

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

FIRST APPEAL NO. 463 OF 2016

1. The State of Maharashtra
Through the Collector, Osmanabad
2. The Executive Engineer,
Minor Irrigation Division,
Osmanabad

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Subhash s/o. Bhimrao Gadhave,
Age: Adult, Occu. Agri.,
R/o. Bhoom, Tq. Bhoom,
Dist. Ahmednagar.

**...RESPONDENT
(Ori. Claimant)**

WITH

FIRST APPEAL NO. 464 OF 2016

1. The State of Maharashtra
Through the Collector, Osmanabad
2. The Executive Engineer,
Minor Irrigation Division,
Osmanabad

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Shri. Navnath Rama Gadhave,
Age: Adult, Occu. Agril,
R/o. Bhoom, Tq. Bhoom,
Dist. Osmanabad

**...RESPONDENT
(Ori. Claimants)**

...
Mr. P.G. Borade and Mr. S.P. Sonpawale, A.G.P. for Appellants
Mr. Wakure Sanjay A., Advocate for Respondents

...
CORAM : P.R. BORA, J.
Dated: June 29, 2017
...

ORAL JUDGMENT :

. Heard finally with consent.

1. Since the present appeals are filed against common judgment and award passed by the Court of IInd Joint Civil Judge, Senior Division, at Osmanabad, on 6th of October, 2009 in LAR No. 471/2000 and LAR No.474/2000, I deem it appropriate to decide both these appeals by common reasoning.

2. The lands which are the subject matter of the present appeals were acquired for the purpose of Bhoom Percolation Tank at Bhoom. Notification under Section 4 of the Land Acquisition Act in that regard was published in the Government gazette on 24th February, 1994, and award under Section 11 came to be passed on 17th of August, 1998. The Special Land Acquisition Officer had offered the compensation to the respondents who are hereinafter referred to as the claimants, at the rate of Rs.250/- per Are i.e. Rs.10,000/- per acre. Dissatisfied with the amount of compensation so offered, the claimants filed applications under Section 18 of the Act to the Collector, Osmanabad who, in turn, forwarded the said application to the Civil Court for adjudication. The claimant had claimed the compensation at the rate of Rs.1,00,000/- (Rs.One lakh) per acre before the Reference Court. In order to substantiate the claim so raised by them, in addition to their own evidence, the claimants had relied upon one sale instance at Exh.19. No oral or

documentary evidence was adduced on behalf of the State. Learned reference Court, after having considered the oral and documentary evidence brought before it, determined the market value of the acquired lands at the rate of Rs.50,000/- (Rs. Fifty thousand) per acre and, accordingly, enhanced the amount of compensation. It has to be stated that the land which was the subject matter of LAR No.474/2000 was admeasuring 1 Hectare 53 Are whereas the land which was subject matter of LAR No.471/2000 was admeasuring 17 Are. Aggrieved by the award passed by the Reference Court, the State has preferred present appeals.

3. Learned A.G.P. has assailed the common awards appealed against on several grounds. Learned A.G.P. submitted that there was no sufficient evidence on record so as to determine the market value of the acquired lands at Rs.50,000/- per acre. Learned A.G.P. further submitted that the only evidence which was adduced by the claimants was a sale instance at Exh.19. Learned A.G.P. further submitted that the land which was the subject matter of the said sale deed was comparatively a small piece of land and as has come on record was at a far distance from the acquired lands. As such, according to learned A.G.P., the same could not have been base for determining the market value of the subject lands. Learned A.G.P. further submitted that ultimately the market value has been determined by the Reference Court by making out some guess work and is thus admittedly not

based on evidence. Learned A.G.P. submitted that on the contrary if the award under Section 11 of the Act is perused, it reveals that the Special Land Acquisition Officer had considered more than 15 sale instances happened between the period 1991 to 1994 and has, thereafter, determined the market value of the acquired lands. Learned A.G.P. submitted that since the market value has been determined by the Reference Court on surmises needs to be set aside and the price as was fixed by the Special Land Acquisition Officer needs to be confirmed. Learned A.G.P., therefore, prayed for allowing both the appeals.

4. Mr. Sanjay A. Wakure, Adv., appears for respondents in both the appeals. Learned counsel appearing for the respondents i.e. original claimants, has supported impugned Judgment and Award.

5. With the assistance of learned A.G.P., I went through the evidence adduced in the matter and the other material on record, more particularly, the sale instance at Exh.19 and the award passed under Section 11 of the Act. After having perused the aforesaid evidence, apparently, it does not appear to me that any interference may be required in the impugned judgment and award. Admittedly, the only evidence which was adduced before the Reference Court was by the claimants. The State has not adduced any oral or documentary evidence. It is, thus, evident that for determination of the market value,

the only material which was before the Reference Court was the sale instance at Exh.19.

6. I have carefully perused the recitals in the sale deed at Exh.19. It reveals that the land admeasuring 42 Are, out of survey No.236-A situate at Bhoom was sold by registered sale deed executed on 17th of December, 1991, by one Bhagwat Gadhave to Ashabai Mali for consideration of Rs.70,000/-. In the evidence before the Court though it was sought to be stated that as per the Government valuation the consideration of the said land was Rs.1,83,000/- in fact, the land was sold at Rs.70,000/-. Thus, the said land was sold at the rate of Rs.1666/- (One thousand six hundred sixty six) per Are. From the discussion made by the Reference Court in paragraph nos. 22 to 25 of the judgment, it is revealed that the Reference Court has not blindly relied upon the said sale instance. The discussion made by the Reference Court goes to suggest that it has considered the aspect of convenience in purchasing the subject land of Exh.19 by the purchaser therein and the location of the said land. However, based on the said sale instance, some guess work was carried out by the Reference Court and ultimately it has fixed the market value of the subject land at the rate of Rs.50,000/- per acre.

7. Admittedly, the land which was subject matter at Exh.19 was sold on 17.12.1991 whereas, the subject lands were acquired in the year 1994 after about a period

of more than two years. However, since the possession of the said land was taken in the year 1992, there was no difficulty in considering the sale instance at Exh.19 to be a base for determining the market value of the acquired lands. All these factors are duly considered by the Reference Court and, thereafter, the market value of the subject land has been determined by the Reference Court at the rate of Rs.50,000/- per acre.

8. After having considered the entire material on record, it does not appear to me that the market value as has been determined by the Reference Court is unreasonable or excessive. It also cannot be held that the same was determined without any evidence therefor. Moreover, as I have earlier stated, the only evidence which was before the Reference Court for determining the market value was adduced by the claimants and no evidence was adduced by the State to substantiate the defenses raised by it. Perusal of the impugned judgment further reveals that the Tribunal has declined to accept the request of the claimants to award some more compensation for the well which was also acquired in the said proceedings and to enhance the amount of compensation for the trees existing in the acquired land. The Reference Court has rejected the claims raised by the claimants in that regard.

9. For the reasons stated above, it does not appear to me that any interference is required in the

common judgment and award impugned in the present appeals. The Appeals being devoid of substance, stand dismissed, however, without any order as to the costs.

. Pending Civil Applications, if any, stand disposed of.

(P.R. BORA, J.)

AGP/