

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

FIRST APPEAL STAMP NO.1409 OF 2013

RANGNATH DAJIBA ARDAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

WITH
FAST/2460/2013

KUSHAL BABURAO KAWALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

WITH
FAST/1404/2013

SUBHASH BABASAHEB KAVHALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

WITH
FAST/31070/2015

NANDKUMAR VITTHALRAO DESHPANDE DIED.
THROUGH LRS. SARLABAI NANDKUMAR DESHPANDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

WITH
FAST/13754/2015

VITTHAL DNYANOBA KAVALE
VERSUS
SPECIAL LAND ACQUISITION OFFICER MIW, JALNA
AND OTHERS.

...

WITH
FAST/13752/2015

BALIRAM DNYANOBA KAVHALE
VERSUS
SPECIAL LAND ACQUISITION OFFICER MIW, JALNA
AND OTHERS.

...
WITH
FAST/31074/2015

ANUSAYABAI VITTHALRAO DESHPANDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...
WITH
FAST/31072/2015

SARLABAI NANDKUMAR DESHPANDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...
WITH
FA/2651/2017

RUKHMINBAI VITTAHLRAO KAVHALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...
WITH
FA/2653/2017

KHIRAJI HARIBHAU SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...
Advocate for Appellant : Mr Kale Ajeet B.
Advocate for appellant : Mr K B Jadhav in FA
2651/2017, 2653/2017.
Mr B V Virdhe AGP for Respondent State.

Advocate for Respondent-Acquiring body : Mr P G
Rodge, Mr V C Solshe, S P Sonpavale, Mr R B
Deshpande.

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CORAM : V.K. JADHAV, J.

Dated: July 26, 2017

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COMMON ORDER :-

1. Being aggrieved by the common judgment and award dated 27.11.2008 passed by District Judge-2, Jalna in LAR No.12 of 2004, dated 3.5.2008 in LAR No.323/1997 (only in LAR No.453/1997), dated 27.11.2008 in LAR No.13/2004, common judgment dated 25.07.2008 in L.A.R No.209/2000 (only in LAR No.136/2003), common judgment dated 25.7.2008 No.209/2000 and other connected (only in LAR No.181/2001), common judgment dated 22.8.2008 in LAR No.183/2000 and other connected (only In LAR No.186/2000), and common judgment dated 25.7.2008 in LAR Nos. 156/2004 and 158/2004 and common judgment dated 3.5.2008 in LAR No.292/2007 and other connected (in LAR No.335/1997) and common judgment dated 22.8.2008 in LAR No.183/2000 and other connected (only in LAR No.39/2001), the original

Claimants preferred these Appeals.

2. 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 various 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 different dates and the Special Land Acquisition Officer vide its award has awarded the compensation between **Rs.300/- to Rs.927/-** per Are for the Jirayat lands as well as for Bagayat 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.1800/- per Aar for Jirayat Land and Rs.3000/- per Are for Bagayat 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 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 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.

3. The learned counsel for Appellants/Claimants submits that, this Court in First Appeal No.3123 of 2016 and other connected first appeals, and also in F.A.

2733/2013 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 Pot-kharab 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 are 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.

4. 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, and also in F.A.2733/2013 with 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 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.

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

6. On perusal of the order passed in First Appeal No.3123 of 2016 dated 30th March, 2017, and in FA 2733/2013 with other connected appeals dated 3.7.2017, 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, F.A. No.2733/2013 with other connected appeals, 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, and in F.A. No.2733/2013 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.

7. 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.

8. Thus, the impugned judgments and awards in these First Appeals and other connected appeals require modification to the extent of enhanced rate as worked out hereinbefore. Hence, the following order:

ORDER

- I. First Appeal Stamp Nos.1409/2013 (Rangnath Dajiba Ardad Vs. The State of Maharashtra and others in L.A.R No.12/2004), 2460/2013 (Kushal Baburao Kavhale Vs. The state of Maharashtra and ors in LAR No.453/1997), 1404/2013 Subhash Babasaheb Kavhale Vs. The State of Maharashtra and ors in LAR No.13/2004), 31070/2015 (Nandkumar Vitthalrao Deshpande Died through

L.Rs. Sarlabai Nandkumar Deshpande Vs. The State of Maharashtra and others in LAR No.136/2003), 13754/2015 (Vitthal Dnyanoba Kavhale Vs. The Special Land Acquisition Officer MIW, Jalna and ors. in LAR no.186/2000), 13752/2015 (Baliram Dnyanoba Kavhale Vs. The Special Land Acquisition Officer MIW, Jalna and others in LAR No.181/2001), 31074/2015 (Anusayabai Vithalrao Deshpande Vs. The State of Maharashtra and ors in Lar No.156/2004), 31074/2015 (Sarlabai Nandkumar Deshpande Vs. The State of Maharashtra and ors. In LAR No.158/2004) are hereby partly allowed with proportionate costs.

- II. The impugned common judgment and award/s dated 27.11.2008 passed by District Judge-2, Jalna in L.A.R. No.12 of 2004 and 13/2004, dated 3.5.2008 in L.A.R. Nos.453/1997 and 335/1997, dated 25.7.2008 in L.A.R.136/2003 and 181/2001, dated 22.8.2008 in L.A.R. No.186/2000 and 39/2001 and in LAR No.335/1997 dated 3.5.2008, in LAR

Nos.156/2004 and 158/2004 dated 25.7.2008 is modified in the following manner:

a] “The Respondents shall jointly and severally pay the compensation at the enhanced rate of Rs.1,500/- per Are for non-irrigated lands, Rs.2,250/- per Aar for seasonally irrigated lands of the Claimants acquired for the said project, with all statutory benefits as awarded by the reference court.

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.1409/2013 (Rangnath Dajiba Ardad Vs. The State of Maharashtra and others), First Appeal

No. 2460/2013 (Kushal Baburao Kavale Vs. The State of Maharashtra and others), First Appeal No. 1404 of 2013 (Subhash Babasaheb Kavhale Vs. The State of Maharashtra and others), First Appeal Stamp No. 31070/2015 (Nandkumar Vitthalrao Deshpande Vs. The State of Maharashtra and others), First Appeal Stamp No. 13754/2015 (Vithal Dnyanoba Kavale Vs. The State of Maharashtra and others), First Appeal Stamp No. 13752/2015 (Baliram Dnyanoba Kavhale Vs. The State of Maharashtra and others), First appeal Stamp No. 31074/2015 (Anusayabai Vitthalrao Deshpande Vs. The State of Maharashtra and ors) and First Appeal Stamp No. 31072/2015 (Sarlabai Nandkumar Deshpande Vs. The State of Maharashtra and others) are accordingly disposed of.

VII. All the appeals are accordingly disposed of. Pending civil application/, if any, also stand disposed of.

[V. K. JADHAV, J.]

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