

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

FIRST APPEAL NO.:62 OF 2015

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
SARDARSING GOVIND AND ANOTHER

WITH

FIRST APPEAL NO.:63 OF 2015

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
GOVIND BHIKAN ZURAWAT

WITH

FIRST APPEAL NO.:64 OF 2015

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
DAGDUSING BHIKAN

WITH

FIRST APPEAL NO.:65 OF 2015

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
ASARABAI W/O DODHA (DIED) THROUGH HER L.R'S
SHANTABAI DIGAMBAR SONWANE AND OTHERS

AND

FIRST APPEAL NO.:66 OF 2015

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
JIJABAI KASHINATH SONAWANE

Mr. S. S. Dande, A.G.P. for the Appellants in all the appeals.

Mr. D. A. Bhide, Advocate h/f Mr. C. K. Sonwane, Advocate for the
Respondents in all the appeals.

CORAM : **V. K. JADHAV, J.**
DATE : 02nd February, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the common judgment and award passed by the Joint Civil Judge Senior Division, Aurangabad dated 15th March, 2013 in LAR No.133 of 2007 and LAR No.140 of 2007, the Respondent / State has preferred First Appeal No.62 of 2015 and First Appeal No.63 of 2015. Being aggrieved by the common judgment and award passed by the Joint Civil Judge Senior Division, Aurangabad dated 15th March, 2013 in LAR No.134 of 2007 and connected reference petitions, the Respondent / State has preferred First Appeal No.64 of 2015, First Appeal No.65 of 2015 and First Appeal No.66 of 2016 respectively.

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

- a) According to the Claimants, their lands situated at Haraswadi village, Taluka Kannad, District Aurangabad came to be acquired for construction of percolation tank. Notification under Section 4

came to be published in the Government Gazette on 13th February, 2003 and its substance also came to be published in village on 1st March, 2004. The Special Land Acquisition Officer has awarded the compensation for all the lands under acquisition under award dated 31st July, 2005 at the rate of Rs.500/- per Are by treating the lands as dry lands. Being aggrieved by the inadequate compensation awarded by the Special Land Acquisition Officer as aforesaid, the Claimants preferred the aforesaid land acquisition references.

- b) According to the Claimants in LAR No.133 of 2007 and LAR No.140 of 2007, their acquired lands are seasonally irrigated lands on the water of well. However, the Special Land Acquisition Officer has not considered the same and awarded the inadequate compensation by treating those lands as dry lands. It has also contended that the Special Land Acquisition

Officer has not considered the prevailing market price of the land in the said vicinity.

- c) The Claimants in LAR No.134 of 2007, LAR No.143 of 2007 and LAR No.146 of 2007 have contended in their reference petitions that the Special Land Acquisition Officer has not awarded the compensation as per the market price.
- d) The Appellant / State has strongly resisted all the reference petitions on the ground that the Special Land Acquisition Officer has fixed the market price of the acquired lands by considering all the relevant factors. The learned Joint Civil Judge Senior Division, Aurangabad vide its aforesaid common judgments and awards, awarded the compensation at the rate of Rs.2,700/- per Are for seasonally irrigated land to the Claimants in LAR No.133 of 2007 and LAR No.140 of 2007 and awarded the compensation at the rate of Rs.1,800/- per Are to the Claimants in the aforesaid other reference petitions by considering

the said lands as dry lands. Being aggrieved by the same, the State has preferred these five separate appeals.

4 The learned AGP appearing for the Appellant / State submits that so far as First Appeal No.62 of 2015 and First Appeal No.63 of 2015 are concerned, the Claimants have failed to prove that the acquired lands were seasonally irrigated lands. The learned AGP submits that so far as sale instance Exhibit – 18 relied upon by the Reference Court is concerned, the Reference Court has not observed in the judgment that the said sale instance pertains to a dry land. In absence of any such observation, the Reference Court has awarded the compensation at 1.5 above the consideration of the sale instance by treating the land under sale instance as a dry land. The learned AGP submits that the Special Land Acquisition Officer has considered all the aspects and awarded the just and reasonable compensation. The Reference Court ought to have dismissed the aforesaid land acquisition references.

5 The learned counsel for Respondents / original Claimants submits that, so far as the acquired lands, which are the

subject matter of LAR No.133 of 2007 and LAR No.140 of 2007 are concerned, the Special Land Acquisition Officer has erroneously treated those lands as dry lands and fixed the market price accordingly. The Claimants in those reference petitions have deposed that the lands, which are subject matter of the aforesaid reference petitions, are the irrigated lands and they were taking the crops like Jawar, cotton etc. In 7/12 extract Exhibit – 17, there is also an entry of the well. The Reference Court has rightly given weightage to the crops taken by the Respondents / Claimants in those acquired lands and also further to the fact that there is an entry in the other right column of 7/12 extract in respect of the well situated in the said acquired lands. The sale instance Exhibit – 18 is of the same village Haraswadi and the sale transaction is dated 23rd May, 2001 i.e. three years prior to the date of notification of the present acquired lands. The title of the said sale instance Exhibit – 18 unmistakably points out that the aforesaid sale instance is about the dry land and accordingly the consideration was paid. The Reference Court has rightly given the price escalation of 10% per year considering the date of the sale instance and further deducted 20% of the amount on account of small area of the land

under the sale instance. Further, the learned Joint Civil Judge Senior Division, Aurangabad has rightly valued the compensation by adding 1.5 for the seasonally irrigated land than the dry land and accordingly worked out the rate to be awarded for the seasonally irrigated land. The learned counsel submits that so far as the other lands which are subject matter of remaining land acquisition references are concerned, those are rightly treated as dry lands by the Reference Court and awarded just and reasonable compensation at the rate of Rs.1,800/- per Are by relying upon the said sale instance Exhibit – 18. The learned counsel submits that there is no merit in the appeals and all the appeals are liable to be dismissed.

6 The learned counsel for the Respondents / Claimants in order to substantiate his contentions, placed his reliance on the case of **Chindha Fakira Patil (D) through L. Rs. Vs. The Special Land Acquisition Officers, Jalgaon**, reported in, **AIR 2012 Supreme Court 481**. On careful perusal of the evidence, documents and judgment and award passed by the Reference Court, it appears that the Reference Court has recorded the finding on the issue of nature of land so far as LAR No.133 of 2007 and

LAR No.140 of 2007 are concerned. The Reference Court has not only considered the oral evidence of the Respondents / Claimants in those land acquisition references, but equally given weightage to the entries in the 7/12 extract, which unmistakably point out that well is situated in the said acquired lands. I do not find any fault or perversity in the impugned judgments and awards treating those lands of LAR No.133 of 2007 and LAR No.140 of 2007 as seasonally irrigated lands. On perusal of 7/12 extract Exhibit – 17, it appears that in other right column there is entry about the common well situated in the acquired lands. The Special Land Acquisition Officer has not considered this material aspect while determining the compensation and erroneously treated the said lands as dry lands.

7 Perusal of sale-deed Exhibit – 18 shows that the land under sale instance is also situated at village Haraswadi and the transaction is dated 23rd May, 2001. The date of notification in the present award is 1st March, 2004. On perusal of the sale instance Exhibit – 18, it appears that the very title of the sale-deed indicates that the said sale-deed has been executed for dry land. I do not find any substance in the submissions made on behalf of the State by

learned AGP that in absence of any evidence that the land under sale instance is a dry land, the Reference Court has committed error in enhancing the compensation of the acquired land by treating those acquired lands as seasonally irrigated lands.

8 In para 14 of the judgment, the Reference Court has given the reasons for relying upon the sale instance Exhibit – 18 and further justified the rate awarded to the lands acquired on the basis of the said sale instance Exhibit – 18. The Reference Court has considered the increase in the market price at the rate of 10% per year for two years. Further he has deducted 20% of the amount by considering that the land under sale instance comparatively small than the area acquired under award. Even though the market price of the land comes to Rs.1950/- as per the aforesaid calculation, the Reference Court has accepted the market price at Rs.1,800/- per Are for dry land and Rs.2700/- per Are for seasonally irrigated land. The Reference Court has rightly relied upon the sale instance Exhibit – 18, which is of the same village and much prior to the notification under Section 4.

9 In the case of *Chindha Fakira Patil (D) through L. Rs. Vs. The Special Land Acquisition Officers, Jalgaon* (supra) relied

upon by the learned counsel for the Respondents / Claimants, in para 13 of the judgment the Supreme Court has made the following observations:

“13. The High Court was also not right in upsetting the finding of the Reference Court on the issue of nature of land. In his deposition, Arjun Sukdeo Patil categorically stated that there were wells in the lands of the appellants and there was Jujubee, Tambrine, Mango, Pomegranate trees. This was supported by the entries contained in 7/12 extracts. The High Court discarded the evidence of the appellants by observing that they had not cultivated sugarcane and wheat. When it was not in dispute that there were wells in the acquired land, the mere fact that the appellants had not cultivated sugarcane or wheat cannot lead to an inference that the land was not irrigated and, in our view, there was no valid reason for the High Court to interfere with the finding recorded by the Reference Court that parts of the lands were Bagayat and for such land they were entitled to compensation @ Rs.6 lacs per hectare.”

10 In view of the above discussions and in the light of the observations made by the Supreme Court, I do not find any substance in these appeals. There is no merit in the appeals. All the appeals are liable to be dismissed. Hence, the following order:

ORDER

- I. First Appeal No. 62 of 2015 (State of Maharashtra and another Vs. Sardarsing Govind and another); First Appeal No. 63 of 2015 (State of Maharashtra and another Vs. Govind Bhikan Zurawat); First Appeal No.64 of 2015 (State of Maharashtra and another Vs. Dagdusing Bhikan); First Appeal No.65 of 2015 (State of Maharashtra and another Vs. Asarabai w/o Dodha (Died) through her L.R's Shantabai Digambar Sonwane and others) and First Appeal No.66 of 2015 (State of Maharashtra and another Vs. Jijabai Kashinath Sonawane), are hereby dismissed.
- II. All the appeals are accordingly disposed of.

[V. K. JADHAV, J.]