

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

FIRST APPEAL NO.356 OF 2003

1. Sheshrao S/o Maruti Patil

2. Sumanbai W/o Sheshrao Patil,

Both Age. Major, Occu: Agril.,
R/o Tupdal (Bk.) Tq. Mukhed,
District Nanded.,

= **Appellants**
(Orig. Claimants)

VERSUS

1. The State of Maharashtra,
Through Collector, Nanded.

2. The Special Land Acquisition
Officer, PT & MIW, Nanded.

= **RESPONDENTS.**

WITH

FIRST APPEAL NO.9 OF 2004

Gangadhar s/o Maroti Patil,
Age: 43 Yrs, Occu: Agril.,
r/o Tupdal (Bk.) Tq. Mukhed,
District Nanded.

= **Appellant**
(Orig. Claimant)

VERSUS

1. The State of Maharashtra,
Through Collector, Nanded.

2. The Special Land Acquisition
Officer, PT & MIW, Nanded.

= **RESPONDENTS**

Shri. M.M.Patil Beedkar, Advocate for Appellant/s;
Shri. A.M.Phule, AGP, for Respondents.

CORAM : P.R.BORA, J.

DATE : 15th January, 2019

ORAL JUDGMENT

1. Since both these appeals are arising out of acquisition made for Jamkhed Medium Project, I have heard the common arguments in both these appeals and I deem it appropriate to decide both the appeals by a common reasoning.

2. The lands, which are the subject matter in the present appeals, were acquired, as noted above, for Jamkhed Medium Project at village Tupdal. Notification under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as the Act) in that regard was published in the Official Gazette on 15th May, 1985 and Award under Section 11 of the Act came to be passed on 19th December, 1988.

3. The Special Land Acquisition Officer offered the compensation @ Rs.7,500/- per hectare, i.e. Rs.75/- per Are for the acquired lands. Dissatisfied with the amount of compensation so offered, the appellants claimants preferred

applications under Section 18 of the Act, which were adjudicated by Civil Judge, Senior Division, Biloli, who is hereinafter referred to as the Reference Court.

4. Before the Reference Court, the appellants-claimants had claimed compensation @ Rs. 50,000/- per hectare. In order to substantiate the claim so raised by them, the claimants in addition to their own testimonies, had relied upon two sale instances. The Reference Court, however, did not accept the evidence so adduced by the claimants and dismissed the Reference Application, observing that no case was made out for causing interference in the amount of compensation. Aggrieved by, the claimants have preferred the present appeals.

5. Shri Milind Patil-Beedkar, learned counsel appearing for the appellants claimants, at the beginning of his arguments, tendered across the Bar a copy of the judgment delivered by this Court (Coram: T.V.Nalawade,J.) in First Appeal No. 938/2007 with First Appeal No.939/2007 arising out of the same acquisition proceedings. The learned

counsel pointed out that this Court has enhanced the amount of compensation in the said appeals by determining the market value of the acquired lands in the said matters @ Rs.200/- per Are. The learned counsel further submitted that present lands are also from village Tupdal and in the circumstances, on principle of parity, the present appellants claimants also deserve to receive the amount of compensation at the same rate. The learned counsel, in the circumstances, prayed for allowing the appeals and to enhance the amount of compensation @ Rs.200/- per Are.

6. Learned AGP Shri Phule has opposed the submissions made by Shri Patil, learned counsel for the claimants. The learned AGP submitted that there is nothing on record suggesting that the lands, which are the subject matter of present appeals, were in all respects similar to the lands, which were involved in the matters dealt with by this Court in First Appeal No.938/2007 with First Appeal No.939/2007. According to learned AGP, in absence of any such evidence, the market value, as has been determined in the aforesaid two appeals,

cannot be extended to the present appellants-claimants. The learned AGP, therefore, prayed for dismissal of the appeals.

7. I have given due consideration to the submissions made by the learned counsel appearing for the appellants claimants and the learned AGP appearing for the respondents. I have also perused the impugned judgment and evidence on record. I have also gone through the Judgment delivered by this Court in First Appeal No.938/2007 with First Appeal No.939/2007. Perusal of the Judgment in First Appeal No.938/2007 with First Appeal No. 939/2007, reveals that the lands, which were the subject matter in the said appeals, were also acquired for Jamkhed Medium Project. It is also revealed that the said lands were also from village Tupdal. The notification by which the said lands were acquired was also same, i.e. 15th May, 1985. In the circumstances, there appears substance in the argument advanced by the learned counsel for the appellants-claimants that the amount of compensation needs to be enhanced in the present appeals in tune with the market value as has been

awarded by this court while deciding the First Appeal No.938/2007 with First Appeal No.939/2007.

8. After having considered the observations made by the Reference Court and after having perused the judgment delivered by this court in the aforesaid first appeals, it appears to me that the present claimants also deserve enhancement in the amount of compensation at the similar rate, as has been determined by this Court. It appears that the Reference Court has manifestly erred in not accepting the evidence, as was adduced by the appellants claimants by way of sale instances at Exhibits-25 and 26. Though the sale deed at Exh. 25 can be said to have been rightly discarded by the Reference Court since it was pertaining to a small piece of land admeasuring 3 Ares, there was no reason for the Reference Court to discard the sale instance at Exh. 26, which pertains to 81 Ares land, which was sold on 24th August, 1984, i.e. prior to issuance of Section 4 notification, @ Rs. 200/- per Are. It was submitted by learned counsel Shri Patil that village Hasnal and village Tupdal are adjacent to each other. It was also brought to

my notice by Shri Patil that the lands involved in First Appeal No.938/2007 with First Appeal No. 939/2007, were also from village Tupdal. It was also pointed out by the learned counsel that in the said matters also, same sale instances were relied upon before the Reference Court but the Reference Court has not considered the said sale instances. It was also pointed out that this Court in the aforesaid judgment has considered the aforesaid sale instance and has accordingly enhanced the amount of compensation @ Rs.200/- per Are. In view of the said judgment, it appears that the same compensation needs to be awarded in the present appeals also. I am, therefore, inclined to allow the present appeals to the aforesaid extent.

9. In the result, following order is passed,

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ORDER

i. Both the appeals are allowed.
The rate per Are is increased to make it Rs.200/- per Are.

ii. The judgments and Awards

impugned in the present appeals are set aside.

iii. The References are allowed in the following terms, -

(I) The rate given by the Special Land Acquisition Officer is enhanced to make it Rs.200/- per Are and following statutory benefits are given, -

a. Component at the rate of 12% p.a. From the date of publication of notification under Section 4(1) of the Act, i.e. 27th June, 1985 till the date of award i.e. 19.12.1988.

b. The claimants are entitled to 30% *solatium* in the difference of market value under Section 23(2) of the Act.

c. The claimants are also entitled to interest at the rate of 15% p.a. From the date of award, i.e.

(9)

19.12.1988 till the date of realization.

iv. Awards are to be prepared accordingly.

(P.R.BORA)
JUDGE

bdv/