

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

FIRST APPEAL NO.: 817 OF 2017

SHIVAJI SHANKAR GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH

FIRST APPEAL NO.: 816 OF 2017

MANOHAR SAKHARAM GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH

FIRST APPEAL NO.: 818 OF 2017

RAMHARI GANPAT GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH

FIRST APPEAL NO.: 819 OF 2017

BALU SHANKAR JADHAV (DIED) THROUGH L.RS.
ASHABAI BALU JADHAV AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH

FIRST APPEAL NO.: 820 OF 2017

RAGHUNATH BABURAO DHOKLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH

FIRST APPEAL NO.: 821 OF 2017

SAHEBRAOA YADAV PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH
FIRST APPEAL NO.: 822 OF 2017

MADHAV BABURAO DHOKLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH
FIRST APPEAL NO.: 823 OF 2017

SUBHASH SHANKAR GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

AND
FIRST APPEAL NO.: 824 OF 2017

ANNA SAYAJI SHINGARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr. D. A. Bhide, h/f Mr. Charudatta K. Sonawane.

AGP for Respondent No.1 : Mr. S. S. Dande.

Advocate for Respondent No.2 : Mr. Sudhir Bhalerao.

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CORAM : **V. K. JADHAV, J.**
DATE : 01st August, 2017.

ORDER:

. Heard finally with consent at admission state.

2 Being aggrieved by the common judgment and award passed by 2nd Joint Civil Judge Senior Division, Aurangabad dated 20th October, 2011 in LAR No.178 of 2002 alongwith other connected

reference petitions, the original Claimants have preferred these appeals.

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

- a) The agricultural lands owned and possessed by the Appellants / original Claimants came to be acquired by the Government for the purpose of construction of Khari Multipurpose Minor Irrigation Tank Rohila (Kh), Taluka Kannad, District Aurangabad. Notification under Section 4 was published on 19th September, 1996. The Special Land Acquisition Officer has awarded the compensation at the rate in between Rs.390/- to Rs.425/- per Are so far as the acquired lands of the present Appellants / Claimants are concerned. Being dissatisfied with the inadequate compensation awarded by the Special Land Acquisition Officer, the Claimants have preferred the aforesaid land acquisition references for grant of compensation at the enhanced rate. It has been contended in the reference petitions that the Special

Land Acquisition Officer has not considered the quality of the acquired lands and the market value of the agricultural land in the same vicinity as on Section 4 notification published in respect of the said acquired lands.

- b) The Respondent / State has strongly resisted those references on the ground that the Special Land Acquisition Officer has awarded just and reasonable compensation. The Respondent / acquiring body has also resisted those references on the ground that the Special Land Acquisition Officer has awarded just and reasonable compensation.
- c) The Appellants / original Claimants have adduced oral and documentary evidence in support of their contentions. The Respondent / State and the acquiring body have not adduced any oral evidence. The learned 2nd Joint Civil Judge Senior Division, Aurangabad vide its impugned common judgment and award dated 20th October, 2011 partly allowed those references with costs and awarded the compensation

at the enhanced rate of Rs.794/- per Are for the acquired lands. Being aggrieved by the same, the Appellants / Claimants have preferred these appeals.

4 The learned counsel for Appellants / original Claimants submits that out of the same notification and award, one of the agriculturist, whose land came to be acquired for the said project, preferred LAR No.214 of 2001, which was settled in Lok Adalat held on 4th March, 2012, in terms of the compromise between the parties at the rate of Rs.930/- per Are for Jirayat land and accordingly said LAR No.214 of 2001 came to be disposed of in view of the settlement arrived at. The learned counsel for Appellant / Claimant is seeking the enhanced compensation on the basis of the said settlement arrived at between the parties in Lok Adalat and as such, claiming the compensation at the enhanced rate of Rs.930/- per Are for the acquired Jirayat lands. The learned counsel submits that the acquired lands of the Appellants / Claimants in LAR Nos.182 of 2002, 173 of 2002, 177 of 2002, 65 of 2002 and 172 of 2002 are the Jirayat lands and the Appellants / Claimants in those references are entitled for the same rate as agreed between the parties in the Lok Adalat as referred above. The learned counsel submits that so far as the acquired lands,

which are subject matters of LAR Nos.181 of 2002, 187 of 2002, 185 of 2002 and 178 of 2002 are concerned, though the Special Land Acquisition Officer has treated those lands as Jirayat lands, except the land admeasuring 30 Ares of land out of the land Gat No.89 of LAR No.187 of 2002 wherein awarded the compensation at the rate of Rs.390/- per Are and Rs.425/- per Are respectively, the Appellants / Claimants in those references are entitled for the compensation for their acquired lands at the rate of Rs.1,395/- per Are for treating their lands as seasonally irrigated land and so far as said 30 Ares of land out of the land Gat No.89, which is a subject matter of LAR No.187 of 2002, the Appellants / Claimants are entitled for the compensation at the rate of Rs.1,860/- per Are by treating their agricultural lands as permanently irrigated land. The learned counsel submits that though there is evidence available on record, the Reference Court has awarded the compensation to the aforesaid lands by treating those lands as Jirayat lands, except the land admeasuring 30 Ares of land out of the land Gat No.89 as stated above. The learned counsel submits that the acquired lands, which are the subject matter of LAR No.181 of 2002 are concerned, there is an entry about the well in the 7/12 extracts Exhibits 19, 20 and 22 respectively and the crop pattern in the 7/12 extracts also indicates that the lands Gat Nos.181 and 184

are the seasonally irrigated lands. Similarly, so far as the land Gat No.89 is concerned, the land admeasuring 30 Ares out of the land Gat No.89, is the Bagayat land and the Special Land Acquisition Officer has also accepted the same and accordingly awarded the compensation. The Claimants are thus, entitled for the compensation at double the rate as agreed by the Respondents in the said land acquisition reference disposed of in terms of the compromise in the Lok Adalat held in the year 2012. The learned counsel submits that similarly, the agricultural land bearing Gat No.149, which is the subject matter of LAR No.185 of 2002 is concerned, the land is irrigated on the water of well and the entries to that effect are taken in the 7/12 extract Exhibit 21. However, the Reference Court has treated the land Gat No.149 as Jirayat land and accordingly awarded the compensation at the enhanced rate of Rs.794/- per Are. The Appellants / Claimants are entitled for the compensation at the rate of Rs.1,395/- per Are by treating the lands, which are the subject matter of LAR Nos.185 of 2002 and 178 of 2002 as seasonally irrigated land. The learned counsel submits that the entries about the well and crop pattern sufficiently indicate that those lands are either seasonally irrigated lands or permanently irrigated lands. Furthermore, fruit bearing trees also came to be acquired from the acquired lands Gat Nos.89, 85, 149

and 163 respectively and as such, the Reference Court ought to have awarded the compensation by treating those lands as seasonally irrigated lands. However, except the land admeasuring 30 Ares out of the land Gat No.89, all the acquired lands were erroneously treated by the Reference Court as Jirayat lands and accordingly awarded the compensation at the enhanced rate of Rs.794/- per Are.

5 The learned counsel for Respondent / acquiring body has not disputed disposal of LAR No.214 of 2001 in the Lok Adalat in terms of the compromise arrived at between the Claimants therein and the State and the acquiring body and accordingly, the compensation awarded for the acquired lands under the same notification, project and award at the rate of Rs.930/- per Are for the Jirayat land. The learned counsel, however, submits that in LAR Nos.181 of 2002, 187 of 2002, 185 of 2002 and 178 of 2002, the Reference Court has rightly treated the acquired lands of the said references as Jirayat land and awarded the compensation at the enhanced compensation of Rs.794/- per Are. The learned counsel submits that even the Special Land Acquisition Officer has also treated those lands as Jirayat land and accordingly awarded the compensation. The learned counsel submits that there is no satisfactory evidence placed before the Reference

Court to treat those lands as Bagayat lands except the land admeasuring 30 Ares out of the land Gat No.89, which is subject matter of LAR No.187 of 2002. 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 are thus, liable to be dismissed.

6 It is not disputed that LAR No.214 of 2001 arises out of the same notification and award, settled in the Lok Adalat held on 4th March, 2012 and the State and acquiring body have agreed to pay the compensation at the rate of Rs.930/- per Are for Jirayat lands and in terms of the said compromise, LAR No.214 of 2001 came to be disposed of in Lok Adalat. In order to maintain the uniformity in the compensation awarded to the Claimants, whose agricultural land came to be acquired under the same notification, same award and the same project, the Appellants / Claimants in First Appeal Nos.817, 819, 820, 823 and 824 of 2017 also entitled for the compensation for their acquired lands at the rate of Rs.930/- per Are.

7 On careful perusal of the record and proceedings, it appears that in LAR No.181 of 2002 (First Appeal No.816 of 2017), the Special Land Acquisition Officer has treated the acquired lands Gat

Nos.181 and 184 respectively as Jirayat lands and accordingly awarded the compensation at the rate of Rs.425/- and Rs.390/- per Are respectively for the said acquired lands. It further appears that though the Appellants / Claimants have produced on record the 7/12 extracts Exhibits 19 and 20, the Reference Court has not considered the same. On perusal of the 7/12 extract Exhibit 19, it appears that the acquired lands Gat Nos.181 and 184 are seasonally irrigated on the water of well situated in Gat No.183. Further, the Appellants / Claimants have also deposed about the same in his affidavit of evidence. It is also a part of record that the well situated in the land Gat No.183 came to be acquired by the Government and accordingly, the Special Land Acquisition Officer has awarded the compensation separately for the well situated in the land Gat No.183. The Reference Court ought to have treated the acquired lands out of the land Gat No.181 and 184, which are the subject matter of LAR Nos.181 of 2002 (First Appeal No.816 of 2017) as seasonally irrigated land. It has already concluded in the forgoing paras that the Appellants / Claimants in other first appeals are entitled for the compensation at the rate of Rs.930/- per Are for the Jirayat land in terms of the compromise arrived at between the parties before the Lok Adalat and as such, the Appellants / Claimants in First Appeal No.816 of 2017 are entitled for

the compensation at the enhanced rate of Rs.1,395/- per Are for their acquired land, which is seasonally irrigated land.

So far as the acquired land, which is subject matter of LAR No.187 of 2002 (First Appeal No.818 of 2017) is concerned, alongwith the land the Government has acquired the well situated in land Gat No.89 alongwith house and Hut and accordingly awarded the compensation separately. The Special Land Acquisition Officer has also awarded the compensation for the land admeasuring 30 Ares by treating the said land as Bagayat land and awarded the compensation for the remaining land admeasuring 24 Ares land by treating it as Jirayat land. The Reference Court has also awarded the compensation for the said land admeasuring 30 Ares of land at the rate of Rs.1,588/- per Are by treating it as Bagayat land and Rs.794/- per Are for the remaining land by treating it as Jirayat land. In view of the settlement arrived at between the parties in the said reference petition before the Lok Adalat, the Appellants / Claimants in First Appeal No.818 of 2017 are entitled for the compensation of double the amount as rate fixed in the Lok Adalat and as such, entitled for the compensation at the rate of Rs.1,860/- per Are for the land admeasuring 30 Ares and Rs.930/- per Are for the remaining land by treating the said land as Jirayat land.

It further appears on the perusal of the record that though the Special Land Acquisition Officer has treated the acquired land, which is subject matter of LAR No.185 of 2002 as Jirayat land and further the Reference Court has also awarded the compensation at the enhanced rate of Rs.794/- per Are by treating the said land as Jirayat land, in view of the 7/12 extract Exhibit 21 indicating the crops pattern, the Appellants / Claimants in First Appeal No.821 of 2017 are entitled for the compensation by treating their acquired land as seasonally irrigated land. The Reference Court has not considered the 7/12 extract Exhibit 21 and the crop pattern as reflected from the said 7/12 extract. The Appellants / Claimants in this appeal are entitled for the compensation at the enhanced rate of Rs.1,395/- per Are by treating their agricultural acquired land as seasonally irrigated land.

Similarly, the Reference Court has also not considered the 7/12 extract Exhibit 21 in LAR No.178 of 2002. There is an entry of well situated in Gat No.85. The Reference Court has mechanically awarded the compensation at the rate of Rs.794/- per Are by treating the land as Jirayat land. The Special Land Acquisition Officer has also paid the compensation separately for the well situated in the land Gat No.85. In view of the same, the Appellants / Claimants in First Appeal No.822 of 2017 are entitled for the compensation at the enhanced rate

of Rs.1,395/- per Are by treating their acquired land as seasonally irrigated land.

8 In view of the above discussion, the common judgment and award passed by 2nd Joint Civil Judge Senior Division, Aurangabad dated 20th October, 2011 in LAR No.178 of 2002 alongwith other connected reference petitions, requires modification. Hence, the following order:

ORDER

- I. **First Appeal No.: 817 of 2017** (Shivaji Shankar Gaikwad Vs. The State of Maharashtra and another),
First Appeal No.: 819 of 2017 (Balu Shankar Jadhav (Died) Through L.Rs. Ashabai Balu Jadhav and others Vs. The State of Maharashtra and another),
First Appeal No.: 820 of 2017 (Raghunath Baburao Dhokle Vs. The State of Maharashtra and another),
First Appeal No.: 823 of 2017 (Subhash Shankar Gaikwad Vs. The State of Maharashtra and another) and **First Appeal No.: 824 of 2017** (Anna Sayaji Shingare Vs. The State of Maharashtra and another)

are hereby partly allowed with proportionate costs.

- II. The common judgment and award passed by 2nd Joint Civil Judge Senior Division, Aurangabad dated 20th October, 2011 in LAR Nos.182, 173, 177, 65 and 172 of 2002, is hereby modified in the following manner:

“The Respondents shall pay the compensation for the acquired lands at the rate of Rs.930/- per Are alongwith all the statutory benefits as awarded by the Reference Court.”

- III. **First Appeal No.: 816 of 2017** (Manohar Sakharam Gaikwad Vs. The State of Maharashtra and another), **First Appeal No.: 821 of 2017** (Sahebraoa Yadav Pawar Vs. The State of Maharashtra and another), and **First Appeal No.: 822 of 2017** (Madhav Baburao Dhokle Vs. The State of Maharashtra and another), are hereby partly allowed with proportionate costs.

- IV. The common judgment and award passed by 2nd Joint Civil Judge Senior Division, Aurangabad dated 20th October, 2011 in LAR Nos.181, 185 and 178 of 2002,

is hereby modified in the following manner:

“The Respondents shall pay the compensation for the acquired lands at the rate of Rs.1,395/- per Are alongwith all the statutory benefits as awarded by the Reference Court.”

V. **First Appeal No.: 818 of 2017** (Ramhari Ganpat Gaikwad Vs. The State of Maharashtra and another) is hereby partly allowed with proportionate costs.

VI. The judgment and award passed by 2nd Joint Civil Judge Senior Division, Aurangabad dated 20th October, 2011 in LAR No.187 2002, is hereby modified in the following manner:

“The Respondents shall pay the compensation at the enhanced rate of Rs.1,860/- per Are for the permanently irrigated land out of the land Gat No.89 admeasuring 30 Ares and pay the compensation at the enhanced rate of Rs.930/- per Are for the acquired land out of land Gat No.89 admeasuring 24 Ares, with all the

statutory benefits as awarded by the Reference Court.”

VII. All the appeals are accordingly disposed of.

[V. K. JADHAV, J.]

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