learned counsel submits that there is no merit in the appeals and all appeals are liable to be dismissed.

6. Learned counsel for the respondent Zilla Parishad submits that

the Zilla Parishad is not acquiring body and the appellant State has also admitted the same. In view of the same, the respondent Zilla Parishad may be exonerated from the liability to pay the compensation to the claimants at the enhanced rate as determined by the reference court.

7. On careful perusal of sale instance Exh.17, it appears that the land admeasuring 86 R out of plot No.105 situated at village Kaulkhed was purchased by one Shivraj Babarao Biradar R/o. Kaulkhed, Tq. Udgir, for consideration of Rs.1,40,000/- i.e. @ Rs.1628/- per R. It is true that towards east side of said land there is percolation tank and towards north side there is river. However, it cannot be ignored that the land under sale instance was purchased on 24.11.1995 i.e. five years prior to issuance of section 4 notification in respect of acquired land. The reference court has therefore, rightly made the addition in consideration amount of Rs.10% per year for five years to find out the correct market price of the land and further deducted 30% of the amount on the count that towards eastern side there is percolation tank and towards northern side there is river. In para 25 of the judgment, the reference court has observed that after such addition and deduction, the market price of the land under sale instance comes to Rs.1708/- per R. It is a part of record that the land under sale instance is situated 5 to 6 block numbers away from acquired land and as such the reference court has rightly considered the sale instance Exh.17 as comparable sale instance to find out the market price of the acquired land. Even

though the reference court, as mentioned above, arrived at the conclusion that the market price of the acquired land is Rs.1708/- per R, considering the fertility, potentiality and productivity of the acquired land and taking into consideration the evidence adduced by the claimants, awarded the compensation at the enhanced rate of Rs.1200/- per R. It appears that the reference court has awarded just and reasonable compensation. I do not find any fault in the observation made by the reference court in the impugned judgment and award.

8. Even otherwise, these appeals are covered by the Government Resolution dated 3.11.2016, as the rate awarded by the reference court is not four times of the rate awarded by the S.L.A.O. and the learned A.G.P. for the appellant-State fairly concedes this factual position.

9. It appears that the respondent Zilla Parishad has no concern with the said acquisition proceeding and the respondent Zilla Parishad has completed the said work of construction of percolation tank as an agent of the appellant State. In view of the above, the appellate State alone would be liable to pay the compensation at the enhanced rate as worked out by the reference Court. With these observations, all appeals are liable to be dismissed. Hence, I proceed to pass the following order:-

O R D E R

- I. The first appeal No. 249 of 2017 (State of Maharashtra vs. Pandharinath Tukaram Musane and another), first appeal No. 250 of 2017 (State of Maharashtra vs. Govind Pandurang Gurame died through L.Rs. Dnyanoba Govind Gurame and another), first appeal No. 251 of 2017 (State of Maharashtra vs. Shankar Chimaji Dawale died through Lrs. Vishwanath Shankar Dawale and another) and first appeal No. 671 of 2017 (State of Maharashtra vs. Tukaram Ramchandra Kundgir and another) are dismissed with costs.
- II. Pending civil applications are also disposed of.

(V. K. JADHAV, J.)

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