

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

38 FIRST APPEAL (STAMP) NO. 9254 OF 2013

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
BHUJANG SITARAM PHAD

WITH

FIRST APPEAL (STAMP) NO. 9219 OF 2013

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
MOTIRAM BALAJI IRLE AND OTHERS

WITH

FIRST APPEAL (STAMP) NO. 9257/2013

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
UTTAM PATALOA GUTTE AND OTHERS

AND

FIRST APPEAL (STAMP) NO. 9251 OF 2013

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
KISHAN BAPURAO CHATE

...

AGP for Appellants : Mr. B. V. Virde.

Advocate for Respondents : Mr. S. S. Pawar.

...

CORAM : **V. K. JADHAV, J.**

DATE : 01st August, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the common judgment and award passed by the Joint Civil Judge Senior Division, Ahmedpur dated 20th March, 2009 in LAR No.573 of 2003 alongwith other connected references, the original Respondents have preferred these appeals.

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

- a) The agricultural lands owned and possessed by the Respondents / original Claimants came to be acquired by the Government for the purpose of construction of percolation tank at village Chikhali Guttewadi, Taluka Ahmedpur, District Latur. Notification under Section 4 was published on 10th July, 1996 and the Special Land Acquisition Officer has awarded the compensation at the rate of Rs.230/- to Rs.260/- per Are for the acquired lands. Being dissatisfied with the inadequate compensation awarded by the Special Land Acquisition Officer, the Respondents / Claimants preferred the aforesaid references for grant of compensation at the

enhanced rate on various grounds. It has been contended that for construction of the said tank, the agricultural lands from villages Kawalwadi, Guttewadi and Chikhali came to be acquired. Villages Kawalwadi and Guttewadi come under village Andhori and there is one group Grampanchayat for the said villages. The said village Andhori is situated at a distance of 13 kilometers from Ahmedpur having all the facilities. However, the Special Land Acquisition Officer has not carried out the valuation nor conducted any inquiry. It has been contended that the Special Land Acquisition Officer has not visited the acquired lands. The Special Land Acquisition Officer has awarded the compensation on the basis of the assessment of the land revenue of the acquired lands and he has not considered the sale instances from those villages to fix the market price of the agricultural land from the said vicinity. It has also been contended that the Special Land Acquisition

Officer has awarded very meager amount for stone bund, fruit bearing trees and well.

- b) The Appellant / State and the acquiring body have strongly resisted the claim petition by filing the written statement. It has been contended that the Special Land Acquisition Officer has visited the acquired lands and he has considered the quality and fertility of the acquired lands and also collected the data about sale instances of that vicinity from the registration office and accordingly awarded just and reasonable compensation for the acquired lands.
- c) The Respondents / original Claimants have adduced oral and documentary evidence in support of their contentions. However, the Appellant / State has not adduced any evidence. The learned Joint Civil Judge Senior Division, Ahmedpur vide its impugned judgment and award dated 20th March, 2009 has awarded the compensation at the enhanced rate of Rs.700/- per Are. Being aggrieved by the same, the State

and the acquiring body have preferred these appeals.

4 The learned AGP submits that the Respondents / Claimants mainly relied upon the sale-deeds Exhibit 13, Exhibit 14 and Exhibit 15 respectively. Sale-deeds Exhibit 13 and Exhibit 15 are from same village Chikhali, whereas sale-deed Exhibit 14 is from village Andhori. All these sale instances are prior to the Section 4 notification published in respect of the acquired lands. In para 19 of the judgment, the Reference Court has observed that so far as sale instance Exhibit 13 is concerned, towards southern side of the land under sale instance, one Nala has been shown and so far as sale instance Exhibit 15 is concerned, towards western side, the purchaser's own land is situated. Furthermore, the land under instance Exhibit 13 is concerned, the same is situated abutting to the road. Though the Reference Court has made the observations in para 19 of the judgment to that effect and further observed that those sale instances cannot be taken as comparable sale instances to fix the market price, awarded the compensation at the enhanced rate of Rs.700/- per Are without any basis. The learned AGP submits that the land under sale instance Exhibit 14 is concerned, the same pertains to small piece of

land and as such, the Reference Court has not considered the said sale instance.

5 The learned counsel for Respondents / Claimants submits that though in para 19 of the judgment, the Reference Court has made the said observations, the Reference Court has not discarded the said evidence altogether. The Reference Court has observed that considering the sale instance Exhibit 13, the market price of the land under sale instance comes to Rs.95,200/- per Hectare and so far as the land under sale instance Exhibit 15 is concerned, the market rate of the land comes to Rs.89,300/- per Hectare. However, considering the fact as observed in para 19 of the judgment, the learned Judge of the Reference Court has reduced the consideration amount to considerable extent and awarded the compensation at the enhanced rate of Rs.70,000/- per Hectare. The Reference Court has considered the acquired lands as Jirayat land and further held that the Special Land Acquisition Officer has awarded just and reasonable compensation for stone bunds, fruit bearing trees etc. The learned counsel submits that the Reference Court has awarded just and reasonable compensation. No interference is required. There is no substance in the appeals and all the appeals thus, liable to be dismissed.

6 It appears from the impugned judgment and award that the Reference Court has not discarded the sale instances Exhibits 13 and 15 respectively. Both the sale instances are from village Chikhali. The Reference Court has also observed that, in the award it has been specifically mentioned that the lands from Andhori (Guttewadi) and Chikhali, Taluka Ahmedpur, District Latur came to be acquired for the purpose of construction of the said tank. It further appears that the sale instances Exhibits 13 and 15 respectively, are prior to Section 4 notification published in respect of the acquired lands. It is true that the Reference Court in para 19 of the judgment has observed that so far as sale instance Exhibit 13 is concerned, towards southern side of the land under sale instance, there is a Nala and so far as the land under sale instance Exhibit 15 is concerned, towards western side, the purchaser's own land is situated, even then the Reference Court has not discarded the said sale instances Exhibits 13 and 15 in toto. The Reference Court has considered the market price of the acquired lands reflecting from the said sale instances Exhibits 13 and 15 respectively, however, reduced the amount of consideration for the reasons as discussed by the Reference Court in para 19 of the judgment. In view of the consideration price of the lands under sale instances Exhibits 13 and 15, the rate of the land under sale instance per Hectare comes to

Rs.95,200/- and Rs.89,300/-. The Reference Court thus, has reduced the amount of consideration of those sale instances to considerable extent and accordingly awarded just and reasonable compensation at the rate of Rs.70,000/- per Hectare for the acquired lands. There is no substance in the appeals. It further appears from the impugned judgment and award that the Reference Court after considering the 7/12 extract and crop pattern, rejected the claim of the Respondents / Claimants and awarded the compensation to the acquired lands by treating the acquired lands as Jirayat land. Further, the Reference Court in absence of positive evidence, considered the compensation awarded by the Special Land Acquisition Officer for stone bunds and fruit bearing trees as just and reasonable and thus, declined to interfere in it. In view of the above, I do not find any substance in the appeals. All the appeals are thus, liable to be dismissed. Hence, the following order:

ORDER

- I. **First Appeal (Stamp) No. 9254 Of 2013** (The State of Maharashtra and others Vs. Bhujang Sitaram Phad),
First Appeal (Stamp) No. 9219 Of 2013 (The State of Maharashtra and others Vs. Motiram Balaji Irle And

Others) **First Appeal (Stamp) No. 9257/2013** (The State of Maharashtra and others Vs. Uttam Pataloba Gutte and others) and **First Appeal (Stamp) No. 9251 Of 2013**(The State of Maharashtra and others Vs. Kishan Bapurao Chate), are hereby dismissed with costs.

- II. All the appeals are accordingly disposed of.
- III. Pending civil applications stand disposed of.

[V. K. JADHAV, J.]

ndm