

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

FIRST APPEAL NO.328 OF 2019

1. Godavari Marathwada Irrigation
Development Corporation Ltd.,
Through Executive Engineer,
M.I.W., Minor Irrigation,
Latur

2. The State of Maharashtra
Through Collector, Latur.

.. Appellants
(Ori. Respondent No.1 and 2)

Versus

Shivaji s/o Pandurang Jadhav
Age : 44 years, Occu : Agri,
R/o. Kamkheda, Tal. Renapur,
Dist. Latur

..Respondent
(Ori. Claimant)

.....

WITH

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Development Corporation Ltd.,
Through Executive Engineer,
M.I.W., Minor Irrigation,
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.. Appellants
(Ori. Respdt No.1 and 2)

Versus

Mahadu s/o Gangaram Davane (Died thr LRs)

1. Prabhavati w/o Mahadev Davane
Age : 64 years, Occu : Household and Agri,

2. Nagnath s/o Mahadev Davane
Age : 34 years, Occu : Agri,
3. Anita w/o Tukaram Karkande
Age : 29 years, Occu : Household and Agri,
4. Kavita w/o Ashok Chavan,
Age : 26 years, Occu : Household and Agri,
All R/o. Kamkheda, Tq. Renapur,
Dist. Latur

..Respondents
(Ori. Claimants)

....

Advocate for Appellant No.1 : Shri S.S. Tope
AGP for Appellant – State : Shri S.J. Salgare
Advocate for Respondents : Shri S.V. Gundre

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CORAM : P.R. BORA, J.
Dated: January 30, 2019

ORAL JUDGMENT :

1. Since both these appeals are arising out of the common Judgment and Award passed by 3rd Joint Civil Judge, Senior Division at Latur on 05.05.2012 in LAR No.421 of 2003 with LAR No.156 of 2003, I have heard the common arguments in these appeals and I deem it appropriate to decide both these appeals by a common reasoning.

2. The lands, which are involved in the present appeal, were acquired for the purpose of submergence of Renapur Medium Project at Kamkheda. 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 21.03.1996 and the Award under Section 11 of the Act came to be passed on 22.03.1999. The SLAO had offered the compensation to the respective claimants at the rate of Rs.63,926/- per hector i.e. Rs.25,570/- per Acre. Dissatisfied with the amount of compensation so offered, the claimants preferred the applications under Section 18 of the Act, which were adjudicated by 3rd Joint Civil Judge, Senior Division at Latur. The said Court is hereinafter referred to as the 'Reference Court'.

3. The claimants had claimed the compensation at the rate of Rs.3,00,000/- per acre before the Reference Court. In addition to their own testimonies, the claimants had relied upon certain sale instances in order to substantiate their claim before the Reference Court. No oral or documentary evidence was adduced on behalf of the respondents. The Reference Court, after having considered the oral and documentary evidence brought before it, determined the market value of the acquired

lands at the rate of Rs.93,600/- per acre and accordingly enhanced the amount of compensation. Aggrieved by, the Acquiring Body has preferred the present appeals.

4. Shri S.S. Tope, learned Counsel appearing for the appellant - Acquiring Body assailed the impugned Judgment on various grounds. The learned Counsel submitted that, ordinarily for determining the market value of the acquired lands, the sale instances of the same village, if are available, are to be taken into account rather than the sale instances of the adjacent villages. The learned Counsel pointed out that, the Reference Court instead of relying on the sale instances, which were considered by the SLAO of village Kamkheda, preferred to rely upon the sale instance of village Bhandarwadi. The learned Counsel submitted that, when sale instance from village Kamkheda was available and that was considered by the SLAO, the Reference Court could not have relied upon the sale instance from the adjacent village. The learned Counsel further brought to my notice that, the finding recorded by the Reference Court itself reveals that, the quality of the land of village Bhandarwadi

and Kamkheda are different and as has been observed by the Reference Court, the lands at village Kamkheda are inferior to the lands of village Bhandarwadi in all respects. In spite of such observation, the Reference Court, according to learned Counsel, has relied upon the sale instance from village Bhandarwadi. The learned Counsel further submitted that, as against it, if the Award is read, it reveals that, the SLAO had taken all care before determining the market value of the acquired lands and had considered the relevant sale instances from the same village and had also visited each and every land before passing the award. In the circumstances, according to the learned Counsel, the Award passed by the SLAO needs to be restored by setting aside the Judgment and Award passed by the Reference Court.

5. Learned AGP Shri Salgare supported the argument advanced by Shri Tope, learned Counsel appearing for the Acquiring Body and prayed for setting aside the impugned Judgment and Award.

6. Shri Gundre, learned Counsel appearing for the

respondents i.e. original claimants supported the impugned Judgment and Award. The learned Counsel submitted that, the Reference Court has determined the market value on the basis of the evidence, which was adduced before it. The learned Counsel submitted that, before the Reference Court the evidence was adduced only by the claimants and no oral or documentary evidence was adduced by the respondents. The learned Counsel submitted that, the Reference Court has rightly considered the sale instance from village Bhandarwadi. Inviting my attention to the discussion made by the Reference Court in para-22 of the impugned Judgment, the learned Counsel pointed out that, the Reference Court has in many words observed that, village Kamkheda and village Bhandarwadi are adjacent to each other. The learned Counsel submitted that, the Reference Court has also observed that, the boundary of the lands, which were acquired in the present matter, were adjacent to village Bhandarwadi. In the circumstances, according to the learned Counsel, the Reference Court has not committed any error in relying upon the said sale instance. The learned Counsel further submitted that, the Reference Court while relying on the said

sale instance from village Bhandarwadi has considered plus and minus factors and has given all negative allowances while determining the market value of the subject land.

7. Learned Counsel further submitted that, in fact, Acquiring Body cannot prosecute these appeals further in view of the policy decision taken by the State vide Government Resolution dated 03.11.2016 read with Corrigendum dated 23.02.2017 and 13.08.2018. Since the market value as has been determined by the Reference Court is less than four times of the market value as was offered by the SLAO. The learned Counsel, therefore, prayed for dismissal of the appeals.

8. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. Perusal of the impugned Judgment reveals that, no oral or documentary evidence was adduced on behalf of the respondents i.e. neither the acquiring body adduced any evidence nor the State or SLAO entered into witness box. It is, thus, evident that while deciding the reference applications, the

only evidence, which was before the Reference Court, was the oral testimonies of the claimants and the sale instances brought on record by them. Though it was sought to be contended by Shri Tope that, the Reference Court must not have considered the sale instance from the adjacent village Bhandarwadi when the sale instance from village Kamkheda was available, I am not convinced with the submissions so made. Law is well settled that, the material considered by the SLAO, unless it is placed on record before the Reference Court, cannot be considered. In the circumstances, apparently, there appears no error on part of the Reference Court in considering the sale instances of the adjacent villages. In para-22 and 23 of the Judgment, the Reference Court has elaborately discussed the evidence in the form of sale instance, I deem it appropriate to reproduce herein below the said discussion, which reads thus:

“22. I have gone through the sale deed at Exh.30. The said sale deed is of Gat No.9 of village Bhandarwadi. Towards west side, there is boundary of village Kamkheda. The village map of village Kamkheda is available for perusal. From the village map of village Kamkheda the location of the acquired lands which are under consideration in the present reference petitions, can be ascertained. From the said village map and the sale deed at Exh.30 it becomes clear that village Kamkheda is situated towards west side of village Bhandarwadi. While, land Gat No.9 is situated on the

boundary of village Kamkheda. Thus, from the eastern boundary of village Kamkheda the distances of the acquired land are not very long. Therefore, it can be said that, the land Gat No.9 of village Bhandarwadi and the acquired lands are situated in the same vicinity. Therefore, though the sale deed is from different village, it can be considered for comparison.

23. As noted earlier, it is an admitted position that, village Bhandarwadi is more progressive than village Kamkheda. Normally, the lands in the same vicinity carry similar quality unless contrary is proved. Thus, so far as the soil quality is concerned, the quality of the acquired lands and the lands under the sale deed Exh.30 might be the same. Admittedly, the land under the sale deed is a dry land. Thus, the only thing of greater progress and development at village Bhandarwadi may have had an impact on the lands whereby the lands would have been sold for more price than that for which those could be sold if situated at village Kamkheda. In the sale deed at Exh.30 which is dtd.16/10/1993 the consideration amount of one acre of land is Rs.80,000/-. Thus, the price of one acre of land in 1993 at village Bhandarwadi was Rs.80,000/-. The sale deed appears to be a bonafide sale deed. Therefore, if the price of the year 1993 for the land of village Kamkheda is to withdrawn on the basis of sale deed Exh.30 then considerable reduction in price is necessary as village Kamkheda is inferior in development than village Bhandarwadi. Thus, approximately the price of a dry land situated at Kamkheda in the year 1993 would have got the consideration of Rs.70,000/- to Rs.72,000/- per acre. Thus, the market price of the acquired lands in the year 1993 may have been around Rs.72,000/- per acre. In the present case, the notification has been issued in the year 1996. Hence, for drawing the price for the year 1996, 10% escalation in the price as per the settled law can be done. The amount of 10% of Rs.72,000/- is Rs.7,200/- per year. Thus, for the next three years it goes to Rs.21,600/-. Hence, if the amount of Rs.21,600/- is added in Rs.72,000/- then one can get the price of the land for the year 1996. It comes to Rs.93,600/- for dry land.”

9. After having considered the discussion made by the

Reference Court, it appears to me that, the Reference Court has taken all care while determining the market value of the acquired lands on the basis of the sale instance from village Bhandarwadi. The Reference Court has also considered and given negative allowance while determining the market value of the acquired lands on the basis of the said sale instance. From the discussion made by the Reference Court, it appears that, the rational criteria was applied by the Reference Court while determining the market value of the acquired lands. In the circumstances, I do not see any reason to cause any interference in the market value as has been determined by the Reference Court and the amount of compensation enhanced accordingly.

10. The reference was also made by the learned Counsel appearing for the respondents - claimants to the Government Resolution dtd. 03.11.2016 read with Corrigendum dated 23.02.2017 and 13.08.2018. Learned Counsel Shri Gundre has tendered across the bar the copy of the said resolution. Perusal of the said resolution with its corrigendum reveals that, the State has decided not to file the appeals and not to prosecute the pending appeals wherein the market value determined by the

Reference Court is less than four times of the market value as was offered by the SLAO. In the present matter, admittedly, the market value offered by the SLAO was at the rate of Rs.25,570/- per acre and the Reference Court has enhanced it to Rs.93,600/- per acre, which definitely comes within the limits of four times. In the circumstances, even otherwise the Acquiring Body could not have prosecuted the present appeals further. Thus, on both the counts, I see no merits in the appeals. Hence the following order.

ORDER

- (i) The appeals are dismissed, however, without any order as to the costs.
- (ii) The claimants are entitled to withdraw the amount of compensation deposited by the Acquiring Body in this Court along with the interest accrued thereon, if already not withdrawn.
- (iii) Pending Civil Application, if any, stands disposed of.

(P.R. BORA, J.)

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