IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 FIRST APPEAL NO. 3587 OF 2017

SUBHASH MALHARI KHATAKE
VERSUS
THE STATE OF MAHARASHTRA AND ANR

WITH

FA/3577/2017 WITH FA/3578/2017 WITH
FA/3579/2017 WITH FA/3580/2017 WITH
FA/3581/2017 WITH FA/3582/2017 WITH
FA/3583/2017 WITH FA/3584/2017 WITH
FA/3585/2017 WITH FA/3586/2017 WITH
FA/3588/2017 WITH FA/3589/2017 WITH
FA/3590/2017

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Advocate for Appellants : Mr.Devakate A.R.
AGP for Respondents : Mr. R.B.Bagul
Advocate for respondents in F.A. Nos. 3583 and 3584 of 2017 : Mr. A.R.Kale
Advocate for Respondents in rest of appeals : Mr.Rajale G.B.

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CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 03.09.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 11.09.2018

J U D G M E N T :

By consent of learned counsel for the respective parties, all appeals are heard finally at the admission stage.

2. Being aggrieved by the common judgment and award, passed by the Joint Civil Judge, Senior Division, Osmanabad, dated 19.1.2011, in Land Acquisition Reference No. 167 of 2007 and 147 of 2007 and other connected matters, original claimants in all Reference Petitions, preferred these appeals. No cross appeal or cross-objection is filed by respondent no.1 State and respondent no.2 acquiring body.

3. Heard Shri A.R.Deokate, learned counsel for the appellants, Shri R.B.Bagul, learned AGP for respondent no.1 and Shri G.B.Rajale, learned counsel for respondent no.2.

4. Brief facts leading to the institution of these appeals are as follows : -

(A) The Government has acquired land for the purpose of re-habilitation of village Pandhare Wadi, Taluka Paranda and notification to that effect under Section 4 (1) of the Land Acquisition Act, 1894 (for short hereinafter referred to as, 'the Act') was published in the Government Gazette on 14.6.2001. The Special Land Acquisition Officer has passed award on 15.12.2004 (for the sake of convenience, parties are referred by their original status in the proceeding before the Reference Court). The particulars of land of the claimants acquired by the State are mentioned in detail in the impugned judgment and award. The Special Land Acquisition Officer has awarded compensation at the rate of Rs.34,090/- per acre. Being aggrieved by inadequacy of compensation awarded by the Special Land Acquisition Officer, the claimants preferred Reference Petitions as above said.

(B) The lands of the claimants are fertile and irrigated with the water of well having sufficient water throughout the year. According to the claimants, at the relevant time of publication of notification under Section 4 (1) of the Act, the market price in the vicinity was Rs. One Lac per acre, however, the Special Land Acquisition Officer has not considered the same and awarded inadequate compensation. It is contended that there were fruit bearing trees and pipeline in the acquired lands, however, the Special Land Acquisition Officer has not paid any compensation for the same.

5. The respondents acquiring body and the State have resisted all the Reference Petitions by filing written statements. The respondents have not disputed the extent of ownership and possession and the purpose for which the lands are acquired. However, the respondents have specifically denied that the acquired lands are irrigated, black cotton soil and fertile. Even the market price in the vicinity at the rate of

Rs. One Lac per acre at the time of publication of notification under Section 4 (1) of the Act has been denied by the respondents. According to the respondents, the claim of the claimants is for exorbitant compensation. According to the respondents, the Special Land Acquisition Officer awarded just and adequate compensation after considering the quality of the land and on scrutinizing the sale instances and market value of the land in the vicinity.

6. The claimants led common evidence and placed reliance on two sale instances. Under sale deed, dated 7.2.2000 (Exh.23), land situated in the same village, admeasuring 30 Are was sold by Popat Tatya Pawar (PW 3) to Pratap Raosaheb Hare and Sharad Raosaheb Takle for total consideration of Rs. 80,000/- which corresponds to Rs. 1,06,666/- per acre. According to the claimants the said sale instance pertains to non-irrigated land. However, the acquired lands are irrigated lands. Second sale instance relied upon by the claimants is dated 31.1.2000 (Exh. 24) of the same

village, under which 50 Are land was sold for consideration of Rs. 60,000/- i.e. at the rate of Rs. 48,000/- per acre.

7. On the other hand, respondent no.2 relied upon sale instance, dated 31.8.2000 (Exh. 48), under which land was sold out at the rate of Rs. 34,090/- per Hector.

8. In fact, the sale instance, dated 7.2.2000 (Exh.23) is for highest consideration for the agricultural land, situated in the vicinity of village Pandhare Wadi. The Reference Court refused to consider it only on the ground that the vendor Popat Pawar (PW 3) has admitted in his cross-examination that the land under this sale instance is of good quality than the acquired land. However, such stray admission is not supported by any material on record. Thus, the sale instance, dated 7.2.2000 (Exh. 23) being from the same village and vicinity having no other infirmities, needs to be considered, to ascertain the market value of the acquired land on the date

of issuance of notification under Section 4 (1) of the Act. Otherwise also, the learned counsel for the appellants as well as the respondents points out that First Appeal No. 2525 of 2016 with other tagged appeals are disposed of by this Court on 21.2.2017. The acquired lands, which were subject matter of those appeals were acquired under the same award, under the same notification issued under Section 4 (1) of the Act and for the same purpose are also situated at village Pandhare Wadi. The land acquired under the same award is of identical quality as un-irrigated land. Learned counsel for the appellants submits that in First Appeal No. 2525 of 2016, this Court has considered the same sale deed, dated 7.2.2000 and held that market value of the land under sale instance is Rs. 1,06,666 per acre. Therefore, compensation was awarded at the enhanced rate of Rs. 1,06,666/- per acre for the lands situated at Pandhare Wadi.

9. As the lands under acquisition, which are subject matter in the present appeals and in First

Appeal No. 2525 of 2016 are of the similar quality, situated in the same vicinity and village, the valuation of the acquired lands as decided by this Court in First Appeal No. 2525 of 2016 can safely be considered as market value of the acquired lands in the present appeals. Accordingly, I hold that all these appeals filed by the original claimants deserve to be partly allowed with proportionate costs. All the claimants are entitled for compensation at the enhanced rate of Rs. 1,06,666/- per acre in respect of the acquired lands, situated at village Pandhare Wadi, Taluka Paranda, District Osmanabad with all statutory benefits, after deducting compensation amount which is withdrawn by the claimants.

10. Hence the following order.

I) First appeal Nos. 3587, 3577, 3578, 3579, 3580, 3581, 3582, 3583, 3584, 3585, 3586, 3588, 3589 and 3590 of 2017 filed by the claimants are hereby partly allowed with proportionate costs.

II) The claimants in all Reference petitions

are entitled for compensation at the enhanced rate of Rs.1,06,666/- per acre in respect of their acquired lands situated at village Pandhre Wadi, Tq. Paranda, District Osmanabad, with all statutory benefits, after deducing the compensation amount which is withdrawn by the claimants.

III) The modification, as aforesaid, be made in the impugned judgment and award passed by the learned Civil Judge, Senior Division, Paranda.

IV) Rest of the judgment and award stands confirmed.

V) The award be drawn up as per the above modification.

VI) In the circumstances, there shall be no order as to costs.

VII) All First Appeals are disposed of.

[**SUNIL K.KOTWAL, J.**]

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