

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

FIRST APEAL NO 660 OF 2016

1. The Executive Engineer,
Nimna Dudhana Project, Selu,
Dist. Parbhani
2. The State of Maharashtra,
Through Collector Jalna.
3. The Special Land Acquisition Officer,
M.I.D, Jalna.

= APPELLANTS

VERSUS

Nayabrao S/o Shrirangrao Nirval
Age: 58 Yrs. Occu.: Agril.
R/o Nansi, Tq.: Mantha, Dist. Jalna

= RESPONDENT

Shri. C.D. Biradar Adv h/f Shri Giri Umakant P,
Advocate for Appellants;

Mrs. Pratibha J. Bharad, Adv for Respondent sole.

WITH

FIRST APEAL NO 1318 OF 2016

1. The Executive Engineer,
Nimna Dudhana Project, Selu,
Dist. Parbhani
2. The State of Maharashtra,
Through Collector Jalna.
3. The Special Land Acquisition Officer,
M.I.D, Jalna.

= APPELLANTS

VERSUS

Radhakishan S/o Uttamrao Nirval
Age: 30 Yrs. Occu.: Agril.
R/o Nansi, Tq.: Mantha, Dist. Jalna

= RESPONDENT

Shri. C.D. Biradar Adv h/f Shri. Giri Umakant P,
Advocate for Appellants;

Mrs. Pratibha J. Bharad, Adv for Respondent sole.

...

CORAM : P.R.BORA, J.

DATE : 29th August, 2018

JUDGMENT:

1. The lands which are the subject matter of the present appeals were acquired for Lower Dudhana Project, vide notification under Section 4 of the Land Acquisition Act, 1894 (for short, the Act) published in the official gazette on 20th September, 1997 and the Awards under Section 11 of the Act in respect to the acquisition of the said lands was declared on 20th December 2001. Both these lands are from village Nansi. In the aforesaid circumstances, though two LARs are decided by two different Presiding Officers and two separate judgments are passed in the said LARs, which have given rise to present two separate appeals, I have heard common arguments in the matters and I deem it appropriate to decide these appeals by a common reasoning.

2. In so far as First Appeal No.660/2016,

arising out of LAR No.55/20016 (Old) New No.1005/2010 is concerned, the Special Land Acquisition Officer had offered compensation @ Rs. 1,192/- per Are holding the said land to be irrigated land and had offered the compensation amounting to Rs.3,49,661/- for the fruit-bearing trees in the said land. The Special Land Acquisition Officer had offered the total compensation amounting to Rs.5,54,880/-. In First Appeal No.1318/2016 arising out of LAR No.1077/2010 (Old No.52/2006), the Special Land Acquisition Officer had offered the compensation @ Rs.669/- per Are for Jirayat land and @ Rs.1338/- for Bagayat land and had offered the compensation amounting to Rs.5,04,664/- for the fruit-bearing trees. The Special Land Acquisition Officer had offered the total compensation of Rs. 7,02,573/-. Aggrieved by the amount of compensation so offered, the respective claimants had preferred the Reference Applications under Section 18 of the Act.

3. In LAR No.55/2006 (New No.1005/2010), the Reference Court enhanced the amount of compensation from Rs.5,54,880/- to Rs.9,66,674/-. In LAR

No.1007/2010 (Old No. 52/2006) the Reference Court enhanced the amount of compensation from Rs. 6,02,513/- to Rs.24,88,667/-. Aggrieved by, the acquiring body has preferred the present appeals.

4. Shri Biradar, learned counsel holding for Shri Giri, learned counsel for appellant, assailed the impugned judgments on various grounds. The learned counsel submitted that the Reference Court has determined the market value at the higher rate and has also erred in awarding the excessive amount of compensation towards the fruit-bearing trees though there was no cogent and sufficient evidence there for.

5. Learned counsel appearing for the respondents in both these matters, who are the original claimants, supported the impugned judgments and Awards. The learned counsel submitted that, in fact, the Reference court has also not awarded the compensation as was expected by the claimants. The learned Counsel submitted that in no case, however, it can be said that the market value of the subject lands and value of the

fruit-bearing trees have been arbitrarily determined by the Reference Court. The learned counsel, therefore, prayed for dismissal of the appeals.

6. I have perused the judgments passed by the Reference Court in the aforesaid two Reference Applications. Both the courts have determined the market value of the acquired lands @ Rs.1,200/- per Are for Jirayat land and @ Rs.2,400/- per Are for irrigated land. The market value, as above, has been determined in LAR No.1077/2010 by the said Reference Court, relying upon the judgment passed in LAR No.1005/20120 decided on 21st March, 2014. As mentioned above, one of the present appeals is against the judgment delivered in the said LAR No.1005/2010. In the circumstances, scrutiny is required of the evidence adduced in the said matter and analysis made of the said evidence.

7. In LAR No.1005/2010, the market value of the acquired lands has been determined by the said Reference Court on the basis of the earlier decisions rendered in LAR No. 373/2010 and LAR

No.858/2010. The judgments rendered in LAR No.147/2005, 150/2005 and 153/2003 arising out of the acquisitions for Lower Dudhana Project are also taken into account by the Reference Court. The Reference Court has noted that in the LAR decided previously, wherein certain sale instances were considered by the said Reference Courts, the market value of the land, which was the subject matter in the LAR before him was liable to be determined and has accordingly, the Reference Court has determined the market value of the said land @ 1,200/- per Are for non-irrigated land and @ Rs. 2,400/- per Are for irrigated land.

8. As noted herein above, the learned Reference Court, which decided the LAR No.1077/2010, has accepted the reasoning given in LAR No.1005/2010 and has accordingly determined the market value at the same rate as was determined in LAR No.1005/2010. The learned counsel for the acquiring body or the learned AGP, none of them has pointed out that against the judgments delivered in LAR No.373/2010, 858/2010, 147/2005, 150/2005 and 153/2003, arising out of the acquisition for the

lower Dudhana project, appeals were filed and if were filed, whether the market value, as determined in the said Reference Applications by the respective Reference Courts, was interfered or maintained. In absence of any such material on record, it has to be presumed that no interference is caused in the market value, as has been determined in the aforesaid LARs.

9. In the above circumstances, the submissions made by the learned counsel appearing for the acquiring body that the market value determined in the judgments impugned in the present appeals, is on higher side or has been arbitrarily determined by the Reference Court, has to be rejected.

10. In so far as compensation enhanced by the Reference Court of the fruit-bearing trees existing in the acquired lands is concerned, apparently, I see no reason to cause any interference in the enhancement so awarded for the reason that the said enhancement is made by the Reference Court on the basis of the evidence of an Expert, who was

examined in both the aforesaid matters.

11. I have carefully gone through the evidence of the said expert witness. It is revealed that the expert has methodically determined the values of the trees existing in the acquired lands and accordingly compensation has been awarded by the Reference Court. In the cross-examination of the expert witness, no such material has been brought on record so as to disbelieve or discard the evidence of the said expert witness. Admittedly, no witness was examined either by the acquiring body or State. Even in the present appeals, no such material is brought to my notice so as to take any contrary view as about the value determined of the fruit-bearing trees existing in the acquired lands.

12. The respective Reference Courts in both the matters have elaborately discussed the evidence of the Expert examined in the matters in order to prove the value of the fruit-bearing trees. I see no infirmity in the discussion so made and the ultimate conclusions arrived at by the respective

Reference Courts. In absence of any contrary evidence brought on record by the acquiring body, I see no reason to disbelieve or discard the evidence of the expert witness on the basis of which, the Reference Courts have determined the market value of the fruit-bearing trees.

13. After having considered the entire material on record, it does not appear to me that any case is made out by the acquiring body in both these appeals so as to cause any interference in the judgments impugned in these appeals passed by the respective Reference Courts. Both the appeals being devoid of any substance, deserve to be dismissed and are accordingly dismissed, however, without any order as to costs. Pending civil application, if any, stands disposed of.

14. The amount of compensation, if any, deposited by the appellant – acquiring body in this Court, is permitted to be withdrawn by the respective claimants, if not already withdrawn.

(P.R.BORA)

JUDGE