

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1139 OF 2008

1. Saw. Latabai Ambadas Patare,
Age 49 years, Occu: Agril.,
R/o. Wakati, Tq. Vaijapur,
Dist. Aurangabad.
2. Manisha Ambadas Patare,
Since deceased through:
 - 2-A) Latabai Ambadas Patare,
Age Major, Occu: Agril.,
 - 2-B) Sainath Ambadas Patare,
Age: Major, Occu: Agril.,
 - 2-C) Gorakhnath Ambadas Patare,
Age: Major, Occu: Agril.,
 - 2-D) Sow. Ashabai Kailash Kale,
Age: Major, Occu: Agril.,All R/o. Wakti, Tq. Vaijapur,
Dist. Aurangabad.

(LRs brought on record as per
Courts order in C.A.No.9615/2014)
3. Ashabai Ambadas Patare,
Age 30 years, Occu: Agril.,
R/o. Wakati, Tq. Vaijapur,
Dist. Aurangabad.

**...APPELLANTS
(Ori.Claimants)**

VERSUS

1. The State of Maharashtra,
Through the Special Land Acquisition Officer,
Jaikwadi Project No.2,
Collector Office at Aurangabad.
2. The Executive Engineer,
Nandur Madhmeshwar Canal,
Division Vaijapur, Tq. Vaijapur,
Dist. Aurangabad.

...RESPONDENTS

...

Mr. N.J.Pahune Patil, Advocate for the appellants.
Mr. S.P.Sonpawale, A.G.P., for respondent State.
Mrs.Kalpalata Patil Bharaswadkar, Advocate for respondent
no.2.

...

WITH

FIRST APPEAL NO.1140 OF 2008

Ashok Tukaram Patare,
Age 35 years, Occu: Agril.,
R/o. Wakti, Tq. Vaijapur,
Dist. Aurangabad.

**...APPELLANT
(Ori.Claimant)**

VERSUS

1. The State of Maharashtra,
Through the Special Land Acquisition Officer,
Jaikwadi Project No.2,
Collector Office at Aurangabad.
2. The Executive Engineer,
Nandur Madhmeshwar Canal,
Division Vaijapur, Tq. Vaijapur,
Dist. Aurangabad.

...RESPONDENTS

Mr. N.J.Pahune Patil, Advocate for the appellants.
Mr. S.P.Sonpawale, A.G.P., for respondent State.
Mrs.Kalpalata Patil Bharaswadkar, Advocate for respondent no.2.

...
WITH

FIRST APPEAL NO.2738 OF 2010

1. The Executive Engineer,
N.M.C. Division Vaijapur,
Dist. Aurangabad.

...APPLICANT/APELLANT

VERSUS

1. Latabai Ambadas Patare,
Age 45 years, Occ. Agril.,
R/o Wakti, Tq. Vaijapur,
Dist. Aurangabad.
2. Manisha Ambadas Patare,
Age 22 years, Occ. And R/o
As above.
3. Ashabai Ambadas Patare,
Age 22 years, Occ. And R/o.
As above.
4. The State of Maharashtra,
Through Special Land Acquisition
Officer, Jaikwadi Project No.II
Collector Office, Aurangabad.

...RESPONDENTS

...
Mrs.Kalpalata Patil Bharaswadkar, Advocate for appellant.

Mr.S.P.Sonpawale, AGP for respondent State.

Mr. N.J.Pahune Patil, Advocate for respondent nos. 1 to 3.

...

WITH**FIRST APPEAL NO.2739 OF 2010**

1. The Executive Engineer,
N.M.C. Division Vaijapur,
Dist. Aurangabad.

...APPLICANT/APPELLANT**VERSUS**

1. Ashok s/o Tukaram Patare,
Age 40 years, Occ. Agril.,
R/o Wakti, Tq. Vaijapur,
Dist. Aurangabad.
2. The State of Maharashtra
Through: Special land Acquisition
Officer, Jaikwadi Project No.II,
Collector Office, Aurangabad.

...RESPONDENTS

...

Mrs.Kalpalata Patil Bharaswadkar, Advocate for appellant.
Mr. N.J.Pahune Patil, Advocate for respondent no. 1.
Mr.S.P.Sonpawale, AGP for respondent State.

...

CORAM : V.K. JADHAV, J.

Dated: February 27, 2017

...

ORAL JUDGMENT:

1. Heard learned Counsel appearing for the
respective parties and learned A.G.P. for respondent
State.

2. Being aggrieved by the common judgment and award passed by the 5th Joint Civil Judge, Senior Division, Aurangabad, dated 7th August, 2007, in LAR No.25/2003, and one another one i.e. LAR No.30/2003, the original claimants have preferred First Appeal Nos.1139/2008 and 1140/2008, respectively, to the extent of the quantum whereas, the respondent acquiring body has preferred two separate appeals bearing First Appeal Nos.2738/2010 and 2739/2010, respectively.

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

According to the appellants / claimants, their land has been acquired by the Government vide notification under Section 4 of the Land Acquisition Act, 1894, (hereinafter referred to as "the Act"), published in the Government Gazette on 10th May, 2001, for Nandur Madhyameshwar Canal Project and the final award has been passed by the Special Land Acquisition Officer on 3rd April, 2002. Being aggrieved by the inadequate amount of compensation awarded by the Special Land Acquisition

Officer, the appellants / original claimants preferred the Reference petitions. In the said petitions, it has been contended that the Special Land Acquisition Officer has not properly valued the acquired land and has also not considered the sale instances in the vicinity. The acquired lands are Bagayat lands and the same has not been considered by the Special Land Acquisition Officer while awarding the compensation. Even though the market value of the acquired land, as on the date of notification, was not less one lac rupees per acre; still, the Special Land Acquisition Officer has awarded compensation at the rate of Rs.530/- per Are.

4. The respondent State and acquiring body strongly resisted the said claim by filing their written statement. It has been contended that the Special Acquisition Officer has considered all the relevant factors such as potentiality, fertility and other relevant factors for determining the market value of the said land. It has also been contended that the acquired lands are Jirayat lands and, therefore, the Special Land Acquisition Officer has awarded just and reasonable compensation. Since

common questions of law and facts are involved in both the matters, the Reference Court has decided both the Land Acquisition References by common judgment after recording common evidence.

5. The claimants have adduced the oral and documentary evidence in support of their contentions, however, the respondent State and the acquiring body have not adduced any evidence.

6. Learned 5th Joint Civil Judge, Senior Division, Aurangabad, by the impugned judgment and award dated 7th August, 2008, partly allowed the said Reference Petitions and awarded the compensation at the rate of Rs.1200/- per Are for perennially irrigated land and Rs.900/- per Are for seasonally irrigated land. Being aggrieved by the same, the original claimants have preferred the appeals, as aforesaid, to the extent of quantum, and the respondent acquiring body has also preferred the appeals, as aforesaid, against the said common judgment passed by the Reference Court.

7. Learned Counsel for the appellants / original claimants submits that the Reference Court has discarded the sale instances Exh.15, Exh.16 and Exh.24, respectively, on the ground that those sale instances appear to have been executed deliberately after possession of the acquired lands was taken by private negotiations. The Reference Court has erroneously drawn a conclusion that those sale deeds have been executed at higher rates only to get the benefits of those sale deeds for claiming compensation in respect of the acquired lands and those sale deeds are not genuine transactions. Learned Counsel submits that it is not the case of the State, or the acquiring body that, those sale deeds came to be executed at higher rates with some ulterior motive after possession of the acquired lands was taken. The Reference Court has concluded to that effect without any basis. Learned Counsel submits that the Reference Court has thereafter considered the statistics of the sale instances considered by the Special Land Acquisition Officer and those sales are from the same village during the period from 1996 to 2000. There are in all 19 sale instances mentioned in the said sales statistics. Even

though most of the sale instances from that sales statistics came to be executed in the years 1996, 1997 and 1998, respectively, the Reference Court has erroneously considered the average of the same along with the sale instances of the year 1999 and awarded the enhanced compensation at the rate of Rs.1200/- per Are instead of Rs.1500/- per Are, as claimed by the claimants. Learned Counsel submits that the award and the copy of the spot inspection report which was carried out by the Special Land Acquisition Officer along with the Executive Engineer, was placed before the Reference Court and those are exhibited. The award is marked at Exh.17-C in the Reference filed by the claimant Latabai; whereas, inspection report dated 11.1.2000 is filed in the Reference Petition preferred by Ashok, which is marked at Exh.23. The Special Land Acquisition Officer has observed that the acquired lands are irrigated lands and further the said inspection report (Exh.23), unmistakably, points out that the acquired lands are perennially irrigated lands. The same is also reflected from the 7/12 extract produced on record and the claimants have also deposed before the Reference Court that they are taking Bagayat crops in the

acquired lands. Learned Counsel submits that the Reference Court ought to have awarded compensation at the enhanced rate of Rs.1500/- per Are.

8. Learned counsel appearing for the respondent acquiring body submits that the Reference Court has rightly discarded the sale instances at Exhs. 15, 16 and 24 respectively. The Government has taken the possession by private negotiation on 28.12.1999. The sale instances at Exhs. 15, 16 and 24 came to be executed at later dates i.e. sale instance Exh.15 came to be executed in March, 2001, Exh.16 came to be executed on 16th April, 2001, and sale instance Exh.24 came to be executed on 26.9.2000. The Reference Court has, therefore, rightly observed that those sale deeds came to be executed with some ulterior motive and at higher rates and the same is also reflecting from the contents of the sale deed. It appears from the contents of the sale deeds that the close relatives like mother, son, uncle and nephew executed the sale deeds in respect of certain portion of the land in favour of each other. Learned Counsel submits that the Reference Court has, therefore, rightly considered the 19

sale instances of the sales statistics collected by the Special Land Acquisition Officer. The Reference court has rightly considered that upto the year 1999, the lands of the village Wakati were averagely sold at Rs.600/- per Are and, after 1999, there is a sudden rise and all the lands were sold at the rate of Rs.900/- per Are, and above it. Learned Counsel submits that, however, the Reference Court has awarded the compensation at the rate of Rs.1200/- per Are, at higher rate. Learned Counsel submits that the acquired lands are the Jirayat lands and the Reference Court has awarded the compensation treating the said lands as perennially or seasonally irrigated lands.

9. On careful perusal of the pleadings, the evidence adduced by the claimants, and the judgment and award passed by the Reference Court, I do not find fault in the observations made by the Reference Court while discarding the sale instances Exhs. 15, 16, and 24, respectively. The Reference Court has rightly observed that on 28.12.1999 when the acquired lands were taken into possession by private negotiations, the villagers came

to know about the acquisition prior to the publication of Section 4 notification, and in that event, the possibility cannot be ruled out that the subsequent sale deeds like Exhs. 15, 16 and 24 came to be executed deliberately at higher rates to claim the benefits of the said sale deed for compensation in respect of the acquired lands. Same is also reflected from the contents of those sale instances that the close relatives have sold the land under the sale instances to each other.

10. The Reference Court has considered the 19 sale instances mentioned in the sales statistics. On careful perusal of the award (Exh.17), it appears that most of those sale instances of Group II have been referred in column No.12 of the award. The Reference Court has drawn the average of the consideration amount of those sale instances which came to be executed in the years 1996, 1997 and 1999, respectively. Even if the date of taking over possession i.e. 28.12.1999 by private negotiations is considered as a basis; still, I do not find any justification for considering the average of the sale instances of the years 1996, 1997 and 1999, respectively.

It is well settled that if the sale instances prior to the notification are considered and if those are beyond the period of one year then, certain rise in the price is required to be considered while awarding the compensation at the enhanced rate. Thus, without considering the rise of 10 per cent per year, if the average of those sale instances are considered right from the year 1996, I do not think that the approach of the Reference Court is proper, correct and legal. There are two sale instances of the year 1999 in those sales statistics mentioned in the award (Exh.17). Out of that, one sale deed is of 22.2.1999 for consideration of Rs.600/- per Are and, another one is dated 24.11.1999 for a consideration of Rs.916/- per Are. Those two sale instances are close to the date of taking possession of the acquired lands i.e. 28.12.1999. If the average of those two sale instances are considered, that comes to Rs.758/- per Are. The appellants / original claimants have claimed compensation at the enhanced rate of Rs.1500/- per Are. The Reference Court ought to have awarded the said compensation at the enhanced rate.

11. In the instant case, there is sufficient evidence

on record to indicate that the acquired lands are perennially irrigated lands; the same is also reflecting from the contents of the inspection report (Exh.23), the award (Exh.17), the 7/12 extract of the acquired lands and from the various documents placed on record including documents in respect of supply of sugarcane to the sugar factories and the electricity bill. The Reference Court ought to have awarded the compensation at the rate of Rs.1500/- per Are instead of Rs.1200/- per Are for the acquired lands.

12. In view of the above discussion, the impugned judgment and award passed by the Reference Court requires modification but, at the same time, the appeals preferred by the acquiring body are liable to be dismissed. Hence, I pass following order:

ORDER

1. First Appeal No.1139/2008 (Saw.Latabai Ambadas Patare and others Vs. The State of Maharashtra) and First Appeal No.1140/2008 (Ashok Tukaram Patare Vs. The State of Maharashtra, and another) are hereby partly

allowed with proportionate costs. The common judgment and award passed by the 5th Joint Civil Judge, Senior Division, Aurangabad, dated 7th August, 2007, in LAR No.25/2003 and LAR No.30/2003 is hereby modified in the following manner.

(i) The respondents shall pay the enhanced compensation to the claimants at the rate of Rs.1500/- per Are for the acquired lands.

(ii) Rest of the judgment and award granting statutory benefits stands confirmed subject to the modification of the enhanced rate of compensation as above.

(iii) The award be drawn up as per the above modification.

2. First Appeal No.2738/2010 (The Executive Engineer, NMC Vaijapur, Aurangabad. Vs. Latabai Ambadas Patare and others) and First Appeal No.2739/2010 (The Executive Engineer, NMC Vaijapur,

Aurangabad Vs. Ashok Tukaram Patare and another) are dismissed with costs.

All the First Appeals are accordingly disposed of.

(V.K. JADHAV)
JUDGE

AGP/1139-08fagr

...