

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2098 OF 2015

Executive Engineer, I.P.S. Division, Omerga
District Osmanabad ...Appellant

versus

Dhondiba @ Dhondiram Harischandra Pawar
and others ...Respondents

WITH
FIRST APPEAL NO. 1453 OF 2015

Executive Engineer, I.P.S. Division, Omerga
District Osmanabad ...Appellant

versus

Swaminath Ramchandra Birajdar
(Died) through his L.Rs. and others ...Respondents

WITH
FIRST APPEAL NO. 1454 OF 2015

Executive Engineer, I.P.S. Division, Omerga
District Osmanabad ...Appellant

versus

Sharnappa Channappa Umate and others ...Respondents

WITH
FIRST APPEAL NO. 1455 OF 2015

Executive Engineer, I.P.S. Division, Omerga
District Osmanabad ...Appellant

versus

Sitaram Gopal Jadhav and others ...Respondents

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WITH
FIRST APPEAL NO. 1456 OF 2015

Executive Engineer, I.P.S. Division, Omerga
District Osmanabad ...Appellant

versus

Vishwanath Channappa Umate and others ...Respondents

WITH
FIRST APPEAL NO. 1457 OF 2015

Executive Engineer, I.P.S. Division, Omerga
District Osmanabad ...Appellant

versus

Shivsharan Vithoba Kale and others ...Respondents

WITH
FIRST APPEAL NO. 1458 OF 2015

Executive Engineer, I.P.S. Division, Omerga
District Osmanabad ...Appellant

versus

Dhondiba Yadav Kale and others ...Respondents

WITH
FIRST APPEAL NO. 1459 OF 2015

Executive Engineer, I.P.S. Division, Omerga
District Osmanabad ...Appellant

versus

Appa Mohd. Majkaure (Died)
Through L.Rs. and others ...Respondents

WITH
FIRST APPEAL NO. 1460 OF 2015

Executive Engineer, I.P.S. Division, Omerga

District Osmanabad

...Appellant

versus

Sanjay Dhondiba Koli and others

...Respondents

.....
Mr. Shirish G. Sangle, advocate for the appellant
Mr. L.C. Patil, advocate for the respondents-claimants
Mr. A.M. Phule, AGP for the respondent State and authority.
.....

CORAM : V. K. JADHAV, J.
DATED : 13th JUNE, 2017

PER COURT:-

1. Heard.
2. Being aggrieved by the common judgment and award dated 13.7.2011 passed in L.A.R. No. 792 of 2007 and other connected Land Acquisition References and another common judgment and award dated 18.06.2011 passed in L.A.R. No. 803 of 2007 and other connected Land Acquisition References, by the learned IInd Joint Civil, Senior Division, Osmanabad, the original respondent-acquiring body has preferred these appeals.
3. Brief facts giving rise to the present appeals are as follows:-
 - a) The agricultural lands owned and possessed by the respondents-original claimants, situated at village Keshegaon came to be acquired by the Government for the purpose of construction of

Keshegaon storage tank at Keshegaon, Tq. Tuljapur, District Osmanabad. Notification under Section 4 of the Land Acquisition Act 1894, came to be published on 24.6.2000 and S.L.A.O. has awarded compensation at the rate of Rs.40,000/- per hectare for group A and Rs.45,000/- per hectare for group B. Being aggrieved by the inadequate compensation awarded the S.L.A.O., the respondents-original claimants preferred separate land acquisition references before the Civil Court, Osmanabad for grant of enhanced compensation on various grounds.

b) It has been contended in the claim petitions that the S.L.A.O. has not awarded just and reasonable compensation towards acquired lands and structures thereon. The S.L.A.O. had determined the market value of the lands on the basis of land revenue assessment and S.L.A.O. has also ignored the quality and fertility of the lands. It has also been contended that the sale instance relied upon by the S.L.A.O. is neither of the same quality of acquired land nor situated in its close vicinity. According to the claimants, the market price of the acquired land in the vicinity was Rs.80,000/- per acre at the time of issuance of notification under section 4 of the Land Acquisition Act. It is also case of the respondents-original claimants that the acquired land is irrigated and Bagayat land with the help of well water situated in the remaining land of the same

block number. The village Keshegaon is situated at about 3 kilometers from National Highway No.9 and village is having facilities like school, electricity, water, transportation etc.

c) The appellant-acquiring body and the State have strongly resisted the reference petitions by filing their written statements in the respective reference petitions. It has been contended that the claimants have put forth false and excessive claims. It has also been contended that the S.L.A.O. has awarded just and reasonable compensation.

d) The respondents-original claimants adduced oral and documentary evidence in support of their contentions. The appellant acquiring body and the State have not adduced any evidence. The learned IIInd Joint C.J.S.D. Osmanabad, by its impugned judgment and award, awarded the compensation at enhanced rate of Rs.30,000/- per acre for Jirayat land and Rs.40,000/- per acre for seasonal irrigated land. Being aggrieved by the same, the acquiring body has preferred these appeals.

4. Learned counsel for the appellant-acquiring body submits that the reference court has mainly relied upon the sale deed dated 23.3.1999 Exh.14 (Exh.17 in another group of L.A.Rs.). The land

under sale instance Exh.14/17 is seasonally irrigated land. Learned counsel submits that the claimants have also admitted during the cross examination that the land of the purchaser Rukminibai is situated just adjacent to the land under sale instance and further land under sale instance is adjacent to the canal. Furthermore, there was government road going to Akkalkot from Tuljapur towards western side of the land under sale instance. Further, the claimants have also admitted in the cross examination that the sale deed Exh.14/17 relied upon by them is of higher price in the village. Learned counsel submits that the sale instance Exh.14/17 is not comparable sale instance for determination of compensation for the acquired land. The reference court has deducted 20% of the amount from consideration of the sale instance for determination of the market value of the acquired land. The reference court ought to have deducted 30% to 40% of the amount from the sale instance owing to the circumstances as discussed above. Thus, the reference court has awarded exorbitant amount of compensation.

5. Learned counsel for the respondents-original claimants submits that the sale instance Exh.14/17 is from the same village Keshegaon and the said sale deeds Exh.14/17 was executed almost one year prior to issuance of notification under Section 4 of the Act in respect of the acquired land. Further, the claimants and the attesting

witnesses of the said sale instance also deposed that the land under sale instance is situated near acquired land. The appellant-acquiring body has not adduced any evidence to rebut the said evidence. Since the purchaser's another land is situated adjacent to the land under sale instance, the reference court has deducted 20% of the amount of said land for determination of market value of the acquired land. However, the reference court has not made any addition as escalation in the price though the sale deeds Exh.14/17 was executed almost one year prior to issuance of notification under Section 4 of the Act in respect of acquired land. Learned counsel submits that the reference court has awarded just and reasonable compensation. No interference is required.

6. On careful perusal of the pleadings, evidence and the common judgment and award passed by the reference court, it appears that the sale instances Exh.14/17 pertains to the land admeasuring 40 R sold for consideration of Rs.50,000/- on 23.3.1999 i.e. one year prior to issuance of Section 4 notification in respect of the acquired land. The said sale instance also from the same village Keshegaon. It further appears that even though the said sale deed Exh.14/17 was executed one year prior to issuance of Section 4 notification in respect of the acquired land, the reference court has not added any amount for determination of compensation in respect of acquired

land. On the other hand, considering the other factors, like purchaser's another land is situated adjacent to the land under sale instance and further the land under sale instance is adjacent to the government road from Akkalkot to Tuljapur, deducted 20% of the amount of consideration of said sale instance for determination of market value of the acquired land.

7. It further appears that the reference court has not considered the submissions of the respondents-original claimants that the acquired lands are irrigated land except in case of land acquisition reference No. 792 of 2007 and 797 of 2007. In my considered opinion, the reference court has given due weightage to the sale instance Exh.14/17 which is of the same village and also deducted just and reasonable amount out of the consideration of the sale instance for determination of market price of the acquired land. I do not find any substance in the submission made on behalf of the appellant acquiring body that the reference court ought to have deducted 30 to 40% of the amount from consideration of the amount of sale instance Exh.14/17 for determination of market price of the acquired land. Furthermore, the reference court has also not accepted the claim of the respondents-claimants pertaining to the well, stone paul, fruit bearing trees etc.. The judgment and award passed by the Reference Court is well reasoned judgment. I do not

find any fault in it. There is no substance in the appeals preferred by the acquiring body. The Reference court after considering the evidence on record has rightly awarded the compensation at the enhanced rate. No interference is required. Hence, I proceed to pass the following order:-

O R D E R

- I. First appeal Nos. 2098 of 2015 (Executive Engineer, I.P.S. Division, Omerga vs. Dhondiba @ Dhondiram Harischandra Pawar and others), 1453 of 2015 (Executive Engineer, I.P.S. Division, Omerga vs. Swaminath Ramchandra Birajdar (Died) through His Lrs. and others), 1454 of 2015 (Executive Engineer, I.P.S. Division, Omerga vs. Sharanapa Channappa Umate and others), 1455 of 2015 (Executive Engineer, I.P.S. Division, Omerga vs. Sitaram Gopal Jadhav and others), 1456 of 2015 (Executive Engineer, I.P.S. Division, Omerga vs. Vishwanath Channappa Umate and others), 1457 of 2015 (Executive Engineer, I.P.S. Division, Omerga vs. Shivsharan Vithoba Kale and others), 1458 of 2015 (Executive Engineer, I.P.S. Division, Omerga vs. Dhondiba Yadav Kale and others), 1459 of 2015 (Executive Engineer, I.P.S. Division, Omerga vs. Appa Mohd. Majkaure (Died) Hi

L.Rs. and others) and 1460 of 2015 (Executive Engineer, I.P.S. Division, Omerga vs. Sanjay Dhondiba Koli and others) are hereby dismissed with costs.

II. All first appeals are disposed of.

(V. K. JADHAV, J.)

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