

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

903 FIRST APPEAL NO.1769 OF 2004

Kashiram S/o Rambhau Chavan
(Died) Through his Lrs.

- 1) Subhash S/o Kashiram Chavan
Age: 59 years, Occu.: Labour,
R/o. Pratapur, Post.Pratapur,
Taluka Taloda, Dist.Nandurbar.
- 2) Bhavrao S/o. Kashiram Chavan
Age: 54 years, Occu.: Labour,
R/o. Pratapur, Post.Pratapur,
Taluka Taloda, Dist.Nandurbar.
- 3) Gulabrao S/o. Kashiram Chavan
Age: 50 years, Occu.: Service,
R/o. Ramkrushna Nagar, 35/A,
Chinoda Road, Taloda,
Tq. Taloda, Dist.Aurangabad.
- 4) Vijayabai W/o. Suklal Somwanshi
Age: 56 years, Occu.: Household,
R/o. Pratapur, Post.Pratapur,
Taluka Taloda, Dist.Nandurbar.
- 5) Rajubai w/o. Subhash Borane
Age: 52 years, Occu.: Household,
R/o. Dhamdod, Post.Dhamdod,
Tq. & Dist.Nandurbar.

..Appellants
(Deceased Kashiram Rambhau
Chavan was orig. Appellant)

Versus

- 1) The State of Maharashtra,
- 2) The Special Land Acquisition Officer,
Nandurbar.
- 3) The Executive Engineer, Sardar
Sarovar Project, Nandurbar.

..Respondents
(Original Opponents)

...
FIRST APPEAL NO.1771 OF 2004

- 1) Umangsing Mohansing Rana -Deceased
 L.R.S.
 Deelip Umangsing Rana
 Age: 45 yrs., Occu.: Agriculturist,
 R/o. Pratappur, Tal.Taloda.
 Dist.Nandurbar. ..Appellant
 (Original Claimant)
- Versus
- 1) The State of Maharashtra,
 2) The Special Land Acquisition Officer,
 Nandurbar.
 3) The Executive Engineer, Sardar
 Sarovar Project, Nandurbar. ..Respondents
 (Original Opponents)

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FIRST APPEAL NO.1772 OF 2004

- 1) Nirmalakuwar W/o Champaksing Goyal
 (died through his L.Rs)
- 1A. Jaideepsinh S/o Champaksing Goyal
 Age: 75 yrs., Occu.: Service,
 R/o. 74, Merton Mentions,
 Bushery Road,
 London SW20, United Kingdon.
- 2) Laxmidevi W/o Bhishmakuwarsing
 Shekhawat
- 3) Raghuvirsing Gulabsing Rana
 Through Power of Attorney of
 Appellant No.1 to 3
 Kirtising S/o Raghuvirsing Rana,
 Age: 63 years, Occu.: Agriculturist,
 R/o. Gopalpur, Post.Pratapur,
 Tq.Taloda, Dist.Nandurbar.
 (died through his L.Rs)
- 3-a. Tarakumari W/o Raghuvirsing Rana
 Age: 85 years, Occu.: Household,

R/o. Gopalpur, Post.Pratap,
Tq. Taloda, Dist.Nandurbar.

- 3-b. Kirtising S/o. Raghuversing Rana
Age: 63 years, Occu.: Agriculture,
R/o. Gopalpur, Post.Pratap,
Tq.Taloda, Dist.Nandurbar.
- 3-c. Ramchandrasing S/o.Raghuversing Rana
Age: 60 years, Occu.: Agriculture,
R/o. Gopalpur, Post.Pratap,
Tq.Taloda, Dist.Nandurbar.
- 3-d. Anjanidevi W/o. Himmatsingh Rathod
Age: 57 years, Occu.: Household,
R/o.14, Manav Mandir, Warli Hill Road,
Mumbai.
- 3-e. Laxmidevi W/o. Bhishmakumar Shaktavat
Age: 61 years, Occu.: Household,
R/o.9, Lalniwas, Sardarpur,
Dist.Udyapur (Rajasthan State),
Pin Code - 313001.
Age: 59 years, Occu.: Labour,
R/o.Pratap, Post.Pratap,
Taluka Taloda, Dist.Nandurbar. ..Appellants
(Deceased Raghuversing Gulabsing
Rana was Orig.Appellant)
(Appellant Nos.1, 2 & 3 orig.claimants)

Versus

- 1) The State of Maharashtra,
- 2) The Special Land Acquisition Officer,
Nandurbar.
- 3) The Executive Engineer, Sardar
Sarovar Project, Nandurbar. ..Respondents

...
Advocate for Appellants : Shri R.M.Deshmukh
AGP for Respondent Nos.1 to 3 : Shri S.J.Salgare
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CORAM : P.R.BORA, J.

DATE: 25th January, 2019

ORAL JUDGMENT:-

1 Since all these matters are arising out of the acquisitions made for the project of rehabilitation of village Gopalpur, Tq.Taloda, Dist.Nandurbar, I have heard common arguments in all these matters and I deem it appropriate to decide all these appeals by a common reasoning.

2 The present lands were acquired vide Notification under Section 4 of the Act published in the official Gazette on 30.08.2001 and the award under Section 11 came to be passed on 02.04.2002. In Land Acquisition Reference (LAR) No.26 of 2002, the Special Land Acquisition Officer (SLAO) had offered the compensation @ Rs.67,500/- per hectare for Jirayat land and Rs.9,000/- for Potkharab land. In LAR No.36 of 2002, the SLAO had offered the compensation @ Rs.70,500/- per hectare and Rs.70/- for Potkharab land, whereas in LAR No.9 of 2003, the compensation was offered by the SLAO @ Rs.45,000/- per hectare. Dissatisfied with the amount of compensation so offered, the appellants - claimants filed applications under Section 18 of the Land Acquisition Act, 1894, which were adjudicated by the Court of Civil Judge, Senior Division at

Shahada (hereinafter referred to as 'the Reference Court'). Before the Reference Court, the claimants, in addition to their testimonies, had relied upon two sale instances in order to substantiate claim raised by them. The claimants had claimed the compensation @ Rs.1,50,000/- per hectare before the Reference Court. The Reference Court, however, after having assessed the evidence on record awarded compensation in all these matters @ Rs.1,00,000/- per hectare. According to the learned Counsel for the appellants since the Reference Court also did not award appropriate compensation the present appeals are filed.

3 Shri R.M.Deshmukh, learned Counsel appearing for the appellants - claimants submitted that sufficient evidence has been brought on record by the claimants evidencing that the subject lands were being irrigated from the water of Padalpur Tank. The learned Counsel further submitted that 7/12 extract of each of the said lands with crop statements are placed on record, which show that Banana and Sugarcane crops were also taken from these lands and in the circumstances, according to the learned Counsel, the Reference Court must have held all these lands to be irrigated lands and must have awarded the compensation accordingly. The learned Counsel submitted that

the Reference Court has utterly failed in considering the sale instances, which were placed on record. The learned Counsel, in the circumstances, prayed for adequate enhancement in the amount of compensation.

4 Shri S.J.Salgare, learned AGP resisted the submissions advanced on behalf of the appellants. The learned AGP supported the impugned Judgments and awards. The learned AGP inviting my attention to the impugned Judgment and the award as well as evidence in LAR No.9 of 2003, submitted that the claimants in the said matter has utterly failed in bringing on record any evidence so as to record finding that the land belonging to them were acquired for the project of rehabilitation of village Gopalpur, Tq.Taloda, Dist.Nandurbar, and were semi-irrigated or irrigated land. The learned AGP, in the circumstances, submitted that the rate as has been determined by the Reference Court of Rs.1,00,000/- is excessive than was required to be determined and as such no case of enhancement is made out in the said application.

5 The learned AGP further submitted that though the claimants are claiming that the acquired lands were fully irrigated lands, there is no such evidence brought on record by

the claimants and discussion made by the Reference Court go to suggest that claimants - appellants had failed in proving the said contention. The learned AGP invited my attention to the observations made by the Reference Court that the claimants have neither placed on record the electricity bills nor placed on record receipt of Sugarcane crops sent to the Sugar Factory. In the circumstances, according to the learned AGP, no interference is liable to be caused in the impugned Judgments and awards.

6 I have carefully gone through the impugned Judgments in each of the LARs. The Reference Court has delivered separate Judgment in each of the LARs. Firstly, I would like to deal with the Judgment delivered by the Reference Court in LAR No.9 of 2003. In the said matter, SLAO had offered compensation @ Rs.45,000/- per hectare and the Reference Court has enhanced to Rs.1,00,000/- per hectare. The demand of the claimants was @ Rs.1,50,000/- per hectare. Evidence on record and the discussion made by the Reference Court clearly demonstrate that in this matter, the claimants did not bring on record sufficient evidence so as to prove their contention that the said land was semi-irrigated or irrigated land. The claimants had placed on record two sale instances. First sale deed was pertaining to Gut No.38. It was an agricultural land and was sold vide registered

sale deed executed on 27.08.1996 for consideration of Rs.21,33,020/- i.e. @ Rs.82,500/- per hectare. The said land was admittedly Jirayat land. The another sale instance was of the date 20.02.1997 for the land situate at Gut No.55/2 from village Ranzani, which was sold vide registered sale deed for total compensation of Rs.1,30,000/- i.e. @ Rs.1,07,438/- per hectare. The aforesaid land was semi-irrigated land as is revealing from the contents of the said sale deed.

7 It is the contention of the appellants - claimants that in the year 1997 when the market value was received to the semi-irrigated land @ Rs.1,07,438/- per hectare, by considering the increasing trend in price of the agricultural land and considering the settled law for taking into account the increase in the market value of the acquired land @ 10% p.a., in no case the Reference Court could have determined the market value of the acquired land below Rs.1,50,000/-. The learned Counsel submitted that the subject lands were acquired approximately four years after the said transaction. The learned Counsel submitted that the Reference Court has grossly erred in ignoring the said evidence, which has resulted in determination of the market value at lower rates and great prejudice has been caused thereby to the appellants - claimants. The learned Counsel, in the

circumstances, prayed for adequate enhancement in the amount of compensation.

8 I have given due consideration to the submissions made by learned Counsel appearing for the appellants – claimants and learned AGP appearing for respondent – State. I have perused the impugned judgments and awards as well as evidence in each of the aforesaid matters. Admittedly, the State or the SLAO did not adduce any evidence before the Reference Court and only evidence, which was available before the Reference Court was adduced by the claimants. After considering the evidence adduced on record by the claimants, it is apparently revealed that though the claimants are claiming the acquired lands to be fully irrigated lands, on the basis of evidence on record, it is difficult to accept the contentions so raised by the appellants – claimants. Similarly, though the learned AGP has assertively submitted that all the said lands were dry lands, the said contention also is not liable to be accepted.

9 In all these matters, the claimants have placed on record the receipts evidencing that they had taken water from Padalpur Tank. Moreover, from the crop statements as are placed on record by the appellants pertaining to subject lands, reasonable

interference can be drawn that all these lands were semi-irrigated lands. In the circumstances, the market value was liable to be determined accordingly. The fact that the sale instance, which was placed on record by the claimants, the rate was received to the semi-irrigated lands @ Rs.1,07,438/- in the year 1997 and the price to the Jirayat land was received @ Rs.82,500/- per hectare in the year 1996. Considering usual increase in the price of the agricultural lands, the market value of the acquired land was liable to be determined at the rate in between Rs.1,10,000/- to Rs.1,20,000/- per hectare. The learned Reference Court has determined the market value in all these matters @ Rs.1,00,000/- per hectare. In so far as the lands, which are the subject matter in LAR Nos.36 of 2002 and 9 of 2003, sufficient evidence is there on record so as to hold these lands to be semi-irrigated lands having regard to the crops taken in the said lands. The market value of the lands involved in these LARs (LAR Nos.36 of 2002 and 9 of 2003) has to be therefore determined @ Rs.1,20,000/- per hectare and accordingly amount of compensation needs to be enhanced. Insofar as LAR No.26 of 2002 is concerned, from the evidence on record, it is difficult to record any such conclusion as aforesaid. I, therefore, see no reason to cause interference in the impugned Judgment and award passed in the said matter. In view of above,

the following order is passed:-

ORDER

I) First Appeal No.1769 of 2004 is dismissed without any order as to the costs.

II) First Appeal Nos.1771 of 2004 and 1772 of 2004 stand partly allowed in the following terms:-

(a) The appellants - claimants are held entitled for the enhanced compensation of Rs.20,000/- per hectare for their acquired lands in addition to the compensation awarded by the Reference Court @ Rs.1,00,000/- per hectare excluding Potkharab lands.

(b) The appellants - claimants shall be entitled for the statutory benefits in accordance with the provisions under Section 23(1A) and 23(2) of the Act and also for the interest under Sections 28 and 34 of the Act, from the date of passing of the awards under Section 11 of the Act i.e. 02.05.2002.

(iii) Modified awards be prepared accordingly.

(iv) Pending Civil Applications stand disposed of.

(P.R.BORA)
JUDGE