

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

57 FIRST APPEAL NO. 988 OF 2012

Nagorao Gunda Gavane (Died)
Through Legal Heirs:-

- 1] Chandarbai w/o Nagorao Gavane
Age: Major, Occu.: Household & Agri.
- 2] Venkat s/o Nagorao Gavane
Age: Major, Occu.: Agriculture
- 3] Subhash s/o Nagorao Gavane
Age: Major, Occu.: Agriculture

All R/o. Marajwadi, Tq.Mukhed,
Dist.Nanded.

..Appellants
(Orig. Claimants)

Versus

- 1) The State of Maharashtra
Through the District Collector,
Nanded.
- 2) The Special Land Acquisition Officer,
M.I.W. Krishna Khore, Nanded,
Nanded.
- 3) The Executive Engineer,
Lendi Project Division,
Kodgire Building, Degloor,
Tq.Degloor, Dist.Nanded.

..Respondents
(Orig. Respondents)

...

**WITH
58 FIRST APPEAL NO. 989 OF 2012**

Kashinath s/o Maroti
Age: 51 Years, Occu.: Agri.,
R/o. Marajwadi, Tq.Mukhed,
Dist.Nanded.

..Appellant
(Orig. Claimant)

Versus

- 1) The State of Maharashtra
Through the District Collector,
Nanded.
- 2) The Special Land Acquisition Officer,
M.I.W. Krishna Khore, Nanded,
Nanded.
- 3) The Executive Engineer,
Lendi Project Division,
Kodgire Building, Degloor,
Tq.Degloor, Dist.Nanded.

..Respondents
(Orig. Respondents)

...
Advocate for Appellants : Shri G.N.Chincholkar
AGP for Respondent Nos.1 & 2 - State : Shri A.M.Phule
Advocate for Respondent No.3 : Shri B.R.Surwase
...

CORAM : P.R.BORA, J.

DATE: 1st October, 2018

ORAL JUDGMENT:-

1. Since both these appeals are arising out of the same acquisition proceeding, common arguments were heard in these appeals and I deem it appropriate to decide both these appeals by common reasoning.

2. The lands, which are the subject matter of the present appeals, were acquired for Lendi Project. Lands involved in both these appeals were acquired from Village Marajwadi, Tq. Mukhed, Dist.Nanded. The subject lands were acquired vide Notification

under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), published in the official Gazette on 09.07.1998 and the award under Section 11 in that regard came to be passed on 25.10.2004. For the land involved in First Appeal No.989 of 2012, the Special Land Acquisition Officer had offered the compensation @ Rs.61,452/- per Hectare for dry land and @ Rs.1,22,404/- per Hectare for irrigated land. The land, which is the subject matter in First Appeal No.988 of 2012, the Special Land Acquisition Officer had offered the compensation @ Rs.62,560/- per Hectare for the acquired land. Most of those lands were dry lands. Dissatisfied with the amount of compensation so offered, the claimants had filed the Reference Applications under Section 18 of the Act and the Reference Court determined the market value of the land, which is the subject matter of First Appeal No.988 of 2012 @ Rs.75,072/- per Hectare and enhanced the amount of compensation accordingly. In so far as the land involved in First Appeal No.989 of 2012 is concerned, the Reference Court determined the market value of the dry land @ Rs.73,742/- per Hectare and Rs.1,47,484/- per Hectare for the irrigated land ad-measuring 13 Are and enhanced the amount of compensation accordingly. The claimants had filed the present appeals seeking enhancement in the amount of compensation so awarded by the Reference Court.

3. Shri G.N.Chincholkar, learned Counsel appearing for the appellants tendered across the bar, a copy of the Judgment delivered by this Court (Coram: A.V.Nirgude, J.) on 31.08.2016 in First Appeal No.2074 of 2015. The learned Counsel submitted that the land, which was the subject matter in the aforesaid appeal was also acquired for the same Lendi Project from the same village Marajwadi and vide the same Notification under Section 4 of the Act, published on 09.07.1998. The learned Counsel submitted that this Court in the aforesaid appeal, determined the market value of the irrigated land @ Rs.2,00,000/- per Hectare and enhanced the amount of compensation accordingly. The learned Counsel submitted that land in the said matter was held to be semi-irrigated. The learned Counsel submitted that since the lands involved in the present matters stand at par with the said land, which was subject matter in First Appeal No.2074 of 2015, the compensation be enhanced on the similar lines.

4. Shri B.R.Surwase, learned Counsel appearing for the Acquiring Body and Shri A.M.Phule, learned AGP appearing for the State Government, resisted the submissions made on behalf of the appellants. The learned AGP and learned Counsel for the

Acquiring Body submitted that the land which was involved in First Appeal No.2074 of 2015 was having its own features and considering the same for the particular said land, this Court has enhanced the amount of compensation by giving the rate of Rs.2,00,000/- per Hectare, holding the said land to be semi-irrigated land. However, the same cannot be held to be the rate determined by the Court for all the lands acquired for the said project. Both the learned Counsel submitted that in the circumstances, the present matters will have to be independently decided on the basis of evidence adduced in these matters.

5. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have perused the impugned Judgments and the evidence on record.

6. The evidence on record shows that the claimants had brought on record total three sale instances. The learned Reference Court in paragraph No.13 of both the Judgments has discussed the evidence as about the sale instances brought on record by the claimants. From the discussions made by the Reference Court, it appears that it has preferred to rely upon the sale instances dated 21.01.1998 by which the land which was the subject matter of the said sale-deed ad-measuring 81 Are

was sold for the consideration of Rs.1,20,000/-. The learned Reference Court has observed that so far as proximity of the time is concerned that was the sale instance of nearest period. The Reference Court, after having considered the said sale instance, has determined the market value of the subject land @ Rs.75,072/- per Hectare for the land, which was subject matter of First Appeal No.988 of 2012 (Land Acquisition Reference No.399 of 2007) and relying on the same sale instance, determined the market value of the lands, which are the subject matter in First Appeal No.989 of 2012 (Land Acquisition Reference No.373 of 2007) @ Rs.1,47,484/- per Hectare for the irrigated land and Rs.73,742/- per Hectare for dry land.

7. It apparently appears that the Reference Court has failed in properly appreciating the sale instance, which was relied upon by it while determining the market value of the subject lands. The land, which was the subject matter of the sale deed executed on 21.01.1998 had received price @ Rs.1,48,000/- per Hectare. The market value of the acquired land must have been, therefore, determined by the Reference Court considering some plus and minus factors. Though, the claimants have not brought on record any concrete evidence as about the similarity of the land and the location of the said land at Exh.21, the market value

determined by the Reference Court @ Rs.75,072/- per Hectare for dry land, according to me, was not in tune with the evidence on record. Even if it is considered that the aforesaid land was having some special features, perhaps that may be the reason that it has fetched the price of Rs.1,50,000/- per Hectare, in no case, the market value of the lands, which are the subject matter in the present appeals could have been determined by the Reference Court less than Rs.1,25,000/- per Hectare. I, therefore, deem it appropriate to determine the market value of the acquired land in the present matters @ Rs.1,25,000/- per Hectare for dry land and for 13 Are land involved in another Appeal, which is irrigated land @ Rs.2,50,000/- per Hectare. The compensation be enhanced accordingly. The appellants are entitled for the statutory benefits as well as interest as per the provisions of the Act on the enhanced amount of compensation from the date of declaration of the award under Section 11 of the Act till realization of the amount. Both these appeals are partly allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

SPT