

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

950 FIRST APPEAL NO.1965 OF 2015

Tulshiram s/o. Bansi Ghansawant
Age: 65 years, Occu.: Agriculture,
R/o.Shevadi, Tq.Jintur,
Dist.Parbhani.

..Appellant

VERSUS

- 1) The State of Maharashtra,
Through the Collector,
Parbhani, Dist.Parbhani.
- 2) The Special Land Acquisition Officer,
Marathwada Agricultural University,
Presently named as Vasantrao Naik
Marathwada Agricultural University,
Parbhani.
- 3) The Executive Engineer,
Minor Irrigation Division,
Local Sector, Jalna.
Tq. & Dist.Jalna.

..Respondents

...
WITH CA/4925/2018 IN FA/1965/2015
WITH CA/8731/2018 IN FA/1965/2015
...

**WITH
FIRST APPEAL NO.1966 OF 2015**

- 1] Kalabai @ Kalawantibai W/o. Tukaram
Ghansawant (Died)
Through her Legal Representatives
- 1-A] Santosh S/o. Tukaram Ghansawant
Age: 34 years, Occu.: Agri.,
- 1-B] Parmeshwar S/o. Tukaram Ghansawant
Age: 26 years, Occu.: Agri.,
- 1-C] Vikas S/o. Tukaram Ghansawant
Age: 23 years, Occu.: Agri.,

1-D] Atikabai Madhukar Dhale
Age: 50 years, Occu.: household.

1-E] Ashamati Shravan Shinde
Age: 30 years, Occu.: Household.

All R/o. Shevdi, Tq.Jintur,
Dist.Parbhani.

..Appellants
(Ori. Claimants)

VERSUS

1) The State of Maharashtra,
Through the Collector,
Parbhani, Dist.Parbhani.

2) The Special Land Acquisition Officer,
Marathwada Agricultural University,
Presently named as Vasantrao Naik
Marathwada Agricultural University,
Parbhani.

3) The Executive Engineer,
Minor Irrigation Division,
Local Sector, Jalna.
Tq. & Dist.Jalna.

..Respondents

...
WITH CA/6909/2018 IN FA/1966/2015
WITH CA/8732/2018 IN FA/1966/2015

...
Advocate for Appellant :Shri Sudhir K. Chavan
AGP for Respondents: Shri S.J.Salgare and Shri A.M.Phule
Respondent No.3 Served
...

CORAM : P.R.BORA, J.

DATE: 6th February, 2019

ORAL JUDGMENT:-

1. Since both these appeals are arising out of the common
Judgment and award passed by the Court of Joint Civil Judge,

Senior Division, Parbhani, in Land Acquisition Reference (LAR) Nos.5 of 2014 and 6 of 2014 decided on 30.03.2015, I have heard the common arguments in both these appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. The lands, which are involved in the present appeals were acquired for the purpose of construction of percolation tank at village Shevadi, Tq.Jintur, Dist.Parbhani. Both the lands are situated at village Shewadi, Tq.Jintur, District Parbhani. 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 05.09.2009 and the award under Section 11 of the Act came to be passed on 13.08.2012. The Special Land Acquisition Officer (SLAO) had offered the compensation @ Rs.2,770/- per Are. Dis-satisfied with the amount of compensation so offered, the appellants - claimants filed the applications under Section 18 of the Act, which were adjudicated by the Court of Joint Civil Judge, Senior Division, Parbhani (hereinafter referred to as the Reference Court). In the Reference Court, the appellants - claimants claimed the compensation @ Rs.12,500/- per Are. In order to substantiate the claim raised by them, the appellants in addition to their oral evidence before the said Court, had relied upon one sale

instance, which was market as Exh.19. The Reference Court, however, preferred not to rely upon the said sale instance and eventually dismissed both the Reference Applications observing that the claimants did not substantiate their claim. Aggrieved thereby, the present appeals are filed.

3. Alongwith the present appeals, the appellants have also filed civil applications seeking leave to produce on record the additional evidence in the form of sale instance. The learned Counsel appearing for the appellants submitted that when the Reference Applications were adjudicated, the appellants were not aware of the sale instance, which had taken place in respect of land Gut No.81 at village Shewadi, which was sold by the registered sale deed executed on 05.12.2008 for the consideration of Rs.1,00,000/- and in the circumstances could not bring on record the said sale instance. The learned Counsel submitted that alongwith the civil application, they have produced on record certified copy of the said sale instance. The learned Counsel submitted that the sale instance, which is intended to be placed on record by way of additional evidence is of the period prior to issuance of Section 4 Notification from the same village. The learned Counsel submitted that the sale instance now filed on record is of comparable land. The learned

Counsel submitted that if the present sale instance is taken into account, the appellants are likely to get additional amount of compensation. The learned Counsel, in the circumstances, prayed for allowing the said applications and has made further request to remit the matter to the Reference Court giving permission to the present appellants to adduce the said evidence before the said Court.

4. Respective learned Assistant Government Pleaders have opposed the request so made on behalf of the appellants. In the alternative, it is submitted that if the Court inclines to accept the request of the appellants to permit them to adduce additional evidence, the fact shall be taken into account that the intervening period has been consumed only because of some lapses on part of the appellants and in the circumstances, in the event of their success in the appeals, they shall be made disentitled from claiming the interest of the said period. The learned Counsel for the appellants, whereupon promptly submitted that if the request of the appellants is accepted, they are ready to waive interest of the said period in the event of their success in re-adjudication of the Reference Applications.

5. I have given due consideration to the submissions made by

learned Counsel for the appellants and learned learned Assistant Government Pleaders. Perused the impugned Judgment and other material on record. Perusal of the impugned Judgment reveals that the sale instance, which was brought on record by the appellants - claimants was not accepted and relied upon by the Reference Court for considering the request of the appellants to enhance the amount of compensation. It is further revealed that, that was the only evidence adduced on behalf of he appellants.

6. In both the present appeals the appellants have filed civil applications seeking permission to adduce the additional evidence in support of their claim for enhancement in the amount of compensation awarded by the SLAO for their acquired lands. The appellants intend to file on record the sale deed dated 05.12.2008 whereby 20 Are land situated at village Shewadi was sold for total consideration of Rs.1,00,000/-. It is the contention of the claimants that the said sale instance was not within their knowledge and therefore, could not be brought on record. It is their further contention that the sale deed, which they intend to bring on record by way of additional evidence is a comparable sale instance so far as the acquired lands are concerned. There appears *prima-facie* substance in the

contention so raised by the appellants. The sale instance, which is intended to be brought on record is admittedly of the period prior to issuance of Section 4 Notification. The land, which is the subject matter of the said sale deed, is admittedly of village Shewadi. Further, the said land was ad-measuring 20 Are whereas, the lands which are the subject matter of the present appeals are respectively 14 Are and 28 Are. It is thus evident that the said sale instance can be considered for determination of the market value of the acquired lands. In the circumstances, it appears to me that the request made by the appellants to permit them to adduce the additional evidence deserve to be accepted. In view of the fact that the appellants have undertaken not to claim interest of the intervening period i.e. from the date of filing of the present appeals i.e. 16.06.2015 till the date of this order, no prejudice is likely to be caused to the respondents and no undue burden of interest is likely to be saddled on them.

7. For the reasons stated above, the following order is passed:-

ORDER

- I) The impugned Judgment and award is set aside.

II) The matters are remitted to the Reference Court to decide afresh by giving opportunity to the appellants – claimants to place on record additional evidence in the form of sale instance, copy of which is on record in the Civil Applications.

III) Needless to state that the respondents will have equal opportunity to rebut the said evidence and also to adduce further evidence on their behalf.

IV) It is clarified that in the event the amount of compensation is enhanced by the Reference Court, the appellants – claimants shall not be entitled for the interest of the period from the date of filing of the present appeals i.e. 16.06.2015 till the date of this order on the said enhanced amount of compensation.

V) The appeals stand allowed in the aforesaid terms.

VI) Civil Application No.4925 of 2018 in First Appeal No.1965 of 2015 and Civil Application No.6909 of 2018 in First Appeal No.1966 of 2015 stand allowed.

VII) Other pending civil applications, if any, stand disposed of.

(P.R.BORA)
JUDGE