

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

FIRST APPEAL NO. 2589 OF 2016

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
SUBABAI BHAURAO MARKAD (DIED) HIS LRS
BHASKAR BHAURAO MARKAD AND ANOTHER

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AGP for Appellants : Mr. S. W. Wattamwar.

Advocate for Respondent No.1 : Mr. Kiran B. Jadhavar.

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

DATE : 07th February, 2017.

ORDER:

. Being aggrieved by the judgment and award dated 3rd January, 2013 in LAR No.147 of 1999 passed by the learned 3rd Joint Civil Judge Senior Division, Osmanabad, the State has preferred this appeal.

2 Brief facts giving rise to the present appeal are as follows:

- i) Survey No.42 owned and possessed by Respondent / Claimant came to be acquired by the Government for the construction of Songiri percolation tank by notification under Section 4 of the Land Acquisition Act dated 2nd December, 1993 and under award dated 11th August, 1997. Aggrieved by the inadequate

compensation awarded by the Special Land Acquisition Officer at the rate of Rs.22,000/- per Hectare, the Respondent / Claimant filed LAR No.147 of 1999.

- ii) The Appellant / State has strongly resisted the said petition on the ground that the Special Land Acquisition Officer has considered the comparable sale instance from the said area and awarded just and reasonable compensation.
- iii) The Respondent / Claimant has adduced oral and documentary evidence in support of his contention. The learned 3rd Joint Civil Judge Senior Division, Osmanabad vide its impugned judgment and award dated 3rd January, 2013 in LAR No.147 of 1999 awarded the compensation at the rate of Rs.41,540/- per Acre for the acquired land. Hence, this appeal.

3 Mr. Wattamwar, learned Assistant Government Pleader submits that, sale instance considered by the Reference Court was in respect of small piece of lands, as such said sale instance could not have been said to be comparable sale instance. The learned AGP

submits that, the Special Land Acquisition Officer after considering various sale instances had awarded compensation at the rate of Rs.25,650/- per Acre, which was reasonable.

4 The learned counsel for Respondent / Claimant submits that this Court in First Appeal (Stamp) No.11868 of 2015 and First Appeal (Stamp) No.11908 of 2015 by order dated 23rd October, 2015 and 12th April, 2016 respectively, dismissed the appeals preferred by the State by confirming the order passed by the Reference Court. The learned counsel submits that the Reference Court has considered the same sale instance of the same village and survey number is also same and awarded the compensation at the enhanced rate of Rs.40,000/- per Acre

5 I have considered the judgment. The Reference Court has considered Exhibit – 13 i.e. sale instance in respect of the land from the same village of the acquired land. The said sale instance is of the year 1989. The Court has also deducted some amount as it was a small area of land under the sale deed. The Reference Court has awarded compensation at the rate of Rs.40,000/- per Acre, which appears to be reasonable and proper. However, in the instant case, the Reference Court though relied upon the same sale instance which

is considered by this Court in the aforesaid appeals, awarded the compensation at the rate of Rs.41,540/- per Acre.

6 In view of the above discussion and in the light of the orders passed by this Court in the aforesaid appeals, modification to the extent of enhanced rate of compensation at the rate of Rs.40,000/- per Acre is required to be made instead of Rs.41,540/- per Acre as awarded by the Reference Court. Hence, the following order:

ORDER

- I. The first appeal is partly allowed. No costs.
- II. The judgment and award passed by the 3rd Joint Civil Judge Senior Division, Osmanabad dated 3rd January, 2013 in LAR No.147 of 1999, is modified to the extent of enhanced rate of compensation in the following manner:

“The Respondent / State shall pay the enhanced compensation to the Claimant at the rate of Rs.40,000/- (Rupees Forty Thousand only) per Acre”

- III. Rest of the judgment and award stands confirmed.

- IV. Decree be drawn up as per the above modification.
- V. Appeal is accordingly disposed of.
- VI. Pending civil application stands disposed of.

[V. K. JADHAV, J.]

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