

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

FIRST APPEAL NO.1065 OF 2018

The State of Maharashtra
Through Collector, Osmanabad
For Special Land Acquisition Officer,
No.2, Osmanabad

..Appellant
(Ori. Respondent)

VERSUS

1. Champabai w/o Nagorao Mete
Age : 35 years, Occu : Agri & Household
R/o. Nipani, Tq. Kallam, District : Osmanabad
2. Nagnath @ Nagorao s/o Narayan Mete
Age : 40 years, Occu : Agri,
R/o. Nipani, Tq. Kallam,
District : Osmanabad

.. Respondents
(Ori. Claimants)

.....

WITH

FIRST APPEAL NO.1064 OF 2018

The State of Maharashtra
Through Collector, Osmanabad
For Special Land Acquisition Officer,
No.2, Osmanabad

.. Appellant
(Ori. Respondent)

VERSUS

Annasaheb Dasa Mete
Age : 10 yrs, Minor U/g of his mother
Vimal w/o Dasa Mete,
Age : 35 years, Occu : Agri & Household,
R/o Nipani, Tq. Kallam, District Osmanabad

.. Respondent
(Orig. Claimant)

....

WITH

FIRST APPEAL NO.1066 OF 2018

The State of Maharashtra
Through Collector, Osmanabad
For Special Land Acquisition Officer
No.2, Osmanabad

.. Appellant
(Orig. Respondent)

VERSUS

Gangabai w/o Govind Mete
Age : 45 years, Occu : Agri & Household,
R/o. Nipani, Tq. Kallam
District : Osmanabad

.. Respondent
(Orig. Claimant)

....

WITH

FIRST APPEAL NO.1067 OF 2018

The State of Maharashtra
Through The Collector, Osmanabad
For Special Land Acquisition Officer
No.2, Osmanabad

.. Appellant
(Orig. Respondent)

VERSUS

1. Venkat s/o Nivarti Mete
[Died] through his LR's
- A. Venubai Venkat Mete
Age : 27 years, Occu : Household,
R/o Nipani, Tq. Kallam,
District : Osmanabad
- B. Deepak s/o Venkat Mete
Age : 27 years, Occu : Agri,
R/o. As above
- C. Dadasaheb s/o Venkat Mete
Age : 20 yrs, Occu : Agri,
R/o. As above

- D. Sau Suman Manohar Kowale
Age : 31 years, Occu : Household,
R/o. Latur, Tq. & Dist. Latur
- E. Sau Latabai w/o Bhagirath Sarwade
Age : 29 years, Occu : Household
R/o. Padoli, Tq. Kallam, Dist. Osmanabad
- F. Sau Sangita w/o Jarasandh Pade
Age : 25 years, Occu : Household,
R/o. Pimpri, Tq. Kallam, Dist. Osmanabad
- G. Babita Ramraje Jamadar
Age : 21 years, Occu : Household
R/o. Patoda, Tq. Ambejawalge,
District : Beed
- H. Sau Savita w/o Satish Tekale
Age : 21 years, Occu : Household,
R/o. Watawada, Tq. Kallam,
District : Osmanabad

... Respondents
(Orig. Claimants)

.....

WITH

FIRST APPEAL NO.1068 OF 2018

The State of Maharashtra
Through Collector, Osmanabad
For Special Land Acquisition Officer
No.2, Osmanabad

.. Appellant
(Orig. Respondent)

VERSUS

1. Devidas s/o Shamrao Mete
Age : 36 years, Occu : Agri & Service
R/o. Nipani, Tq. Kallam,
District : Osmanabad
2. Eknath w/o Sopan Mete
Age : 50 years, Occu : Agri,
R/o Nipani, Tq. Kallam,
District : Osmanabad

.. Respondents
(Orig Claimants)

In all the matters :

AGP for Appellant – State : Shri A.M. Phule
Advocate for Respondents : Shri S.A. Wakure

.....

CORAM : P.R. BORA, J.

Dated: October 17, 2018

ORAL JUDGMENT :

1. These appeals are arising out of the common Judgment and Award passed by the Joint Civil Judge, Senior Division at Osmanabad (hereinafter referred to as the 'Reference Court') in Land Acquisition Reference Nos.829 of 1991 with 827/91, 830/91, 832/91 & 833/91 decided on 15.10.2007.

2. The lands, which are involved in the present appeals, were acquired for the purpose of Percolation Tank at village Nipani, Tal. Kallam, Dist. Osmanabad. The respondents (hereinafter referred to as the 'claimants') in the present appeals were the owners of the acquired lands. The subject lands were acquired for the aforesaid project vide notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') published in the Official Gazette on 21.04.1988 and the Award under Section 11 of the Act came to be passed on 30.03.1991. The Special Land Acquisition Officer (hereinafter

referred to as the 'SLAO') had offered the compensation for the acquired lands at the rate of Rs.28,000/- per hectare i.e Rs.280 per *Are*. Dissatisfied with the amount of compensation so offered, the claimants filed the applications under Section 18 of the Act to Collector, Osmanabad, who in turn forwarded those applications for adjudication to the Reference Court.

3. In the Reference Applications, the claimants had claimed the compensation at the rate of Rs.50,000/- per hectare i.e. Rs.500/- per *Are*. In order to substantiate the claim so raised, the claimants in addition to their own evidence brought on record two sale instances one at Exh.66 and another at Exh.67. No oral or documentary evidence was adduced by the Respondent – State. The learned Reference Court, after having assessed the oral and documentary evidence brought on record, determined the market value of the acquired lands at the rate of Rs.450/- per *Are* and enhanced the amount of compensation accordingly. The Reference Court also granted the statutory benefits as well as the interest payable under the provisions of the Act. Aggrieved by, the appellants - State has preferred the

present appeals.

4. Shri Phule learned AGP appearing for the appellants – State criticized the impugned Judgment mainly on the point that, the Reference court has determined the market value of the acquired lands on the basis of the sale instances, which in no case can be said to be of comparable lands. The learned AGP submitted that the land involved in Exh.66 is admeasuring 9 *Are*, whereas the land involved in Exh.67 is 18 *Are*.

5. The learned AGP pointed out that, in First Appeal No.1067 of 2018 the land acquired was admeasuring 2 Hectare, 25 *Are* and in other matters also, the lands are 50 *Are* or 60 *Are*. The learned AGP submitted that, in the circumstances, on the basis of the sale instances pertaining to the small pieces of land, the market value of the subject lands could not have been determined by the Reference Court.

6. The learned AGP submitted that, on the contrary the SLAO has methodically determined the market value of the acquired lands by personally visiting each and every acquired

land. In the circumstances, the learned AGP prayed for setting aside the impugned common Judgment and Award and consequently to restore the Award passed under Section 11 of the Act by the SLAO.

7. Shri Wakure, the learned Counsel appearing for the respondents – original claimants in all these matters, supported the impugned Judgment and Award. The learned Counsel submitted that, the Reference Court has rightly relied upon the sale instances brought on record by the respondents. The learned Counsel brought to my notice that, the Reference Court has taken appropriate care while determining the market value of the acquired lands on the basis of the aforesaid sale instances by taking into account all plus and minus factors and has accordingly determined the market value of the acquired lands. The learned Counsel pointed out that, though the land which was the subject matter at Exh.67 was sold at Rs.833/- per *Are* and the land which was the subject land at Exh.66 was sold at the rate of Rs.550/- per *Are*, the Reference Court has not awarded the said rate blindly to the acquired lands.

8. The learned Counsel invited my attention to the discussion made by the Reference Court in that regard and submitted that, considering plus and minus factors the Reference Court has eventually determined the market value of the acquired lands at the rate of Rs.450/- per *Are*. The learned Counsel submitted that, no interference is, therefore, warranted in the market value so determined and the amount of compensation so enhanced by the Reference Court. The learned Counsel further submitted that, in fact the Government should not have prosecuted these appeals further in view of the policy decision taken by it vide G.R. Dated 03.11.2016 with corrigendum dated 23.02.2017. The learned Counsel pointed out that, in the present matter the Reference Court has enhanced the market value of the acquired lands not even double to the rate granted by the SLAO. The learned Counsel submitted that, the Government has resolved not to prosecute the appeals if the Reference Court has enhanced the amount of compensation less than 4 times than the compensation determined by the SLAO.

9. I have given due consideration to the submissions made by the learned AGP and learned Counsel appearing for the respondents – claimants. I have perused the impugned Judgment. As has been submitted by the learned Counsel, the market value has been determined by the Reference Court on the basis of two sale instances first at Exh.66 and another at Exh.67. Both the sale instances were of the lands from village Nipani, from where the subject lands were acquired for the proposed project. It is further not in dispute that, the sale instances are of the period prior to issuance of Section 4 notification. Now, the only objection which remained to be considered is, whether the said sale instances could have been relied upon by the Reference Court. Admittedly, no other sale instance was brought on record by the respondents or no oral evidence was adduced on behalf of the respondents. In the circumstances, except these two sale instances, there was no material before the Reference Court so as to determine the market value of the acquired lands. Moreover, as was rightly pointed out by the learned Counsel appearing for the claimants, the Reference Court has not blindly accepted the price received

to the lands which were the subject matter for the aforesaid sale instances. Admittedly, the land which was the subject matter at Exh.67 was sold at the rate of Rs.833/- per *Are* and the land involved in Exh.66 was sold at the rate of 550/- per *Are*. Even if it is assumed that, some more price was received to the said lands as because they were the small pieces of lands, the price determined by the Reference Court for the acquired lands at the rate of Rs.450/- per *Are* cannot be said to be unreasonable though the lands which are the subject matter of the present appeals were bit large piece of the lands.

10. After having considered the entire evidence on record and the discussion made by the Reference Court in that regard, it does not appear to me that, the amount of compensation has been arbitrarily enhanced by the Reference Court. In the circumstances, there seems no reason to cause any interference in the impugned Judgment and Award.

11. Second point which was raised by the learned Counsel for the claimants also deserves to be considered. In view of the fact that, now the Government has resolved not to file and

not to prosecute the appeals which are already filed, in the cases where the amount of compensation enhanced by the Reference Court is less than four times of the compensation offered by the SLAO. In that view also, the appeals do not deserve consideration.

12. For the aforesaid reasons, the following order is passed.

ORDER

(i) The appeals are dismissed, however, without any order as to the costs.

(ii) Respondents i.e. original claimants are permitted to withdraw the amount of compensation in their respective matters, in terms of the Awards passed by the reference Court, if not already withdrawn by them.

(iii) Pending Civil Application, if any, stands disposed of.

(PR. BORA, J.)

...