

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

FIRST APPEAL NO. 460 OF 2017

THE EXECUTIVE ENGINEER, VARGA -1, URDHVA
PRAVARA DHARAN UPVIBHAG-2, AKOLE
VERSUS
GOPABAI BUDHA DHINDALE AND OTHERS

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**WITH
FA/461/2017
WITH
FA/462/2017
WITH
FA/463/2017**

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Advocate for Appellant : Mr R C Patil
AGP for Respondent 1-5 : Mr B V Virdhe/ S N
Morampalle
Advocate for Respondent 6 : Mr D A Bide

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**CORAM : V.K. JADHAV, J.
Dated: July 13, 2017**

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the common judgment and award passed by the Civil Judge S.D., Sangamner dated 30.11.2011 in LAR No.160/2002 and other connected three land acquisition reference petitions, the original respondent no.2-acquiring body has preferred these four

appeals.

3. Brief facts, giving rise to these appeals are as follows :-

a] The agricultural lands owned and possessed by the respondents-claimants situated at village Digambar, Tq. Akole, came to be acquired by the respondents for the purpose of submergence of Urdhva Pravara Project Nilwande-2 at village Digambar. Section 4 notification was published on 29.1.1998. The Special Land Acquisition Officer has awarded the compensation for the acquired lands @ Rs.580/- per aar. Being aggrieved by the inadequate compensation awarded by the Special Land Acquisition Officer, the respondents-claimants preferred land acquisition reference petitions for compensation at the enhanced rate. It has been contended in the said reference petitions that the Special Land Acquisition Officer has not considered fertility of the acquired lands and awarded the compensation at the less rate than market rate at the relevant time. It has also been contended that the Special Land Acquisition Officer has not taken into

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consideration sale deeds of more amount though executed prior to the issuance of Section 4 notification in respect of the acquired lands. Accordingly, respondents-claimants have claimed the compensation at the enhanced rate of Rs.3,500/- per aar.

b] Respondent No.1 State and appellant-acquiring body both strongly resisted those reference petitions by filing separate written statements. It has been contended in those written statements that, concerned Special Land Acquisition Officer had considered all the aspects while determining the compensation of the acquired lands and awarded the compensation as per the market rate at the relevant time.

c] The respondents-claimants have adduced oral and documentary evidence in support of their contentions and the respondent-State has examined the Special Land Acquisition Officer to substantiate its contentions. The appellant-acquiring body has also examined its officer. The learned Civil Judge S.D., Sangamber, by its

impugned judgment and award dated 30.11.2011 partly allowed all reference petitions and awarded the compensation at the enhanced rate of Rs.1,600/- per aar. Being aggrieved by the same, the original respondent no.2 acquiring body has preferred these four appeals.

4. Learned counsel for the appellant-acquiring body submits that, the reference court has mainly placed its reliance on the sale instance exh.21, however, the land under the sale instance is of village Rajur and not of village Digambar, where the acquired lands are situated. Learned counsel submits that, village Rajur is abutting to the State High Way and as such, sale instance exh.21 cannot be considered as a comparable sale instance. Learned counsel submits that, reference court without any basis awarded exorbitant compensation at the enhanced rate. Learned counsel for the appellant-acquiring body submits that lands under different villages came to be acquired for the same project under different notification published under section 4 of the

Act and as such, villagers from all those villages including village Rajur were knowing about the acquisition proceedings.

5. Learned counsel for respondents-original claimants submits that, witness examined by respondent-State and also witness examined by the appellant-acquired body have admitted in their cross-examination that, no sale transactions taken place in the village Digambar since 1978, and, thus, sale transaction of village Rajur are considered by the concerned land acquisition officer for fixation of the rate of the acquired lands. They have also admitted that boundaries of village Digambar and Rajur are common. They have also admitted that, so far as sale transaction exh.21 is concerned, said transaction was called by the concerned land acquisition officer for fixation of the rate in respect of the acquired lands. Learned counsel submits that, on perusal of the award exh.24, it is manifest that, acquired lands are surrounded by village namely Pimparkane, Babhulwandi, Pimpalgaon,

Nakvinda and Rajur. Learned counsel submits that, as per the said sale instance exh.21, market price of lands under sale instance comes to Rs.5,769/- per aar. However, Reference Court has considered the acquisition proceedings initiated by the State under different adjoining villages and awarded the compensation @ Rs.1,600/- per aar only. Learned counsel submits that, reference court has awarded very meager amount and as such, no interference is required. There is no merit in the appeal and the appeals are thus liable to be dismissed.

6. On perusal of the pleadings, evidence and judgment and award passed by the Reference Court, it appears that, reference court has considered the sale instance exh.21 for awarding the compensation at the enhanced rate. On perusal of the said sale instance exh.21, it appears that the land admeasuring 26R was sold for a consideration of Rs.1,50,000/- on 17.1.1997 i.e. almost one year prior to section 4 notification published in respect of the acquired lands. Though, the

learned counsel for the appellant-acquiring body has vehemently submitted that, the acquisition proceedings were initiated in respect of the same project for acquisition of the lands of adjoining villages, failed to substantiate the same by pointing out the relevant dates of the acquisition of the lands in those villages for the same project. Both the witnesses examined by the respondent-State as well as the appellant-acquiring body have admitted in their cross- examination that there are no sale transactions in village Digambar since 1978 as area of village Digambar was totally gone under the water of Nilwande Dam. They have also admitted that boundaries of village Digambar and Rajur is common and the land acquisition officer has also mentioned in his chart sale transaction Exh.21 for fixation of the market rate of the acquired lands. The learned Judge of the reference court has, therefore, rightly placed reliance on the sale instance exh.21 to find out the market price in respect of the acquired lands at the relevant time. It further appears that, reference court has considered the land under sale

instance situated in a commercial town Rajur, which is abutting to the State High Way and accordingly, reduced the compensation considerably. As per the consideration shown in sale instance exh.21, though market rate of the lands under sale instance comes to Rs.5,769/- per aar, the Reference Court has awarded the compensation at the enhanced rate of Rs.1,600/- per aar. In my considered opinion, reference court has awarded just and reasonable compensation. No interference is required. There is no merit in the appeals. Hence, following order.

O R D E R

1. First Appeal No.(i)460/2017 (The Executive Engineer, Varga-1, Urdhav Pravara Dharan Upvibhag-2, Akole, Vibhag Sangamner, Dist. Ahmednagar Vs. Gopabai Budha Dhindale and others),
(ii)F.A.461/2017 (The Executive Engineer, Varga-1,Urdhav Pravara Dharan Upvibhag2,Akole,VibhagSangamner,Dist. Ahmednagar Vs. Rama Suka Pawar through his L.Rs. and others),
(iii)F.A.no. 462/2017 (The Executive

Engineer, Varga-1, Urdhav Pravara
Dharan Upvibhag-2, Akole, Vibhag
Sangamner, Dist. Ahmednagar Vs.
Sadashiv Nana Targe deceased through
his L.Rs. and others), and

(iv)FA No.463/2017 (The Executive
Engineer, Varga-1, Urdhav Pravara
Dharan Upvibhag-2, Akole, Vibhag
Sangamner, Dist. Ahmednagar Vs.
Chandrabhan Namdeo Awari and others)
are hereby dismissed.

2. All the appeals are accordingly disposed
of.
3. If amount is deposited before this Court,
the same shall be transferred to the
executing court and the claimants are
permitted to withdraw the same.

SD/-

(V.K. JADHAV, J.)

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