

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1073 OF 2017

KISAN NAGNATH SABDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 1074 OF 2017

SHIVAJI VISHNU SABDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
FIRST APPEAL NO. 1075 OF 2017

PRABHU NAME SABDE (DIED) L.RS.
KAUSLYABAI PRABHU SABDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Appellants : Mr. S.S. Halkude .
AGP for Respondent-State/authority: Mr. P.G. Borade
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CORAM : V. K. JADHAV, J.
DATED : 28th JUNE, 2017

PER COURT:-

1. By consent, heard finally at admission stage.
2. Being aggrieved by the common judgment and award dated 27.9.2011 passed by the learned Adhoc District Judge -1, Latur in L.A.R. No. 854 of 2009, 855 of 2009, 853 of 2009, the original claimants in the said L.A. Rs. have preferred these separate appeals to the extent of quantum of compensation as awarded by the

Reference court at the enhanced rate.

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

a) The State of Maharashtra has acquired the lands owned and possessed by the appellants claimants situated at village Janwal Tq. Chakur, District Latur for the purpose of construction of Janwal percolation tank No.10. Section 4 notification was published on 16.11.2006. The S.L.A.O. has granted compensation at the rate of Rs.1178/- per R. Being dissatisfied with the inadequate compensation awarded by the S.L.A.O., the appellants claimants preferred aforesaid reference petitions. It has been contended in those reference petitions that village Janwal is having population 15000 and the said village is situated on Gharni-Vadval-Janwal road and the same is at a distance of 10 kilometers from Taluka Place Chakur. There are facilities such as school up to 12th standard, electricity, post office, telephone, water supply, STB etc. There is broad gauge railway station, Hyderabad to Parali via Janwal and the main market is at Chakur. Furthermore, the said village is under the command area of Jai Jawan Jai Kisan sugar factory. It has also been contended that the acquired lands were fertile and black cotton soil and the claimants were taking double crops every year. However, the S.L.A.O. has not considered the same and awarded

very meager amount of compensation.

b) The respondents have strongly resisted those reference petitions by filing written statement. It has been contented that the S.L.A.O. after visiting the acquired lands and considering the existing situation, has awarded just and reasonable compensation.

c) The appellants claimants have adduced common evidence in L.A.R. No. 855 of 2009 and also relied upon the sale deed dated 28.4.2003 Exh.14 from the same village, alongwith the 7x12 extract at Exh. 15 to 18, respectively. The learned Ad-hoc district Judge, Latur by its impugned judgment and award dated 27.9.2011 partly allowed the aforesaid reference petitions and awarded the compensation to the appellants claimants at the enhanced rate of Rs.3750/- per R. Being aggrieved by the compensation as awarded at the enhanced rate by the reference court, the original claimants have preferred these appeals.

4. Learned counsel for the appellants submits that as per the contents of sale deed Exh.14 out of Gat No.3, land admeasuring 80 R was sold for consideration of Rs.4,00,000/- on 28.4.2003. The lands under sale instance Exh.14 is also from the same village Janwal, Tq. Chakur, where the acquired lands are situated. Learned

counsel submits that the reference court though rightly placed reliance on the sale instance Exh.14, has failed to add 10% of consideration amount in the total consideration for every year. The said sale deed Exh.14 was executed on 28.4.2003 whereas the section 4 notification in respect of acquired land was published on 16.11.2006. The reference court has even reduced the consideration amount of the said sale instance Exh.14 alone on the ground that the land under sale instance is situated adjacent to the road, leading to railway station. Learned counsel submits that on careful perusal of the contents of sale instance Exh.14, it appears that in the four boundaries of the land sold, towards western side one cart road is shown leading towards railway station. The reference court has not made any addition year wise in consideration amount though there is considerable gap between the date of sale instance and section 4 notification published in respect of the acquired land, and reduced the amount considerably and awarded very meager amount of compensation at the enhanced rate.

5. The learned A.G.P. for the respondent State submits that though the sale instance Exh.14 is of the land situated at village Janwal, the lands acquired are away from the said land. P.W.1 has also admitted in his cross examination that towards western side of the land under sale instance the road leading towards railway station

is situated. Learned A.G.P. submits that considering the said fact reference court has rightly reduced the consideration amount of the said sale instance and determined the market price of the land. Learned A.G.P. submits that there is no substance in the appeals and the appeals are liable to be dismissed.

6. On careful perusal of evidence and the judgment and award passed by the reference court, it appears that the reference court has placed reliance on the sale deed Exh.14. On careful perusal of the contents of sale deed Exh.14, it appears that the land admeasuring 80 R out of the land Gat No. 3 situated at village Janwal itself sold for total consideration of Rs.4,00,000/- on 28.4.2003 i.e. three and half years prior to issuance of Section 4 notification in respect of acquired land. It further appears from the contents of the sale instance Exh.14 that only one cart road is shown towards western side of the land under sale instance leading towards the railway station. It is not the case that the said road is tar road and as such land under sale instance would have fetched more price than the market price. The reference court should have added 10% per year in consideration amount of sale instance Exh.14 after taking into account the considerable gap between the date of sale instance and section 4 notification published in respect of acquired lands. If such 10% addition per year is made, the market price on the publication of

Section 4 notification in respect of acquired land, the amount comes to Rs.6750/- per R. It appears from the impugned judgment and award that the reference court has awarded compensation at the enhanced rate of Rs.3750/- per R. by reducing considerable market price as reflected from sale instance Exh.14 after addition of 10% on yearly basis. It appears that reference court has reduced the said consideration amount to the extent of 50% only for the reason that the land under sale instance is situated by the side of road, which is leading towards railway station. It would be just and proper if the amount is reduced to the extent of 30% by considering the fact that the land under sale instance is situated by the side of the cart road which is leading to the railway station. It would be thus just and reasonable if the compensation is awarded at the enhanced rate of Rs.4700/- per R instead of Rs.3750/- per R as awarded by the reference court.

7. In view of the above discussion, the judgment and award passed by the reference court requires modification. Hence, I proceed to pass the following order:-

O R D E R

- I. The first appeal No. 1073 of 2017 (Kisan Nagnath Sabde and others vs. State of Maharashtra and others), first appeal No.1074 of 2017 (Shivaji Vishnu Sabde vs. State of

Maharashtra and others) and first appeal No. 1075 of 2017 (Prabhu Nama Sabde (Died L.Rs.) Kauslyabai Prabhu Sabde vs. State of Maharashtra and others), are hereby partly allowed.

- II. The common judgment and award dated 27.9.2011 passed by the learned Adhoc District Judge-1, Latur in L.A.R. Nos. 854 of 2009, 855 of 2009 and 853 of 2009, to the extent of the present appellants/claimants is hereby modified in the following manner:-

“The reference petition Nos. Nos. 854 of 2009, 855 of 2009 and 853 of 2009, are hereby partly allowed with proportionate costs and claimants are entitled for the compensation at the enhanced rate of Rs.4700/- per R corresponds to Rs.1,88,000/- per acre, with all statutory benefits as awarded by the reference Court. However, the appellants-claimants are not entitled for the amount of interest for the period of which the delay has been condoned by this court, as per the order passed by this court on 27.2.2017 while condoning the delay in preferring the appeal.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up as per the above modification.
- V. All first appeals are accordingly disposed of.

(V. K. JADHAV, J.)