

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

FIRST APPEAL NO.349 OF 2004

- . SK.Amir s/o Shaikh Maheboob
Age: 32 Yrs., occu. Agril.
R/o Chandaj, Tq. Jintur,
District Parbhani. .. **APPELLANT**
(orig.Claimant)

Versus

1. The State of Maharashtra
2. The Special Land Acquisition Officer
and Asstt. Collector, Parbhani.
.. **RESPONDENTS**

WITH

FIRST APPEAL NO.350 OF 2004

- . Shaikh Maheboob s/o Shaikh Ahmed
Age: 56 Yrs., occu. Agril.
R/o Chandaj, Tq. Jintur,
District Parbhani. .. **APPELLANT**
(orig.Claimant)

Versus

1. The State of Maharashtra
2. The Special Land Acquisition Officer
and Asstt. Collector, Parbhani.
.. **RESPONDENTS**

WITH

FIRST APPEAL NO.383 OF 2004

WITH

CIVIL APPLICATION NO.2132/2004

- . Sk. Maula s/o Shaikh Maheboob
Age: 35 Yrs., occu. Agril.
R/o Chandaj, Tq. Jintur,
District Parbhani. .. **APPELLANT**
(orig.Claimant)

Versus

1. The State of Maharashtra
2. The Special Land Acquisition Officer
and Asstt. Collector, Parbhani.

.. **RESPONDENTS**

....

Mr.SS Rathi, for Appellants.

Mr.AM Phule, AGP for Respondents

CORAM : P.R. BORA, J.

DATED : 29th October, 2018.

ORAL JUDGMENT:-

1. These appeals arise out of common Judgment and Award passed by 3rd Additional District Judge, Parbhani in LAR No.261/1992; 262/1992 and 263/1992 decided on 23.11.2001. I, therefore, heard the common arguments in all these appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. The lands, which are the subject matter of the present appeals, were acquired for extension of *Gaothan* of village Chandaj. Notification under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as the Act) was published in the official gazette in that regard on 19th April, 1984 and Award under Section 11 of the Act came to be

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passed on 16.10.1987. The Special Land Acquisition Officer offered the compensation @ 14,000/- per hectare. Dissatisfied with the amount of compensation so offered, the appellants, who are herein after referred to as claimants, preferred applications under Section 18 of the Act to Collector, Parbhani, who, in turn, forwarded the said applications for adjudication to the District Court (which is herein after referred to as the Reference Court), and the Reference Court dismissed all the three LARs, observing that the claimants did not bring on record any evidence in order to substantiate the claim raised by them. Aggrieved by, the claimants have preferred these appeals.

3. Shri Rathi, learned counsel appearing for the claimants, submitted that the Reference Court has grossly erred in appreciating the evidence placed on record by the claimants. The learned counsel submitted that though the sale instances which were brought on record by the claimants were of the period after publication of the notification under Section 4 of the Act, that could not have been the only reason for outrightly rejecting the

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said sale instances. The learned counsel submitted that in such circumstances, the Reference Court could have considered all plus-minus factors as well as factum of increase in the value of the lands sold after publication of section 4 notification whereby the subject lands were acquired and considering all those factors, could have adequately determined the market value on the basis of the said sale instances also.

4. The learned counsel submitted that in the similar period, from village Chandaj itself, certain lands, which are adjacent to the subject lands, were acquired by the Government and in the Reference Applications filed by the landholders of the said lands, the Reference Court has determined the market value of the said lands @ Rs.20,000/- per hectare. The learned counsel submitted that the claimants have also filed application in the present appeals seeking leave to produce on record the said Judgment and Award as additional evidence so as to substantiate their contentions.

5. Inviting my attention to the judgment

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delivered in LAR No.259/1992 to support the said contention, the learned counsel submitted that, though the claimants, in fact, are entitled for more enhancement in the price of the acquired lands, since in the said Reference Applications, the Reference Court has determined the market value @ Rs.20,000/- per hectare, at least that much of enhancement, needs to be granted in the present matters also.

6. Learned AGP Shri Phule resisted the submissions made on behalf of the appellants claimants. Reading out the observations made by the Reference Court in para Nos.11 and 12 of the impugned common judgment, the learned AGP submitted that when the claimants failed in bringing on record any evidence in order to substantiate their contentions, no fault can be found in the finding recorded by the learned Reference Court. The learned AGP further submitted that the judgment, which is now sought to be relied upon by the learned counsel appearing for the appellants, could have been very well relied upon and cited by the claimants in the present appeals. The learned AGP

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further submitted that no reasons has been assigned by the appellants claimants as to why they could not produce on record the said evidence. The learned AGP further submitted that in absence of any such reasons provided by the claimants, they cannot be permitted to adduce any additional evidence. The learned AGP on all these grounds prayed for dismissal of the appeals.

7. I have given due consideration to the submissions made by learned counsel appearing for the appellants claimants and learned AGP appearing for Respondent – State. The lands, which are the subject matter of the present appeals, were admittedly acquired for extension of *Gaothan* and all these lands hail from village Chandaj, Tq. Jintur District Parbhani.

8. In LAR No.261/1992, the land admeasuring 1 hectares and 58 Ares was acquired. In LAR No.262/1992 the acquired land was admeasuring 1 hectare and 58 Ares; whereas in LAR No.263/1992, the land was admeasuring 2 hectares and 39 Ares. As was submitted by Shri Rathi, learned counsel for

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the claimants, all the lands, which are the subject matter of the present appeals, were acquired from out of Gut No.80 situated at village Chandaj. The land, which was the subject matter of LAR No. 259/1992, was admeasuring 2 hectares and 33 Ares and was the part of Gut No.79 of village Chandaj. It is thus evident that the said land was acquired from adjacent gut number. The said land was acquired for the purpose of rehabilitation of village Chandaj and notification under Section 4 of the Act in that regard was published on 2.8.1984. Thus, the said land was acquired after four months of the acquisition of the lands, which are the subject matter of the present appeals. For the land acquired from Gut No.79, the Special Land Acquisition Officer had offered the similar rate of compensation, i.e. @ Rs.14,000/- per hectare, as was offered for the acquired land. The land owner of Gat No.79 filed LAR No.259/1992 and while deciding the said Reference application, the Reference Court determined the market value of the said land @ Rs.20,000/- per hectare and accordingly enhanced the amount of compensation.

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9. In the aforesaid background, it was the contention of the learned counsel appearing for the claimants that the claimants be permitted to adduce the additional documentary evidence by placing on record a certified copy of the judgment delivered in LAR No. 259/1992 by the concerned Reference Court. Though it was sought to be contended by the learned AGP that the copy of the judgment in LAR No.259/1992, which was admittedly decided on 28.6.1994, i.e. prior to date the LARs which are the subject matter in the present appeals were decided, merely on the said ground, the request of the appellants to rely upon the said contention cannot be rejected. Moreover, it further appears to me that when the adjacent landholder has received the compensation at the higher rate, which was also acquired for the sister project from the same village, the claimants in the present appeals cannot be deprived of the said benefit granted to their neighbours.

10. In the above circumstances, I deem it appropriate to first allow the civil applications filed by the appellants claimants and permit them

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to place on record a copy of the judgment passed in LAR No.259/1992 decided on 28.6.1994 on record and to rely upon the same.

11. Having regard to the fact that for the adjacent land acquired for the sister project, the owner of the said land has received compensation @ Rs.20,000/- per hectare, the same scale has to be applied in so far as the present appellants are concerned.

12. It was also brought to my notice by Shri Rathu that while preparing E statement, consolidated Statement was prepared by Special Land Acquisition Officer wherein the land, which was the subject matter of LAR No.259/1992 was also incorporated along with lands which are the subject matter of present appeals. It appears to me that it would be in the fitness of things if the same benefit is extended to the present appellants claimants also.

13. For the reasons stated above, I deem it appropriate to pass following order, -

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ORDER

- i. Civil Application No. 2132/2004 is allowed;
- ii. The market value of the lands involved in the present appeals be determined at the rate of Rs.20,000/- per hectare and the amount of compensation payable to the applicants be enhanced accordingly;
- iii. Appellants are also held entitled to the statutory benefits as provided under Section 23(1A) and 23(2) of the Act on the enhanced amount of compensation;
- iv. Appellants also held entitled to receive the interest under section 28 and 34 of the Act in accordance with law from the date of declaration of Award under Section of the Act;
- v. All the three appeals, thus, stand partly allowed in the aforesaid terms.
- vi. Pending civil application, if any, stands disposed of.

(P.R. BORA)
JUDGE