

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

FIRST APPEAL NO.939 OF 2004

1. Shri Rangnath s/o Abaji Abhale
Age : 57 years, Occu : Agriculturist
R/o. Nilwande, At present at Akole
Tq. Akole, Dist. Ahmednagar
2. Smt Jijabai w/o Rangnath Abhale
Age : 55 years, Occu : Agriculturist,
R/o. Nilwande, At present Akole,
Tq. Akole, Dist. Ahmednagar

..Appellants
(Original Claimants)

Versus

The State of Maharashtra
(Through The Special Land Acquisition
Officer No.13, Ahmednagar, Dist. Ahmednagar)

..Respondent

.....

WITH

FIRST APPEAL NO.940 OF 2004

Late Dnyaneshwar Ganpat Abhale
(Deceased Thr. His Legal Representatives)

1. Smt Ashabai w/o. Dnyaneshwar Abhale
Age : 36 years, Occu : Agriculturist
2. Kum. Archana Dnyaneshwar Abhale
Age : 17 years, Occu : Education,
3. Shri Amol Dnyaneshwar Abhale
Age : 14 years, Occu : Education,

(The appellant nos.2 & 3 being minors,
under the Guardianship of appellant no.1)

All R/o. Nilwande, Tq. Akole,
Dist. Ahmednagar

.. Appellants
(Original Claimants)

Versus

The State of Maharashtra
(Through The Special Land Acquisition
Officer No.13, Ahmednagar, Dist. Ahmednagar) ..Respondent

.....
WITH

FIRST APPEAL NO.961 OF 2004

Shri Rangnath Abaji Abhale
Age : 57 years, Occu : Agriculturist
R/o. Nilwande, At present at Akole
Tal. Akole, Dist. Ahmednagar

.. Appellant
(Original Claimant)

Versus

The State of Maharashtra
(Through The Special Land Acquisition Officer
No.13, Ahmednagar, Dist. Ahmednagar) ..Respondent

.....
WITH

FIRST APPEAL NO.962 OF 2004

1. Shri Dashrath s/o Shankar Abhale
Age : 62 years, Occu : Agriculturist
2. Shri Rambhau s/o Shankar Abhale
Age : 59 years, Occu : Agriculturist
3. Shri Karbhari s/o Shankar Abhale
Age : 50 years, Occu : Agriculturist
4. Shri Pandharinath s/o Shankar Abhale
Age : 45 years, Occu : Agriculturist
All R/o. Nilwande, Tal. Akole,
Dist.Ahmednagar

.. Appellants
(Orig. Claimants)

Versus

The State of Maharashtra
(Through The Special Land Acquisition
Officer No.13, Ahmednagar, Dist. Ahmednagar) ..Respondent

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Advocate for Appellants : Shri R.D. Bhalerao ;
AGP for Respondent – State : Shri P.M. Kulkarni.

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CORAM : PR. BORA, J.

Dated: 31.01.2019

ORAL JUDGMENT :

1. Since all these appeals are arising out of the acquisitions made for the construction of the dam base for 'Nilwande II' from Tal. Akole of Dist. Ahmednagar, I have heard the common arguments in all these matters and I deem it appropriate to decide these appeals by a common reasoning.

2. First Appeal No.939 of 2004 is filed against the Judgment and Award passed in LAR No.4/1996, First Appeal No.940 of 2004 is filed against the Judgment and Award passed in LAR No.31/1998, First Appeal No.961 of 2004 is filed against the Judgment and Award passed in LAR No.6/1997, whereas in First Appeal No.962 of 2004, the Judgment and Award passed in LAR No.2/1997 is questioned.

3. Shri R.D. Bhalerao, learned Counsel appearing for the appellants submitted that, though several grounds are raised by the appellants in exception to the Judgments and Awards impugned in the present appeals, the appellants wish to press the only objection as about non-payment of enhanced compensation in respect of the acquisition of trees and the house properties existing in the subject lands acquired for the 'Nilwande II' Project. The learned Counsel submitted that, though sufficient evidence was adduced in respect of the existence and valuation of the trees and houses in the acquired lands, the Reference Court has rejected the claim of the appellants – claimants in that regard for erroneous reasons. The learned Counsel, therefore, prayed for the adequate enhancement in the amount of compensation towards trees and houses in the subject lands.

4. Learned AGP Shri P.M. Kulkarni resisted the submissions made on behalf of the appellants. He supported the impugned Judgments and Awards and prayed for dismissal of the appeals.

5. On perusal of the Judgments passed by the Reference Court, which are impugned in the present appeals, it is revealed that, the detailed reasoning has been given by the Reference Court in the judgment passed in LAR No.6/1997. The other LAR's have been decided by the said Court on the basis of the said judgment. Material on record further reveals that, one Prakash Gadge was examined as a common witness in all the concerned LAR's in order to bring on record the value of the fruit bearing trees existing in the subject lands at the time of their acquisition. The facts which have come on record in his cross-examination reveal that, the said witness had visited the acquired lands on 15.10.2000. It is thus evident that, the said witness visited the acquired lands after 10 years of their acquisition. The Reference Court has, therefore, discarded his evidence by observing that, the evidence of the said witness who visited the spot after 10 years of the acquisition of the land cannot be accepted to hold that, the trees as prescribed in the report submitted by him were existing at the time of the acquisition of the said lands in the year-1992. It does not appear to me that, the Reference Court has committed any error in

discarding the evidence of Prakash Gadge as about the existence and valuation of the trees in the subject lands.

6. The material on record further reveals that, the claimants had examined PW-8 Anil Salunke to bring on record the valuation of the houses allegedly existing in the acquired lands at the time of their acquisition. In the cross-examination of witness PW-8 Anil Salunke it has come on record that, when he visited the spot the houses were not in existence. The Reference Court has, therefore, disbelieved the evidence of the said witness also.

7. After having perused the testimonies of the aforesaid two witnesses, it does not appear to me that, the Reference Court has committed any error in disbelieving the evidence of these witnesses. In order to claim the enhanced compensation for the trees and houses, the reliance of the claimants was on the evidence of the aforesaid two witnesses. However, as I noted herein above, the Reference Court has discarded the evidence of the said witnesses by recording sound reasons therefor. I reiterate that, there is no infirmity in the finding

recorded by the Reference Court. The appeals being devoid of any substance deserve to be dismissed and are accordingly dismissed, however, without any order as to the costs.

(PR. BORA, J.)