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

FIRST APPEAL NO.1262 OF 2005

1. Shripati s/o Apparao Munde
Age 75 years, Occu. Agril.,
R/o Shivani, Tal. & Dist. Beed.

2. Indrabai w/o Sripati Munde,
Age 66 years, Occu. Agril. &
Household, R/o as above. ... APPELLANTS

VERSUS

1. The State of Maharashtra
through Collector, Beed
(Copy to be served on G.P.
High Court, Bench at Aurangabad)

2. Executive Engineer,
P.W.D., Beed. ... RESPONDENTS

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Shri S.S. Mundhe, Advocate for appellants
Shri S.N. Morampalle, A.G.P. for State
.....

WITH

FIRST APPEAL NO.2753 OF 2008

1. The State of Maharashtra
through Collector, Beed
at Beed.

2. The Executive Engineer,
P.W.D., Beed. … APPELLANTS

VERSUS

1. Shripati s/o Apparao Mundhe
Age 75 years, Occu. Agriculture,
R/o Shivani, Tal. & Dist. Beed.

2. Indirabai w/o Shripati Mundhe,
Age 66 years, Occu. Agriculture &
Household, R/o as above. ... RESPONDENTS

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Shri S.N. Morampalle, A.G.P. for State
Shri S.S. Mundhe, Advocate for respondents

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CORAM: A.M. DHAVALE, J.

DATED : 10th August, 2018.

ORAL JUDGMENT :

1. By judgment dated 23.8.2005, the learned Ist Adhoc Additional District Judge, Beed, in Land Acquisition Reference No.108/2003, enhanced the compensation awarded to the claimants from Rs.450/- per R to Rs.1000/- per R. Aggrieved State has preferred Appeal No.2753/2008 while the aggrieved claimants, who had demanded enhancement to Rs.2000/- per R, have preferred First Appeal No.1262/2005. Heard learned Advocate Mr. Mundhe for the claimants and Mr. S.N. Morampalle, learned A.G.P. for the State.

2. The record shows that, the claimants' land of 73 R from Block No.701 at village Shivani was acquired by notification under Section 4, which was published in the official gazette on 1.7.1999, but the last date of publication was 15.2.1999. The

possession of 50 R of land was taken in August 1989 to November 1989, whereas the remaining 23 R land was taken in on 8.3.1999. It was for construction of road of State Highway from Beed to Parbhani. The Special Land Acquisition Officer considered the statutory prices in respect of 5 lands and showing value of Rs.103/- per R and some sale instances showing valuation of around Rs.525/ to Rs.575/- per R. he considered the 3 sale instances where the value was awarded between Rs.300/- to Rs.500/- per R. He determined the market value at Rs.275/-. The aggrieved claimants filed reference claiming market value of Rs.2000/- per R. Before the Reference Court, the claimants alone led evidence, both oral and documentary. The State has not led any oral or documentary evidence. The Reference Court considered two sale instances and held that, the irrigated lands were worth Rs.2000/- per R. He, therefore, awarded market value at Rs.1000/- per R for the acquired land which was dry land.

3. Learned Advocate Shri Mundhe for the claimants submitted that the land of the claimants was irrigated land and the market rates were Rs.80,000/- to Rs.85,000/-. Even if it is held that their lands were dry lands, still there should not have been deduction of more than 25% of the price of the irrigated land.

4. Per contra, the learned A.G.P. submitted that the Land Acquisition Officer has considered the sale instances and fixed the price as per the market value and the same should not have been interfered with. He submitted that, the possession was taken in the year 1989 and, therefore, the prices should have been considered of that year. He also submitted that, the subsequent sale deeds were executed for excessive prices for gaining benefits in land acquisition matters.

5. The point for my determination with my findings is, whether the Reference Court has awarded just and reasonable price to the claimants? I answer it in the negative and enhance compensation to the tune of Rs.1700/- per R.

6. Though it is not disputed that the possession of the lands was taken much earlier, the notification under Section 4 was published for the first time on 14.6.1999 in local newspaper, on 1.7.1999 in the Gazette and on 15.9.1999 in village Chavdi. As per the legal provisions, the last date of the notification is to be considered for determining the market price i.e. 15.9.1999, the date of taking possession has no relevance. The Government should have been diligent for issuing the notification in time.

7. There was oral evidence and documents namely the

sale deeds of only two sale instances as follows :

Date of Sale Deed	Area	Value	Nature of land	Rate Per R.	Price in 1999
22.3.1990 (Exh.29	22 R	40,000/-	Irrigated	1818/-	3389 Per R
1.4.1993 (Exh.32)	76 R	1,61,000/-	Irrigated	2118/-	3454 Per R

Both these lands are from the same village and both are irrigated lands. There is no satisfactory evidence to show that the acquired land was irrigated land. It was a dry land. The learned trial Judge has rightly considered this aspect and has reduced the price to 50%. As per settled guidelines, market price of irrigated land is double the rate of dry land.

10. However, the learned trial Judge has not taken into consideration that these sale instances were of the transactions much prior to the date of notification. It is settled rule that if the sale deed is for a prior period, there should be 10% increase per year for determining the market value as on the date of notification. Applying this principle, the value of land of the land sold by Sale Deed Exh.22, dated 1.4.1993 would be Rs.3389/- per R in 1999 whereas the sale deed Exh.29, of land of 22 R sold for Rs.40,000/- is dated 22.3.1990. It was 9 years prior to the date of notification. Granting enhancement of 90% price of the said land as on the date of notification would be Rs.3454/-. I

assume that, these two lands were having average price of Rs.3400/- per R on the date of notification (1999) and these being irrigated lands, the acquired dry land would have market value of Rs.1700/- per R.

11. The Land Acquisition Officer has shown the sale instances showing much lesser price. It was for the Government and the acquiring body to lead proper evidence before the Reference Court and show the real market price of the acquired land as on the date of notification. Since it is not done, the Reference Court was justified in relying on the two sale deeds provided by the claimants, but he has not followed the principle of granting 10% increase per year for calculating the market price as on the date of notification. Hence, I hold that, the State Appeal will have to be dismissed and the Appeal of the claimants will have to be allowed and the market price will have to be enhanced to Rs.1700/- per R. Hence, I pass the following order :

12. First Appeal No.2753/2008 filed by the State is dismissed.

13. First Appeal No.1262/2005 is partly allowed. The market value of the acquired land is enhanced to Rs.1700/- per R as on the date of notification dated 15.2.1999. The respondents shall pay 30% Solatium and 12% p.a. third Component from the

date of notification to the date of the award on the above market price and interest @ 9% p.a. for the first year and @ 15% p.a. for the subsequent period from the date of award on the entire compensation inclusive of Solatium and third Component. The amounts paid earlier at different stages along with proportionate interest shall be deducted from the amount payable. If the possession of the land is taken prior to the date of award, the claimants shall be entitled for rental compensation as per rules till the date of award. The State shall bear the costs of the claimant.

14. Decree shall be drawn up accordingly.

(A.M. DHAVALE)
JUDGE

fmp/