

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

FIRST APPEAL NO. 1072 OF 2002

The State of Maharashtra
Through Collector, Osmanabad. ..Appellant

Versus

Mustafa Jafar Shaikh, age-36 yrs,
Occ.Agri, r/o. Ruibhar, Tq, and
Dist. Osmanabad. ..Respondent

WITH

FIRST APPEAL NO. 1071 OF 2002

The State of Maharashtra
Through Collector, Osmanabad. ..Appellant

Versus

1. Ramchandra Shamrao Thirtkar,
Age: 45 years, Occu: Agri.,
r/o: Ruibhar, (died) his L.Rs.
2. Sow. Vijaya Pandurang Gurave,
Age: Adult, r/o Ruibhar
Tq & Dist. Osmanabad.
3. Ranajana Ramchandra Tirtkar,
Age: Adult, r/o Ruibhar
Tq & Dist. Osmanabad.
4. Vithoba Shamrao Thirtkar
Age: 40 years, Occu: Agri.,
r/o: As above. ..Respondents

WITH

FIRST APPEAL NO. 1080 OF 2002

The State of Maharashtra
Through Collector, Osmanabad. ..Appellant

Versus

Babasaheb Faridsaheb Khonde (Shaikh)
Age: 44 years, Occu: Agri., r/o: Ruibhar,
Tq. And Dist. Osmanabad .. Respondent

WITH

FIRST APPEAL NO. 1081 OF 2002

The State of Maharashtra
Through Collector, Osmanabad. ..Appellant

Versus

1. Goroba Namdeo Sherkhane
Age: 30 years, Occu: Agri.,
r/o:Ruibhar, Tq. And Dist. Osmanabad
(died his L.Rs. as under)
- a. Mangal w/o Goroba Sherkhane
Age: 27 years, Occu: Household,
r/o:Ruibhar.
- b. Kishor s/o Goroba Sherkhane
Age: 4 years,minor, u/f his real mother Mangal
Goroba Sherkhane
- c. Manikshi d/o Goroba Sherkhane
Age: 2 years,minor, u/f his real mother Mangal
Goroba Sherkhane
2. Vithoba s/o Namdeo Sherkhane
Age: 35 years, Occu: Agri,
r/o: as above. .. Respondents

WITH

FIRST APPEAL NO. 1082 OF 2002

The State of Maharashtra
Through Collector, Osmanabad. ..Appellant

Versus

Dagdu Daji Ghodake
Age: 50 years, Occu: Agri.,
r/o:Ruibhar, Tq. and Dist. Osmanabad .. Respondent

WITH

FIRST APPEAL NO. 1083 OF 2002

The State of Maharashtra
Through Collector, Osmanabad. ..Appellant

Versus

1. Bhimrao Satwa Sherkhane
Age: 63 years, Occu: Agri.,
r/o:Ruibhar, Tq. Osmanabad

2. Maruti Satwa Sherkhane
Age: 57 years, Occu: Agri.,
as above ... Respondents

WITH
FIRST APPEAL NO. 1084 OF 2002

The State of Maharashtra
Through Collector, Osmanabad. ..Appellant

Versus

Bibhishan Tukaram Kaspate
Age: 35 years, Occu: Agri.,
r/o:Ruibhar, Tq. Osmanabad .. Respondent

WITH
FIRST APPEAL NO. 1085 OF 2002

The State of Maharashtra
Through Collector, Osmanabad. ..Appellant

Versus

1. Maruti s/o Mahadeo Kaspate
Age: 45 years, Occu: Agri.,
r/o:Ruibhar, Tq. Osmanabad
2. Balbhim Mahadeo Kaspate
Age: 35 years, Occu: Agri.,
r/o: as above. .. Respondents

WITH
FIRST APPEAL NO. 1086 OF 2002

The State of Maharashtra
Through Collector, Osmanabad. ..Appellant

Versus

Sharubhai Bapu Khonde
Age: 60 years, Occu: Agri,
r/o:Ruibhar, Tq. & Dist. Osmanabad .. Respondent

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Mr. A.M. Phule, AGP for Appellants.
Mr. V.V. Ingle, Advocate for Respondents.

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CORAM : P.R. BORA, J.
DATE : 15th OCTOBER, 2018.

ORAL JUDGMENT:-

. These appeals are arising out of the common judgment and award delivered by the Joint Civil Judge Senior Division, Osmanabad in L.A.R. No.246 of 1991 with connected eight land acquisition references decided by the said Court by a common judgment on 03.03.1997.

2. The lands which are the subject matter in the present appeals were acquired for Ruibhar Medium Project. The lands were acquired from Village Ruibhar. The notification under Section 4 of the Land Acquisition Act in that regard was published in the official gazette on 07.08.1984 and the award under Section 11 came to be passed on 19.02.1987. The SLAO had offered the compensation at the rate of Rs. 5,000/- per Acre i.e. Rs. 125 per R. Dissatisfied with the amount of compensation so offered, the claimants had filed the applications under Section 18 of the Act which were adjudicated by the Court of Civil Judge, Senior Division, at Osmanabad. The said Court is hereinafter referred to as the 'Reference Court'.

The respondents in all these appeals are hereinafter referred to as the 'claimants'.

3. The claimants had claimed the compensation in reference applications at the rate of Rs. 40,000/- per Acre and had also claimed the enhanced amount of compensation for the acquired Wells and Tals as well as the trees standing in their lands. The record reveals that all nine reference applications were heard commonly and common evidence was adduced in the said reference applications. In addition to the evidence of the respective claimants, the reliance was also placed by the claimants on certain sale instances. The record shows that three sale instances were brought on record by the claimants in order to substantiate their claims. The claimants had also examined the valuer for bringing on record the valuation of the wells, tals and the trees in some of the lands. No oral evidence was adduced by the SLAO.

4. The learned Reference Court after having assessed the oral and documentary evidence brought on record before him, determined the market value of the acquired lands at the rate of Rs. 30,000/-

per Acre i.e. Rs. 750 per R and also enhanced the compensation for the Wells in about four matters. The compensation was also enhanced by the Reference Court for Tals in four matters. Aggrieved by, the State has preferred the present appeals.

5. Shri Phule, the learned AGP appearing for the State assailed the impugned common judgment and award on various grounds. The first objection as has been raised by the learned AGP is that the Reference Court has not provided any rational in determining the market value of the acquired lands at the enhanced rate. The learned AGP pointed out that the Reference Court has also failed in appreciating that the land which was the subject matter of Exhibit-39 when was sold at the rate of Rs. 40,000/- per Acre though it was within municipal area, the lands which are the subject matter in the present appeals which were admittedly not within the municipal area, in all probabilities were liable to receive the market value at half of the said rate received to the land which was in the municipal area. In the circumstances, according to the learned AGP, the Reference Court could not have determined the market value of the acquired lands

at the rate more than Rs. 20,000/- per Acre.

6. The learned AGP further submitted that another sale deed at Exhibit-40 was of the period after the publication of Section 4 notification. The same was therefore not liable to be considered at all. It was further contended by the learned AGP that the sale deed which seems to have relied upon by the learned AGP was infact an agreement of sale and the land ad-measuring 81 Are was agreed to be sold for the consideration of Rs. 90,000/-. The learned AGP submitted that the Reference Court has mentioned that the said land is not away from the acquired lands. The learned AGP submitted that nothing has come on record to show as to how much was the distance of the acquired lands from the said land and how that land can be said to be comparable for determining the market value of the acquired lands. The learned AGP submitted that the Reference Court has thus arbitrarily enhanced the amount of compensation which cannot be sustained.

7. The learned AGP further submitted that the valuer on whose evidence the Reference Court has placed the implicit reliance was infact not a

approved valuer and no implicit reliance therefore could have been placed on the valuation given by the said valuer. On all these grounds, the learned AGP prayed for setting aside the judgment and award passed by the Reference Court and/or to modify award and/or suitably modify the impugned common judgment and award.

8. Shri Ingle, the learned counsel appearing in these appeals for the respondents i.e. original claimants supported the impugned judgment and award. The learned counsel submitted that Village Bhuibhar is just adjacent to Osmanabad city. The learned counsel submitted that in such circumstances, there is no much difference in the value of the lands falling in the area of municipal limit of Osmanabad and the lands situate at Village Ruibhar. The learned counsel further submitted that the said village is at Osmanabad-Latur road and has all potentials of ongoing developments and as such the Reference Court has rightly determined the market value of the said lands at the rate of Rs. 30,000/- per Acre.

9. The learned counsel further submitted

that the Reference Court has not awarded the same rate as was received to the lands which was the subject matter of the sale instances relied upon by the claimants. The learned counsel pointed out that the Reference Court has specifically observed that the average rate which was received to the lands which were the subject matter of the sale instances brought on record by the claimants was of Rs. 40,000/- per Acre. The Reference Court has awarded the market value of Rs. 30,000/- to the acquired lands. The learned counsel submitted that the market value as has been determined by the Reference Court was based on the evidence and was the real market value of the acquired lands at the relevant time.

10. The learned counsel further submitted that the witness examined by the claimants may not be a government approved valuer but admittedly he was an expert in the field and in absence of any contrary evidence on record, his evidence was liable to be considered and was accordingly considered by the Reference Court. The learned counsel submitted that the compensation as has been enhanced by the Reference Court is moderate and in

no case can be said to be arbitrarily enhanced or exorbitant. The learned counsel further submitted that the claimants had already received the entire amount of compensation with interest thereon as was enhanced by the Reference Court. The learned counsel for all above reasons prayed for dismissing the appeals.

11. I have given due consideration to the submissions made by the learned AGP and the learned counsel appearing for the original claimants. I have perused the impugned common judgment and award as well as the evidence on record. It is not in dispute that the lands which are the subject matter in the present appeals were acquired for Ruibhar Medium Project vide the notification published on 07.08.1984. Though the learned AGP was much persuasive in submitting that the Reference Court has failed in appreciating the sale instances on record after having gone through the discussion made by the Reference Court, it is difficult to agree with the contention so raised.

12. The Reference Court has made exhaustive discussion while determining the market value of

the acquired lands and has thoroughly considered the evidence on record. The Reference Court has appropriately considered the sale instances brought on record by the claimants and based on the value received to the lands involved in the said sale instances has determined the market value of the acquired lands. In the circumstances, it is difficult to accept the contention raised by the learned AGP that the market value of the acquired lands has been arbitrarily enhanced by the Reference Court.

13. As has come on record, Village Ruibhar from where the lands were acquired for the project, is adjacent to the municipal limit of Osmanabad. As was submitted by the learned counsel for the claimants, where the municipal limits ends, area of village Ruibhar starts. Considering the situation as above, it can be reasonably said that there may not be much difference in the prices of the lands falling within the municipal limits but at a very short distance from the acquired lands. It is true that while discussing the sale instances i.e. agreement of sale executed by one Shri Nanasaheb Tirthkar, the Reference Court has not provided

further particulars as about the distance of the said land from the acquired lands. Nothing contrary is, however, brought on record to suggest that the acquired lands were at far away distance from the said lands. In the circumstances, merely because the exact distance is not mentioned, the fact mentioned by the Reference Court that the said land is not away from acquired lands cannot be discarded.

14. It further appears to me that the Reference Court has not blindly accepted the sale instances brought on record by the claimants. Admittedly, the sale instances which are brought on record show that the lands involved in the said sale deeds had received the consideration at the rate of Rs. 40,000/- per Acre. Though the Reference Court has not made any elaborate discussion, there is reason to believe that considering the plus and minus factors, the advantages and disadvantages, the Reference Court has determined the market value of the acquired lands at the rate of Rs. 30,000/- per Acre and has accordingly enhanced the amount of compensation.

15. After having considered the entire evidence on record, it does not appear to me that the Reference Court has committed any error so as to cause interference in the judgment and award passed by it.

16. Similarly, though the learned AGP has argued that there is no uniformity in the amount of compensation awarded for wells and tals, this submission also does not carry any weightage for the reason that in each of the matter, the size of the well and the nature of its construction appears to be different. In the circumstances obviously the Reference Court has valued the said Wells at difference prices.

17. It is further revealed that the claimants had adduced the evidence of an expert in order to prove the valuation of the said wells. The evidence on record shows that though the valuer has valued the wells at the price as are mentioned in the said valuation reports, the Reference Court has awarded the compensation almost at half of the said rate in the judgment and award passed by it. It is therefore quite evident that the Reference Court

has not accepted the evidence of the valuer as it is but has applied its mind and has accordingly determined the enhanced amount of compensation liable to be paid for the Wells existing in four matters. Same is the case in respect of the Tals existing in four of the lands involved in the present matters. I need not to make any more discussion in this regard for the reason that a very meager enhancement is granted for the tals.

18. After having considered the entire material on record, it does not appear to me that there is any scope for causing any interference in the common judgment and award so passed. In the result, the following order is passed:

ORDER

- i) The appeals are dismissed however without any order as to costs.
- ii) Pending civil applications, if any, stand disposed of.

(P.R. BORA, J.)