

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

FIRST APPEAL NO. 1392 OF 2014

Maharashtra Krishna Valley
Development Corporation,
Through Executive Engineer,
Medium Project Division,
Osmanabad, Dist. Osmanabad.

...APPELLANT
(Orig. Respo. No. 2)

Versus

1. The State of Maharashtra
Through Collector, Osmanabad,
Dist. Osmanabad.

2. Shantabai W/o Tulshiram Tambe,
Age. 53 years, Occu. Agri.
R/o. Tambewadi, Tq. Paranda,
Dist. Osmanabad.

...RESPONDENTS.
(Orig. Respo. No. 1
& Orig. Claimants.)

...

Advocate for Appellant : Mr. Rajale Gulab
Advocate for Respondent/State : Mr. B.V. Virdhe

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**WITH
CROSS OBJECTION STAMP NO. 25973 OF 2015
IN FIRST APPEAL NO. 1392 OF 2014**

Shantabai Tulshiram Tambe (Died) Through L.Rs.
Ramchandra Tulshiram Tambe and Another.

...APPLICANTS
(Resp. in F.A.)

Versus

Executive Engineer, Minor Irrigation Division,
Osmanabad and Another.

...Non-Applicants.

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Advocate for Applicants : Mr. V.V. Ingale
 Advocate for Respondent No. 1: Mr. Rajale Gulab
 Advocate for Respondent/State : Mr. B.V. Virdhe

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WITH

FIRST APPEAL NO. 1393 OF 2014

Maharashtra Krishna Valley
 Development Corporation,
 Through Executive Engineer,
 Minor Irrigation Division,
 Osmanabad, Dist. Osmanabad.

...APPELLANT

(Orig. Respo. No. 2)

Versus

1. The State of Maharashtra
 Through Collector,
 Osmanabad.
2. Vasant S/o Krishna Mahajan,
 Age. 55 years, Occu. Agri.,
 R/o. Tambewadi, Tq. Paranda,
 Dist. Osmanabad.

...RESPONDENTS.

(Orig. Respo. No. 1
 & Orig. Claimants.)

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Advocate for Appellant : Mr. Rajale Gulab
 Advocate for Respondent/State : B.V. Virdhe
 Advocate for Respondent No. 2 : Mr. V.V. Ingale

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WITH

FIRST APPEAL NO. 1394 OF 2014

Maharashtra Krishna Valley
 Development Corporation,
 Through Executive Engineer,
 Medium Project Division,
 Osmanabad, Dist. Osmanabad.

...APPELLANT

(Orig.Resp. No. 2)

Versus

1. The State of Maharashtra,
Through Collector, Osmanabad.
2. Vishwas Shridhar Mahajan,
Age. 37 years, Occu. Agri.
R/o. Tambewadi, Tq. Paranda,
Dist. Osmanabad.
3. Nanasaheb Shridhar Mahajan,
Age. 30 years, Occu. Agri.
R/o. As above.
4. Kaushalyabai Shridhar Mahajan,
Age. 55 years, Occu. Agri.
R/o. As above.
5. Surekha Narayan Thite,
Age. 35 years, Occu. Household,
R/o. Agalgaon, Tq. Barshi,
Dist. Solapur.
6. Daivashala W/o Bhausahab Havale,
Age. 32 years, Occu. Household,
R/o. Deolali, Tq. Paranda,
Dist. Osmanabad.
7. Devidas Ramrao Mahajan,
Age. 45 years, Occu. Agri.
R/o. As above.

...RESPONDENTS.
(Orig. Resp. No. 1 &
Orig. Claimants.)

...

Advocate for Appellant : Mr. Rajale Gulab
Advocate for Respondent/State : B.V. Virdhe

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WITH

FIRST APPEAL NO. 737 OF 2016

Vasant Krishna Mahajan (Died) Through L.Rs.

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Abhijeet S/o Vasant Mahajan & Another.

...APPELLANTS.

Versus

The State of Maharashtra through Collector,
Osmanabad and Another.

...RESPONDENTS.

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Advocate for Appellant : Mr. Murge Estiling S.

Advocate for Respondent/State : B.V. Virdhe

Advocate for Respondent No. 2 : Mr. Rajale Gulab

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WITH

FIRST APPEAL NO. 738 OF 2016

Devidas S/o. Ramrao Mahajan.

...APPELLANT

Versus

The State of Maharashtra through Collector,
and Another.

...RESPONDENTS.

...

Advocate for Appellant : Mr. Murge Estiling S.

Advocate for Respondent/State : B.V. Virdhe

Advocate for Respondent No. 2 : Mr. Rajale Gulab

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CORAM : V.K. JADHAV, J.

Dated: April 26, 2017

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ORAL JUDGMENT :-

1-I. Being aggrieved by the common judgment and award passed by the Reference Court in LAR Nos. 859/1997, 493/1997, 860/1997, the respondent-Acquiring body has preferred First Appeal

Nos.1392/2014, 1393/2014 and 1394/2014 respectively.

II. The claimants in First Appeal No.1393/2014 and 1394/2014 filed first appeal no.738/2016 and 737/2016 respectively.

2. Though notification under section 4 of the Land Acquisition Act is different compared to the other group of appeals, from the same village, the lands which are subject matter of the present appeals also came to be acquired for the same project from the same village Tambewadi. The Reference Court has awarded the compensation to the acquired lands in L.A.R.493/1997 by treating the lands as irrigated lands at the rate of Rs.49,777/- per acre and in LAR no.859/1997 and LAR No. 860/1997 awarded the compensation to the acquired lands at the rate of Rs.37,332/- by treating the land as seasonally irrigated lands.

3. In all the aforesaid appeals, only in F.A. Nos.1392/2014 respondents-original claimants preferred

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cross-objection for enhancement in compensation as awarded by the reference Court.

4. In all the aforesaid land references, the agricultural lands owned and possessed by the respondents-claimants, situated at village Tambewadi, Tq. Paranda, Dist. Osmanabad came to be acquired by the Government for construction of Tambewadi Medium Project under notification under section 4 of the L.A. Act published in the Government Gazette on 31.8.1989.

5. In a group of first appeals referred as I, II, in the above mentioned paragraphs, the Reference Court has awarded the compensation at the enhanced rate of Rs.49,777/- and Rs.37,332/- per acre. In all the aforesaid reference petitions, the Reference Court placed reliance on the sale deed dated 3.4.1987 of village Umbarge.

6. The Respondents-original claimant has preferred his cross objection on the ground that the Reference Court in LAR No.511/1994 and 512/1994 in respect of

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the lands acquired for the same project though under different awards, awarded the compensation at the enhanced rates of Rs.72,000/- per acre. Hence all these first appeals and cross appeals.

7. The learned counsel for the appellant-acquiring body submits that the acquired lands are situated far away from the lands under the sale instance dated 3.4.1987 of village Umbarge. Learned counsel submits that, said sale instance dated 3.4.1987 is two years prior to section 4 notification in respect of the present acquired lands. Learned counsel submits that it is the duty of the claimants to lead evidence in support of its case and in absence of any satisfactory evidence, court is not under legal obligation to determine the market value merely as per prayer of the claimants. In the instant matter, the claimants have not produced on record any site map/map indicating the exact distance between the acquired land and land under sale instance dated 3.4.1987 of village Umbarage and as such, there was no satisfactory material placed before the Reference

Court to determine the correct market price of the acquired land. Learned counsel submits that, respondents-claimants have claimed compensation at the enhanced rate of Rs.60,000/- per acre before the Reference Court and now they are claiming Rs.72,000/- per acre by filing cross objections/appeals. Learned counsel submits that, inordinate delay has been occurred in filing the cross objections/appeals and this Court has condoned the said delay on the condition that the respondents claimants shall not be entitled to claim interest of the said period and further directed the respondents-claimants to file undertaking to that effect. Respondents-claimants have also filed undertaking before this Court and as such, in the event, if this Court enhanced the compensation by allowing or partly allowing their cross objections/appeals, respondents-claimants would not be entitled to claim interest for the said period of delay in terms of their undertakings. Learned counsel for the appellant-acquiring body, in the alternate submits that, claim for the enhanced compensation of claimants/cross objectors can be

considered to the extent of enhancement at the rate of Rs.50,000/- per acre as awarded by the Division Bench of this Court [Coram:S.V.Gangapurwala and A.M.Badar, JJ.] dated 20.6.2014 (page 32) of compilation.

8. Learned counsel for the appellant-acquiring body has placed his reliance on a judgment in case of **Bhule Ram Vs. Union of India and another** reported in (2014)

11 Supreme Court Cases 307.

9. The learned counsel for the respondents-claimants/cross objector submits that, the Reference Court in respect of the acquired lands from the same village Tambewadi and for the same project awarded the compensation at the enhanced rate of Rs.72,000/- per acre vide judgment and award passed on 11.12.2011 in LAR No.511/1994 and 512/1994. The Reference Court has awarded the compensation at the enhanced rate of Rs.72,000/- per acres by relying upon the sale deed dated 3.4.1987 of village Umbarage. Being aggrieved by the same, the appellant-acquiring body herein has

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preferred First Appeal no.1365/2013 and 1363/2013 before this Court and this Court by order dated 10.9.2015 dismissed the said First Appeals by confirming the order passed by the Reference Court in the aforesaid Land Acquisition Reference petitions. Learned counsel submits that, the claimants are entitled for the compensation for their acquired lands at same rate since the order passed by this Court in the said first appeal has now attained finality and admittedly, the acquiring body or the State Government have not preferred any appeal against the said judgment before the Supreme Court. Learned counsel submits that, though the claimants have claimed compensation before the Reference Court at the enhanced rate of Rs.60,000/- per acre, the claimants are entitled for just and reasonable compensation for which they are ready to pay deficit court fees, if directed by this Court. Learned counsel submits that rightful claim of the claimants cannot be denied on the ground of deficit court fees and the claimants are entitled for the compensation as per the market value.

10. Learned counsel for the claimants in order to substantiate his contentions placed his reliance on a case **Chandrashekhar and others Vs. Addl. Special Land Acquisition Officer** reported in **2009 Supreme Court 3012**.

11. I have carefully perused the judgment and award passed by the reference court as categorized in group I and II. It appears that, relying on the same sale deed dated 3.4.1987 of village Umbarege, the Reference Court has awarded the compensation at two different enhanced rates. In the group of appeals referred in I the Reference Court has awarded the compensation at the enhanced rate of Rs.37,332/- per Acre and in group No.II in the same state of facts and evidence the reference Court has awarded the compensation at the rate of Rs.49,777/- per acre. In all these reference petitions, the status of the land as irrigated or seasonally irrigated land is not disputed. It further appears that in LAR Nos.511/1994 and 512/1994, the Reference Court has awarded the compensation at the enhanced rate of Rs.72,000/- per

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acre for the acquired land by treating the said land as seasonally irrigated land. It thus appears that, there is no uniformity in the compensation awarded by the Reference Court at the enhanced rate. However, this Court had an occasion to examine the judgment and Award passed by the Reference Court in the said LAR No.511/1994 and 512/1994 and this Court while disposing off FA no.1365/2013 with FA No.1363/2013 arises out of the judgment and award passed by the Reference Court in the aforesaid reference petitions No.511/1994 and 512/1994 in paragraph No.4 of the judgment has observed that sale instance has been properly considered by the Reference Court. Admittedly, the order passed by this Court in FA No.1365/2013 with FA No.1363/2013 has now attained finality.

12. Though the Division Bench of this court by order dated 20.6.2014 confirmed the order passed by the Reference Court, awarding the compensation at the enhanced rate of Rs.50,000/- per acre for the land from the village Tambewadi, however, it is to be noted here

that those appeals came to be preferred by the present acquiring body and the respondents-claimants therein have not preferred any cross objections. However, the learned Single Judge of this court had an occasion to examine the judgment and award passed by the Reference Court awarding compensation at the enhanced rate of Rs.72,000/- per acre for the acquired land in the same village Tambewadi and accordingly confirmed the order passed by the Reference Court.

13. In view of the same, the claimants are entitled for the compensation at the same rate as awarded by the Reference Court in those LAR Nos.511/1994 and 512/1994 confirmed by this Court in FA Nos. 1365/2013 with 1363/2013 and the same is also essential to maintain the uniformity in grant of compensation at the enhanced rate for the acquired lands of the same village for the same project under the same notification. Hence, following order.

O R D E R

I] The appeals preferred by the acquiring

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body bearing First Appeal Nos.1392/2014, 1393/2014 and 1394/2014 are hereby dismissed. In the circumstances there shall be no order as to costs.

II] CROSS OBJECTION STAMP NO.25973 OF 2015 IN FIRST APPEAL NO.1392 OF 2014 is partly allowed with proportionate costs.

III] The judgment and award passed by the Reference Court in the Land Reference Petition No.859/1997 (CROSS OBJECTION STAMP NO.25973 OF 2015 IN FIRST APPEAL NO.1392 OF 2014) is hereby modified in the manner that the claimants are entitled for the compensation for the acquired lands at the enhanced rate of Rs.52,000/- (Rs. Fifty Two Thousand) per acre with all statutory benefits as awarded by Reference Court.

IV] First Appeal Nos.737/2016 (LAR No.493/1997) is hereby partly allowed with proportionate costs.

V] The judgment and award passed by the Reference Court in the Land Reference Petition No.493/1997 (First Appeal

Nos.737/2016) is hereby modified in the manner that claimants in this Land Reference Petition are entitled for the compensation for the acquired lands at the enhanced rate of Rs.72,000/- (Seventy Two Thousands) per acre with all statutory benefits as awarded by Reference Court.

VI] First Appeal No.738/2016 (LAR No.860/1997) is hereby partly allowed with proportionate costs.

VII] The judgment and award passed by the Reference Court in the Land Reference Petition No.860/1997 (First Appeal No.738/2016) is hereby modified in the manner that the claimants are entitled for the compensation for the acquired lands at the enhanced rate of Rs.52,000/- (Rs. Fifty Two Thousand) per acre with all statutory benefits as awarded by Reference Court.

VIII] In view of the order passed by this Court and in view of the undertaking furnished by the claimants before this Court, the claimants are not entitled for the interest for the period for which delay sought to be condoned.

- IX] Award be drawn up as per the above modifications.
- X] All the First appeals and Cross objection are disposed of.
- XI] In view of disposal of first appeals and cross objections, pending civil applications, if any, also stand disposed of.
- XII] The claimants/cross objectors shall pay the deficit court fees within four weeks from the date of this Order.

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(V.K. JADHAV, J.)

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