

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

FIRST APPEAL NO. 3881 OF 2016

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
VISHWANATH LIMBAJI MURME (DIED) THROUGH L.RS.
SUBHASH VISHWANATH MURME AND OTHERS

...
AGP for Appellants : Mr.S.S.Dande.
Advocate for Respondents : Mr. L. C. Patil.
...

WITH

FIRST APPEAL NO. 3882 OF 2016

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
MADHAV LIMBAJI MURME (DIED) THROUGH L.RS.
SMT. NARSABAI MAHADU MURME AND OTHERS

...
AGP for Appellants : Mr.S.P.Sonpawle.
Advocate for Respondents : Mr. L. C. Patil.
...

CORAM : **V. K. JADHAV, J.**
DATE : 14th March, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the common judgment and award
passed by the learned Civil Judge Senior Division, Omerga, District
Osmanabad dated 3rd April, 2010 in LAR No.1247 of 2009 and other

connected reference petition, the State has preferred these two appeals.

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

- i) The Appellant / State has acquired the land owned and possessed by Respondents / Claimants for the purpose of Koregaon Storage Tank at village Koregaon. Notification under Section 4 of the Land Acquisition Act was published on 8th September, 1998 and the Special Land Acquisition Officer has awarded the compensation at the rate of Rs.140/- to Rs.150/- per Are to the acquired lands. Being dissatisfied with the inadequate compensation awarded by the Special Land Acquisition Officer, the original Claimants have preferred LAR No.1247 of 2009 and LAR No.1242 of 2009 for enhanced rate of compensation. It has been contended in the reference petitions that the Special Land Acquisition Officer has considered the land assessment in respect of the acquired lands for determination of the compensation and failed to

consider the sale instances prior to the notification under Section 4 of the said area. Even the Special Land Acquisition Officer has not considered that the acquired lands were the irrigated lands and awarded the compensation by treating the acquired lands as dry lands.

- ii) The Appellant / State has strongly resisted the reference petitions by filing the written statement. It has been contended that the Special Land Acquisition Officer has awarded just and reasonable compensation after considering the prevailing market rate in the said area.
- iii) Respondents / Claimants have adduced oral and documentary evidence in support of their contentions. The learned Civil Judge Senior Division, Omerga, District Osmanabad vide its impugned judgment and award, awarded the compensation at the rate of Rs.480/- per Are. Being aggrieved by the same, the State has preferred these two appeals.

4 The learned AGP submits that even though the Reference Court in paras 27 and 28 of the judgment has observed that the acquired lands are not permanently irrigated lands, however, awarded the compensation at the enhanced rate by treating the acquired lands as seasonally irrigated lands. The Reference Court has therefore, erroneously awarded the compensation by making addition in the consideration amount of the sale instance Exhibit – 14 to the extent of 50% and awarded the compensation at the rate of Rs.480/- per Are.

5 The learned counsel for the Respondents / Claimants submits that in paras 27 and 28 of the judgment, the Reference Court has observed that the acquired lands are not permanently irrigated lands, however, after considering the 7/12 extract placed on record and after considering the well situated in the acquired lands, awarded the compensation at the enhanced rate by treating the acquired lands as seasonally irrigated lands. The learned Judge of the Reference Court has therefore, rightly made addition of 50% of the consideration of the sale instance Exhibit – 14 and awarded the compensation at the enhanced rate of Rs.480/- per Are. There is no merit in the appeals. Both the appeals are thus, liable to be

dismissed.

6 On careful perusal of the judgment and award passed by the Reference Court most particularly paras 27 and 28 of the judgment, it appears that the Reference Court though observed that the acquired lands are not permanently irrigated lands, on the basis of entries taken in the 7/12 extract about the crops taken prior to the notification, rightly considered the acquired lands as seasonally irrigated lands. So far as Exhibit – 14 is concerned, a land admeasuring 1 Hectare 28 Ares was sold for the consideration of Rs.41,000/-. It thus, appears that the said land was sold at the rate of Rs.32,031/- per Hectare. The Claimants have admitted in their cross-examination that adjacent to their acquired lands, land Survey No.79 owned by one Mallikarjun is situated. Sale instance Exhibit – 14 pertains to the land Survey No.79. Thus, the land under sale instance is adjacent to the acquired lands and therefore, the Reference Court has rightly considered the said sale instance as a basis for grant of compensation at the enhanced rate. After considering the 7/12 extract exhibits – 44, 45 and 46 from the year 1989-90 to 1990-91 in respect of the reference petition filed by Vishwanath Limbaji Murme and also considering the 7/12 extract

Exhibits 47 for the years 1988-89 and 1989-90 has rightly held that the acquired lands are seasonally irrigated lands. The Reference Court has also given weightage to the fact that the well came to be acquired from the acquired lands Survey No.82/B/5 and 82/B/6.

7 In view of the above discussion, I do not find any fault with the judgment and award passed by the Reference Court. No interference is required. There is no merit in the appeals and both the appeals are thus, liable to be dismissed. Hence, the following order:

ORDER

- I. Both the appeals, are hereby dismissed with costs.
- II. Both the appeals are accordingly disposed of.

[V. K. JADHAV, J.]