

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

FIRST APPEAL NO.465 OF 1998

Maharashtra State Electricity Board,
Through the Executive Engineer (Civil),
M.S.E.B., Osmanabad, Dist, Osmanabad.

= APPELLANT.
(Interested party)

VERSUS

. Gundappa S/o Mallikarjun Swami.
(died through his L.Rs.)

1. Mallikarjun S/o Gundappa Swami,
Age 68 yrs, Occ. Agri.,
R/o Chakur, Tq Chakur
Dist. Latur.

= Ori. Claimant.

2. The State of Maharashtra,
through the collector,
Latur

= RESPONDENTS

WITH

X-Objection St.NO.19356/1998

. Gundappa S/o Mallikarjun Swami,
(Died Through L.Rs.)

. Malilikarjun S/o Gundappa Swami,
(Died Through L.Rs.)

. Parwatibai S/o Malikarjun Swami,
Age Major, Occ. Agri.
R/o Adarsha Colony, Chakur
Tq. Chakur, Dist. Latur.

= APPELLANT
(Ori. Claimant)

Versus

1) Maharashtra State Electricity
Board Through the Executive

(2)

Engineer, Civil M.S.E.B.
Osmanabad.

- 2) The State of Maharashtra,
through Collector, Latur,
District: Latur.

= RESPONDENTS
(Resp. No. 1
interested party)

WITH

FIRST APPEAL NO 466 OF 1998

Maharashtra State Electricity Board,
Through the Executive Engineer (Civil),
M.S.E.B., Osmanabad, Dist, Osmanabad.

= **APPELLANT.**
(Interested party)

Versus

1. Vasantrao S/o Digambarrao Shashtri,
Age 55 yrs, Occ. Agri. & household,
R/o Chakur, Tq Chakur
Dist. Latur.

= Ori.Claimant.

2. The State of Maharashtra,
through the collector,
Latur

= **RESPONDENTS.**

WITH

X- Objection Stamp NO.19358 Of 1998

Vasantrao Digambarao Shastri.
Died Through Legal Heirs,

1. Shantabai W/o Vasantrao Shastri
Age 80 yrs, Occ. Household,
R/o Chakur,Tq. Chakur,
Dist. Latur.

2. Prabhakar S/o Vasantrao Shastri,
Age 62 yrs, Occ. Agri.
R/o Chakur,Tq. Chakur,

Dist. Latur.

3. Bhaskar S/o Vasant Rao Shastri,
Age 53 yrs, Occ. Agril,
R/o Chakur,Tq. Chakur,
Dist. Latur.
4. Sudhakar S/o Vasant Rao Shastri,
(died through Legal Heirs.)
- 4-A) Sudhakar S/o Vasant Rao Shastri,
Age 49 yrs, Occ. Household,
R/o Chakur,Tq. Chakur,
Dist. Latur.
- 4-B) Vishwas S/o Sudhakar Shastri,
Age 22 yrs, Occ. Agri.
R/o Chakur,Tq. Chakur,
Dist. Latur.
- 4-C) Vishrant S/o Sudhakar Shastri
Age 13 yrs, Occ. Nil,
U/g of mother Sunanda Sudhakar Shastri,
Age 49 yrs, Occ. Household,
R/o Chakur,Tq. Chakur,
Dist. Latur.
5. Shivkumar s/o Vasant Rao Shastri,
Age 50 yrs, Occ. Agri,
R/o Chakur,Tq. Chakur,
Dist. Latur.
6. Sunita @ Laxmi w/o Shamsundar Joshi,
Age 46 yrs, Occ. Household,
R/o Pune, Tq. and Dist. Pune.

= **APPELLANTS**
(Ori. Claimant)

Versus

- 1) Maharashtra State Electricity
Board Through the Executive
Engineer, Civil M.S.E.B.
Osmanabad.
- 2) The State of Maharashtra,
through Collector, Latur,
District: Latur.

= **RESPONDENTS**

(Resp. No.1
interested party)

Shri. P.B.Paithankar Adv. for Appellant-MSEB;

Shri H.B.Nandgavale, Adv. h/for Shri V.G. Sakolkar
Adv. for Resp.no.1;

Shri A.M.Phule, AGP for Respt.-State

CORAM : P.R.BORA, J.

DATE : 7th February, 2019

ORAL JUDGMENT

1. Since both these appeals and the Cross-objections are arising out of the common Judgment and Award passed by the court of Civil Judge, Senior Division at Latur in LAR No.1997/1990 with LAR No.310 passed on 27th October, 1997, I have heard the common arguments in these matters and I deem it appropriate to decide these appeals by a common reasoning.

2. FA No.465/1998 is arising out of LAR No. 1997/1990 whereas FA No.466/1998 is arising out of LAR No.310/1991.

3. The lands involved in the present appeals were acquired for construction of 33 KV Sub-Station

of Maharashtra State Electricity Board, at Chakur, Tq. Ahmedpur, District Latur. Notification under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as the said Act) in that regard was published in the official gazette on 1st January, 1987; whereas Award under Section 11 of the Act came to be passed on 21st June, 1989. Possession of the acquired lands was taken on 10th June, 1986, i.e. prior to issuance of Section 4 notification. In the Award passed under Section 11 of the Act, the Special Land Acquisition Officer had offered compensation @ Rs.24,000/- per hectare. Dissatisfied with the amount of compensation so offered, the claimants filed Reference Applications under Section 18 of the Act, seeking enhancement in the amount of compensation awarded by the Special Land Acquisition Officer, which was adjudicated by the Court of Civil Judge, Senior Division at Latur. The said court is hereinafter referred to as the Reference Court.

4. In the Reference Applications, the claimants had claimed the compensation @ Rs.10/- per sq.ft. In order to substantiate the claim

raised by them, three witnesses were examined by the claimants. The claimants relied upon two sale instances at Exhibit-23 and Exhibit 26. The sale instances were duly proved by them respectively through evidence of CW 1 – Ramesh Jadhav and CW 2 – Shivshankar. The evidence was recorded in LAR No. 1997/1990. No oral evidence was adduced by the respondents. Two sale instances were, however, produced by the respondents.

5. The learned Reference Court, after having assessed the oral and documentary evidence brought on record before it, determined the market value of the acquired lands @ Rs.7/- per sq.ft. and accordingly enhanced the amount of compensation. In so far as land involved in LAR No.1997/1990 is concerned, the Reference Court directed deductions to the extent of 25% of the total acquired area towards the development; whereas in LAR No.310/1991, out of the total area, 10% was deducted from it for the purposes of development. Aggrieved by, the acquiring body has preferred the present appeals. Since according to the claimants, the Reference Court also did not grant the just and

sufficient compensation, they have filed the Cross-objections, seeking further enhancement in the amount of compensation, as has been awarded by the Reference Court.

6. Shri PB Paithankar, learned counsel appearing for the appellant – acquiring body, assailed the common Judgment and Award impugned in the present appeals mainly on the ground that the Reference Court determined the market value of the acquired lands on the basis of the sale instances pertaining to small plots. The learned counsel submitted that the Reference Court failed in appreciating that the price, which was received to the plots, which were the subject matters of the sale-deeds at Exhibit-23 and Exhibit-26, was not liable to be received to the acquired lands, which were much large in area. The learned counsel further submitted that the Reference Court has also failed in appreciating that the lands, which were the subject matters of Exhibit-23 and Exhibit-26, were located in the fully developed area; whereas the lands, which were the subject matters of the Reference Applications, were at a considerable distance from the said lands and

were from the undeveloped area.

7. The learned counsel further submitted that ordinarily, while considering the aspect of NA potentiality of the agricultural land, 1/3rd of the area is deducted; whereas the Reference Court in the present matters has directed the deductions to the extent of 25% and 10% respectively towards the development. The learned counsel, in the circumstances, prayed for setting aside the impugned Judgment and Award and to restore the Award passed by the Special Land Acquisition Officer under Section 11 of the Act.

8. As against it, learned counsel Shri HR Nandgavhale, holding for Advocate Shri VG Sakolkar, submitted that the amount of compensation, as has been awarded by the Reference Court, is unjust and inadequate. It was the contention of the learned counsel that the Reference Court must have relied upon the sale instance at Exhibit-26 instead of Exhibit-23 and must have awarded the same market rate to the acquired lands. The learned counsel further submitted that the deductions, as are made

from the acquired area for the purpose of computing the compensation, is also unjust and inappropriate. The learned counsel further submitted that the claimants had brought on record sufficient evidence to substantiate their demand and as such, the Reference Court must have determined the market value of the acquired lands at the rate not less than Rs.10/- per sq.ft.

9. I have given due considerations to the submissions made by the learned counsel appearing for the acquired lands and the learned counsel appearing for the claimants. I have perused the impugned Judgment and Award and the evidence on record. As has come on record, through evidence of CW 3 - Mallikarjun, both the acquired lands were situated and located in the central place of Chakur city and there were residential houses, plots, offices around the said lands. It has also come on record through the evidence of said witness that towards West of the acquired lands, there was Grampanchayat office; Zilla Parishad Girls' High School and the Rural hospital. Whereas to the north of the acquired lands, there is Jagat Jagruti High

School, Untakaneshwar temple, Rest house, Lokmanya college and the residential colonies. To the South of the acquired lands, there is cinema theater and Urdu high school and Railway station and towards northern side, there are residential colonies on both the sides of the road. It was specifically deposed by the said witness that both the acquired lands were having NA potentiality.

10. In the Cross-objection of CW 3, nothing has been brought on record so as to disbelieve the facts deposed by him. The Reference Court, on the basis of the evidence, which has come on record, has recorded an unequivocal finding that the acquired lands were situated in the midst of Latur-Chakur city and were possessing NA potentiality. In the circumstances, the Reference Court has disapproved the amount of compensation offered by the Special Land Acquisition Officer @ Rs.24,000/- per hectare, observing that the same is wholly unjust and insufficient.

11. The discussion made by the Reference Court further reveals that though the sale instance

at Exhibit-26 was much pressed by the claimants for determining the market value of the acquired lands, the Reference Court has preferred to rely upon the sale instance at Exhibit-23. The land which was the subject matter of Exh.26 was a plot admeasuring 600 sq.ft. (i.e. 20 ft. X 30 ft.) and was sold on 1st June, 1982 for consideration of Rs.15,000/-, i.e. @ Rs.25/- per sq.ft.. Whereas the land, which was the subject matter of sale deed at Exh. 23, was admeasuring 29 mtrs. X 7½ mtrs and was sold by registered sale deed executed on 16th January, 1985 for the consideration of Rs.15,000/-, i.e. approximately @ Rs.7/- per sq.ft.

12. It appears to me that the Reference Court has rightly preferred to rely upon the sale instance at Exh.23 since it was pertaining to comparatively large area than the plot, which was the subject matter of sale deed at Exh. 26. Secondly, the sale instance at Exh. 26 was of the period prior to about 4½ years of the issuance of Section 4 notification pertaining to the acquired lands, whereas the sale deed at Exh. 23 was executed prior to about two years of the issuance

of Section 4 notification. It has come in the evidence of CW 1 – Ram Jadhav that though in the sale instance at Exh.23, the plot involved therein is shown to have been sold for the consideration of Rs.15,000/-, in fact, it was sold at Rs.24,000/- and only for the purpose of stamp duty, the valuation thereof was shown at Rs. 15,000/-. The Reference Court has believed the version of CW 2 since the same has gone uncontroverted.

13. The discussion made by the Reference Court further reveals that having considered the fact that the sale instance at Exh.23 was of the year prior to two years of the issuance of Section 4 notification, adequate rise in the market price of the land at the rate of 10% per year has also been considered by the Reference Court. The Reference Court has thereafter taken into account the minus factors also and has ultimately determined the market value of the acquired lands @ 7/- per sq.ft.

14. The Reference Court has appropriately discussed that the value which was received to the

plots of a smaller area, was not liable to be received to the large area of land and accordingly, the negative allowances are appropriately worked out and the market price of the acquired lands was determined by it @ Rs.7/- per sq.ft. According to me, the method adopted by the Reference Court was in tune with the guidelines laid down by the judicial pronouncements for determination of the market value of the lands. The objection raised by the acquiring body that the Reference Court determined the market value of the acquired lands on the basis of the smaller plots, therefore, does not carry any substance and deserves to be rejected. I reiterate that the sale instance at Exh.26 was pertaining to too small plot admeasuring 600 sq.ft. and was of the period prior to about five years of Section 4 notification. It does not appear to me that the Reference Court has committed any error in not relying upon the said sale instance.

15. Further, it was the objection of the acquiring body that the Reference Court must have directed the deduction to the extent of 33% of the

acquired lands towards development; whereas as against it, it is the contention of the claimants that no deductions were liable to be directed. Both the objections deserve to be turned down. The Reference Court has provided sufficient reasons while directing the deductions to the aforesaid extent. It has to be stated that the Reference Court was conscious in directing such deductions. Considering that the land involved in LAR No. 1997/1990 was larger in area, admeasuring 81 Ares, when the Reference Court has directed the deduction to the extent of 25%, similar deduction is restricted to 10% from the acquired land, which is involved in LAR No.310/1991, it being comparatively small piece of land admeasuring 15 Ares. It does not appear to me that the Reference Court has committed any error in directing such deductions. The objections raised in this regard are also, therefore, without any substance and liable to be rejected.

16. After having considered the entire material on record, it does not appear to me that any sustainable ground is made out either by the

appellants for reduction in the amount of compensation or by the claimants for any enhancement in the said amount.

17. In the result, both the appeals as well as both the cross-objections deserve to be dismissed and are accordingly dismissed, however, without any order as to costs. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/
title-Mahesh
Jt.BDV