

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

1009 FIRST APPEAL NO. 2640 OF 2018

1. Machindra s/o Haribhau Tonde
Age: 60 years, Occu.: Agril.
2. Rajendra s/o Haribhau Tonde
Age: 55 years, Occu.: Agril.
3. Anurath s/o Haribhau Tonde
Age: 52 years, Occu.: Agril.
4. Revan s/o Haribhau Tonde
Age: 49 years, Occu.: Agril.

All R/o. Sonpethwadi,
Tq. & Dist.Beed.

..Appellants
(Ori. Claimants)

Versus

- . The State of Maharashtra,
Through District Collector,
Beed, Dist.Beed.

..Respondent
(Orig. Respondent)

...

**WITH
FIRST APPEAL NO.2641 OF 2018**

- . Machindra s/o Haribhau Tonde
Age: 55 years, Occu.: Agril.
R/o. Sonpethwadi, Tq. & Dist.Beed.

..Appellant
(Ori. Claimant)

Versus

- . The State of Maharashtra,
Through District Collector,
Beed, Dist.Beed.

..Respondent
(Orig. Respondent)

...

**WITH
FIRST APPEAL NO.2642 OF 2018**

- . Mahadeo s/o Gyandeo Tonde
Age: 45 years, Occu.: Agril.
R/o. Sonpethwadi, Tq. & Dist.Beed. ..Appellant
(Ori. Claimant)

Versus

- . The State of Maharashtra,
Through District Collector,
Beed, Dist.Beed. ..Respondent
(Orig. Respondent)

...

WITH

1010 FIRST APPEAL NO. 2685 OF 2018

1. Mahadeo s/o Ginyandeo Tonde
Age: 45 years, Occu.: Agril.
2. Asruba s/o Ginyandeo Tonde
Age: 42 years, Occu.: Agril.
Both R/o. Sonpethwadi,
Tq. & Dist.Beed. ..Appellants
(Ori. Claimants)

Versus

- . The State of Maharashtra,
Through District Collector,
Beed, Dist.Beed. ..Respondent
(Orig. Respondent)

...

WITH

FIRST APPEAL NO.2686 OF 2018

1. Nagnath s/o Karbhari Tonder
Age: 55 years, Occu.: Agril.
2. Dattu s/o Karbhari Tonde
Age: 52 years, Occu.: Agril.
3. Malu s/o Karbhari Tonde
Age: 50 years, Occu.: Agril.
4. Gahininath s/o Karbhari Tonde
Age: 45 years, Occu.: Agril.

All R/o. Sonpethwadi,
Tq. & Dist.Beed.

..Appellants
(Ori. Claimants)

Versus

The State of Maharashtra,
Through District Collector,
Beed, Dist.Beed.

..Respondent
(Orig. Respondent)

...
WITH
FIRST APPEAL NO.2687 OF 2018

1. Bhiva s/o Shahurao Tonde
Age: 60 years, Occu.: Agril.
2. Arjun s/o Shahurao Tonde
Age: 57 years, Occu.: Agril.
3. Chandulal s/o Shahurao Tonde
Age: 40 years, Occu.: Agril.
4. Bansilal s/o Shahurao Tonde
Age: 50 years, Occu.: Agril.
Both R/o. Sonpethwadi,
Tq. & Dist.Beed.

..Appellants
(Ori. Claimants)

Versus

The State of Maharashtra,
Through District Collector,
Beed, Dist.Beed.

..Respondent
(Orig. Respondent)

...
WITH
FIRST APPEAL NO.2688 OF 2018

Bhiva s/o Shahurao Tonde
Age: 60 years, Occu.: Agril.
R/o. Sonpethwadi, Tq. & Dist.Beed.

..Appellant
(Ori. Claimant)

Versus

- . The State of Maharashtra,
Through District Collector,
Beed, Dist.Beed. ..Respondent
(Orig. Respondent)

...
WITH
FIRST APPEAL NO.2689 OF 2018

- . Rajendra s/o Haribhau Tonde
Age: 45 years, Occu.: Agril.
R/o. Sonpethwadi, Tq. & Dist.Beed. ..Appellant
(Ori. Claimant)

Versus

- . The State of Maharashtra,
Through District Collector,
Beed, Dist.Beed. ..Respondent
(Orig. Respondent)

...
Advocate for Appellants : Shri Vilas P. Savant
AGP for Respondent - State : Shri A.M.Phule and Shri P.M.Kulkarni

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CORAM : P.R.BORA, J.

DATE: 1st November, 2018

ORAL JUDGMENT :-

1. All these matters are arising out of the acquisition of lands for the purpose of construction of Percolation Tank No.1 at village Sonpethwadi, Tq. And District Beed. I, therefore, heard common arguments in all these appeals and I deem it appropriate to decide these appeals by common reasoning.

2. As I noted herein above, the lands, which are the subject matter of the present appeals were acquired for the construction

of Percolation Tank No.1 at village Sonpethwadi. All these lands were acquired from village Sonpethwadi. The Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was published in the official Gazette in that regard on 20.11.1990 and award under section 11 of the Act came to be passed on 19.11.1993. The Special Land Acquisition Officer (hereinafter referred to as 'the SLAO') offered the compensation to the claimants of the respective lands at the rates ranging between Rs.140 to Rs.170 per Are as per the categorization of the lands made by the SLAO. Dissatisfied with the amount of compensation so offered, the claimants had filed Applications under section 18 of the Act to the Collector, Beed, which were in turn forwarded for adjudication to the Civil Court (herein after referred to as 'the Reference Court') .

3. The claimants had demanded the compensation at the rate of Rs.1,250/- per Are for their acquired lands before the Reference Court. In order to substantiate their contentions, the claimants had relied upon several sale instances in addition to their own testimonies. The learned Reference Court, however, determined the market value of the acquired lands at the rate between Rs.330/- to Rs.400/- per Are as per the categorization of the respective lands and accordingly, enhanced the amount of

compensation. It is the contention of the appellants- claimants that even the Reference Court did not award appropriate compensation for their lands and the claimants, have, therefore, preferred these Appeals, seeking enhancement in the amount of compensation as awarded by the Reference Court.

4. Shri V.P. Savant, learned counsel appearing for the appellants in all these matters, submitted that reasonable enhancement was sought by the claimants before the Reference Court for the acquisition of their lands, however, the Reference Court, without appreciating the evidence adduced by the claimants on record, has determined the market value at the rate of Rs.330/- to Rs.400/- per Are. The learned counsel submitted that the sale instance which was considered by the Reference Court while determining the market value as above has also not been appropriately appreciated by the said Court. The learned counsel submitted that even if it is accepted that the sale instance was pertaining to a small piece of land, necessary deductions could have been worked out by the Tribunal and accordingly, the market value of the acquired land could have been determined. However, the Reference Court did not do that exercise and has wrongly determined the market value of the acquired land at too low level.

5. The learned counsel further submitted that in the meanwhile, additional acquisitions were made for the same Percolation Tank No.1 at Sonpethwadi and the land out of Gut No.366 was acquired by the Government. The learned counsel submitted that, in fact the land which was acquired by way of additional acquisition was also taken into possession by the Government in the year 1988 itself. However, the Notification under section 4 of the Act was published in the official gazette in that regard on 24.12.2000 and the award under section 11 of the Act was passed on 12.07.2005. The learned counsel submitted that in the said Award the SLAO had awarded compensation at the rate of Rs.330/- per Are. The owners of the land which were acquired had filed Reference Appreciations under section 18 of the Act seeking enhancement in the amount of compensation as was awarded by the SLAO. The claimants in the said Applications had demanded compensation @ Rs.4,000/- per Are. The learned counsel submitted that in the said matters, the Government entered into compromise with the claimants and the market value for the said acquired lands was settled @ Rs.2,800/- per Are. The consent awards are passed in the said matters, showing the said matters to have been settled in the *Lok Adalat*. The learned counsel for the appellants – claimants had filed on record

a certified copy of the said settlement and the same is taken on record and has been marked for identification as Exhibit 'X'.

6. The learned counsel submitted that the lands which are the subject matter of the present appeals are adjacent to the lands for which the Government in the settlement gave the market value at the rate of Rs.2,800/- per are. The learned counsel pointed out that the lands which are subject matter of the appeals, were from Gut No.356, 357, 360, 361, 362, 367 etc. and the lands pertaining to which settlement had arrived at was from Gut No.366. The lands in both the matters are adjacent to each other and were acquired for the same project. The learned counsel submitted that even if it is assumed that section 4 Notification for acquisition of the said subject land was published after ten years i.e. on 24.12.2000 and as such, the market value of the said land has to be determined on the date of acquisition, even then in no case, the market value of the lands involved in the present appeals could have been determined by the Reference Court @ Rs.330 to Rs.400 per Are.

7. The learned counsel submitted that in view of the settlement arrived at in the matter of land acquired from Gut No.366 for the said project, the present appeals can also be

conveniently disposed of and on the same criteria, the market value of the lands involved in the present appeals can be enhanced. The learned counsel submitted that considering that section 4 Notification in respect of lands, which are the subject matter of the present appeals, was published prior to ten years of the Notification published in respect of the lands acquired from Gut No.366 and on that count it is presumed that within the said period of ten years, prices of the said lands have 100% increased, even then the market value of the lands involved in the present appeals can be safely determined at the rate of Rs.1,250/- per Are. The learned counsel submitted that having considered the settlement arrived at in the proceedings arising out of subsequent acquisition, the compensation demanded by the present appellants for their lands at the rate of Rs.1,250/- per Are is most just and genuine demand. The learned counsel therefore, prayed for determining the market value of the acquired lands at the said rate and consequent enhancement in the amount of compensation accordingly.

8. The learned AGP appearing for the State resisted the submissions advanced on behalf of the appellants - claimants. The learned AGP submitted that in the Judgments which have been impugned in the present appeals, the Reference Court has

given very sound reasons for arriving at the conclusion before determining the market value of the acquired lands at the rate of Rs.330/- to Rs.400/- per Are. The learned AGP submitted that the law is settled that the burden is on the claimants to prove their claims by bringing on record cogent and sufficient evidence. The learned AGP submitted that the claimants have brought on record such sale instances, which cannot be said to be of comparable lands and as such, were rightly not considered by the the Reference Court. The learned AGP submitted that the only sale deed considered by the Reference Court was also of a small portion of two Are. In the circumstances, there was no justification for the claimants to seek hike in the market value of their lands on the basis of the sale instance of said small piece of land.

9. The learned AGP submitted that it cannot be a 'Rule of Thumb' that there may be increase in the price of lands at the particular rate for the particular year. The learned AGP submitted that merely because in the subsequent proceedings, the Government had agreed to give compensation to the respective claimants at the rate of Rs.2,800/- per Are, it cannot be a base for enhancing the amount of compensation in the present matters. The learned AGP submitted that additional acquisition

was made after a long lapse of ten years. The learned AGP submitted that the prices of the lands in the vicinity were bound to increase in the said period for the reason that section 4 Notification for acquisition of lands for constructions of Percolation Tank No.1 was prior to ten years. Learned AGP submitted that by the time the subsequent acquisition of land took place, the construction of Percolation Tank No.1 might have been commenced and completed to substantial extent and that was the reason that for the subsequent acquisition, the higher rate was given by the Reference Court and further the Government also agreed to give the compensation at the higher rate. The said criteria cannot be applied for the lands which are acquired when no such situation was existing. The learned AGP, in the circumstances, prayed for dismissing the appeals. The learned AGP submitted that the SLAO had accurately calculated the amount of compensation and no interference was warranted even by the Reference Court. The learned AGP, therefore, prayed for dismissal of the appeals.

10. I have given due consideration to the submissions made by the learned counsel appearing for the claimants and the learned AGP appearing for the respondent – State. I have also perused the impugned Judgments and the evidence on record. What

required to be considered in the present appeals is the further development which had taken place by way of additional acquisition for the Percolation Tank No.1 at Sonpethwadi and the market rate determined in the said matter of the acquired land. It is not in dispute that the lands which were subsequently acquired were the lands adjacent to the lands, which are the subject matter of the present appeals. It is further not in dispute that the possession of the lands was also taken in the year 1988. In the circumstances, the arguments advanced by the learned AGP that the lands were bound to receive more price in view of the fact that the construction of the Percolation Tank No.1 had already started, is difficult to be accepted.

11. It is true that the Notification under section 4 of the Act acquiring the lands by way of additional acquisition was published in the official gazette after ten years of the previous Notification. That, however, can certainly be considered for determining the market value of the lands involved in the present appeals. It has come on record that the Government, in Land Acquisition References filed by the owners of the lands subsequently acquired from Gut No.366 for the same project, has entered into settlement with the said agriculturists and the market value in the said settlement was determined @

Rs.2,800/- per Are. Assuming that the lands, which are the subject matter in the present appeals were acquired prior to 10 years of the said acquisition, considering the market value determined in the subsequent proceedings and effecting the appropriate deductions in the price, the market value of the lands, which are subject matter of the present appeals, can therefore very well be determined after having considered entire material on record.

12. Claimants are insisting and pursuing in submissions that for their lands appropriate market value is @ Rs.2,800/- per Are and not less than that. It appears to me that subsequent lands, which were additionally acquired were certainly on better footing for the reason that by that time the work of Percolation Tank No.1 had started and the lands were acquired as the additional requirement. However, for the said reason and on assuming that during the period of 10 years, the rates were substantially increased, it would be improper to keep the said factor out of consideration. It appears to me that that this factor will also have to be considered while determining the market value of the lands, which are the subject matter of the present appeals. In no case, the market value determined by the Reference Court ranging between Rs.330 to Rs.400/- can be said to be rightly

arrived at. Considering the evidence adduced in the present matters, it appears to me that the market value must have been determined at a bit higher level. Having regard to the aforesaid circumstances, and more particularly, the fact that adjacent land holders have been paid price for their land @ Rs.2,800/- per Are, the market value for the lands, which are subject matter of the present appeals, can safely be determined @ Rs.1,250/- per Are having regard to the fact that these lands were acquired prior to about ten years. This would be the just and fair compensation payable to the claimants in the present matters for the acquisition of the lands belonging to them. I therefore, hold the appellants entitled for the enhancement in the amount of compensation accordingly.

13. It has to be stated that the appellants - claimants have filed the appeals after long lapse of period and while condoning the delay, the appellants have agreed not to claim any interest for the period of delay. The appellants have filed affidavits in that regard in the delay condonation applications decided on 04.09.2018. In the order dated 04.09.2018, all these facts are mentioned and cognizance of the matters settled in the *Lok Adalat* is also taken. It is thus evident that though the amount of compensation is enhanced, the appellants will not be entitled to

claim interest for the period of delay on the enhanced amount of compensation.

14. It is further directed that the interest payable to the appellants - claimants under Sections 28 and 34 of the Act shall be calculated from the date of declaration of award under Section 11 of the Act, in view of the Full Bench Judgment of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari (2016 (4) All MR 513)***. The appeals stand allowed in the aforesaid terms. Pending civil applications stand disposed of.

(P.R.BORA)
JUDGE

SPT