

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

961 FIRST APPEAL NO.95 OF 2004

Jayant Kishanrao Patil ... Appellant

Versus

The State of Maharashtra ... Respondent.

WITH

FIRST APPEAL NO.96 OF 2004

Shrikrishna Kulkarni. ... Appellant

Versus

The State of Maharashtra ... Respondent.

WITH

FIRST APPEAL NO.97 OF 2004

Kalyan Rangnath Kulkarni. ... Appellant

Versus

The State of Maharashtra. ... Respondent.

....
Mr. V.D. Salunke H/f Mr. P.P. More and Mr. K.D. Bade Patil,
Advocate for Appellants.

Mr. A.M. Phule, AGP for Respondent-State.

....

CORAM : P.R. BORA, J.

DATED : 10th JANUARY, 2019

ORAL JUDGMENT:-

1. Since all these appeals are arising out of a common judgment and award and from the same acquisition proceedings, I have heard common arguments in all these appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. The lands, which are involved in the present appeals were acquired for construction of Osmanabad – Tuljapur bypass road. Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') in that regard was published in the official gazette on 30.08.1990, and the award under Section 11 was passed on 29.07.1992. The SLAO had offered the compensation to the respective claimants at the rate ranging between 28,000/- to 30,000/- per Hecter. Dissatisfied with the amount of compensation so offered, the present appellants, who are hereinafter referred to as 'the Claimants' had filed the applications under Section 18 of the Act, which were adjudicated by the Court of Civil Judge, Senior Division, Osmanabad. The said Court is hereinafter referred to as 'the Reference Court'.

3. In the Reference Applications, the claimants had claimed the market value for their acquired lands at the rate of Rs.15 per Sq. Feet. In order to substantiate the claims so raised by them, the claimants had, in addition to their own testimonies relied upon three sale instances. No evidence was adduced on behalf of the respondents. The learned Reference Court after having considered the evidence brought on record before it, held the claimants entitled to receive enhanced amount of compensation at the rate of Rs.9/- per Sq. Foot. The claimant in First Appeal No.96/2004 arising out of L.A.R. No.70/1993 was also held entitled to receive

Rs.4.50 paise per Sq. Ft. for remaining area of 66 R out of survey no.259/4 towards the severance and injurious affection.

4. Aggrieved by the common judgment and award passed in L.A.R. No.70/1993 with L.A.R. No.71/1993 and L.A.R. No.145/1993 decided on 04.01.1994, the State preferred appeals before this Court, which were numbered as First Appeal Nos.672/1994, 673/1994 and 674/1994. The Hon'ble Division Bench of this Court vide judgment delivered on 23.04.2003, remitted the matters to the Reference Court for deciding the same afresh by giving due opportunity to the State to adduce the necessary evidence with liberty to the claimants to adduce additional evidence, if they so desire.

5. After remand of the matters by the Division Bench of this Court, the claimants impleaded the Executive Engineer, Osmanabad as respondent no.2 in all the Reference Applications. The said respondent filed his written statement resisting the claim of the claimants. The claimants, in support of their claims examined as many as eight witnesses and also placed on record the certified copies of the N.A. Permissions obtained by them pertaining to the acquired lands. In rebuttal, the respondents examined two witnesses i.e. the SLAO and the Executive Engineer, PWD, Osmanabad. The Reference Court after having considered the evidence on record held the claimant in L.A.R. No.70/1993

entitled for the enhanced compensation at the rate of Rs.1,70,000/- per Hectar and also held him entitled for the enhanced amount at the rate of Rs.1,50,000/- per Hectar in respect of his 66 R land for injurious affection and severance. The Reference Court enhanced the amount of compensation of the land involved in L.A.R. No.71/1993 at the rate of Rs.1,50,000/- per Hectar, and compensation of the land involved in L.A.R. No.145/1993 was enhanced at the rate of Rs.1,70,000/- per Hectar. According to the claimants, since the Reference Court did not award the just, fair and adequate compensation, the present appeals are preferred by them seeking further enhancement in the amount of compensation so awarded by the Reference Court.

6. Shri V.D. Salunke, learned counsel h/f Mr. P.P. More appearing for the appellants, at the beginning of his arguments tendered across the bar, the judgment delivered by this Court (Coram : Sunil P. Deshmukh, J.) on 19.11.2017 in First Appeal No.315/1994 with connected appeals. The learned counsel submitted that the aforesaid first appeals were arising out of the same acquisition proceedings from which the present appeals have arisen. The learned counsel further submitted that in First Appeal No.315/1994 with connected appeals, this Court has enhanced the compensation at the rate of Rs.15 per square foot. The learned counsel submitted that since the lands which are the subject matter of the present appeals in all respect stand at par with the

lands involved in the aforesaid appeals decided by this Court, the appellants in the present appeals also need to be awarded the enhanced compensation at the rate of Rs.15 per square foot. Learned counsel, in the circumstances, prayed for allowing the present appeals and to enhance the amount of compensation at the rate of Rs.15 per square foot.

7. Shri Phule, the learned AGP appearing for the respondent-State supported the impugned judgment and award. The learned AGP submitted that the Reference Court has passed a well reasoned order and no interference is required in the order so passed.

8. I have given due consideration to the submissions made by the learned counsel appearing for the appellants and the learned AGP appearing for the respondent-State. I have perused the impugned judgment and award, as well as the evidence on record. It is not in dispute that the lands, which are the subject matter of the present appeals have been acquired for the Osmanabad – Tuljapur bypass road. It is further not in dispute that the award under Section 11 of the Act pertaining to the lands involved in the present appeals was passed on 29.07.1992. The material on record reveals that the lands which were involved in the First Appeal No.315/1994 with connected appeals were also acquired for the same purpose i.e. for Osmanabad – Tuljapur bypass road.

The said lands were acquired by the same Notification issued under Section 4 of the Land Acquisition Act on 30.08.1990. The award under Section 11 of the Act in regard to the said lands was passed on the same date i.e. 29.07.1992. The material on record reveals that the same sale instances relying upon which this Court has enhanced the amount of compensation at the rate of Rs.15 per square foot in First Appeal No.315/1994 with connected appeals, are relied upon in the instant matters. In view of the fact that the lands which are the subject matter in the present appeals were acquired for the same purpose vide the same notification and the award under Section 11 of the Act was also passed on the same day, the market value of the lands which are the subject matter in the present appeals has to be determined at par with the market value determined by this Court of the lands involved in First Appeal No.315/1994 with connected appeal.

9. In the aforesaid circumstances and for the reasons discussed above, the claimants in these appeals are held entitled to receive the compensation for their acquired lands at the rate of Rs.15/- per square foot with corresponding statutory benefits arising therefrom. It need not be stated that the compensation already received shall be liable to be deducted while determining the amount of compensation at the rate of Rs.15/- per square foot. It is clarified that the interest under Sections 28 and 34 shall be payable from the date of the award i.e. from 29.07.1992.

10. Modified award be prepared accordingly.
11. The appeals stand allowed in the aforesaid terms.

(P.R. BORA)
JUDGE

Sudhir Rane