

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

**915 FIRST APPEAL NO.345 OF 2002
WITH
CIVIL APPLICATION NO.4354 OF 2016 IN FA/345/2002
...**

Uttamrao Bhimrao Gharule
Age: 35 years, Occu.: Agriculture,
R/o. Gaur, Taluka Nilanga,
District Latur. ..Appellant

VERSUS

The State of Maharashtra
Through the Collector, Latur. ..Respondent

...
Advocate for Appellants : Mr.H.B.Nandagawale h/f.
Mr.V.G.Sakolkar
AGP for Respondent : Mr.A.M.Phule

...
WITH
FIRST APPEAL NO.351 OF 2002
WITH
FIRST APPEAL NO.352 OF 2002
WITH
FIRST APPEAL NO.354 OF 2002
WITH
FIRST APPEAL NO.356 OF 2002
WITH
FIRST APPEAL NO.357 OF 2002
WITH
FIRST APPEAL NO.358 OF 2002
...

CORAM : M.S.SONAK, J.

DATE : 15th FEBRUARY, 2018

ORAL JUDGMENT:-

- 1) Heard the learned counsel for the parties.
- 2) Learned counsel for the parties submitted that all the aforesaid seven appeals can be disposed of with a common Judgment and order, since, the matters arise out of land acquisition for Left Bank Canal of Masalga Project, Village Gaur, Tq. Nilanga, District Latur, which came to be acquired by one and the same Section 4 Notification dated 17.9.1987.
- 3) In these matters, there is no dispute that the acquired lands were Bagayat or Jirayat lands for which the Land Acquisition Officer awarded compensation of Rs.29,000/- per Hectare, which corresponds to Rs.11,600/- per Acre. The Reference Court by the impugned Judgment and award has enhanced compensation to Rs.31,000/- per Hectare, which corresponds to Rs.12,400/- per Acre. In

these cases, neither of the parties produced any evidence, but the Reference Court by referring to certain previous acquisitions and the awards made therein, enhanced the compensation marginally.

4) In these appeals, the learned counsel for the appellants has produced on record Judgment and order dated 14.10.2008 made in First Appeal No.2716 of 2008 and connected matters in which this Court has determined the rate of the acquired lands from the same Village Gaur, which came to be acquired for the same Project i.e. the Masalga Project, but in pursuance of the earlier Notification dated 4.8.1984. This Court has determined that the irrigated lands are liable to be paid compensation at the rate of Rs.40,000/- per Acre and dry lands at the rate of Rs.30,000/- per Acre. The learned counsel for the appellants submits that since, this Court, has determined the rate in respect of the acquired lands from very same village and for the very same Project, compensation in the present appeals is liable to

be determined on the basis of the decision of this Court dated 14.10.2008 in First Appeal No.2716 of 2008 and connected matters. He submits that since, this Court determined the rate in the context of Section 4 Notification dated 4.8.1984 and since now the present appeals which are concerned with acquisition in pursuance of Section 4 Notification dated 17.9.1987, the appellants are entitled to escalation at the rate of 10% p.a. on the rate determined by this Court in the context of Section 4 Notification dated 4.8.1984.

5) Mr.A.M.Phule learned AGP for the State submits that since in the present case no evidence was adduced by the appellants, the References were required to be rejected on that ground alone. Mr.Phule submits that the burden of proving the enhanced rate is always on the claimants and since the claimants have failed to prove it by adducing evidence before the Reference Court, the Reference Court had erred even in marginally increasing the compensation. In any case, Mr.Phule submits that

there is no case made out to order any further enhancement. He submits that there is no evidence on record as to the comparability and therefore, no enhancement can be ordered relying upon the decision of this Court dated 14.10.2008. For these reasons, Mr.Phule submits that these appeals are liable to be dismissed.

6) In these matters, it is true that no evidence was led by either parties before the Reference Court. Notwithstanding the same, the Reference Court did enhance the compensation after it was satisfied that the compensation awarded by the Land Acquisition Officer was inadequate, however, such enhancement was only marginal. The appellants have not given any cogent reasons as to why they did not lead evidence before the Reference Court. Ordinarily, in the matters of this nature, yet another opportunity could have always been granted to the appellants so as to lead evidence in support of their claims for enhancement. However, this Court in its Judgment and order dated 14.10.2008 has already

determined the compensation in respect of both irrigated as well as dry lands for the same village i.e. Gaur, which came to be acquired for the very same Project i.e. Masalga Project, but, under the previous Notification dated 4.8.1984. In the small villages of this nature, normally, there is no substantial variation in the quality of lands. It is infact on this basis, that the Reference Court had granted marginal enhancement, even though, there is no evidence led on behalf of either of the parties. Such marginal enhancement was never questioned by the respondent State. From this, it can be inferred that even the respondent State did not have any serious objection to the proposition that in small villages of this nature, there is no substantial variation in the quality of lands. Besides, in this case, we are concerned with Jirayat land or dry land and the compensation is also claimed on this admitted basis. In these circumstances, rather than remanding the matters, interest of justice will be served if the

compensation is determined in terms of the Judgment and order dated 14.10.2008 made in First Appeal No.2716 of 2008 and connected matters.

7) As noted earlier, this Court, in the context of Section 4 Notification dated 4.8.1984, has already determined the rate of Rs.30,000/- per Acre in respect of dry land. By grant of 10% escalation each year, the rate of compensation in respect of dry land or Jirayat land in context of Section 4 notification dated 17.9.1987 can therefore be determined as Rs.39,930/- per Acre. This is, by grant of yearly increase of 10% p.a. which is consistent with the decision of the Hon'ble Supreme Court in the matters of this nature.

8) Accordingly, all these appeals are partly allowed. Compensation amount is enhanced to Rs.39,930/- per Acre. The appellants will be entitled to statutory benefits and interest on the enhanced amount.

9) The respondents are directed to recompute the compensation amount in each of these cases in terms of the enhancement now granted and deposit the enhanced amount together with statutory benefits and interest in this Court within a period of 12 weeks from today. Upon deposit, the appellants will be entitled to withdraw the same unconditionally.

10) In case, there is any dispute as regards calculations or computation, the appellants will be at liberty to withdraw the deposited amount without prejudice and thereafter, take out execution to recover the balance amount, if any.

11) The appeals are partly allowed in the aforesaid terms. There shall be no order as to costs.

12) Civil application pending, if any, is also disposed of.

[M.S.SONAK, J.]