

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

FIRST APPEAL NO.480 OF 2004

The State of Maharashtra
Through Spl. Land Acquisition
Officer, Aurangabad = **Appellant**
(Ori. Respondent)

VERSUS

Sarubai W/o Gopinath Jadhav,
Age 50 years occu. Agriculture
and household, R/o Rahegavan,
Tq Vaijapur, Dist. Aurangabad = **RESPONDENT**
(Ori. Petitioner)

WITH

FIRST APPEAL NO.482 OF 2004

The State of Maharashtra
Through Spl. Land Acquisition
Officer, Aurangabad = **Appellant**
(Ori. Respondent)

VERSUS

Karbhari S/o Girjaba Died -
Through L.Rs.

1. Bhagwan s/o Karbhari Pawar,
Age 21 years, Occ: Agriculture,
R/o Rahegavan, Tq. Vaijapur,
Dist. Aurangabad.
 2. (FA stood dismissed against
Resp.No.2 vide order dt.12.2.18)
 3. Gayabai Karbhari Pawar,
Age 42 Years, Occ: Household
R/o as above. = **RESPONDENTS**
(Ori. Petitioners)
- ***

Shri. AM Phule, AGP for Appellants;

CORAM : P.R.BORA, J.

DATE : 8th January, 2019

ORAL JUDGMENT

1. Since both these appeals are arising out of common Judgment and Award passed by Joint Civil Judge, Senior Division, Osmanabad on 3rd February, 2001 in LAR No.167/1992 with connected LAR, I have heard the common arguments in both the appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. The lands, which are the subject matter of the present appeals, were acquired for Bordhegaon medium Project from village Rahegavan, Tq. Vaijapur, District Aurangabad. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) in that regard was published in the official gazette on 29th March, 1986 and the Award under Section 11 of the Act came to be passed on 15.11.1989.

3. The Special Land Acquisition Officer had offered the compensation to the respective

claimants at the rate, ranging between Rs.300/- per Are to Rs.350/- per Are, for non-irrigated lands. Dissatisfied with the amount of compensation so offered, the respondents, who are hereinafter referred to as the claimants, filed applications under Section 18 of the Act, which were forwarded for adjudication to the Civil Court. The Civil Court is hereinafter referred to as the Reference Court.

4. The Reference Court, after having considered the evidence brought on record, determined the market value of the acquired lands @ Rs.780/- per Are, holding the said land to be irrigated land. The Reference Court also awarded the compensation in LAR No.167/1992 for the Pomegranate trees; whereas in LAR No.180/1992 for Guava trees. Aggrieved by, the State has preferred the present appeals.

5. Learned AGP Shri Phule assailed the impugned Judgment and Award mainly on two grounds, firstly, that without there being any evidence, the Reference Court has held the acquired lands to be

irrigated lands and secondly, that the compensation, as has been awarded by the Reference Court towards the trees, is exorbitant and without any evidence there for.

6. The respondents, i.e. original claimants in both the appeals though are duly served, have not caused their appearance in the matters.

7. I perused the impugned judgment and the evidence brought on record. After having perused the impugned judgment, apparently, it does not appear to me that any interference may be required in the compensation so offered by the Reference Court. Though it was sought to be contended by the learned AGP that the Reference Court has awarded the compensation at the exorbitant rate by holding the acquired lands to be irrigated lands, the objection so raised is not supported with any evidence. Moreover, in no case, it can be said that the compensation, as has been awarded by the Reference Court, is on higher side or enhanced arbitrarily. Admittedly, the Special Land Acquisition Officer had offered the compensation at

the rate ranging between Rs.300/- per Are to Rs. 350/- per Are. The Reference Court has enhanced the said compensation by determining the market value of the acquired lands @ Rs.780/- per Are. It is thus evident that the compensation, as has been enhanced by the Reference Court, is slightly more than double of the compensation as awarded by the Reference Court.

8. I have carefully gone through the evidence on record. The Reference Court has methodically determined the market value of the acquired lands. It does not appear to me that any error much less any apparent error has been committed by the Reference Court in determining the market value of the aforesaid rate. Moreover, in view of the fact that the amount of compensation enhanced by the Reference Court is less than four times of the compensation, as awarded by the Special Land Acquisition Officer, even otherwise, in view of the recent policy adopted by the State Government, vide Government Resolution dated 3.11.2016 with corrigendum dated 23.2.2017, the present appeals are not liable to be prosecuted

further.

9. It was further sought to be contended by the learned AGP that the Reference Court has arbitrarily awarded the compensation for the trees existing in the acquired lands. The said objection also apparently appears to be unsustainable. The Reference Court has assessed the market value of one pomegranate tree @ Rs.640/- per tree and has accordingly, awarded the compensation for 250 trees existing in the land which is the subject matter of LAR No.167/1992. The Reference Court has also awarded the compensation for 200 guava trees standing in the land, which was the subject matter of LAR No.180/1992, @ Rs.1200/- per tree.

10. It was the contention of the learned AGP that there was absolutely no evidence as about the value of the trees standing in both the aforesaid lands. The learned AGP also submitted that it was incumbent on part of the claimants to examine the valuer or the expert so as to prove the value of the trees existing in the respective lands. According to learned AGP, in absence of any such

evidence, no compensation was liable to be awarded by the Reference Court towards the trees. The argument so made is also liable to be rejected at the threshold.

11. I have carefully gone through the discussion made by the Reference Court in regard to the award of compensation towards the trees existing in the acquired lands. It is true that the valuer was not examined by the claimants. However, the Reference Court has methodically assessed the yearly yield of the guava trees as well as pomegranate trees and has awarded the compensation averagely for eight years' yield. It does not appear to me that the Reference Court has committed any error in determining the amount of compensation by the aforesaid method. Admittedly, there is no contrary evidence adduced by the State Government.

12. After having considered the entire material on record, I do not see any reason for causing any interference in the impugned Judgment and Award. In the result, following order is

passed,

ORDER

i. Both the appeals stand dismissed, however without any order as to costs. Pending civil application, if any, stands disposed of.

ii. The original claimants are permitted to withdraw the amount of compensation, if any, deposited by the acquiring body and if lying in this court.

(P.R.BORA)
JUDGE

bdv/