

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

973 FIRST APPEAL NO. 109 OF 2004

. The State of Maharashtra

..Appellant

Versus

1) Soma Vithu Banger
Age: 35 yrs.

2) Dhawala Krishna Banger
Age: 30 yrs.,
R/o.Kohandi, Tq.Akole,
District Ahmednagar.

..Respondents

...
AGP for Appellant : Mr. B.V. Virde
Advocate for Respondents : Mr. V.S. Bedre
...

**WITH
FIRST APPEAL NO. 110 OF 2004
WITH
FIRST APPEAL NO. 114 OF 2004**

...

**CORAM : SUNIL P. DESHMUKH, J.
DATE : 22nd FEBRUARY, 2018**

ORAL JUDGMENT:-

1) The present set of three Appeals is preferred by the State against enhancement of compensation by Land Acquisition Reference Court in its award dated 05.12.1996, in Land Acquisition References bearing No.8 of 1990, 25 of 1990 and 7 of 1990 respectively.

2) Heard Mr. B.V. Virde learned Assistant Government Pleader for the appellant and Mr. V.S. Bedre learned counsel for the respondents in these three Appeals.

3) All the First Appeals are concerned with the lands from the same village i.e. Kohandi, Tq.Akole, District Ahmednagar.

4) Lands of respondents/claimants were acquired for submergence in Upper Pravara Project. The land acquisition proceedings were initiated by same Notification under Section 4 in respect of the acquisitions concerned in present set of appeals and were decided by Special Land Acquisition Officer by award No.LAQ/SR/6/83 dated 22.02.1988. Exception to said Award has been taken by the land loser-owners in respect of rates and enhancement in the same had been demanded preferring land acquisition references. The State had filed written statement in Land Acquisition Reference No.48 of 1990 at Exhibit 6 and had adopted said written statement in the other references arising out of said award. Possession of the lands had been taken on 05.08.1988. All the references arising out of said award No.LAQ/SR/6/83 preferred by the land loser-owners had been heard simultaneously and were decided by a

common Judgment in Land Acquisition References No.7 to 36, 47 and 48 of 1990 and 147 of 1991. Common evidence, had been led in all the Land Acquisition References. All the references were decided by passing detailed Judgment and award dated 05.12.1996 in Land Acquisition Reference No.35 of 1990.

5) The matter will have to be viewed in the background that Land Acquisition Reference Court proceeded to decide all the Land Acquisition References simultaneously rendering a common Judgment including the Land Acquisition References No.35 of 1990, the very same decision is being questioned in these three appeals.

6) While this is so, it may be relevant to quote paragraph No.4 from the order passed on 15.6.2007 by the Division Bench of this Court while rejecting Civil Application No.7404 of 2005 for condonation of delay in First Appeal Stamp No.25664 of 1997 sought to be preferred against Land Acquisition Reference No.35 of 1990, reading thus:-

“4. That apart, in order to ascertain that a meritorious case is not being thrown out at the threshold, we have referred to copy of the impugned judgment which is available on record. Against compensation of Rs.1,09,068/- as awarded by S.L.A.O., Reference Court has awarded compensation of Rs.6,78,400/- towards

market price of the land. This market price is allowed to an area of 8 Hectares 48 Ares (21 Acres and 8 Are). Compensation is paid by fixing the market price at Rs.800/- per Are or Rs.80,000/- per Hectare. It appears that the claimant had produced before the Court judgment and award in Land Acquisition Reference no.15/91 pertaining to land at village Indori. This was a matter decided on 24/7/96. In that judgment the sale instances which were relied upon in present land acquisition reference and copies of which were produced at Exhs.41, 43, 45 and 47 were considered. The claimants also produced acquiescence letter issued by Government of Maharashtra in respect of judgment and award in Land Acquisition Reference no.15/91 which arose out of award no.LAQ/SR/418/84. The lands of the claimants are from village Kohandi and were acquired for the submergence of Upper Pravara Project. In the sale instances at Exhs.41 and 43, lands were sold at a rate of nearly 1000/- per Are (46 Ares sold for Rs.45,000/- and 41 Ares sold for Rs.41,000/-) which were transactions of jirayat land in the year 1984 whereas award in the matter under consideration was of the year 1988. Thus it can be ascertained that by granting compensation at the rate of Rs.800/- per Are in the year 1988 i.e. 4 years after the date of sale transactions referred for the purpose of comparison wherein jirayat lands were sold at higher rate, it can be confirmed that reference Court has not granted unreasonable or exorbitant compensation.”

7) Land Acquisition Reference Court had held on the evidence as adduced that land value determined by the Special Land Acquisition Officer while making award on 22.02.1988 will have to be upwardly revised. Valuation/compensation for trees with reference to the reports

submitted by either side, however, was reduced by 1/3rd considering that the report of horticulture expert, as has been submitted on behalf of the land owners, was on higher side.

8) Learned Assistant Government Pleader has contended that compensation granted by the Special Land Acquisition Officer had been adequate and the classification of lands considered by him is proper and that the lands are situated in geographically hilly area. He contended that reliance placed on the sale instances from neighbouring village would not be proper as small pieces of land would not be indicative of actual price of the acquired land that would have been fetched in the market. He further contends that the value for trees had been computed properly. It is contended that compensation awarded by the Land Acquisition Reference Court @ Rs.80,000/- per hectare is more and not proper and is not in tune with the evidence on record.

9) The land owners had contended that value of their lands as considered by the Special Land Acquisition Officer had been grossly inadequate. The quality of their lands had been superior and lands were fetching more market price than valued by the Special Land Acquisition Officer. The land owners had been taking cash crops as the lands were

situated on the bank of river. Additionally, the lands were getting irrigated by well water. Grouping of lands in I, II, III and IV categories with reference to land revenue had been objected to, contending that, that is not sound way of valuation of land because timely land revenue revisions had not taken place. Sale instances of lands of neighbouring village had not been taken into account. The quality and yielding capacity had been held as low. Besides, the compensation awarded for trees had been grossly inadequate.

10) Mr. V.S. Bedre learned counsel for the respondents submits that all the lands were acquired under the same Notification under Section 4 of the Land Acquisition Act, 1894 for submergence in Upper Pravara Project. All the lands concerned are from village Kohandi and they are from same track of lands geographically. Thus, common evidence had been allowed to be adduced by the Land Acquisition Reference Court and no objection had been taken to the same by the State. He points out that, as a matter of fact, common written statement had been considered for all the References as can be gathered from decision and observations of the Land Acquisition Reference Court.

11) He submits that Land Acquisition Reference Court had considered

all the aspects involved in the matter and had scanned all the evidence and had arrived at proper compensation for acquisition of the lands and the trees. He submits that the Court with reference to a decision in the case of *Raja Bhairabendra Vs. Collector of Goalpara [AIR 1987 Gohatti 51]* has appropriately considered that classification of lands according to land revenue would not be a determinative factor. He further submits that in the absence of sale instance from the same village indicating market value of lands, sale instances of neighbouring villages are guiding factors and same has been properly considered accordingly. He submits that as far as compensation in respect of trees is concerned, the Land Acquisition Reference Court had referred to evidence given by witness and there is no counter evidence in respect of the same. No other contradictory evidence is brought forth which could be considered showing lower valuation. In the absence of any other evidence, there is no substance in assailing the compensation as determined by the Land Acquisition Reference Court in respect of trees.

12) It appears that all the lands under acquisition were in the same track and were adjacent lands. The lands were of similar quality and fertility. Their geographical location is similar. The crop pattern in the lands were also similar. In the circumstances, it has been considered to

be appropriate by the Land Acquisition Reference Court to decide the References by common Judgment.

13) The Land Acquisition Reference Court under its common Judgment in Land Acquisition Reference No.35 of 1990 in quite some details has referred to the evidence led in Land Acquisition References and the sales instances. It has further been observed that lands in adjacent villages like Takali, Vitha, Chittal-Wedha and Nibbodi had the same quality of lands as that of village Kohandi. The rains and climatic conditions were also similar and mode of cultivation was also similar. Further, the villages Indori, Mehenduri and Vitha, are all on the bank of river Pravara. All the land loser owners were having the facility of watering their lands with implements therefor. The cross-examination of witness had also revealed that the villages referred to were quite close to the lands under acquisition in question. In addition to oral evidence tendered on behalf of the land owners, the Land Acquisition Reference Court has discussed a few sale instances in some detail in paragraph No.17 to 28. Having regard to aforesaid, while it is not the case even of the appellant State that there had been any irregularity in deciding all the Land Acquisition References by a common Judgment, the reasons as appearing in the decision of the Land Acquisition Reference Court, which has referred to

decisions in the cases of *Anar Singh Vs. Union of India* [AIR 1985 Delhi, 298], and *Pt. Jain Ram Singh Vs. Union of India and others* [AIR 1989 Delhi, 310] relied on behalf of the land owners, as well as the evidence and the discussion with regard to the same appear to be in tune. The Land Acquisition Reference Court appears to have minutely scrutinized the evidence and found that the Award passed by the Special Land Acquisition Officer dated 22.2.1988 requires modification by giving upward compensation to the land owners.

14) The Land Acquisition Reference Court has also referred to the decision of the Supreme Court in the case of *Pal Sing Vs. Union Territory of Chandigarh* [AIR 1993 Supreme Court, 225] considering that a Judgment determining market value of land can be admitted in evidence for determination of market value of land in question and the Judgment so considered must be a previous Judgment.

15) The State has not been in a position to bring forth any evidence to show that the lands involved in the present set of three Appeals are not from the same track of lands as considered by the Land Acquisition Reference Court or for that matter not geographically similarly located or in other words climatic conditions are different.

16) Apart from aforesaid, it may also be pertinent to note that the Judgment rendered by the Land Acquisition Reference Court cannot be said to be not in tune with the evidence on record or is so highly improbable that it would not be a reliable decision.

17) The reasons and observations which have been appearing in Paragraph No.4 quoted above by the Division Bench (supra – foregoing paragraph) aptly apply in the present facts and circumstances.

18) In the circumstances, the grounds on which the challenge is sought to be posed to the decision of the Land Acquisition Reference Court do not appear to carry any substance. These Appeals therefore fail and are dismissed.

[SUNIL P. DESHMUKH, J.]