

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

FIRST APPEAL NO.1901 OF 2009

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

2. The Executive Engineer,
Beed.

.. Appellants
[Orig. Respondents]

Versus

Pandharinath S/o Bhiva Chandanshiv,
Age-40 years, Occu. Agriculture,
R/o Sawargaon Ghat, Tal. Ashti,
Dist Beed.

... Respondent
[Ori.Petitioner.]

...
WITH

FIRST APPEAL NO.1902 OF 2009

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

2. The Executive Engineer,
Beed.

.. Appellants.
[Orig. Respondents]

Versus

1. Baban S/o Bapu Mhaske
Age : Major, Occup. Agri.
2. Bhima S/o Bapu Mhaske
Age : Major, Occup. Agri.
Both R/o. Sawargaon- Ghat
Tq Ashti, Dist Beed.

... Respondents.
[Ori. Petitioners]

...

WITH

FIRST APPEAL NO.1903 OF 2009

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

2. The Executive Engineer,
Beed.

.. Appellants.
[Orig. Respondents]

Versus

1. Arjun S/o Sukhdev Maske
Age : 40 yrs, Occup. Agri.

2. Ashok s/o Sukhdev Maske,
Age : 35 yrs, , Occu. Agri.

3. Anusayabai W/o Sukhdev Maske
Age : 50 yrs, Occup. Household
all R/o Sawargaon Ghat,
Tal. Ashti, Dist. Beed

... Respondents
[Ori. Petitioners]

...
WITH

FIRST APPEAL NO 1904 OF 2009

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

2. The Executive Engineer,
Beed

... Appellants
[Ori. Respondents]

Versus

Sukhdev s/o Rajaram Mhaske
Age : 65 yrs, Occup. Agri.
R/o Sawargaon-Ghat
Tq. Ashti, Dist. Beed.

...Respondent.
[Ori. Petitioner]

...

WITH

FIRST APPEAL NO 1905 OF 2009

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

2. The Executive Engineer,
Beed

... Appellants
[Ori. Respondents.]

Versus

1. Suresh S/o Bhimraj Mhaske
Age : Minor, u/g of his mother
Satyabhama w/o Bhimraj Mhaske
Age : 35 yrs, Occup. Agri.
R/o. Sawargaon Ghat, Tq Ashti
Dist Beed.

2. Satyabhamabai w/o Bhimraj Mhaske
Age : 35 yrs, Occup. & r/o as above

3. Kamalbai w/o Bhimraj Mhaske
Age : 56 yrs, Occup. and r/o as above ...Respondents.
[Ori. Petitioners]

.....

Shri A.M. Phule, AGP for Appellants – State ;
Shri Shubham D. Jaybhar, Advocate, h/f. Shri D.R.Jaybhar,
Advocate for Respondent

....

CORAM : PR. BORA, J.
Dated: January 11, 2019

ORAL JUDGMENT :

1. Since all these appeals are arising out of the common
Judgment and Award passed by the 4th Ad-hoc Additional
District Judge, Beed on 16.10.2004 in Land Acquisition

Reference No.699 of 1999 with the connected LAR's, 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. The lands, which are the subject matter of the present appeals, were acquired for the construction of village tank at village Sawargaon Ghat. 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 24.09.1992 and the Award under Section 11 of the Act came to be passed on 21.09.1995. The SLAO had offered the compensation to the respective claimants at the rate ranging from Rs.90/- per *Are* to Rs.95/- per *Are*. Dissatisfied with the amount of compensation so offered, the claimants preferred the applications under Section 18 of the Act to Collector, Beed, who in turn forwarded all said applications for adjudication to the Civil Court at Beed. The Civil Court at Beed (hereinafter referred to as the 'Reference Court') decided the said applications. The claimants had claimed the compensation at the rate of Rs.40,000/- per acre for *jirayat* land, Rs.50,000/- per acre for seasonally irrigated land and Rs.60,000/- per acre for the

irrigated land. In order to substantiate the claim so raised by them, in addition to their oral evidence, the claimants had relied upon one sale instance (Exh.32). No oral or documentary evidence was adduced by the respondents. The learned Reference Court, after having assessed the oral and documentary evidence brought on record by the parties, held the claimants entitled for the compensation at the rate of Rs.500/- per *Are* for the acquired lands and accordingly enhanced the amount of compensation. The Reference Court also held the claimants entitled for the statutory benefit and the interest under Section 28 of the Act. Aggrieved by, the State has preferred the present appeals.

3. Learned AGP Shri Phule appearing for the appellant – State has assailed the impugned Judgment and Award mainly on the ground that, the reference Court though has observed that the sale instance placed on record by the claimants was not useful for the case as was pleaded by the claimants has ultimately determined the market value of the acquired lands on the basis of the same sale instance and has accordingly

enhanced the amount of compensation. The learned AGP submitted that, the only sale instance, which was brought on record by the claimants, was pertaining to a small piece of land admeasuring 14 *Are* and it was pertaining to the irrigated land. In the circumstances, according to the learned AGP, no reliance could have been placed on such sale instance. The learned AGP submitted that, the lands, which are the subject matter of the present appeals, are *Jirayat* lands and at least in two matters the lands were admeasuring more than 1 hector. The learned AGP submitted that, without any legal base or any supportive evidence, the Reference Court has arbitrarily enhanced the amount of compensation more than four times of the compensation awarded by the SLAO. The learned AGP, therefore, prayed for setting aside the impugned Judgment and Award.

4. It was the further contention of the learned AGP that, the SLAO had considered all the circumstances, considered the relevant sale instances executed at the relevant time and has actually visited each and every acquired land and has, thus, determined the market value correctly. The learned AGP

submitted that, there was no reason for any enhancement in the amount so offered by the SLAO. The learned AGP, therefore, consequently prayed for restoring the Award passed by the SLAO under Section 11 of the Act.

5. Shri Jaybhar, learned Counsel appearing for the claimants supported the impugned Judgment and Award. It was the contention of the learned Counsel that, in fact the Reference Court has enhanced the amount of compensation more conservatively and the claimants were entitled for more compensation as has been awarded by the Reference Court. The learned Counsel submitted that, out of five matters, in three matters, the lands which were acquired, were admeasuring 55 *Are*, 30 *Are* and 76 *Are* respectively. In the circumstances, according to the learned Counsel, the sale instance brought on record by the claimants at Exh.32 must have been considered by the Reference Court in determining the market value of the acquired lands and to enhance the compensation accordingly. The learned Counsel further submitted that, the compensation as has been enhanced by the Reference Court is moderately

enhanced and as such, no interference is called for in the impugned Judgment and Award. The learned Counsel, therefore, prayed for dismissal of the appeals.

6. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have perused the impugned Judgment and Award and the evidence on record. After having perused the evidence on record, apparently, it does not appear to me that, any interference is required in the market value as has been determined by the Reference Court. As was rightly submitted by the learned Counsel appearing for the respondents – claimants, the lands involved in three LAR's were also the small pieces of land and as such the reliance could have been placed on the sale instance at Exh.32 brought on record by the claimants. It further appears to me that, the Reference Court has not blindly accepted the evidence on record. Though at one place the Reference Court has casually observed that, the sale instance brought on record was not useful for the case of the claimants, the entire

discussion goes to suggest that, ultimately the Reference Court has determined the market value of the acquired lands on the basis of the said sale instance and I do not see any infirmity in the conclusion so arrived at by the Reference Court. The land, which was the subject matter of Exh.32, was sold on 23.07.1990 at the rate of Rs.1,000/- per *Are*. As has come on record, the said land was irrigated land. Having regard to the fact that, the lands which are the subject matter of the present appeals were acquired vide notification under Section 4 of the Act issued on 24.09.1992, 20% increase was liable to be given while determining the market value of the said lands on the basis of the sale instance at Exh.32. It appears that, after having considered the said fact and having further considered the said sale instance, which was pertaining to the irrigated land, the Reference Court eventually determined the market value of the acquired lands which are held to be non-irrigated lands at the rate of Rs.500/- per *Are* i.e. at less than half of the rate received to the land involved in Exh.32. After having considered the material on record, I see no infirmity in the finding so recorded

and the compensation accordingly enhanced by the Reference Court. The appeals being devoid of any substance deserve to be dismissed and are accordingly dismissed, however, without any order as to the costs.

(PR. BORA, J.)