

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

FIRST APPEAL NO.1964 OF 2016

1. The Executive Engineer,
Nimna Dudhana Project Division,
Sailu, Tq. Sailu, Dist. Parbhani
through Jalna Irrigation Division,
Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(E & D), Jalna.

.. APPELLANTS

(Ori.Resp.No.1 to 3)

VERSUS

1. Mahadeo Gyanba Mhaske,
Age: Major, Occu. Agri.
R/o. Padali (Pardhi),
Tq. Partur, Dist. Jalna.

.. RESPONDENT

(Ori.Claimant)

WITH

FIRST APPEAL NO.1967 OF 2016

1. The Executive Engineer,
Nimna Dudhana Project Division,
Sailu, Tq. Sailu, Dist. Parbhani
through Jalna Irrigation Division,
Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(E & D), Jalna.

.. APPELLANTS

(Ori.Resp.No.1 to 3)

1. Yunus Babamiya Momin,
Age: Major, Occu. Agri.
R/o. Padali (Pardhi),
Tq. Partur, Dist. Jalna. .. **RESPONDENT**
 (Ori.Claimant)

1. The Executive Engineer,
Nimna Dudhana Project Division,
Sailu, Tq. Sailu, Dist. Parbhani
through Jalna Irrigation Division,
Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(E & D), Jalna.

1. Bhagabai Premrao Mhaske,
Age: Major, Occu. Agri.
R/o. Padali (Pardhi),
Tq. Partur, Dist. Jalna. .. **RESPONDENT**
 (Ori.Claimant)

1. The Executive Engineer,
Nimna Dudhana Project Division,
Sailu, Tq. Sailu, Dist. Parbhani
through Jalna Irrigation Division,
Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.

3. The Special Land Acquisition Officer
(E & D), Jalna.

.. APPELLANTS
(Ori.Resp.No.1 to 3)

VERSUS

1. Subhash Sheshrao Mote (died)
Through Rukhamanibai Subhash Mote
Age: Major, Occu. Agri.
R/o. Padali (Pardhi),
Tq. Partur, Dist. Jalna. **.. RESPONDENT**
(Ori.Claimant)

WITH
FIRST APPEAL NO.1968 OF 2016

1. The Executive Engineer,
Nimna Dudhana Project Division,
Sailu, Tq. Sailu, Dist. Parbhani
through Jalna Irrigation Division,
Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(E & D), Jalna.

.. APPELLANTS
(Ori.Resp.No.1 to 3)

VERSUS

1. Sukhdev Bhujangrao Mhaske,
Age: Major, Occu. Agri.
R/o. Padali (Pardhi),
Tq. Partur, Dist. Jalna. **.. RESPONDENT**
(Ori.Claimant)

WITH
FIRST APPEAL NO.1963 OF 2016

1. The Executive Engineer,
Nimna Dudhana Project Division,

Sailu, Tq. Sailu, Dist. Parbhani
through Jalna Irrigation Division,
Jalna.

2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(E & D), Jalna.

.. APPELLANTS
(Ori.Resp.No.1 to 3)

VERSUS

1. Devidas Apparao Bahekar,
Age: Major, Occu. Agri.
R/o. Padali (Pardhi),
Tq. Partur, Dist. Jalna. **.. RESPONDENT**
(Ori.Claimant)

...

Shri Ruturaj C. Patil, Advocate for the
appellants.

Shri A.M.Phule, AGP for the appellants –
State.

Shri N.V.Gaware, Advocate for the respondent.

...

CORAM : P.R.BORA, J.
DATE : 03.10.2018

ORAL JUDGMENT:

1. Heard Shri Ruturaj C. Patil, learned
counsel appearing for the appellants i.e.
acquiring body and Shri N.V.Gaware, learned
counsel appearing for the respondents i.e.
original claimants in all these matters. Shri
A.M.Phule, learned AGP has also made
submissions and has supported the arguments

advanced by Shri Ruturaj C. Patil, learned counsel appearing for the appellants.

2. The lands, which are involved in all these matters were acquired for the Lower Dudhana Project. The Notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') in that regard was published in the *Official Gazette* on 09.08.2002 and Award under Section 11 of the Act came to be passed on 08.05.2005. The possession of the acquired lands was taken prior to that. The Special Land Acquisition Officer had offered the compensation to the claimants at the rate ranging from Rs.676/- per Are to Rs.849/- per Are for dry land.

3. Dissatisfied with the amount of compensation so offered, the claimants filed the applications under Section 18 of the Act. The Reference Court, after having considered the evidence brought on record before it,

determined the market value of the acquired lands at the rate of Rs.2500/- per Are for the non-irrigated land, Rs.3750/- per Are for seasonally irrigated land and Rs.1250/- per Are for *Pot Kharaba* land and enhanced the amount of compensation accordingly. The Reference Court also awarded the statutory benefits and the interest. Aggrieved by the order so passed, the Acquiring Body has preferred the present First Appeals.

4. Shri Ruturaj C. Patil, learned counsel appearing for the acquiring body has assailed the impugned judgment on various grounds. The learned counsel submitted that the Reference Court has not followed settled and established procedure for determining the market value of the acquired lands. The learned counsel pointed out that the Reference Court determined the market value of the lands without verifying the quality and location of the lands. The learned

counsel further submitted that none of the sale instances have been discussed by the Reference Court so as to justify the market rate determined by it for the acquired lands. The learned counsel submitted that perusal of the Award under Section 11 of the Act reveals that the Special Land Acquisition Officer, after visiting the concerned agricultural lands physically and after having taken into account all the relevant factors, had offered the amount of compensation. The learned counsel submitted that the Special Land Acquisition Officer had determined the compensation properly and no enhancement was warranted in the amount of compensation so offered. In the circumstances, the learned counsel prayed for setting aside the impugned judgments and awards passed by the Reference Court and further prayed for restoring the awards passed by the Special Land Acquisition Officer under Section 11 of the Act.

5. Shri A.M.Phule, learned AGP supported the submissions made by Shri Ruturaj C. Patil, learned counsel appearing for the appellants and prayed for setting aside the impugned awards.

6. Shri N.V.Gaware, learned counsel appearing for the respondent i.e. original claimants supported the impugned judgments and awards. The learned counsel submitted that a well reasoned order has been passed and no interference is required in the said order. The learned counsel pointed out that in L.A.R. No.248 of 2010, arising out of the same acquisition the Reference Court has determined the market value of the land involved in the said matter at the rate of Rs.2500/- per Are. The land involved in the said LAR was also from village i.e. Padali (Pardhi) and was non irrigated. It was acquired vide the same Notification under Section 4 of the Act. The learned counsel

submitted that relying upon the judgment in LAR No.248/2010, the Reference Court determined the market value of the lands involved in present appeals at par with the market value which was determined in the said matter. The learned counsel invited my attention to para no.10 of the impugned judgment. The learned counsel submitted that, in such circumstances, it is difficult to say that the Reference Court has enhanced the amount of compensation arbitrarily.

7. The learned counsel further invited my attention to the policy decision taken by the Government and submitted that in fact in view of the policy decision taken by the Government, the present Appeals are not liable to be prosecuted further by the acquiring body.

8. I have given due consideration to the submissions made by the learned counsel

appearing for the respective parties. I have perused the impugned judgments carefully. It is apparent that the Reference Court has relied upon the earlier decision in LAR No.248/10 relating to the same acquisition and pertaining to the lands of the same village Padali (Pardhi). The Reference Court, as was pointed out by the learned counsel appearing for the claimants, has also noted his observations that the lands were similar in quality as well as location to the land which was subject matter of LAR No. 248 of 2010 and as such, has determined the market value of the acquired lands at the rate of Rs.2500/- per Are for dry land.

9. After having considered the evidence on record and having perused the discussion made by the Reference Court, it does not appear to me that the Reference Court has committed any error in determining the market value of the subject lands at the rate of

Rs.2500/- per Are. Nothing has been brought to my notice that the award passed in LAR No.248/2010 was challenged before the High Court and if challenged, whether it was confirmed or set aside by the High Court.

10. It was pointed out by the learned counsel that in the order passed by the Reference Court in LAR No.1176/2010 (Old No. 224/2010), the Reference Court has wrongly awarded the interest under Sections 28 and 34 of the Act from the date of the Notification under Section 4, whereas it must have been from the date of passing of the award under Section 11 of the Act. The learned counsel appearing for the original claimants immediately pointed out that in the said matter, the Reference Court has not awarded benefit under Section 23 (1) (a) of the Act i.e. 12% component. Both the submissions are liable to be accepted.

11. Learned counsel for the claimants had also referred to the policy decision recently taken by the State Government. It is true that the State Government has taken policy decision not to file Appeal and not to prosecute Appeals already filed in the cases where the amount of compensation enhanced by the Reference Court is less than four times of market value as determined by the Land Acquisition Officer. In none of the present matters, the market value as has been determined by the Reference Court is more than four times than the market value determined by the Land Acquisition Officer. As such I do not see any reason for causing interference in the judgments and awards impugned in the present Appeals. I reiterate that only in one Appeal i.e. First Appeal No.1967 of 2016 some modification is required as about grant of interest. For the reasons stated above, the following order is passed:

ORDER

i] The First Appeal Nos.1964/2016, 1966/2016, 1965/2016, 1968/2016 and 1963/2016 stand dismissed.

ii] The award passed in the First Appeal No.1967/2016 shall be modified to the following extent:

Clause Nos. 3 and 4 of the impugned judgment in respect of awarding the interest under Sections 28 and 34 of the said Act from the date of issuance of the Notification under Section 4, stands quashed and set aside. Instead it is directed that such interest shall be payable from the date of declaration of the award under Section 11 i.e. from 08.05.2005. It is further directed that the respondent i.e. original claimant shall be entitled for the benefits under Section 23 (1) (a), the same be calculated and accordingly award be modified. The

respondent i.e. original claimant shall be entitled for 12% interest on the amount of compensation from 09.08.2002 up to 08.05.2005.

First Appeal No.1967/2016 stands disposed of in the aforesaid terms.

iii] It would be open for the respondents original claimants to withdraw the compensation deposited by the acquiring body. The undertakings, if any, given by the original claimants while withdrawing the amount on earlier occasions shall stand discharged.

iv] Pending Civil Applications stand disposed of.

[P . R . BORA]
JUDGE