

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

FIRST APPEAL NO.809 OF 2002

Rajaram s/o. Piraji Surnar
(Died) Through L.Rs.

1. Maroti s/o Rajaram Surnar
Age : 40 years, Occu : Agri,
R/o. Goundgaon, Taluka - Loha,
Dist. Nanded
2. Shesherao s/o. Rajaram Surnar,
Age : 36 years, Occu : Agri,
R/o. As above

.. Appellants
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through the Collector,
Nanded
2. The Special Land Acquisition Officer,
Through B & C, Shivajinagar, Nanded

.. Respondents

.....
WITH

FIRST APPEAL NO.1073 OF 2002

Bapurao s/o. Kondiba Surnar
Aged : 55 years, Occu : Agril,
R/o. Goundgaon, Tq. Kandhar,
Dist. Nanded

.. Appellant
(Orig. Claimant)

Versus

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

2. The Special Land Acquisition Officer,
Through B & C, Shivajinagar, Nanded .. Respondents

.....

FIRST APPEAL NO.1078 OF 2002

Datta S/o. Nagorao Surnar
Age : 44 years, Occu : Agril,
R/o. Goundgaon, Tq. Kandhar,
District : Nanded

.. Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through the Collector,
Nanded
2. The Special Land Acquisition Officer,
Through B & C, Shivajinagar, Nanded .. Respondents

.....

FIRST APPEAL NO.1077 OF 2002

Sarubai w/o Gangaram Gadhe
Age : 35 years, Occu : Agriculture,
R/o. Goundgaon, Tal. Kandhar,
District : Nanded

.. Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through the Collector,
Nanded
2. The Special Land Acquisition Officer,
Through B & C, Shivajinagar, Nanded .. Respondents

.....

FIRST APPEAL NO.1076 OF 2002

Venkati s/o Gangaram Gadhe
 Age : 45 years, Occu : Agriculture,
 R/o. Goundgaon, Tq. Kandhar,
 District : Nanded

.. Appellant
 (Orig. Claimant)

Versus

1. The State of Maharashtra,
Through the Collector,
Nanded
 2. The Special Land Acquisition Officer,
Through B & C, Shivajinagar, Nanded
- .. Respondents

.....

FIRST APPEAL NO.1075 OF 2002

Narayan s/o. Nivrutti Surnar
 Age : 40 years, Occu : Agriculture,
 R/o. Goundgaon, Tal. Kandhar,
 Dist. Nanded

.. Appellant
 (Orig. Claimant)

Versus

1. The State of Maharashtra,
Through the Collector,
Nanded
 2. The Special Land Acquisition Officer,
Through B & C, Shivajinagar, Nanded
- .. Respondents

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FIRST APPEAL NO.1074 OF 2002

Sudhakar s/o Narharrao Kanakdande
 Age : 47 years, Occu : Agri & Service
 R/o.Andga, Tal. Kandhar, Dist. Nanded

.. Appellant
 (Orig. Claimant)

Versus

1. The State of Maharashtra,
Through the Collector,
Dist. Nanded, Nanded
2. The Special Land Acquisition Officer,
Through B & C, Shivajinagar, Nanded .. Respondents

.....

FIRST APPEAL NO.1079 OF 2002

Prabhu s/o Gangaram Gadhe
Age : 35 years, Occu : Agril,
R/o. Goundgaon, Tq. Kandhar,
Dist. Nanded

.. Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through the Collector,
Nanded
2. The Special Land Acquisition Officer,
Through B & C, Shivajinagar, Nanded .. Respondents

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Shri Pradeep Deshmukh, Advocate, h/f. Smt Smita L.
Deshpande, Advocate for the appellants ;
Shri S.J. Salgare, AGP for Respondents – State

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CORAM: P. R. BORA, J.

Date : 10.01.2019

ORAL JUDGMENT :

1. Since the present appeals are arising out of the acquisition of lands for Upper Maniyar Medium Project at Limboti, I have heard the common arguments in all these

appeals and I deem it appropriate to decide all these appeals by a common reasoning.

2. Two common Judgments are challenged in the present group of appeals. First common Judgment and Award pertains to LAR Nos.154/91, 149/91, 157/91, 162/91 and 155/91, whereas the other common Judgment and Award pertains to LAR Nos.151/91, 158/91, 159/91, 160/91 and 164/91. I deem it appropriate to mention herein below the information in the tabular form as about LAR and the appeal filed against the decision in the said LAR.

LAR NO.	FIRST APPEAL NO.
149/91	809/2002
158/91	1073/2002
152/91	1074/2002
146/91	1075/02
160/91	1076/02
164/91	1077/02
148/92	1078/02
159/91	1079/02

3. Both the common Judgments are delivered on 27.07.1994 by the same learned Judge, who was working as Civil Judge, Senior Division, Nanded at the relevant time. The

said Court is hereinafter referred to as the 'Reference Court'.

4. The lands, which are the subject matter of the present appeals, are from village Goundgaon and were acquired for the submergence of Upper Maniyar Medium Project at Limboti, Tal. Kandhar, Dist. Nanded. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was published in that regard in the Official Gazette on 26.12.1986 and the Award under Section 11 of the Act came to be passed on 09.03.1988. The SLAO had offered the compensation to the respective claimants ranging between Rs.14,000/- to Rs.22,500/- per hectare. Dissatisfied with the amount of compensation so offered, the claimants had filed applications under Section 18 of the Act, which were adjudicated by the Reference Court. In the reference applications filed by them, the claimants had claimed the compensation at the rate ranging between Rs.35,000/- to Rs.40,000/- per acre. In order to substantiate the claim so raised by them, the claimants in addition to their own testimonies have brought on record several sale instances. It was the contention of the claimants before the Reference Court

that, the sale instances brought on record by them were comparable sale instances and the market value of the subject lands was liable to be determined on the basis of the value received to the lands, which were the subject matter of the said sale instances.

5. The demand so raised in the reference applications was resisted by the State on several grounds. The learned Reference Court, after having assessed the oral and documentary evidence brought on record, determined the market value of the acquired lands as the uniform rate of Rs.18,000/- per acre and accordingly enhanced the amount of compensation payable to the respective claimants. The Reference Court has held the claimants entitled for the statutory benefits under Sections 23 (1A) and 23 (2) of the Act as well as the interest under Sections 28 and 34 of the Act. According to the claimants, since the Reference Court also did not grant the adequate compensation, they are constrained to file the present appeals seeking further enhancement in the amount of compensation enhanced by the Reference Court.

6. Shri Pradeep Deshmukh, learned Counsel appearing for the appellants – claimants submitted that, though the claimants have placed on record ample evidence in the form of sale instances revealing that at the relevant time the market value of the acquired lands was definitely more than Rs.35,000/- per acre, the Reference Court has failed in appreciating the said evidence and has awarded a meager enhancement in the amount of compensation by determining the market value of the acquired lands at the rate of Rs.18,000/- per acre. The learned Counsel submitted that, the sale instances at Exhs.25 to 27 were the comparable sale instances, wherein the market value was received to the lands, which were the subject matter of the said sale instances, at the average rate of Rs.30,000/- to Rs.35,000/- per acre. The learned Counsel submitted that, the Reference Court must have relied upon the said sale instances and accordingly must have determined the market value of the subject lands at the rate not less than Rs.30,000/- per acre. The learned Counsel, in the circumstances, prayed for the adequate enhancement in the amount of compensation along with the statutory benefits.

7. Learned AGP Shri Salgare supported the impugned

Judgments and Awards. The learned AGP submitted that, the Reference Court has appropriately considered the sale instances brought on record and has arrived at the right conclusion in determining the market value of the acquired lands at the rate of Rs.18,000/- per acre. The learned AGP, therefore, prayed for dismissal of the appeals.

8. I have given due consideration to the submissions made by the learned Counsel Shri Deshmukh and learned AGP Shri Salgare. I have perused the impugned Judgments and Awards and the other material placed on record.

9. It is not in dispute that, the lands, which are the subject matter in the present group of appeals, were acquired from village Goundgaon, Tal. Kandhar, Dist. Nanded vide notification issued under Section 4 of the Act on 26.12.1986. Though it was sought to be contended by Shri Deshmukh that some of the acquired lands were semi-irrigated lands, the evidence on record does not support the contention so raised by Shri Deshmukh. Considering the evidence, which has come on record, there remains no doubt that all the lands involved in the present appeals were non-irrigated lands. It is further not in

dispute that, before the Reference Court the evidence was adduced only by the claimants and no oral or documentary evidence was adduced on behalf of the respondents. Though the exhaustive written-statement was filed by the respondent – State supporting the Award passed by the SLAO, neither the SLAO entered into the witness box nor the certified copy of any sale instance was brought on record by the State. The xerox copies of some of the sale instances were filed on record by the State, which were not liable to be considered and the Reference Court has, therefore, rightly ignored the said sale instances. Thus, the only evidence, which was before the Reference Court, was the oral testimonies of the respective claimants and the sale instances brought on record by them. The record in the aforesaid two common Judgments and Awards reveals that, more than eight sale instances were brought on record by the claimants.

10. Perusal of the impugned Judgments reveals that, the Reference Court has relied upon the sale instance, which was considered in the decision rendered in LAR No.1401/90 and the connected LAR's. In the said sale instance, the land

admeasuring 20 R from village Rui Sangvi was sold by registered sale-deed on 10.11.1983 for the consideration of Rs.10,000/- i.e. at the rate of Rs.20,000/- per acre. It was, admittedly, a dry land. In the said matters, the SLAO had offered the compensation to the said land at the rate of Rs.5600/- per acre and the same was enhanced by the Reference Court to Rs.20,000/- per acre. However, while relying on the said sale instance, the Reference Court has failed in appreciating that, the said sale instance was pertaining to the year 1983 whereas the lands which are the subject matter in the present appeals were acquired vide notification under Section 4 of the Act published in the official gazette on 26.12.1986 i.e. after more than 3 years from the date of said sale-deed. In the circumstances, while determining the market value of the acquired lands, the Reference Court must have considered the notional increase in the market rate of the land ordinarily at the rate of 10% per annum. As such, the market value of the acquired lands, as on 26.12.1986 was liable to be determined reasonably at the rate of Rs.26000/- per acre and not less than that. The Reference Court has observed that, village Rui Sangvi and village Goundgaon are adjacent to each other. In the circumstances, referring to certain

Judgments, the Reference Court has preferred to consider and rely upon the said sale instance for determining the market value of the subject lands. However, as I noted herein above, without considering the fact that, the market price of the said land must have increased in the period of three years upto Rs.26,000/- per acre, the Reference Court has determined the market value of the acquired lands only at the rate of Rs.18,000/- per acre. The Reference Court has not provided any rational in determining the market value of the acquired lands at the rate of Rs.18,000/- per acre on the basis of the said sale instance.

11. The material on record further reveals that, there were at least more three sale instances on record executed in the similar period i.e. in the year 1986, wherein the market value received to the lands, which were the subject matter of the said sale instances, was ranging between Rs.27,200/- per acre to Rs.35,000/- per acre. The Reference Court has not assigned any good reason for not considering the said sale instances. In para-18 of the impugned Judgment, the Reference Court has made the following observations :

“18. To support enhancement of compensation in claim under references, my attention is drawn by learned counsel representing claimants towards sale-deed of Rui-Sangvi. Claimant's contention reveals at the time of acquisition, the price of field of village Goundgaon was at the rate as already discussed in sale deed and maximum at the rate of Rs.32000/- per acre and even considering minimum, it was at the rate of Rs.20/- to Rs.25000/- per acre. Undisputedly, village Rui Sangvi is adjacent to village of claimants from where the land acquired by respondent. The claimant's contention that the land of Rui Sangvi and land under acquisition are similar in quality and the land of Rui Sangvi acquired for the purpose of Maniyar Project for which land of claimant acquired which appears undisputed. Admittedly, cases for compensation of land under acquisition of Rui Sangvi were already decided by passing award by competent court vide Exh.16.”

12. In view of the observations made as above by the Reference Court, the market value of the acquired lands could not have been determined by it at the rate less than Rs.26,000/- per acre. I accordingly determine the market value of the acquired lands at the rate of Rs.26,000/- per acre and hold the appellants – claimants entitled for the enhancement in the amount of compensation accordingly. In the result, the following order is passed.

ORDER

(i) The appellants are held entitled for the enhanced compensation at the rate of Rs.8,000/- per acre with statutory benefits and interest under the provisions of the Land Acquisition Act. It is clarified that, the interest under Sections 28 and 34 of the Act shall be payable to the appellants - claimants on the enhanced amount of compensation from the

date of passing of the Award under Section 11 of the Act i.e. from 09.03.1988.

- (ii) The modified awards be prepared accordingly.
- (iii) The appeals stand partly allowed in the aforesaid terms.
- (iv) Pending Civil Application, if any, stands disposed of.

[P.R. BORA]
JUDGE