

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

FIRST APPEAL NO. 152 OF 2017

THE EXECUTIVE ENGINEER, IRRIGATION PROJECT
STRENGTHENING DIVISION, OMERGA

VERSUS

DEELIP SANTRAM PATIL AND ANR

...

WITH

FA/153/2017

THE EXECUTIVE ENGINEER, IRRIGATION PROJECT
STRENGTHENING DIVISION, OMERGA

VERSUS

IMAM ABDUL SAHEB NIRGUDE AND ANOTHER

...

WITH

FA/154/2017

THE EXECUTIVE ENGINEER, IRRIGATION PROJECT
STRENGTHENING DIVISION, OMERGA

VERSUS

HUSEN ABDUL SAHEB NIRGUDE AND OTHERS.

..

Advocate for Appellant : Mr Sangle Shirish G.

AGP for Respondent 2 : Mr A M Phule

Advocate for Respondent 1 : Mr S N Patne

...

CORAM : V.K. JADHAV, J.

Dated: July 18, 2017

...

COMMON ORDER :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award

aaa/-

passed by the Civil Judge S.D., Omerga, dated 12.1.2011 in LAR No.797/2009 and other connected matters, the acquiring body has preferred the appeal against the judgment and award passed in LAR No.797/2009, 791/2009 and 798/2009 respectively.

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

a] The agricultural lands owned and possessed by the respondents-claimants came to be acquired by the State for the purpose of construction of Bhusani Storage Tank at villages Bhusani and Chincholi (Bhuyar), Tq. Omerga, Dist. Osmanabad. Section 4 notice was published on 23.4.1998 and the Special Land Acquisition Officer has classified the lands in three groups and awarded the compensation at the rate of Rs.362/-, Rs.385/- and Rs.440/- per aar respectively for the lands falling under these three groups. Being dissatisfied with the inadequate compensation awarded by the Special Land Acquisition Officer, respondents-original claimants have preferred aforesaid land

acquisition reference petitions. It has been contended in the said petitions that, respondent no.1 has not considered the market price of the acquired lands and awarded the compensation only on the basis of the land revenue assessment, which is not permissible. It has also been contended that, respondents have not considered the fertility of the acquired lands and awarded a very meager amount of compensation. Even, respondents have not considered the sale instances from the vicinity where the acquired lands are situated. Acquired lands are the black cotton soil lands and the Bagayat lands. Village Chincholi Bhuyar is a well developed village having facilities like school, tar road, transportation, electricity, water supply etc. and the price of the acquired land is increasing day by day.

b] Appellants-acquiring body and the State has strongly resisted the said reference petitions by filing their written statement. It has been contended that claim petitions are not filed within a period of limitation. It has been contended that, the Special Land

Acquisition Officer has considered the sale instances from the same area and accordingly awarded just and reasonable compensation.

c] Respondents-claimants have adduced oral and documentary evidence in support of their contentions. The appellant-acquiring body and respondent State has not adduced any evidence. The reference Court has partly allowed the aforesaid claim petitions and awarded the compensation at the enhanced rate of Rs.1188/- per Aar. Being aggrieved by the same, the acquiring body has preferred these appeals.

4. The learned counsel for the appellant-acquiring body submits that in presence of respondents-claimants award was declared on 24.3.2003 and as such, the claim petitions were required to be filed within a period of 42 days from the said date. However, though respondents-claimants are having knowledge about the contents of the award, they have not preferred the claim petitions within a period of 42 days from said date and

as such, their claim petitions are liable to be dismissed on this ground alone. Learned counsel submits that the reference court has relied upon sale instance exh.26. Said sale instance is from village Murum and not from the village where the acquired lands are situated. Furthermore, land under sale instance is Bagyat land and as such, sale instance exh.26 cannot be taken as comparable sale instance. Learned counsel submits that, the burden is on the respondents-claimants to prove the distance between the acquired lands and lands under sale instance, however, reference court has erroneously shifted the said burden on the acquiring body and awarded the compensation at the exorbitant rate.

5. Learned counsel for respondents-original claimants submits that, notice under section 12 (2) of the Act came to be issued on 23.1.2004 and the same was served on the respondents-claimants on 27.1.2004. It is not disputed that compensation was paid on 27.1.2004 as per the notice issued and served on the

respondents-claimants. Learned counsel submits that, there is no evidence that said notice issued under section 12 (2) was served on the respondents-claimants on 23.1.2004. Thus, the petitions are within limitation from the said date 27.1.2004 and reference court has rightly recorded the findings in the affirmative to issue no.1 and held that the claim petitions are within the limitation. Learned counsel submits that the appellant-claimant Dilip Santram Patil has filed his affidavit of evidence before the Reference Court, wherein he has specifically mentioned about the distance between the acquired lands and lands under sale instance. The appellant-acquiring body has though disputed the said distance, failed to substantiate its contentions by adducing the evidence. The reference court has rightly increased the amount year wise @ 10% considering the fact that the sale deed exh.26 was executed three years prior to section 4 notification published in respect of the acquired lands. Further, reference court has reduced the amount to the extent of 50% on the count the land under sale instance is Bagayat lands and the acquired

lands are Jirayat lands. Learned counsel submits that the reference court has awarded just and reasonable compensation. No interference is required.

6. On perusal of the pleadings, evidence and judgment and award passed by the Reference Court, I do not find any substance in the submissions made on behalf of the appellant-acquiring body that the claim petitions are not within limitation. After considering the entire evidence on record, the reference court has rightly held that the claim petitions are within limitation. Appellant-acquiring body has failed to substantiate its contentions that notices under section 12 (2) were served on the respondents-claimants on 23.1.2004 and not on 27.1.2004. It is an admitted fact that the compensation was paid to the respondents-claimants on 27.1.2004 as per the notice issued under section 12 (2) of the Act. Thus, the reference Court has rightly recorded the findings in the affirmative to issue no.2 and held that claim petitions are within limitation.

7. Respondents-claimants have placed their reliance on the sale instance exh.26. On perusal of the same, it appears that land admeasuring 1H 23 R alongwith well was sold for a consideration of RS.2,25,000/- and land under sale instance is situated at village Murum. The appellant-claimant Dilip has stated in his affidavit of evidence that lands under sale instance is near to the acquired lands and the same is at a distance of about two kilometers. He has also deposed about the distance of villages Murum, Yeli, Dalimb and Bhusani alongwith boundary line of these villages. However, the appellant-acquiring body has not adduced any evidence in rebuttal. It further appears from the impugned judgment and award that the reference court has rightly increased the amount year wise @ 10% considering the fact that the sale deed exh.26 was executed three years prior to section 4 notification published in respect of the acquired lands and further reduced 50% of the amount on the ground that, the land under sale instance is bagayat land. Reference Court has considered the acquired land as Jirayat lands and accordingly deducted

said 50% of the amount. I do not find any fault in the judgment and award passed by the reference court. It appears that reference court has awarded just and reasonable compensation at the enhanced rate. The Special Land Acquisition Officer has awarded the compensation @ Rs.362/-, Rs.385/- and Rs.440/- per aar, whereas, the reference court has awarded the compensation @ Rs.1188/- per R.

8. In view of the same, I do not find any substance in these appeals. All the appeals are liable to be dismissed. Hence, following order.

O R D E R

1. (i)**FIRST APPEAL NO. 152 OF 2017** (THE EXECUTIVE ENGINEER, IRRIGATION PROJECT STRENGTHENING DIVISION, OMERGA VS. DEELIP SANTRAM PATIL AND ANR).

(ii)**FA/153/2017**(THE EXECUTIVE ENGINEER, IRRIGATION PROJECT STRENGTHENING DIVISION, OMERGA VERSUS IMAM ABDUL SAHEB NIRGUDE AND ANOTHER) and,

(iii)**FA/154/2017** (THE EXECUTIVE ENGINEER, IRRIGATION PROJECT STRENGTHENING DIVISION, OMERGA VERSUS HUSEN ABDUL SAHEB NIRGUDE AND OTHERS) are hereby dismissed with costs.

2. Appeals are accordingly disposed of.

(V.K. JADHAV, J.)

...

aaa/-

aaa/-