

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

FIRST APPEAL NO.:2733 OF 2013

Tukaram Apparao Kavale, (Died) Through His Legal Heirs
Narayan Tukaram Kavale and another
VERSUS
The State of Maharashtra and others

Mr. Kailas B. Jadhav, Advocate for Appellants.
Mr. S. N. Morampalle, A.G.P. for Respondent Nos.1 & 2.
Mr. A. M. Gaikwad, Advocate for Respondent No.3.

WITH

FIRST APPEAL NO.:447 OF 2017

Dinkar Panditrao Late
VERSUS
The State of Maharashtra and others

Mr. Kailas B. Jadhav, Advocate for Appellant.
Mr. B. V. Virde, A.G.P. for Respondent Nos.1 & 2.
Mr. A. M. Gaikwad, Advocate for Respondent No.3.

WITH

FIRST APPEAL NO.:448 OF 2017

Rama Bapu Kavhale, (Died) Through His Legal Heirs
Pralhad Rama Kavhale
VERSUS
The State of Maharashtra and others

Mr. Kailas B. Jadhav, Advocate for Appellant.
Mr. B. V. Virde, A.G.P. for Respondent Nos.1 & 2.
Mr. Shrimant Mundhe, Advocate for Respondent No.3.

WITH

FIRST APPEAL NO.:449 OF 2017

Asaram Bapurao Kavhale
VERSUS
The State of Maharashtra and others

Mr. Kailas B. Jadhav, Advocate for Appellant.
Mr. B. V. Virde, A.G.P. for Respondent Nos.1 & 2.
Mr. Shrimant Mundhe, Advocate for Respondent No.3.

WITH

FIRST APPEAL NO.:450 OF 2017

Babasaheb Kundlikrao Kavhale
VERSUS
The State of Maharashtra and others

Mr. Kailas B. Jadhav, Advocate for Appellant.
Mr. S. N. Morampalle, A.G.P. for Respondent Nos.1 & 2.
Mr. A. M. Gaikwad, Advocate for Respondent No.3.

WITH

FIRST APPEAL NO.:451 OF 2017

Sudhakar Babasaheb Late
VERSUS
The State of Maharashtra and others

Mr. Kailas B. Jadhav, Advocate for Appellant.
Mr. S. N. Morampalle, A.G.P. for Respondent Nos.1 & 2.
Mr. A. M. Gaikwad, Advocate for Respondent No.3.

WITH

FIRST APPEAL NO.:452 OF 2017

Shivaji Ganpatrao Kavhale
VERSUS
The State of Maharashtra and others

Mr. Kailas B. Jadhav, Advocate for Appellant.
Mr. B. V. Virde, A.G.P. for Respondent Nos.1 & 2.
Mr. Shrimant Mundhe, Advocate for Respondent No.3.

AND

FIRST APPEAL NO.:453 OF 2017

Raosaheb Dajiba Kavhale
VERSUS
The State of Maharashtra and others

Mr. Kailas B. Jadhav, Advocate for Appellant.
Mr. S. N. Morampalle, A.G.P. for Respondent Nos.1 & 2.
Mr. A. M. Gaikwad, Advocate for Respondent No.3.

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

DATE : 03rd July, 2017.

ORDER:

. Being aggrieved by the common judgment and award passed by District Judge-2, Jalna dated 2nd May, 2008 in LAR No.276 of 1998 and other connected reference petitions, the legal heirs of original Claimant Tukaram Kavale vide LAR No.91 of 2001 preferred First Appeal No.2733 of 2013 and being aggrieved by the common

judgment and award passed by District Judge-1, Jalna dated 25th July, 2008 in LAR No.209 of 2000 and other connected reference petitions, the original Claimants in LAR.40 of 2001, LAR No.18 of 2001, LAR No.47 of 2003, LAR No.464 of 2002, LAR No.183 of 2001, LAR No.461 of 2002 and LAR No.462 of 2002 have preferred First Appeal Nos.447, 448, 449, 450, 451, 452 and 453 of 2017 respectively.

2 The learned counsel for Appellants / Claimants submits that the other Claimants have also preferred the first appeals and those are of even years and listed before Court No.7.

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

- i) Agricultural lands owned and possessed by Appellants / original Claimants came to be acquired by the Government from 26 villages of three Talukas namely Mantha, Partur and Selu for the purpose of Lower Dudhana Project. So far as agricultural lands, which are subject matter of present appeals are concerned, those are acquired from village Kedar Wakadi, Taluka Mantha, District

Jalna. Section 4 notification was published in the Government Gazette on 15th September, 1994 and the Special Land Acquisition Officer vide its award dated 31st March, 1999 has awarded the compensation at the rate of Rs.1,200/- per Are for Jirayat lands (non-agricultural lands). Being dissatisfied with the compensation awarded by the Special Land Acquisition Officer, the Claimants preferred the reference petitions as stated above. It has been contended in their respective claim petitions that the Special Land Acquisition Officer has undertaken the wrong and unreasonable basis for assessing the market value and as such, grossly under valued the acquired lands. The Special Land Acquisition Officer has not made proper inquiry and he has wrongly classified the acquired lands of the Claimants. The acquired lands are the fertile lands and the Special Land Acquisition Officer has not used proper capitalization method while fixing the market value of the acquired lands. The Appellants / Claimants

have thus, claimed the compensation at Rs.2,000/- per Are for the acquired lands.

- ii) The State and the acquiring body have strongly resisted those reference petitions. It has been contended that the valuation is determined by the Special Land Acquisition Officer on the basis of the information called from the various departments and the quality and fertility of the acquired lands was taken into consideration. It has been contended that the Special Land Acquisition Officer has awarded just and reasonable compensation.
- iii) The Appellants / Claimants have adduced evidence in support of their contentions. The State has adduced evidence in a group of matters bearing LAR No.209 of 2000 and also relied upon the evidence of Horticulture Supervisor. The Appellants / Claimants have relied upon the sale instances to substantiate their claims at the enhanced rate.

iv) In both the group of reference petitions, the Reference Court has awarded the compensation at the enhanced rate of Rs.1,200/- per Are for dry land, Rs.1,600/- per Are for seasonally irrigated land Rs.1,800/- per Are for irrigated lands. Hence, these appeals.

4 The learned counsel for Appellants / Claimants submits that this Court in First Appeal No.3123 of 2016 and other connected first appeals arose out of same project, had an occasion to deal with the judgment and award passed by the Reference Court. By giving reference to the earlier judgment passed in First Appeal No.2740 of 2016 and other connected appeals therein, awarded the compensation at the enhanced rate of Rs.1,500/- per Are for non-irrigated lands, Rs.2,250/- per Are for seasonally irrigated lands, Rs.3,000/- per Are for perennially irrigated lands and Rs.750/- per Are for Potkharab lands. The learned counsel submits that so far as the group of First Appeal No.3123 of 2016 is concerned, this Court has considered the acquisition proceedings of the lands acquired from village Deola, Taluka Partur, District Jalna in respect of the same Lower Dudhna Project. The learned counsel submits that there is only one river passes through village Kedar Wakadi and village Deola and the lands

of these two villages situated adjacent to each other. The learned counsel submits that the Appellants / original Claimants are entitled for the same enhanced rate since the quality of the acquired lands from all these villages are same. In the instant group of appeals, the Reference Court has considered the acquired lands as non-irrigated lands except in a case of LAR No.91 of 2001, which is a subject matter of First Appeal No.2733 of 2013. The learned counsel submits that so far as LAR No.91 of 2001 is concerned, the agricultural land owned and possessed by the Appellants / Claimants to the extent of 3 Hectare 15 Ares from land Gat No.63-A was acquired and the Appellants / original Claimants have received the compensation for 2 Hectare 6 Ares as dry lands at the rate of Rs.425/- per Are and further received the compensation of the land admeasuring 1 Hectare 7 Ares at the rate of Rs.637/- per Are treating the same as seasonally irrigated land. The learned counsel submits that despite the rate awarded by the Special Land Acquisition Officer by treating some portion of the acquired lands as dry land and some portion of the acquired land as seasonally irrigated lands, the Reference Court has treated the entire acquired land in LAR No.91 of 2001 as dry land and awarded the compensation accordingly. The learned counsel submits that in LAR No.91 of 2001 which is the subject matter of First Appeal

No.2733 of 2013, the Appellants / Claimants are entitled for the compensation at the enhanced rate by treating their land admeasuring 2 Hectare 6 Ares land as dry land and the land admeasuring 1 Hectare 7 Ares land as seasonally irrigated land.

5 The learned counsel for Respondent / acquiring body has not disputed the position that this Court in a group of appeals bearing First Appeal No.3123 of 2016 and other connected appeals and in First Appeal No.2740 of 20016 and other connected appeals, dealt with the judgment and award passed by the Reference Court in respect of the acquired lands from the villages in Partur Taluka, District Jalna for the same Lower Dudhna Project and awarded the compensation at the enhanced rate as detailed in those judgments. The learned counsel fairly conceded that so far as LAR No.91 of 2001 (First Appeal No.2733 of 2013) is concerned, the Reference Court ought to have awarded the compensation by treating some portion of the acquired land as dry land and some portion of the acquired land as seasonally irrigated land as classified by the Special Land Acquisition Officer. The learned counsel submits that however, the distance between the acquired agricultural lands of two villages i.e. Kedar Wakadi and Deola has not come on record. The learned counsel submits that the

Reference Court has awarded just and reasonable compensation in respect of the acquired lands of village Kedar Wakadi and as such, no interference is required.

6 I have also heard the learned AGP for the Respondent / State.

7 On perusal of the order passed in First Appeal No.3123 of 2016 dated 30th March, 2017, it appears that this Court had an occasion to deal with the judgment and award passed by the Reference Court in respect of the acquired lands of villages in Partur Taluka, District Jalna for Lower Dudhna Project. The Reference Court has awarded the compensation at the enhanced rate of Rs.1,200/- per Are for dry lands, Rs.30/- per Are for Potkharab and further awarded the compensation at the enhanced rate of Rs.1,600/- per Are for seasonally irrigated lands. This Court has considered the acquisition of the lands of 22 villages for the Lower Dudhna Project from three different Talukas namely Selu, Partur and Mantha respectively. This Court in the aforesaid group of appeals also referred the earlier judgment passed in First Appeal No.2740 of 2016, where this Court had an occasion to deal with the acquisition of lands for the aforesaid three Talukas for Lower Dudhna Project and in the said group of first

appeals bearing First Appeal No.2740 of 2016 and other connected appeals, awarded the compensation at the enhanced rate of Rs.1,500/- per Are for non-irrigated lands, Rs.2,250/- per Are for seasonally irrigated lands, Rs.3,000/- per Are for perennially irrigated lands and Rs.750/- per Are for Potkharab lands as categorized by the Reference Court in the respective awards. In both the group of appeals as aforesaid, this Court has also upheld and maintained the statutory benefits as awarded by the Reference Court.

8 So far as the acquisition of the lands from 22 villages from three Talukas for the same project are concerned, Talukas Partur and Mantha are from Jalna district. These two Talukas are adjacent to each other and divided by one river. It is not a disputed position that the quality and fertility of the acquired lands from villages Kedar Wakadi and Deola are almost one and the same. Thus, in order to maintain uniformity in the compensation at the enhanced rate, the Appellants / Claimants in this group of appeals are also entitled for the compensation at the enhanced rate of Rs.1,500/- per Are for non-irrigated lands, Rs.2,250/- per Are for seasonally irrigated lands.

9 The Appellants / Claimants in LAR No.91 of 2001 (First Appeal No.2733 of 2013) are entitled for the compensation at the rate

of Rs.1,500/- per Are for the acquired land admeasuring 2 Hectare 6 Ares out of the land Gat No.63-A and Rs.2,250/- per Are for the land admeasuring 1 Hectare 7 Ares out of the land Gat No.63-A. Thus, the impugned judgment and award in First Appeal No.2733 of 2013 requires modification to that extent only. Similarly, the impugned judgment and award in First Appeal No.447 of 2017 and other connected appeals requires modification to the extent of enhanced rate as worked out hereinbefore. Hence, the following order:

ORDER

- I. First Appeal No.2733 of 2013 (Tukaram Apparao Kavale, (Died) Through His Legal Heirs Narayan Tukaram Kavale and another Vs. The State of Maharashtra and others) is hereby partly allowed with proportionate costs.
- II. The common judgment and award passed by District Judge-2, Jalna dated 2nd May, 2008 in LAR No.276 of 1998 and other connected reference petitions to the extent of LAR No.91 of 2001, is modified in the following manner:

“The Respondents shall joint jointly and severally pay the compensation at the enhanced rate of Rs.1,500/- per Are for the acquired land of the Claimants from the land Gat No.63-A to the extent of 2 Hectare 6 Ares and the compensation at the enhanced rate of Rs.2,250/- per Are for the land admeasuring 1 Hectare 7 Ares from the land Gat No.63-A.”

- III. As undertaken by the Appellants, they shall not be entitled for the statutory benefits and interest in respect of the period of delay caused in filing the appeals by them.
- IV. Rest of the judgment and award stands confirmed.
- V. Award be drawn up as per the above modification.
- VI. First Appeal No. 447 of 2017 (Dinkar Panditrao Late Vs. The State of Maharashtra and others), First Appeal No. 448 of 2017 (Rama Bapu Kavhale, (Died) Through His Legal Heirs Pralhad Rama Kavhale Vs. The State of Maharashtra and others), First Appeal No. 449 of 2017 (Asaram Bapurao Kavhale Vs. The State of Maharashtra and others), First Appeal No.

450 of 2017 (Babasaheb Kundlikrao Kavhale Vs. The State of Maharashtra and others), First Appeal No. 451 of 2017 (Sudhakar Babasaheb Late Vs. The State of Maharashtra and others), First Appeal No. 452 of 2017 (Shivaji Ganpatrao Kavhale Vs. The State of Maharashtra and others) and First Appeal No. 453 of 2017 (Raosaheb Dajiba Kavhale Vs. The State of Maharashtra and others) are hereby partly allowed with proportionate costs.

VII. The common judgment and award passed by District Judge-1, Jalna dated 25th July, 2008 in LAR No.209 of 2000 and other connected reference petitions to the extent of LAR.40 of 2001, LAR No.18 of 2001, LAR No.47 of 2003, LAR No.464 of 2002, LAR No.183 of 2001, LAR No.461 of 2002 and LAR No.462 of 2002, is modified in the following manner:

“The Respondents shall pay the compensation at the enhanced rate of Rs.1,500/- per Are for the acquired lands with all the statutory benefits as awarded by the Reference Court.”

VIII. As undertaken by the Appellants, they shall not be entitled for the statutory benefits and interest in respect of the period of delay caused in filing the appeals by them.

IX. Rest of the judgment and award stands confirmed.

X. Award be drawn up as per the above modification.

XI. All the appeals are accordingly disposed of.

[V. K. JADHAV, J.]

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