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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.4246 OF 2016

1. Ratnakar Baburao Waghchaure APPELLANTS
Age - 70 years, Occ - Agriculture

2. Rajendra Baburao Waghchaure
Age - 65 years, Occ - Agriculture

3. Babutai Baburao Waghchaure
Age - 64 years, Occ - Agriculture

All R/o Nimgaon Korahale
Taluka - Rahata, District - Ahmednagar

VERSUS

1. The Government of Maharashtra RESPONDENTS
Through Special Land Acquisition Officer,
No.9 @ Sub Divisional Officer,
Aurangabad Road,
Ahmednagar

2. The Executive Engineer,
Middle Railway (Construction)
Bhusawal, District - Jalgaon

WITH
FIRST APPEAL NO.4247 OF 2016

1. Abhay Purushottam Shelke APPELLANTS
Age - 43 years, Occ - Agriculture

2. Avinash Purushottam Shelke
Age - 38 years, Occ - Agriculture

R/o Shirdi, Taluka - Rahata,
District - Ahmednagar

VERSUS

1. The Government of Maharashtra RESPONDENTS

Through Special Land Acquisition Officer,
No.9 @ Sub Divisional Officer,
Aurangabad Road,
Ahmednagar

2. The Executive Engineer,
Middle Railway (Construction)
Bhusawal, District - Jalgaon

WITH
FIRST APPEAL NO.4248 OF 2016

1. Jayram Tukaram Ghodkar APPELLANTS
Age - 75 years, Occ - Agriculture

2. Shankar Tukaram Ghodkar
Age - 61 years, Occ - Agriculture

R/o Nimgaon KOrhale, Taluka - Rahata,
District - Ahmednagar

VERSUS

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Through Special Land Acquisition Officer,
No.9 @ Sub Divisional Officer,
Aurangabad Road,
Ahmednagar

2. The Executive Engineer,
Middle Railway (Construction)
Bhusawal, District - Jalgaon

WITH
FIRST APPEAL NO.4249 OF 2016

Bhamabai Rangnath Bagade APPELLANTS
Died Through LRs

A) Laxman Rangnath Bagade
Age - 59 years, Occ - Agriculture

B) Digambar Rangnath Bagade
Age - 40 years, Occ - Agriculture

R/o Nimgaon Korhale, Taluka - Rahata,
District - Ahmednagar

VERSUS

1. The Government of Maharashtra RESPONDENTS
Through Special Land Acquisition Officer,
No.9 @ Sub Divisional Officer,
Aurangabad Road,
Ahmednagar

2. The Executive Engineer,
Middle Railway (Construction)
Bhusawal, District - Jalgaon

WITH
FIRST APPEAL NO.4250 OF 2016

Karbhari Damu Ghodekar APPELLANTS
Died Through LRs

A) Changdeo Karbhari Gadekar
Age - 66 years, Occ - Agriculture

B) Ashok Karbhari Gadekar
Age - 57 years, Occ - Agriculture

C) Shivaji Karbhari Gadekar
(Died Through LRs)

C-1) Shantabai Shivaji Gadekar
Age - 68 years, Occ - Agriculture

C-2) Raghunath Shivaji Gadekar
Age - 38 years, Occ - Agriculture

R/o Nimgaon Korhale, Taluka - Rahata,
District - Ahmednagar

VERSUS

1. The Government of Maharashtra RESPONDENTS
Through Special Land Acquisition Officer,

No.9 @ Sub Divisional Officer,
Aurangabad Road,
Ahmednagar

2. The Executive Engineer,
Middle Railway (Construction)
Bhusawal, District - Jalgaon

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Mr. P. B. Sirsath, Advocate for the appellants
Mr. A. D. Namde, AGP for respondent - State
Mr. D. V. Soman, Advocate for respondent No.2

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 22nd MARCH, 2018

ORAL JUDGMENT :

1. The first appeals have been preferred by claimants - owners of lands bearing lands gut No.52, 53/A-B, 54, 55, 56, 60/B, 62 and 68 situated at Mouje Nimgaon-Korhale, Taluka-Rahata, District - Ahmednagar. Their lands had been acquired for Puntamba - Shirdi railway line, under award dated 24th August, 2005. The special land acquisition officer had granted compensation to the claimants @ Rs.11,40,000/- per hectare.

2. According to learned advocate Mr. P. B. Shirsath for the appellants - claimants, compensation awarded by the special land acquisition officer was on much lower side than was due to them. The special land acquisition officer had not appreciated evidence on record and considerations which had weighed hardly

relate to the material available. He had gone by with the matter very cursorily. It is being contended that linking of lands with land revenue assessment which had taken place long back has also worked against proper determination of land value. The special land acquisition officer has gone only by crop pattern rather than other material on record, giving clear position of price fetched by the lands in the market being as demanded and higher. The rate of compensation determined by the special land acquisition officer under the award is without consideration of relevant statutory provisions relating to determination of land value.

3. It is further being contended that evidence on record, particularly, relevant one, of sale instances has not been properly appreciated and has not given its due by reference court. The reference court had not applied its mind to lot of relevant and vital facts and aspects and at many a place observations and inferences of the reference court are conjectures and surmises, assumptions and presumptions.

4. Mr. Sirsath, learned advocate appearing for the claimants - appellants submits, that examination of decision by reference court would reveal that the court had been influenced by value of

lands determined by the Assistant Director of Town Planning, who has valued the lands @ Rs.11,40,000/- per hectare. He submits that the valuation by said authority would hardly be a relevant consideration and much less when there is no reference or evidence as to the basis and the material taken into account by said authority while determining land value. He submits that while stronger evidence in the form of sale deeds had been placed on record, going by land value determined by Assistant Director of Town Planning has been a gross and patent error committed by the reference court. The land value ought to have been determined from the evidence placed on record and not on the basis of report by Assistant Director of Town Planning.

5. He purports to point out that while the judgment refers to quite a few sale instances, a relevant one in respect of land in close proximity to the lands of the appellants has been discarded very unreasonably, for it is of the year 1999 and the land acquisition notification is of the year 2002, since sale deed is of a date three years prior to notification. He submits that the sale deed in respect of gut No.71 of the year 2000 has not been considered which has a closer proximity to the lands under acquisition, for the reason that it does not make any reference as to whether the lands were irrigated or otherwise. He submits

that, however, in respect of land acquisition of land bearing gut No. 44, which is at a farther distance, the sale instance of gut No. 71 has weighed with the reference court in land acquisition reference No.136 of 2007. The reference court has in said reference directed to pay higher compensation to the land placed farther from land gut No. 71 than the lands under acquisition in present matters, which are at much closer distance. However, the same court has not only turned down request for enhancement of compensation by the appellants but also has rejected their request absolutely.

6. Learned advocate further purports to point out that evidence on record in respect of lands under acquisition of the claimants has been overlooked by the learned judge of the reference court. He submits that the court has erred in blindly following classification of lands done by special land acquisition officer rather than evidence on record. He submits that there is sufficient record placed in respect of land gut No.52 being irrigated, but is classified as dry land by the special land acquisition officer, and draws attention particularly to Exhibit-71, which is a seven twelve extract showing well in the land. Exhibit-64 is an energy bill issued by MSEB, depicting that there had been electric connection giving indication of that there was water

source available. Exhibits-65 and 66 are water pass receipts showing that the lands were receiving water supply. Exhibit-67 is a block receipt which once again gives indication of water supply to land bearing gut No.52. Lands bearing gut no. 53-A and 53-B were already classified by Special Land Acquisition Officer as irrigated land. He further points out that Exhibit-26 is the seven twelve extracts of land gut No.54, which shows existence of well in the land, whereas Exhibits-50 and 63 are energy bills issued by MSEB in respect of Gut No. 54. Exhibit-70 a seven twelve extract shows existence of a bore well in land gut No.55. He further submits that while revenue record had been produced in respect of land gut No.60/B, the same has not been exhibited.

7. He further points out that while the special land acquisition officer had considered land gut No.68 to be an irrigated land, yet reference court had ignored the same and dismissed the claim for enhancement of compensation even for land gut No. 68. He further submits that all the lands of the claimants are situated in close proximity to each other and quality, fertility and yielding capacity of the lands is also similar. There is sufficient evidence / material available showing that the lands were receiving water supply. He submits that may be due to some reasons and due economic incapacity of the claimants, for some period water

facility could not be utilized, yet the fact remains that the lands were receiving water. All these material aspects have been missed out by the reference court while evaluating worth of lands under acquisition.

8. He submits that notification in the present matters for acquisition under section 4 of the Land Acquisition Act had been issued on 21st November, 2002. There is a sale deed at Exhibit-48 in respect of land bearing gut No.73/1 where twenty *are* land had been sold @ Rs.24,000/- per *are* aggregating to Rs.4,80,000/- for 20 *are* land. The sale deed is dated 10th February, 2000. There is yet another sale deed in respect of land bearing gut No.30, which is also quite close to the claimants' land, wherein two *are* land had been sold on 18th January, 2002 @ Rs.30,000/- per *are.*

9. He submits that Exhibits-74 and 75 are sale deeds of 14th July, 2000, in respect of land gut No.71, fetching Rs.20,000/- per *are*. He submits that those sale deeds have weighed while determining value of land in acquisition reference No.136 of 2007 for gut No.44, which is at a much farther distance from land gut No.71. The lands of the claimants are nearer to land gut No.71 than land gut No.44. Yet, those sale deeds have also been

ignored by the reference court. He, therefore, submits that land acquisition reference court has not appreciated evidence properly and has erred in going cursorily over the same.

10. He submits that the land under land acquisition reference No.136 of 2007 has been acquired also for railway track under the very same notification as the one concerns with the present lands. Land gut No.44 is also from the same village. Land gut No.44 while deciding land acquisition reference has indeed been considered as dry land and land acquisition compensation has been paid @ Rs.20,00,000/- per hectare working out to be Rs.20,000/- per *are*. With reference to above, learned advocate Mr. Sirsath places reliance on a judgment of the Apex Court in the case of *"Ali Mohammad Beigh and Others V/s Sate of J and K"* reported in *2017 ALL SCR 813.* Drawing attention to contents of paragraphs No.6, 9, 12, 13 and 14 from the same, he states that, the case related to lands from adjoining villages. In the scenario, he submits, having regard to decision in land acquisition reference No.136 of 2007 and the observations referred to in aforesaid paragraphs, parity demands that the claimants shall at least receive compensation @ Rs.20,000/- per *are* and not at all at the lower rate as determined by the Assistant Director of Town Planning beyond which the reference court has not applied its

mind while deciding land acquisition reference.

11. In such a case, referring to decision in the case of *"Union of India V/s Bal Ram and Another"* reported in *(2010) 5 SCC 747*, drawing attention to paragraphs No. 3, 4 and 5 of the judgment, he submits, it would be unfair to discriminate between land owners, to pay one more and the others less when the purpose of acquisition is the same and the lands are identical and similar. In the present case, discrimination would be all the more apparent since lands are from the same village.

12. Countering aforesaid submissions, Mr. D. V. Soman, learned advocate appearing for respondent No. 2 acquiring body contends that land acquisition reference court with reference to the material on record has taken a proper and plausible view. There is no reliable and cogent material giving indication of price of lands. He submits that revenue record, it can hardly be said, depicts lands of the claimants to be irrigated lands. The crop pattern shown in the revenue record gives quite an indication of that from a long time, the lands were not receiving water supply and the crop pattern also suggests that lands were in use as dry lands. He further submits, in the circumstances, Exhibits-48 and 49 the sale instances which are being relied upon in support of

claim for enhancement of compensation may not be relevant to be taken into account, looking at that those sale instances are in respect of of smaller areas of lands and may be having other advantages. According to him, those have been rightly discarded by the reference court since none of the sale instances refer to quality of land and cultivation and as to whether those lands are irrigated or dry lands. The reference court had picked up a right path and went on with the classification of lands as referred to by the special land acquisition officer, supplemented by the revenue record available in evidence.

13. He submits that the submission on behalf of the claimants about their lands being irrigated may not be as much relevant as on the date, for the documents would depict that those are of distant past and not of proximal period. In such a case, result producing capacity of claim about lands being irrigated gets watered down and the evaluation of the lands will have to be made in the circumstances as were appearing on the date of notification. He submits that land acquisition reference No.136 of 2007 would not have any impact on the evaluation of the lands of the claimants. Land Acquisition Reference No.136 of 2007 concerns land gut No.44, which is a disjointed land from the lands of the claimants. In support of his submission, learned

advocate Mr. Soman also cites two judgments, one in the case of *"State of Maharashtra V/s Bhaskar Namdeo Wagh and Others"* reported in 2*008 SCC OnLine Bom 1048*, in which he submits that it has been aptly considered that crop pattern of agricultural land would be indicator about quality of land and the treatment be given to the same accordingly. Other citation relied upon on behalf of respondent No.2 is the case of *"Union of India and Another V/s Raja Ram and Others"* reported in *(2014) 11 SCC 307*, which he presses into service to refer to as to what considerations shall go into determining land value. He draws attention to paragraph No. 23 thereof in order to emphasise that location of land and its distance from other developments would affect land valuation.

14. Perusal of the decision of the reference court shows, it has been considered that land acquisition award by special land acquisition officer had been on the basis of draft development plan and not on the basis of sale instances as the lands were considered to be included into growth centre having development potential and the valuation had been done by assistant director of town planning, who had fixed value of lands @ Rs.11,40,000/- and accordingly, the special land acquisition officer had determined value @ Rs.11,40,000/- per hectare and value of gut No.26 had been determined by the special land

acquisition officer @ Rs.22,79,000/- per hectare.

15. Learned judge of the reference court also appears to have appreciated that before going ahead to determine land price it should be considered that assessment of land and land revenue, are not the criteria to determine compensation, albeit, it also appears to have been considered that ready reckoner prices would not be relevant, for it had been considered these are meant for the purpose of collection of stamp duty. Learned judge also has observed that there is no documentary evidence placed on record, on the basis of which the assistant director of town planning has valued land @ Rs.11,40,000/- per hectare. Learned judge initially appears to have adverted to that the special land acquisition officer had not given any reason, as to why sale deeds of land gut No.71, are not considered which give indication of the land being priced at Rs.20,00,000/- per hectare. Learned judge also has considered relevant date for market value of land is date of notification which is 21st November, 2002.

16. Learned judge, however, further appears to have considered that Exhibit-47 is a sale instance of 6th July, 1999 and it being beyond three years before the date of notification, it would not be appropriate to take the same into account while

deciding compensation in present matters. The two sale instances, one at Exhibit-48 dated 10th February, 2000 and the other Exhibit-49 dated 18th January, 2002 in respect of 20 *are* and 2 *are* land respectively, show that lands been valued at Rs.27,000/- per *are,* but were not considered for the reason that those do not reflect upon as to whether lands were irrigated or dry. Learned judge appears to have further considered that Exhibit-72 is a sale instance in respect of non agricultural land, although there is no N.A. order.

17. Sale instances relating to land gut No. 68 is during 1999 to 2001 fetching value @ Rs.21,000/- to 25,000/- per *are,* as can be seen from pages 9 and 11 of the award of Special Land Acquisition Officer dated 24th August, 2005 whereas dry lands were being sold in the range of Rs.7000/- to 20,000/- per *are* and dry lands as referred to on page 12 of the award are of lands gut No.163/1, 163/2, 163/3, 163/4, 163/5, 383, 369, 154, 196, 7, 298, and 71. It also emerges that land gut No.71 sold on 14th July, 2000 @ Rs.20,000/- per *are* has been a dry class IV said land is similar to the acquired lands and acquired lands had been considered also by the special land acquisition officer as dry class IV lands.

18. Learned judge, it appears, has been oblivious of that even dry land in close proximity in particular land gut No.71 had fetched in the year 2000 rate of Rs.20,000/- per *are*. It may have also to be taken into consideration that the very sale instance in respect of land gut No.71 which has been considered to be dry land has weighed with the same court while deciding land acquisition reference No.136 of 2007 in respect of land gut No.44, which had also been dry class IV land. The tabular form in which sale instances in respect of dry land as appearing at page 12 of land acquisition reference award gives an indication those lands are not at close distance from land gut No.71. Land gut No.71, the map, at Exhibit-76 appearing on record, shows that the lands under acquisition of the claimants have closer proximity to land gut No.71 than land gut No.44.

19. Learned judge although has also referred to submissions on behalf of the claimants about sale instances particularly Exhibits-47, 48, 49, 72, 74, and 75. Yet the court had considered that no oral evidence has been produced in respect of the same and the sale instances are of different land gut numbers and not of the claimants' lands gut number. Section 51A of the Land Acquisition Act in process appears to have been overlooked by reference court.

20. In the circumstances, it does not appear that the reference court had been right in absolutely dismissing the claims made for enhancement of compensation by the present appellants. While determining the land value even if one goes by contention on behalf of the respondent - acquiring body that the lands ought to be treated as dry lands while dry lands from the same village around the year 2000 could fetch value @ Rs.20,000/- per *are,* and land values around the time of acquisition had been increasing, the rate at which lands had been sold in 2000, should get enhancement @ 10% per year as is generally considered. While reference court has specifically observed that basis of valuation of lands by assistant director of town planning has not been placed on record and while sale instances have been placed on record in respect of land in closer proximity giving guiding indicator of prevailing land prices, may not be with mathematical precision, the same ought to receive its due. There does not appear any reason whatsoever as to why a three year old sale instance in respect of land in closer proximity may be of a smaller area could not be considered. Even the reference court has considered that sale instance of smaller piece of lands cannot be absolutely discarded as observed in paragraph No.22 of the judgment and award and there are sale instances relating

to lands having close proximity i.e. sale instance at Exhibit-48 in respect of land gut No.68 whereunder one *are* land has fetched consideration of Rs.30,000/- on 10th February, 2000. Exhibit-74 of gut No. 71 also gives indication of prevailing price of dry land. Said sale instances of the year 2000 ought to have received their legitimate due. A land which is placed at farther distance from land gut No.71 than the claimants' lands, after considering sale instance in respect of land gut No.71 has been paid land value @ Rs.20,000/- per *are.*

21. It does appear that the reference court has erred in absolutely dismissing the claims for enhancement in land acquisition compensation. Evidence available on record in respect of lands gut No.71 and 73 shows value in 2000-2002 in the range of rate Rs.20,000/- to Rs.30,000/- per *are.* All the sale instances taken together give an indication that the claimants' have been inadequately compensated. Land value in the circumstances, will have to be determined going by sale instances at Exhibits-47, 48, 49 and 71 and the decision in land acquisition reference No.136 of 2007. While determining land value of the claimants' lands at least Rs.20,000/- per *are* ought to have been considered by the reference court, if not more.

22. In the circumstances, it would be appropriate that the claimants should also receive land acquisition compensation at least at the same rate as were prevailing for lands in closer proximity *viz.,* gut No.68 and 71 in 2000, if not more.

23. In view of aforesaid, first appeals are allowed. Impugned judgment and award by reference court is quashed and set aside. Land acquired of the claimants / appellants shall be paid compensation @ Rs.20,000/- per *are* and should be given all the statutory benefits, arising therefrom.

24. First appeals are allowed accordingly.

[SUNIL P. DESHMUKH, J.]

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