

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.945 OF 2014

Godawari Marathawada Irrigation
Development Corporation through
The Executive Engineer,
Latur Medium Project, Latur
Dist. Latur

= **APPELLANT**

VERSUS

1. The State of Maharashtra
Through Collector Latur
(Special L.A.O. No.1)
Dist.Latur
2. Shivaji s/o. Venkoba Patil
Age: 45 years, Occu.:Agri,
R/o. Sone-Sangavi,
Tq. Nilanga, Dist. Latur

= **RESPONDENTS**

Mr. M.G. Kolse Patil, Advocate for Appellant;
Mr. S.P. Sonpawale, AGP for Respondent/State.
Mr. B.N. Patil, Advocate for Respondent No.2.

WITH

FIRST APPEAL NO.944 OF 2014

Godawari Marathwada Irrigation
Development Corporation through
The Executive Engineer,
Latur Medium Project Latur
Dist. Latur

= **APPELLANT**

VERSUS

1. The State of Maharashtra
Through Collector Latur
(Special L.A.O. No.1)
Dist.Latur
2. Sheshrao s/o. Eknath Gore,

Age: Major, Occu.: Agri.,
R/o. Tupadi, Tq. Nilanga,
Dist. Latur = **RESPONDENTS**

Mr. M.G. Kolse Patil, Advocate for Appellant;
Mr. S.P. Sonpawale, AGP for Respondent/State.
Mr. B.N. Patil, Advocate for Respondent No.2.

**WITH
FIRST APPEAL NO.943 OF 2014**

Godawari Marathwada Irrigation
Development Corporation through
The Executive Engineer,
Latur Medium Project Latur
Dist. Latur = **APPELLANT**

VERSUS

1. The State of Maharashtra
Through Collector Latur
(Special L.A.O. No.1)
Dist.Latur
2. Shahabuddin s/o. Surajsaheb Shaikh
Age: Major, Occu.-Agri.,
R/o. Shivani (Kothal),
Tq. Nilanga, Dist. Latur = **RESPONDENTS**

Mr. M.G. Kolse Patil, Advocate for Appellant;
Mr. S.P. Sonpawale, AGP for Respondent/State.

**WITH
FIRST APPEAL NO.946 OF 2014**

Godawari Marathwada Irrigation
Development Corporation through
The Executive Engineer,
Latur Medium Project Latur
Dist. Latur = **APPELLANT**

VERSUS

1. The State of Maharashtra
Through Collector Latur
(Special L.A.O. No.1)
Dist.Latur
2. Rajesaheb s/o. Surajsaheb Shaikh
Age: Mejor, Occu.: Agri.,
R/o. Shivani (Kothal),
Tq. Nilanga, Dist. Latur = **RESPONDENTS**

Mr. M.G. Kolse Patil, Advocate for Appellant;
Mr. S.P. Sonpawale, AGP for Respondent/State.

**WITH
FIRST APPEAL NO.1550 OF 2010**

Prabhakar s/o. Eknath Gore
Age: 70 years, Occu: Agril.,
R/o. Tupadi. Tq. Nilanga,
Dist. Latur = **APPELLANT**
(Orig. Claimant)

VERSUS

1. The State of Maharashtra
Through Collector Latur
2. The Executive Engineer,
Medium Project, Latur = **RESPONDENTS**
(Orig. Respondents)

Mr. B.N. Patil, Advocate for Appellant;
Mr. S.P. Sonpawale, AGP for Respondents/State.

**WITH
FIRST APPEAL NO.1552 OF 2010**

Sheshrao s/o. Eknath Gore
Age: 65 years, Occu: Agril.,
R/o. Tupadi. Tq. Nilanga,
Dist. Latur = **APPELLANT**
(Orig. Claimant)

VERSUS

1. The State of Maharashtra
Through Collector Latur
 2. The Executive Engineer,
Medium Project, Latur
- = RESPONDENTS
(Orig. Respondents)**

 Mr. B.N. Patil, Advocate for Appellant;
 Mr. S.P. Sonpawale, AGP for Respondent/State.
 Mr. M.G. Kolse Patil, Advocate for Resp.No.2.

**WITH
FIRST APPEAL NO.1553 OF 2010**

Keshav S/o. Eknath Gore,
 Age: 67 years, Occu.:Agril.,
 R/o. Tupadi, Tq. Nilanga,
 Dist. Latur

**= APPELLANT
(Orig. Claimant)**

VERSUS

1. The State of Maharashtra
Through Collector Latur
 2. The Executive Engineer,
Medium Project, Latur
- = RESPONDENTS
(Orig. Respondents)**

 Mr. B.N. Patil, Advocate for Appellant;
 Mr. S.P. Sonpawale, AGP for Respondent/State.
 Mr. M.G. Kolse Patil, Advocate for Resp.No.2.

CORAM : P.R.BORA, J.

DATE : 20th July, 2017.

ORAL JUDGMENT:

- 1) Heard. First Appeal Nos.1550/2010;
 1552/2010 & 1553/2010 are not on Board. Taken on

Board.

2) The present appeals are arising out of the award pertaining to the lands acquired for Masalga Medium Project. Four appeals are filed by the acquiring body, objecting to the amount of compensation enhanced by the Reference Court, whereas three appeals are filed by the original claimants, seeking enhancement in the amount of compensation, as has been awarded by the Reference Court.

3) As noted above, the lands, which are the subject matter in the present appeals were acquired for the Masalga Medium project. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) in that regard was published in the official Gazette on 1st October, 1992. Award under Section 11 of the Act came to be passed on 13th April, 1996. The Special Land Acquisition Officer offered the compensation for the acquired

land by determining the market value of the said lands @ Rs. 38,235/- per hectare for dry land. Dissatisfied with the amount of compensation so offered by the SLAO, the claimants had filed the Reference Applications, seeking enhancement in the amount of compensation, which were forwarded for adjudication to the District court at Nilanga (hereinafter referred to as the Reference Court). The claimants had claimed the compensation @ Rs. 1,00,000/- per hectare for Jirayat land and Rs. 2,00,000/- per hectare for the irrigated land. In addition to their own testimony, the claimants had placed on record certain sale instances in order to substantiate their claims. No oral or documentary evidence was adduced by the State of by the acquiring body. The learned Reference Court, after having assessed the oral and documentary evidence brought on record before it, determined the market value of the acquired lands @ Rs.1,00,000/- per hectare and accordingly enhanced the amount of compensation. Aggrieved by, as noted above, the acquiring body and the

original claimants both have filed the present appeals.

4) Shri M.G.Kolshe-Patil, learned Counsel appearing for the acquiring body, submitted that the reference court has enhanced the amount of compensation unreasonably, discarding the evidence on record. The learned Counsel submitted that, in fact, when all the claimants were served with notice under Section 5 of the Act, at the first instance, they were supposed to appear before the SLAO and place on record the necessary evidence. The learned Counsel submitted that none of the claimants availed the said opportunity and resultantly, on the basis of the material collected by the SLAO, he determined the market value of the acquired land and awarded the amount of compensation. The learned Counsel submitted that the claimants had, therefore, lost their right to raise any objection as regards to the amount of compensation offered by the SLAO.

5) The learned Counsel further submitted that the Reference Court has wrongly relied upon the sale deed at Exh. 23. The learned Counsel further submitted that the land which was the subject matter of Exh. 23, was admittedly from different village and there is no discussion in the impugned judgment as to whether the said land was in any way comparable with the subject lands in nature and quality etc. The learned Counsel submitted that without making any discussion, it was not open for the Reference Court to rely upon the said sale instance for determining the market value of the acquired lands. The learned Counsel further submitted that the Reference Court has further grossly erred in totally discarding the observations made by the SLAO in the award under Section 11 of the Act.

6) The learned Counsel further submitted that the sale instances which were relied upon by the claimants before the Reference Court, were duly considered and discarded by the SLAO while

making the Award under Section 11 of the Act. The learned Counsel submitted that in the impugned judgment, the Reference Court has not even touched to the said aspect and has not recorded any other finding or recording any such opinion that the sale instances were wrongly kept out of consideration by the SLAO. The learned Counsel submitted that though the Reference Court in its judgment has referred to the decision given by this Court in First Appeal No. 2716/2008, while determining the amount of enhanced compensation, has totally ignored that, in the said appeal this court has confirmed the decision of the Reference Court awarding the compensation to the lands involved in the said matters @ Rs. 30,000/- per acre for dry land. The learned Counsel submitted that since the impugned judgment is delivered without proper appreciation of the evidence on record, the same deserves to be quashed and set aside. The learned Counsel submitted that the SLAO had properly determined the market value of the acquired lands and there was no reason for

the Reference Court to cause any interference in the award so passed under Section 11 of the Act.

7) The learned Counsel in order to support the contentions raised by him, relied upon the following judgments, -

- a) **2011 AIR SCW 3582** – Trishala Jain & anr Vs. State of Uttaranchal and anr;
- b) **(2011)1 SCC 330** – The Special Dy.Collector, Land Acquisition CMDA Vs. J.Sivaprakasam and Ors.
- c) **AIR 1983 Bom.313** – State of Maharashtra Vs. Vishwanathrao Parshuram Mali;
- d) **AIR 2004 SC 1179** – Panna Lal Ghosh Vs. Land Acquisition Collector;
- e) **2013 AIR SCW 4591** -Ramanlal Deochand Shah and anr. vs. State of Maharashtra and Anr.

8) As against it, Shri B.N.patil, learned Counsel appearing for the original claimants in all these matters, submitted that the Reference Court has failed in awarding a just and fair compensation to the claimants. The learned Counsel submitted that the sale instance brought on record by the claimants vide Exh.23, was

perfectly comparable with the lands which are the subject matter in the present appeals. The learned counsel submitted that the land which was the subject matter of Exh.23 was admeasuring 1 hectare and 35 Ares and was sold by a registered sale deed executed on 31st January, 1991 for the consideration of Rs.1,95,000/-. The learned counsel submitted that the said land was thus sold @ Rs. 1,44,400/- per hectare. The learned counsel submitted that the subject lands were acquired vide the notification issued on 1.10.1992, i.e. after the period of about two years or the execution of the sale deed at Exh. 23. The learned counsel submitted that as has come on record the sale deed of the said land, though was executed on 31st January, 1991, the agreement of sale pertaining to the said land was entered into in the year 1990. The learned counsel submitted that in such circumstances, in face, the price which was received to the land involved in Exhibit-23 was liable to be enhanced at least by 20% and the said rate ought to have

been held as a basis for determination of the market value of the acquired lands. The learned Counsel submitted that the Reference Court has caused injustice to the claimants by determining the market value much less than the price received to the said land involved in Exh.23. The learned counsel submitted that in such circumstances, the claimants are entitled for enhancement in the amount of compensation as awarded by the Reference Court and the same may be appropriately enhanced and the awards be accordingly modified.

9) Learned AGP appearing for the respondent submitted that in view of the earlier decision in First Appeal No.2716/2008, with connected appeals, appropriate orders may be passed since the lands which were involved in the said appeal were also acquired for Masalga Medium project.

10) I have carefully considered the submissions advanced by learned counsel appearing

for the respective parties. I have carefully perused the common impugned Judgment and Award . First I would like to refer to the judgment delivered by this Court in First Appeal No. 2716/2008 with the connected First Appeals. Indisputably, the lands which were the subject matter in the said appeals were also acquired for the Masalga Medium project. As is revealing from the discussion made in the said judgment, the said lands were acquired, vide notification under Section 4 of the Act published on 4th August, 1984. In the said matters, the Reference Court had enhanced the amount of compensation by determining the market value of the said lands @ Rs.30,000/- per acre in respect of the dry land and Rs.40,000/- per acre in respect of irrigated lands.

11) The learned Reference Court has referred to the decision in First Appeal No.2716/2008, however, has not made any more discussion as about the observations made in the said judgment

or conclusions recorded by this Court in the said judgment. Admittedly, the decision of this court in the aforesaid appeals has not been challenged before the Hon'ble Apex court and thus has attained the finality. It appears to me that the said judgment, thus, can be a base for determining the market value of the acquired lands in the present appeals. However, I would discuss the said aspect bit later. Before that I would prefer to discuss the evidence which was adduced before the Reference Court and how the same has been appreciated by the Reference Court.

12) It was the contention of the learned counsel appearing for the acquiring body that the same has not been properly appreciated by the Reference Court and pointing out some observations in the judgments relied upon by him, it was sought to be canvassed by him that the Reference Court has erred in determining the amount of compensation in the impugned Judgment and Award. Perusal of the common impugned

Judgment and Award reveals that though there were more than one sale instances placed on record by the claimants, the Reference Court has preferred to rely upon the sale instance at Exh.23. In para 24 to 27, the Reference Court has elaborately discussed the reasons for relying upon the said sale instance. By taking into account plus and minus factors, by comparing the land which was the subject matter of Exh. 23 with the acquired lands, the Reference Court has observed that the land which was the subject matter of Exh.23, though was sold by registered sale deed on 31st January, 1991, the agreement of sale pertaining to the said land was of the year 1990 and, therefore, the Court has given increase in the said price @ 10% per year. As held by the Reference Court, as per the value received for the said land, the market rate on the date of notification was notionally coming to Rs.69,910/- per acre. The Reference Court has further observed that since the land which was the subject matter of Exh. 23 was purchased by son of

one of the claimants in the present matter and since it was adjoining land to the land owned by the said person, some deductions were liable to be made from the value received to the said land. The learned Reference Court has, therefore, by making appropriate deductions, determined the market value of the acquired lands @ Rs. 1,00,000/- per hectare.

13) After having considered the entire evidence on record and the reasons assigned by the Reference Court, it does not appear to me that the Reference Court has committed any error in determining the market value of the acquired lands. From the evidence on record it is difficult to accept the contention of the acquiring body that the Reference Court has given unreasonable hike in the market value of the acquired lands.

14) At the same time, though the claimants are seeking enhancement in the amount of

compensation, as has been awarded by the Reference Court, no such case is made out even by the claimants showing any inherent error committed by the Reference Court in determining the market value of the acquired lands. Moreover, as has been noted by me earlier, for the lands which were acquired for same Masalga Medium project in the year 1984, the amount of compensation was determined @ Rs.30,000/- per acre for non-irrigated land and @ Rs. 40,000/- per acre for irrigated land and this Court in First Appeal No.2716/2008 has confirmed the judgment and award passed in that regard by the Reference Court.

15) Considering the aforesaid aspects, it does not appear to me that the Reference Court has committed any error in determining the market value of the acquired lands @ Rs.40,000/- per acre. I, therefore, do not see any merit in the appeals filed by the acquiring body as well as by the claimants.

16) In view of the finding recorded by me that the Reference Court has correctly determined the market value of the acquired lands, all the present appeals deserve to be dismissed and are accordingly dismissed, however, without any order as to cost. Pending civil application, if any, stands disposed of.

(P . R . BORA)
JUDGE

bdv/