

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

FIRST APPEAL NO. 656 OF 2009

1. Dagdu s/o Topaji Deshmukh,
Aged: 45 yrs., Occu. Agri.,
R/o: Donwada, Tq. Basmat,
Dist. Parbhani.
2. Topaji S/o Dagdu Deshmukh,
Died through L.Rs.
- 2-A. Devanand s/o Topaji Deshmukh,
Age: 28 years, Occu.: Agril.,
R/o : Donwada, Tq. Basmath,
District Hingoli.
- 2-B. Niranjan S/o Topaji Deshmukh,
Age: 32 years, Occu. &
R/o: as above.
- 2-C. Shivkanta W/o Topaji Deshmukh,
Age: 47 years, Occu.: & r/o
as above.
3. Devidas S/o Dagdu Deshmukh,
Age: 28 years, Occu. & r/o
As above.
4. Shivdas S/o Dagdu Deshmukh,
Age: 26 years, Occu: & r/o
As above.
5. Ganesh S/o Dagdu Deshukh,
Age: 20 yrs, Occu. : & r/o
as above.
6. Rajesh s/o Dagdu Deshmukh,
Age: 18 yrs., Occu. : & r/o
As above.

...APPELLANTS
(Ori. Claimants)

VERSUS

1. The State of Maharashtra,
through Collector, Parbhani.

2. The Special Land Acquisition Officer, UPP II, Parbhani.

... RESPONDENTS
(Ori. Respondents)

....

**WITH
FIRST APPEAL NO. 763 OF 2009**

Vishwanath S/o Madhavrao Deshmukh,
Died through L.Rs.

- 1-a. Ramchandra S/o Madhavrao Deshmukh,
Age: 58 years, Occu. : Agril.,
R/o.: Donwada, Tq. Basmath,
District Parbhani, Now Hingoli.

...APPELLANT
(Ori. Claimant)

VERSUS

1. The State of Maharashtra,
through Collector, Parbhani.

2. The Special Land Acquisition Officer, UPP 1, Parbhani.

... RESPONDENTS
(Ori. Respondents)

...

Mr. S.K. Adkine, Advocate for appellants
Mr. S.P. Deshmukh, AGP for respondents

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CORAM : A.M. DHAVAL, J.

DATED : 14th AUGUST, 2018.

ORAL JUDGMENT :-

1. In the First Appeal No. 656 of 2009, the land admeasuring 3 Hectare, 87 R situated at village Donwada, Taluka Basmath, District Parbhani, of the appellants was acquired for Donwada Percolation Tank under Notification dated 02-05-1985 and Award came to be passed on 26-06-1987. The Special Land Acquisition Officer (for short "SLAO") has awarded compensation @ Rs.3,200/- per acre along with statutory benefits.

In the First Appeal No. 763 of 2009, the land admeasuring 3 Hectare, 59 R situated at village Donwada of the appellant, was acquired for Donwada Percolation Tank under Notification dated 02-05-1985 and Award came to be passed on 15-06-1987. The SLAO has awarded compensation @ Rs.3,000/- per acre along with statutory benefits. Being aggrieved by the market price fixed by the SLAO, the appellants preferred Land Acquisition References before the Reference Court.

2. In the Reference Court, the appellants claimed enhanced compensation @ Rs.10,000/- per Acre. The appellants have produced three sale-deeds on record. The learned Reference Court held that those were from different villages and of different quality of lands, therefore, he dismissed the References. Hence, these appeals.

3. At the outset, it must be mentioned here that there is handicap as "C" and "D" parts of original proceedings, which includes Award as well as oral evidence of the claimants have been destroyed. The lands were acquired long back prior to 33 years. Fortunately, the three sale deeds are on record.

4. Mr. Adkine, learned Advocate for the appellants relying on the Judgments in the cases of ***Union of India Vs Harinder Pal Singh [2006 AIR (SC) 447]*** and ***Kishan Yeshwantrao Naik Vs. The State of Maharashtra (First Appeal No. 109 of***

1994) and connected matters, submitted that three sale deeds disclose market rate @ Rs.300/- to Rs. 350/- per R. The said sale deeds are of one year prior to the date of notification. Therefore, the claim of appellants @ Rs.10,000/- per acre is quite reasonable and it should have been allowed.

5. Per contra, Mr. Deshmukh, learned AGP for respondents has referred to the admission of the only witness examined on behalf of the claimants. He argued that sale-deeds produced on record are of irrigated lands and the lands acquired of the appellants were dry in nature. They were from different developed villages, whereas, the lands of the appellants are from backward village, having no development and proper access. He supported the impugned Judgment and Award and prayed for dismissal of the appeals.

6. In the light of above facts, following points arise for my consideration and findings thereon are as follows :

Nos.	Points	Findings
1	Whether these appeals can be decided on basis of evidence on record ?	In the affirmative.
2	Whether the Special Land Acquisition Officer has awarded just and reasonable compensation?	In the negative.
3	Whether the learned Reference Court was justified in dismissing the claim ?	In the negative.
4	What order ?	As per final order.

REASONS

7. The Judgments on record do not show that respondents have led any evidence either oral or documentary. There is only oral evidence of claimants and documentary evidence in the form of three sale deeds. Though, the evidence of claimants is destroyed, it has been substantially reproduced in the judgments of the Reference Court. Considering the fact that long period of thirty three years has been elapsed and the copies of three sale deeds are on record, it will not be appropriate to direct reconstruction of record and remand the matter for recording fresh evidence. Therefore, I proceed to decide these appeals on the basis of three sale deeds and Judgments disclosing admission of the witnesses of the claimants. The details in respect of three sale-deeds filed in First Appeal No. 656 of 2009 are as follows : -

Sale Deed Exhibits	Date	Village	Area	Rates per Acre	Rates Per R	Rates per R on the date of Notification
21	11/10/84	Amba	30R	10,000/-	333/-	366/-
22	11/06/84	Sukadi	20R	7,000/-	350/-	385/-
23	04/06/84	Kurunda	50R	15,000/-	300/-	330/-

8. These sale-deeds disclose the market price of lands ranging between @ Rs.300/- to Rs.350/- per R in the year 1984. The notification is one year later. If average price of the lands is fixed @ Rs.330/- per R, the average market price as on the date of notification would be @ Rs.363/- per R.

9. Mr. Adkine relying on two judgments contended that price should be fixed at the same rate irrespective of nature of the land. On careful perusal of the judgments, it shows that this is not ratio that all land should get same price. In ***Union of India Vs Harinder Pal Singh's case*** (*supra*), a huge area of 3512 Acres from five villages was acquired for development of the entire area of lands, which were having residential potential. Therefore, those were given fixed rate in the award, which was approved by the Apex Court. The facts in the present case are not similar. In the case of ***Kishan Yeshwantrao Naik Vs. State of Maharashtra*** (*supra*), the learned Single Judge of this Court held that lands acquired were one single unit. Therefore, he fixed uniform rates. In the present case, comparable sale deeds of the lands are of better quality and from different villages. Those are not acquired. Therefore, the appellants cannot claim same rate as shown in the comparative sale instances.

10. It is true that the evidence shows that these are not the comparable sale deeds, but the Government has not produced on record to show how the SLAO arrived at conclusion to fix the market price of the acquired lands @ Rs.3200/- per acre i.e. Rs.80/- per R. It was open for the Reference Court to call for relevant documents for determining the real market price of the lands at the relevant time. There is no record to that effect on

record and the learned Reference Court dismissed the References. Considering that the three sale-deeds, which are produced on record are of irrigated lands, whereas lands of the claimants were dry, the market price will have to be taken at 50% i.e. Rs.180/- per R, but these are from backward village as compared to villages, in which lands under sale-deeds are situated. Considering the facts and circumstances, I assume the market price of the acquired lands @ Rs.160/- per R i.e. Rs.6400/- per acre. The SLAO has awarded Rs.3200/- and Rs.3000/- per acre to the acquired lands respectively, the claimants are entitled for difference in the market price awarded by the SLAO @ Rs.3200/- and Rs.3000/- per acre at the enhanced rate. There will be proportionate statutory benefits like 30% solatium on the market price and 12% third component from the date of notification till date of the award. The claimants are also entitled for interest @ 9% p.a. for the first year and @ 15/- for subsequent years on the entire amount from the date of award till realization of the compensation amount. Whatever amount are already paid to the claimants shall be deducted from the main price as well as for the purpose of calculation of interest.

11. In view of above, I pass the following Order :-

ORDER

(1) The appeals are partly allowed as under :-

- (a) The impugned Judgments and Award dated 26-06-1992 passed by Civil Judge, Senior Division, Parbhani in Land Acquisition References No. 174 and 176 of 1988, are hereby quashed and set-aside.
 - (b) The respondents do pay to the appellants-claimants enhanced market price of the acquired lands @ Rs.160/- per R i.e. Rs.6400/- per acre.
 - (c) The respondents shall pay to the claimants difference in the market price awarded by the SLAO @ Rs.3200/- and Rs.3000/- per acre and the enhanced rate.
 - (d) The respondents shall pay to the claimants proportionate statutory benefits like 30% solatium on the enhanced market price and 12% third component from the date of notification till date of the award on the enhanced market price.
 - (e) The respondents do pay to the claimants interest @ 9% p.a. for the first year and @ 15 % for subsequent years on the entire amount from the date of award till realization of the compensation amount.
 - (f) Whatever amounts have already been paid to the claimants shall be deducted from the main price and shall be considered as well as for the purpose of calculation of interest.
- (2) The respondents shall pay proportionate costs throughout.
 - (3) An award amounting to decree be drawn up accordingly.

Sd/-

[A. M. DHAVAL]
JUDGE

MTK.