

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

10 FIRST APPEAL NO. 1032 OF 2015

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
KHANDU DATTU KARDILE

WITH

10 FIRST APPEAL NO. 1031 OF 2015

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
RAM VITTHAL KARDILE AND OTHERS

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AGP for Appellants : Mr. A. M. Phule.

Advocate for Respondent : Mr. Chandrakant K. Shinde.

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CORAM : **V. K. JADHAV, J.**

DATE : 27th June, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the common judgment and award passed by District Judge-2, Beed dated 20th December, 2011 in LAR No.473 of 2010 and another connected land acquisition reference petition, the Respondent / State preferred this appeal.

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

- i) Agricultural lands owned and possessed by the Respondents / original Claimants came to be acquired by the Government for construction of village tank No.1, Sabalkhed / Kada Project. The notification under Section 4 of the Land Acquisition Act was published on 16th February, 2006. The Special Land Acquisition Officer vide award dated 14th April, 2008, awarded the compensation for the acquired lands at the rate of Rs.750/- per Are. Being dissatisfied with the inadequate compensation awarded by the Reference Court, the Respondents / original Claimants preferred the reference petitions as above. It has been contended in those reference petitions that the award passed by the Special Land Acquisition Officer is arbitrary, illegal and against the principles of natural justice. The Special Land Acquisition Officer has awarded extremely meager, inadequate compensation and not as per prevailing market price of the locality. The Special Land Acquisition Officer has not collected the sale transaction / sale-

deed and as such, fixed the market price of the acquired lands at lower side. It has been contended that at the relevant time, the minimum market price of the acquired lands was Rs.5,000/- per Are.

- ii) The Appellant / State has strongly resisted the said reference petitions by filing the written statements. It has been contended that the Special Land Acquisition Officer has called the information from the village Talathi as to the sale transactions from the same village and accordingly awarded just, reasonable compensation as per the market rate prevailing in the locality.
- iii) The Respondents / Claimants have adduced oral and documentary evidence in support of their case. The Appellant / State has not adduced any evidence.
- iv) Learned District Judge-2, Beed by impugned judgment and award dated 20th December, 2011 partly allowed those reference petitions with costs

thereby awarded the compensation for the acquired lands at the enhanced rate of Rs.2,800/- per Are. Being aggrieved by the same, the State has preferred these appeals.

4 The learned AGP submits that the Reference Court has discarded both the sale instances Exhibits 16 and 17 respectively. However, awarded the compensation at the enhanced rate of Rs.2,800/- per Are without any base. The learned AGP submits that the Reference Court has rightly discarded those sale instances Exhibits 16 and 17 respectively. So far as sale instance Exhibit 16 is concerned, it pertains to the irrigated land and situated just adjacent to the river. Furthermore, the land under sale instance Exhibit 17 is also an irrigated land on the water of canal and purchaser's another land is situated adjacent to the land under sale instance. The learned AGP submits that the Reference Court has erroneously awarded the interest under Section 34 of the Land Acquisition Act from the date of possession instead of from the date of award and as such, clause (6) of the operative part of the judgment is liable to be quashed and set aside.

5 The learned counsel for Respondents / original Claimants

submits that the Reference Court in para 6 of the judgment has considered the sale instance Exhibit 16 as it is from the same village and further deducted 1/4th of the amount from its consideration amount owing to various factors such as irrigation facilities available etc. Thereafter, the Reference Court without any justifying reason discarded both the sale instances Exhibits 16 and 17 respectively. The learned counsel submits that so far as sale-deed Exhibit 16 is concerned, the land admeasuring 1 Hectare 44 Ares out of Survey No.367 situated at village Sabalkhed has been sold for the consideration of Rs.4,80,000/- on 31st January, 2004. As per this sale-deed market rate per Are comes to Rs.3,333/- per Are. The Reference Court has carried out 1/4th deductions from the consideration amount of the land under sale instance and accordingly, considered the market value of the acquired land at the rate of Rs.2,500/- per Are. It further appears that after considering the date of notification under Section 4 of the Land Acquisition Act i.e. 16th February, 2006, the Reference Court has awarded the compensation at the enhanced rate of Rs.2,800/- per Are. The learned counsel submits that no interference is required in the impugned judgment and award passed by the Reference Court except clause (6) of the operative part of the judgment. The learned counsel fairly concedes that the Reference

Court has committed error in awarding the interest under Section 34 of the Land Acquisition Act from the date of possession instead of the date of award.

6 On careful perusal of the pleadings, the evidence and the impugned judgment and award passed by the Reference Court, it appears that the sale instance Exhibit 16 is from the same village executed approximately two years prior to Section 4 notification published in respect of the acquired lands. The Reference Court has rightly made 1/4th of deductions from the consideration price as shown in the sale instance Exhibit 16 and arrived at a conclusion that the market price of the acquired land is Rs.2,500/- per Are. Notification under Section 4 of the Land Acquisition Act was published on 16th February, 2006 in respect of the acquired lands. Thus, considering the date of sale instance i.e. 31st January, 2004 the Reference Court has awarded just and reasonable compensation at the enhanced rate of Rs.2,800/- per Are. Furthermore, in view of the Government Resolution dated 3rd November, 2016, the Government has taken a policy decision that in case enhanced compensation is awarded by the Reference Court which is within the limit of four times of the compensation as awarded by the Special Land Acquisition Officer, no appeals would be preferred and in case if appeal is already preferred,

the same would be withdrawn.

7 In view of the above discussions, I do not find any substance in the appeals except clause (6) of the operative part of the judgment. Thus, by modifying clause (6) of the operative part of the judgment, these appeals can be disposed of. Hence, the following order:

ORDER

- I. First Appeal No.1032 of 2015 and First Appeal No.1031 of 2015, are hereby partly allowed. No costs.
- II. The common judgment and award award passed by District Judge-2, Beed dated 20th December, 2011 in LAR No.473 of 2010 and another connected land acquisition reference petition, is hereby modified to the extent of clause (6) of the operative part of the judgment in the following manner:

“6. The Respondents also do pay interest at the rate of 9% per annum under Section

34 of the Land Acquisition Act on the awarded amount paid by S.L.A.O. from the date of award till the date of actual payment of awarded amount i.e. from 14th April, 2008 to 23rd January, 2009.

III. Rest of the judgment and award stands confirmed.

IV. Award be modified accordingly.

V. Appeals are accordingly disposed of.

[V. K. JADHAV, J.]

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