

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

6 FIRST APPEAL NO.476 OF 2015

1. The Executive Engineer,
Minor Irrigation Division No.1,
Aurangabad.
Through Godavari Marathwada
Vikas Mandal, Aurangabad.
2. The State of Maharashtra ..Appellants

VERSUS

1. Tukaram s/o. Trimbak Dongare
(Deceased, through - his Legal L.R.'s),
 - (i) Smt.Parigabai w/o Tukaram Dongre
Age: 85 yrs., Occu.: Household.
 - (ii) Appasaheb S/o. Tukaram Dongre
Age: 55 yrs., Occu.: Agril.
 - (iii) Nanasaheb S/o. Tukaram Dongre
Age: 50 yrs., Occu.: Agril.
 - (iv) Bhavlal S/o. Tukaram Dongre
Age: 45 yrs., Occu.: Agril.
 - (v) Balasaheb S/o. Tukaram Dongre
Age; 40 yrs., Occu.: Agril.
 - (vi) Indubai w/o. Raghunath Suryawanshi
Age: 60 yrs., Occu.: Household.
 - (vii) Hirabai W/o. Devidas Raut
Age: 47 yrs., Occu.: Household.
 - (viii) Tarabai W/o. Shivaji Bodkhe
Age: 35 yrs., Occu.: Household.
 - (ix) Mirabai S/o. Walmik Jadhav
Age: 30 yrs., Occu.: Household,
All R/o. Gajgaon, Tq.Gangapur,

Dist.Aurangabad.

..Respondents
(Original Claimants)

...
Advocate for Appellants : Shri Umakant K. Patil
Advocate for Respondent Nos.1(i) to 1(ix) :
Shri Dnyaneshwar A. Bide
...

CORAM : P.R.BORA, J.**DATE: 4th January, 2019****ORAL JUDGMENT:-**

1. The present First Appeal is filed by the Acquiring Body against the Judgment and order dated 06.02.2012 passed by the Civil Judge, Senior Division, Vaijapur in Land Acquisition Reference No.1533 of 2010 (Old L.A.R. No.450 of 1999). The land, which is the subject matter in the present appeal was acquired for Palasgaon Minor Irrigation Canal (Tank), Tq.Gangapur, District Aurangabad. The Special Land Acquisition Officer had offered the compensation @ Rs.500/- per Are. Dis-satisfied with the amount of compensation so offered, deceased Tukaram s/o. Trimbak Dongare filed an application under Section 18 of the Land Acquisition Act, before the Collector, Aurangabad and the said application was forwarded for adjudication to the Civil Court (hereinafter referred to as the Reference Court).

During the pendency of the Reference Application, Tukaram Trimbak Dongare expired and his legal heirs prosecuted the matter further. The Reference Court after having assessed the evidence on record, determined the market value of the acquired land @ Rs.1,100/- per Are and accordingly, enhanced the amount of compensation. Aggrieved thereby, the Acquiring Body has preferred the present appeal.

2. Shri Umakant K.Patil, learned Counsel appearing for the Acquiring Body, though, sought to contend that the Reference Court has arbitrarily enhanced the amount of compensation, the facts as are revealing from the record do not support his contention. On the contrary, on perusal of paragraph Nos.16 and 17 of the impugned Judgment, there seems no reason for causing any interference in the impugned Judgment and award. Paragraph Nos.16 and 17 of the impugned Judgment are reproduced herein below:-

“16. It is claimants' case that compensation awarded by L.A.O. is inadequate and it is not as per the prevailing market value as on the date of notification u/sec. 4 of L.A. Act. According to claimant market price of acquired land was @ Rs.1250/-per R i.e. Rs.1,25,000/- per hectore. To prove the said fact claimant is relying upon the certified copy

of sale deed bearing no.400 executed by Laxman Kondaji Shinde in favour of Dwarkadas Dagdu Shinde filed at exh. 26 in this case. It shows that Laxman has sold his 1 acre 16 R. land to Dwarkadas for Rs. 30,000/- from gut no.36 of village Shahpur, Tq. Gangapur. Claimant has also filed the certified copy of Judgment of L.A.R. No. 750/2010 decided by this court on 11.10.2011. Certified copy of judgment is filed on record at exh.24. The said judgment is related to the land from same award i.e. LQN/7/92 and of same village. In this judgment this court has awarded enhanced compensation to claimant Bansi for his acquired land @ Rs. 1100/- per R. Claimant has filed copy of under protest letter at exh.27. Claimant has filed the statement of consolidated voucher for payment made to the claimants on 27.06.1995 by L.A.O. towards compensation of their acquired land. Said statement shows that the claimants have received the compensation of Rs. 94,620/- towards compensation of his acquired land 1 H. 66 R. Claimants have filed copy of E Statement on record. It shows that the L.A.O. has awarded compensation for 1 H. 66 R. acquired land @ Rs. 500/- per R. Claimant has filed the copy of compromise deed passed in L.A.R. no. 203/1991(Vishwanath & Others Vs. The State & others) at exh. 25. Said compromise deed shows that the matter was settled in Lok Adalat held on 5th July, 2009 and parties have settled the rate of acquired land from village Palaskheda @ Rs.483/- per R.

17. Apart from the above documentary evidence claimant Appasaheb has filed his affidavit as his examination in chief at exh.20. He has stated on oath that his 1 H. 66 R. land from gut no.79 of village Gajgaon was acquired by respondents for Palasgaon Medium Irrigation tank (additional area). Notification u/sec. 4 of L.A.

Act was published in Govt. Gazette on 3.3.94. Possession of acquired land was taken by respondent on 27.02.1986. He has received compensation on 27.06.1995 and at that time he received notice u/sec. 12(2) of L.A. Act. Talathi has informed him before 1 day of payment about said payment. He has accepted the compensation under protest. Said compensation is inadequate and it is not as per market value, hence he has filed this reference for enhanced compensation on 7.8.1995."

3. It appears to me that the Reference Court has rightly determined the market value of the acquired land @ Rs.1,100/- per Are. I see no infirmity in the Judgment and order so passed. Even otherwise, the appeal could not have been prosecuted further by the Acquiring Body in view of the policy adopted by the State Government vide Government Resolution No.03.11.2016 read with Corrigendum dated 23.02.2017 and 13.08.2018. So on both the aforesaid counts, no interference is required to be caused in the impugned Judgment and order.

4. The appeal being devoid of merit deserves to be dismissed and is accordingly dismissed.

(P.R.BORA)
JUDGE

SPT