

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

**FIRST APPEAL NO. 4142 OF 2016
WITH
CIVIL APPLICATION NO. 12211 OF 2016**

The Executive Engineer,
Minor Irrigation Division, Osmanabad.
Through Godavari Marathwada Irrigation
Development Corporation, Aurangabad

... APPELLANT
(Ori. Respondent No. 2)

VERSUS.

1. Dyanoba Baba Hake,
Age: Major Occup: Agriculturist,
R/o: Ramkund, Tq. Bhoom,
District Osmanabad.
2. The State of Maharashtra,
Through : The Collector, Osmanabad.RESPONDENTS
(Respdt. No. 1 is Ori. Claimant
and Respdt.No. 2 is ori. Respdt No. 1)
...

WITH

**FIRST APPEAL NO. 4143 OF 2016
WITH
CIVIL APPLICATION NO. 12209 OF 2016**

The Executive Engineer,
Minor Irrigation Division, Osmanabad.
Through Godavari Marathwada Irrigation
Development Corporation, Aurangabad

... APPELLANT
(Ori. Respondent No. 2)

VERSUS.

1. Tukaram Baba Hake,
Age: Major Occup: Agriculturist,
R/o: Ramkund, Tq. Bhoom,
District Osmanabad.
2. The State of Maharashtra,
Through : The Collector, Osmanabad.RESPONDENTS
(Respdt. No. 1 is Ori. Claimant
and Respdt.No. 2 is ori. Respdt No. 1)
....

Mr. S.G. Bhalerao, Advocate for appellant
Mr. A.N. Nagargoje, Advocate for respondent No. 1 - original claimants
Mr. S.J. Salgare, AGP for respondent No. 2 - State

CORAM : K.K. SONAWANE, J.

DATE : 12th DECEMBER, 2017.

JUDGMENT :-

1. Heard. **Admit.** With consent of the learned counsel for parties, the matters are heard at the time of admission.

2. The points of controversy in these appeals are identical and lies within a narrow compass relating to valuation of the lands under acquisition determined by the Reference Court. Therefore, both appeals are dealt with together for its adjudication finally by this common judgment.

3. Agricultural land Survey No. 41/1 admeasuring 0.82 R and Survey No. 43/3 admeasuring 0.23 R located at village Ramkund were acquired by the appellant-Acquiring Body for construction of storage tank of village Wakwad, Ta. Bhoom, District Osmanabad. Notification under section 4 of the Land Acquisition Act, 1894 (for short "Act of 1894") was published on 18-05-1995. After compliance of procedural formalities Land Acquisition Officer (for short "LAO") declared the award under section 11 of the Act of 1894 on 11-08-1998 and awarded Rs. 16,000/- per hectare as market price to the acquired land. The claimants – original owners of the lands under acquisition did not satisfy with the quantum of compensation determined by LAO. Therefore, Reference Applications were made under section 18 of the Act of 1894. The Reference Court considered the evidence adduced on record and fixed the compensation @ Rs. 55,000/-per hectare for the

acquired lands of the claimants. The appellant-Acquiring body found reluctant to accept the market value of the acquired land quantified by the Reference Court. The appellant-Acquiring Body casts allegation of exorbitant and excessive compensation amount awarded to the claimants. Therefore, appeals came to be filed by Acquiring Body for redressal.

4. Learned counsel for the appellant submits that the impugned Judgment and Award of the Reference Court is illegal, unjust and arbitrary one. The Reference Court did not consider the factual aspect in proper manner and awarded exorbitant compensation amount in favour of claimants. The findings expressed by the Reference Court are totally rests on surmises and conjectures. The sale instance produced on record can not be considered as comparable sale instance. It was the sale deed of small area of land. It would not represent correct market value to ascertain the price of the lands under acquisition. There was no material to substantiate the claim of the claimants for enhancement of compensation.

5. Per contra, Mr. Nagargoje, learned counsel for respondents-original claimants submits that the Reference Court dealt with reference petitions in proper manner and rightly fixed the market value of the acquired lands. The lands of the claimants under acquisition were fertile and irrigated. Reference Court has applied principle of deduction while computation of market value of the lands of claimants in its proper prospective. The findings of Reference Court for determination of compensation deserves to be upheld.

6. Admittedly, single sale instance (Exh.18) was produced on record before the Reference Court on behalf of claimants. Sale instance was of agricultural land admeasuring 0.14 R located at village Wakwad, Tahsil Bhoom, District Osmanabad. The sale-deed was executed on 06-05-1992 for consideration of Rs.40,000/-. It is not disputed that the lands under acquisition located at village Ramkund were acquired by the appellant- Acquiring Body / State of Maharashtra for construction of Water Storage Tank at village Wakwad. Obviously, lands located within precincts of village Ramkund should have been located abutting to the land situated within the vicinity of village Wakwad. It would be visualized that the lands of both villages Ramkund and Wakwad must have similar characteristic and potential value being proximate with each other. The alleged sale instance (Exh.18) produced on record was of land situated within vicinity of Wakwad nearby the acquired lands of claimants. The document of sale instance was executed within reasonable period of the date of notification under section 4 of Act of 1894. Obviously, it would be comparable sale instances to provide good guide for ascertaining the price of lands under acquisition in this case. It is to be noted that appellant - Acquiring Body did not lead any sort of evidence in this matter before Reference Court to traverse the contentions propounded on behalf of claimants.

7. Learned counsel for appellant- Acquiring Body harped on the circumstances that market value of the large area of lands cannot be assessed on the basis of rates fixed for small area. He raised objection

that sale transaction produced on record before Trial Court was of small area admeasuring 0.14 R only. It can not be considered as a comparable sale instance because it would not represent correct market value for the lands under acquisition.

8. The Hon'ble Apex Court in the case of – **Ravinder Narain and another Versus Union of India**, reported in **AIR 2003 Supreme Court 1987** observed in para 6 and 7 as below :-

"6. Where large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to three decisions of this Court in The Collector of Lakhimpur Vs. Bhuban Chandra Dutta (AIR 1971 SC 2015). Prithvi Raj Taneja (dead) by L.Rs. Vs. The State of Madhya Pradesh and another (AIR 1977 SC 1560) and Smt. Kausalya Devi Bogra and others, etc. Vs. Land Acquisition Officer, Aurangabad and Anr. (AIR 1984 SC 892).

7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/ adjustments have to be made while determining the prices."

9. It would be reiterated that except the solitary sale instance produced on record, there are no other material available for appreciation in this case. The Hon'ble Supreme Court has delineated that it would be justifiable to adjudicate the issue by making comparison of the value paid for small area. Therefore, there was no impediment to appreciate the sale instance of small area of 0.14 R land

for comparison to ascertain the price of acquired lands. The principle of deduction adopted by the Reference Court on account of classification of acquired land as Jirayat land as well as the small area of land under sale etc., found amenable within limitation. The Reference Court dealt with the circumstances in proper manner and calculated the just and reasonable market value for the lands in question. There is no legal infirmity or error in the findings expressed by the Reference Court. It is also worth to mention that the area of lands under acquisition were admeasuring 0.82 R and 0.23 R only. In view of marginal size of acquired lands the approach of Reference Court while computing the market value appears sustainable and appropriate one.

10. In the light of aforesaid discussion, there is no impediment to conclude that the market value fixed by Reference Court appears to be reasonable and appropriate price for lands under acquisition. There is no error or imperfection in the findings expressed by the Reference Court. The interference in the conclusion drawn by the Reference Court at the instance of appellant - Acquiring Body is totally unwarranted and indefensible one. In contrast, the impugned Judgment and Award of the Reference Court is liable to be made absolute and confirmed. In the result, The appeals being devoid of merit deserve to be dismissed.

11. Accordingly, appeals stand dismissed. No order as to costs.

12. In view of aforesaid, pending civil applications do not survive and stand disposed of.

[K. K. SONAWANE]
JUDGE