

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

FIRST APPEAL NO.: 707 OF 2016

JANARDHAN ANANDA KOTHALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH

FIRST APPEAL NO.: 708 OF 2016

KESHAV BHAWANI WAGH, (DIED) THROUGH L.RS.
KAILAS KESHAV WAGH AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

AND

FIRST APPEAL NO.: 709 OF 2016

RAGHO GANPAT WAGH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellants : Mr. S. K. Adkine.
AGP for Respondent / State : Mr.B.V.Virde.

...

CORAM : **V. K. JADHAV, J.**
DATE : 23rd January, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by
the III Joint Civil Judge Senior Division, Aurangabad dated 11th

December, 2006 in LAR No.14 of 1998, the judgment and award passed by the III Joint Civil Judge Senior Division, Aurangabad dated 11th December, 2006 in LAR No.13 of 1998 and the judgment and award passed by the III Joint Civil Judge Senior Division, Aurangabad dated 11th December, 2006 in LAR No.11 of 1998, the original Claimants have preferred the present first appeals.

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

Appellants' lands situated at village Chowka came to be acquired for the purpose of construction of percolation tank. Notification under Section 4 of the Act was published in Government Gazette on 18th May, 1995 and the Land Acquisition Officer has passed the award on 17th March, 1997 and granted the compensation at the rate of Rs.440/- per Are for the acquired land. Being aggrieved by the same, the Appellants / original Claimants preferred aforesaid reference petitions for compensation at the enhanced rate of Rs.650/- per Are. The learned III Joint Civil Judge Senior Division, Aurangabad by the aforesaid impugned judgments and awards, awarded the compensation to the acquired lands at the rate of Rs.480/- per Are. Hence, these three separate appeals.

4 The learned counsel for Appellants submits that the Reference Court has committed error in not considering the sale-deed Exhibit – 22. The land under sale-deed was purchased in the year 1992 i.e. much prior to the notification under Section 4 of the Act published for the land under acquisition. The learned counsel submits that the land under the sale-deed was admeasuring 40 Ares for the consideration of Rs.1,08,000/- and though it was executed in favour of one institution, the land under sale-deed is situated near the forest land whereas the acquired land is situated near the highway namely Aurangabad – Ajanta. The Reference Court has ignored the said sale-deed and enhanced the compensation for the acquired land at very meager rate.

5 The learned AGP submits that the certified copy of sale-deed Exhibit – 22 was merely produced on record and the Appellants / Claimants have not examined any witnesses on sale-deed to prove its contents. The learned AGP submits that the State had no opportunity to cross-examine the witnesses on the sale-deed so as to find out the circumstances in which the said sale-deed executed for higher consideration. However, the Reference Court has rightly considered that the sale-deed came to be executed for higher consideration and

thus cannot be considered in the given set of facts. The learned AGP submits that sale-deed Exhibit – 22 came to be executed in favour of an institution and in all the circumstances, the higher consideration is possible when the land under sale-deed is purchased by the institution. Considering the evidence on record, the Reference Court has enhanced the compensation at a just and reasonable rate. No interference is required.

6 On careful perusal of the impugned judgments and awards and the record and proceedings, it appears that the Appellants / Claimants have not produced on record the map showing the location of the acquired land as well as the land under sale-deed Exhibit – 22. The learned counsel for the Appellants / Claimants vehemently submitted that there is only one land between the land acquired by the Government and the highway Aurangabad – Ajanta. However, on careful perusal of the affidavit of evidence of the Appellants / Claimants, I do not find that the Appellants / Claimants have deposed before the Reference Court in the manner as argued by the learned counsel. Furthermore, as pointed out hereinbefore no map is produced before the Reference Court to point out the exact location of the acquired lands.

7 The Appellants / Claimants have mainly relied on the sale-deed dated 1st December, 1992 Exhibit – 22. The learned Judge of the Reference Court has observed that the said sale-deed is showing higher consideration and the same is also executed in favour of an institution. The Appellants / Claimants have not produced any other sale-deed before the Reference Court to show the rising rate of the market price of the agriculture land in the similar vicinity. It further appears from the contents of sale-deed Exhibit – 22 that for 40 Ares of land to the consideration of Rs.1,08,000/- was paid. The same appears to be excessive. The said land under sale-deed is abutting the cart road and located by the site of the forest land. The Respondent / State had no opportunity to cross-examine the witnesses on the sale-deed to point out as to how the sale-deed is for excessive consideration. In view of the above discussion, I do not find any fault in the observations made by the Reference Court ignoring the sale-deed Exhibit – 22 on the ground that the said sale-deed is showing higher consideration and also executed in favour of an institution.

8 In para 13 of the judgment, the learned Judge of the Reference Court has considered the sale-deed taken into account by the Land Acquisition Officer and enhanced the compensation as

admissible. No case is made out for enhancement of the compensation at the rate of Rs.650/- per Are as claimed by the Appellants / original Claimants. Hence, the following order:

ORDER

- I. All the three appeals are hereby dismissed.
- II. In the circumstances, there shall be no order as to the cost.
- III. All the first appeals are accordingly disposed of.

[V. K. JADHAV, J.]

ndm