

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL STAMP NO.13202 OF 2016

1. The Executive Engineer,
Minor Irrigation Division,
Osmanabad, Through
Godawari Marathawada Irrigation
Development Corporation,
Aurangabad

2. The State of Maharashtra,
Through the Collector,
Osmanabad

= **APPELLANTS**
(Ori. Respondents)

VERSUS

Anil S/o. Somnath Yele,
Age: 56 years, Occ. Agri.,
R/o. Wakwad, Tq. Bhoom,
Dist. Osmanabad

= **RESPONDENT**
(orig.Claimant)

WITH

FIRST APPEAL STAMP NO.13412 OF 2016

1. The Executive Engineer,
Minor Irrigation Division,
Osmanabad, Through
Godawari Marathawada Irrigation
Development Corporation,
Aurangabad

2. The State of Maharashtra,
Through the Collector,
Osmanabad

= **APPELLANTS**
(Ori. Respondents)

VERSUS

1. Girjappa S/o. Shiva Yele,
Age 75 years, Occ. Agri.,
2. Nama S/o. Shiva Yele
Age 73 years, Occ. Agri.,
3. Sopan S/o. Baji Yele,
Age: 73 years, Occ. Agri.,

All R/o. Wakwad, Tq. Bhoom,
Dist. Osmanabad

= **RESPONDENTS**
(Ori. Claimants)

WITH

FIRST APPEAL STAMP NO.13420 OF 2016

1. The Executive Engineer,
Minor Irrigation Division,
Osmanabad, Through
Godawari Marathawada Irrigation
Development Corporation,
Aurangabad

2. The State of Maharashtra,
Through the Collector,
Osmanabad

= **APPELLANTS**
(Ori. Respondents)

VERSUS

1. Limba S/o. Shankar Yele,
Age: 80 years, Occ. Agri.,
2. Mahadeo S/o. Limba Yele,
Age: 55 years, Occu. Agri.,

Both R/o. Wakwad, Tq. Bhoom,
Dist. Osmanabad

= **RESPONDENTS**
(Ori. Claimants)

WITH

FIRST APPEAL STAMP NO.13425 OF 2016

1. The Executive Engineer,
Minor Irrigation Division,
Osmanabad, Through
Godawari Marathawada Irrigation
Development Corporation,
Aurangabad

2. The State of Maharashtra,
Through the Collector, Osmanabad

= **APPELLANTS**
(Ori. Respondents)

VERSUS

Parubai W/o. Ambu Yele
Age: Major, Occ. Agri
& Household,
R/o. Wakwad, Tq. Bhoom,
Dist. Osmanabad

= **RESPONDENT**
(Ori. Claimant)

Mr. Dheple Shantaram R. Advocate for Appellant/s;
Mr. A.N. Nagargoje, Advocate for Respondent/s.

CORAM : P.R.BORA, J.

DATE : 10th July, 2017.

ORAL JUDGMENT:

1) In view of the order passed by this Court on civil Applications for condonation of delay in the present matters, the present appeals are taken up for final disposal with the consent

of the learned Counsel for the parties.

2) Shri Dheple, learned Counsel appearing for the acquiring body, submitted that the Reference Court without there being any sufficient evidence, has enhanced the amount of compensation unreasonably from Rs. 270/- per Are to Rs.1500/-. The learned Counsel further submitted that only one sale instance was placed on record by the claimants and that too pertaining to a very small piece of land admeasuring 14 Are and relying upon the said sale instance, the Reference Court has determined the amount of compensation. The learned Counsel further submitted that the Reference Court has failed in appreciating that the sale deed which was filed on record was not of a comparable land, and as such could not have been the basis for determining the market value of the subject lands. The learned Counsel further submitted that the Reference Court has also misconstrued the provisions of Limitation Act and has wrongly

held the Reference Applications to have been filed within period of limitation. On both the counts, the learned Counsel submits that the impugned awards deserve to be quashed and set aside.

3) Shri Nagargoje, leaned counsel appearing for the original claimants, resisted the submissions made on behalf of the acquiring body. The learned Counsel submitted that the Reference Court has rightly held the appeals to have been filed within period of limitation. The learned Counsel submitted that the award under Section 11 of the Act was passed in absence of the original claimants and the claimants came to know about the awards only after section 12(2) notice was served upon them. The learned Counsel submitted that after service of the notice under Section 12(2) of the Act, within six weeks the Reference Applications are filed and they are perfectly within period of limitation.

4) The discussion made by the Reference Court reveals that the claimants had filed the Reference Applications within the period of six weeks after having come to know about passing of the awards. I do not see any reason to cause any interference in the finding of fact so recorded by the Reference Court as about the limitation.

5) In so far as the objection raised by the acquiring body as about the error committed by the Reference Court in determining the market value, is concerned, I have carefully perused the discussion made by the Reference Court in that regard. It is true that only one sale instance has been relied upon by the Reference Court in determining the market value of the acquired land. However, from the record, it is quite evident that, that was the only evidence before the Reference Court, since neither the acquiring body nor the State has adduced any oral or documentary evidence before the Reference Court so as to oppose the claim made by the claimants.

In the circumstance, the Reference Court was having the only option to determine the market value, may be by doing some guess work on the basis of the evidence which was adduced before it.

6) Secondly, it does not appear to me that the Reference Court has committed any error in relying upon the said sale instance. The evidence on record reveals that the sale deed at Exh.18, which has been relied upon by the Reference Court was pertaining to 14 Are land, which was sold by registered sale deed on 6th May, 1992 for the total consideration of Rs.40,000/-. Per hectare rate of the said sale instance comes to Rs. 2857/- per Are. The learned Reference Court has made a detailed discussion pertaining to the said sale instance. Since the said sale instance was pertaining to the year 1992, i.e. three years prior to issuance of the notification under Section 4 of the Act, (in the present matter, Section 4 notification was issued on

24.2.1993 and the Award under Section 11 was passed on 11.8.1998), the Reference Court has given increase @ 10% every year and thus total 30% increase was given. After giving the increase, the Reference Court has discussed the nature, quality and the location of the said land and accordingly has determined the value of the subject land.

7) The Reference Court has not implicitly relied upon the said sale instance. Though in the year 1992, the said land was sold @ Rs.28,755/- per Are, having considered the advantageous position of the said land, the appropriate deductions are made by the Reference Court while determining the market value of the subject lands and the subject lands have been given the market rate of only Rs.1500/- per Are, which comes to practically half of the rate which was received to the said land. It does not appear to me that the Reference Court has determined the market value arbitrarily or

excessively or unreasonably on higher side. On the contrary, it appears that the Reference Court has considered all plus and minus factors while determining the market value of the subject lands. The Reference Court has awarded the compensation at half of the rate for the Jirayat lands, which was forming the part of the acquisition and has accordingly enhanced the amount of compensation.

8) In so far as the objection that the sale instance relied upon was of small piece of land, it has to be noted that majority lands which are involved in the present appeals, are also small pieces of lands. The chart, which is reproduced in the order clause reflects that majority of the lands were averagely of the same area and only one Gut No. 59(1) was admeasuring 2 hectares and 25 Are. In the circumstances, the objection raised by the appellant, that the same criterion could not have been liable while determining the market value of the subject lands, cannot be

entertained.

9) After having considered the entire evidence on record, it does not appear to me that the Reference Court has committed any error in determining the market value of the acquired lands and in enhancing the amount of compensation accordingly. The appeals being devoid of any substance, deserve to be dismissed and are accordingly dismissed, however, without any order as to costs. Pending civil applications, if any, stand disposed of.

(P . R . BORA)
JUDGE

bdv/