

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**3 FIRST APPEAL NO.2811/2017
WITH CA/5289/2016 IN FA/2811/2017
WITH CA/8399/2018 IN FA/2811/2017**

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
 2. The State of Maharashtra
Through the Collector, Jalna.
 3. The Special Land Acquisition Officer
(M.I.W.), Jalna.
- ..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Bhagwan Uttamrao Akat
Age: Major, Occu.: Agri.,
 2. Prakash Uttamrao Akat
Age: Major, Occu.: Agri.,
- Both R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna.
- ..Respondents
(Ori. Claimants)

...

**WITH
FIRST APPEAL NO.710/2016**

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
 2. The State of Maharashtra
Through the Collector, Jalna.
 3. The Special Land Acquisition Officer
(M.I.W.), Jalna.
- ..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Madhukar Rajabhau Akat
Age: Major, Occu.: Agri.,
R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna.

..Respondent
(Ori. Claimant)

...

WITH

FIRST APPEAL NO.711/2016

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(M.I.W.), Jalna.

..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Apparao Yadavrao Akat
Age: Major, Occu.: Agri.,
R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna.

..Respondent
(Ori. Claimant)

...

WITH

FIRST APPEAL NO.712/2016

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(M.I.W.), Jalna.

..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Babasaheb Manjit Akat
Age: Major, Occu.: Agri.,
R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna. ..Respondent
(Ori. Claimant)

...

**WITH
FIRST APPEAL NO.713/2016**

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(M.I.W.), Jalna. ..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Ramchandra Tulsiram Akat
Age: Major, Occu.: Agri.,
R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna. ..Respondent
(Ori. Claimant)

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**WITH
FIRST APPEAL NO.714/2016**

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(M.I.W.), Jalna. ..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Shankarrao Madhavrao Kavade
Age: Major, Occu.: Agri.,
R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna. ..Respondent
(Ori. Claimant)

...

**WITH
FIRST APPEAL NO.715/2016
WITH CA/7427/2018 IN FA/715/2016**

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(M.I.W.), Jalna. ..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Anant Baliram Akat
Age: Major, Occu.: Agri.,
R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna. ..Respondent
(Ori. Claimant)

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**WITH
FIRST APPEAL NO.716/2016**

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(M.I.W.), Jalna. ..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Manik Shripati Akat
Age: Major, Occu.: Agri.,
R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna.
..Respondent
(Ori. Claimant)

...

**WITH
FIRST APPEAL NO.717/2016**

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(M.I.W.), Jalna.
..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Keshav Shamrao Akat
Age: Major, Occu.: Agri.,
Both R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna.
..Respondent
(Ori. Claimant)

...

**WITH
FIRST APPEAL NO.718/2016**

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(M.I.W.), Jalna.
..Appellants

(Ori.Resp.No.1 to 3)

VERSUS

1. Munja Gopala Akat
Age: Major, Occu.: Agri.,
R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna. ..Respondent
(Ori. Claimant)

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**WITH
FIRST APPEAL NO.719/2016**

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(M.I.W.), Jalna. ..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Ankush Akat (died) through his L.R.'s
Annapurna Ankushrao Akat
Age: Major, Occu.: Agri.,
R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna. ..Respondent
(Ori. Claimant)

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**WITH
FIRST APPEAL NO.720/2016
WITH CA/7430/2018 IN FA/720/2016**

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.

3. The Special Land Acquisition Officer
(M.I.W.), Jalna. ..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Sukhdev Akat (died) through his L.R.'s
Babasaheb Sukhdev Akat
Age: Major, Occu.: Agri.,
2. Sunita Asaram Akat
Age: Major, Occu.: Agri.,

Both R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna. ..Respondents
(Ori. Claimants)

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WITH
FIRST APPEAL NO.721/2016
WITH CA/7428/2018 IN FA/721/2016

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
2. The State of Maharashtra
Through the Collector, Jalna.
3. The Special Land Acquisition Officer
(M.I.W.), Jalna. ..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Vitthal Maliba Akat
Age: Major, Occu.: Agri.,
2. Mankarnabai Vitthal Akat
Age: Major, Occu.: Agri.,
Both R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna. ..Respondents
(Ori. Claimants)

...
WITH
FA/722/2016
WITH CA/7431/2018 IN FA/722/2016

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
 2. The State of Maharashtra
Through the Collector, Jalna.
 3. The Special Land Acquisition Officer
(M.I.W.), Jalna.
- ..Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Rajkumar Mahadev Akat
Age: Major, Occu.: Agri.,
R/o. Satona (Kh.),
Tq.Partur, Dist.Jalna.
- ..Respondent
(Ori. Claimant)

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**WITH
CIVIL APPLICATION NO.5286/2016
IN FAST/33618/2015
WITH CA/5287/2016 IN FAST/33618/2015
WITH FAST/33618/2015**

1. The Executive Engineer,
Lower Dudhana Project, Division Selu,
Tq.Selu, Dist.Parbhani, through
Jalna Irrigation Division, Jalna.
 2. The State of Maharashtra
Through the Collector, Jalna.
 3. The Special Land Acquisition Officer
(M.I.W.), Jalna.
- ..Applicants - Appellants
(Ori.Resp.No.1 to 3)

VERSUS

1. Pralhad Munjaji Akat
Age: Major, Occu.: Agri.,
2. Shankar Munjaji Akat
Age: Major, Occu.: Agri.,
R/o. Satona (Kh.),

Tq.Partur, Dist.Jalna.

..Respondents
(Ori. Claimants)

...

Advocate for Appellant Acquiring Body : Shri Ruturaj C. Patil
AGP for Appellants - State : Shri P.M.Kulkarni
Advocate for Respondents - Claimants : Shri D.M.Kakade and
Shri N.R.Pawade

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CORAM : P.R.BORA, J.

DATE: 14th January, 2019

ORAL JUDGMENT:-

1 Civil Application Nos.5286 of 2016 and 5287 of 2016 in First Appeal Stamp No.33618 of 2015, are not on board . The same are taken on board at the request of learned Counsel for the applicants - appellants. For the reasons mentioned in Civil Application No.5286 of 2016, which according to me are just and sufficient, delay of 1512 days caused in filing the appeal is condoned. Appeal be registered in accordance with law. The learned Counsel for the claimants caused appearance in the present matter also. Service complete. The said appeal on stamp number is also heard alongwith present group of appeals.

2 Since all these appeals are arising out of the acquisition made for Lower Dudhana Project from village Satona (Kh.), I have heard the common arguments in all these appeals and I deem it appropriate to decide all these appeals by a common reasoning.

3 The Civil Court (hereinafter referred to as 'the Reference Court') though, has decided the Land Acquisition References separately and has passed separate Judgments in each of the Reference Applications, the Reference Court has determined the market value of the acquired lands @ Rs.2,000/- per Are for dry land and has accordingly enhanced the amount of compensation.

4 As noted herein above, the lands, which are the subject matter of the present appeals, were acquired for Lower Dudhana Project from village Satona (Kh.). The Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was published in that regard in the official Gazette on 26.06.2002 and the award under Section 11 of the Act came to be passed on 24.09.2005. The Special Land Acquisition Officer (SLAO) had categorized the lands and according to their categorization has offered the amount of compensation ranging between Rs.525/- to Rs.775/- per Are. Dissatisfied with the amount of compensation so offered, the claimants preferred the Reference Applications under Section 18 of the Act, which were adjudicated by the Reference Court and the Reference Court has enhanced the amount of compensation @ Rs.2,000/- per Are for dry land. The Reference Court has also held the claimants

entitled for statutory benefits under Sections 23(1-A) and 23(2) of the Act and has also granted interest under Section 28 and 34 of the Act. Aggrieved thereby, the Acquiring Body has preferred the present appeals.

5 Shri R.C.Patil, learned Counsel appearing for the Acquiring Body has assailed the impugned Judgments on the ground that the Reference Court merely relying on its earlier Judgment in Land Acquisition Reference (LAR) No.701 of 2010, has enhanced the amount of compensation, though, there was no sufficient evidence adduced by any of the claimants in the present matters to substantiate their claim for enhancement in the amount of compensation. The learned Counsel submitted that the land, which was the subject matter in LAR No.701 of 2010, was from village Ekrukha and as such the same criteria could not have been applied and the market value of the lands, which are the subject matters of the present appeals could not have been determined on the basis of the market value, which was determined of the lands from village Ekrukha. The learned Counsel submitted that perusal of the Judgment passed by the Reference Court in LAR No.701 of 2010, also reveals that in the said matter the Reference Court has relied upon the sale instances from some other villages and the sale instances were

of the lands ad-measuring 10 Are or in that range i.e. the small pieces of land.

6 The learned Counsel for the Acquiring Body further submitted that it is settled principle of law that each matter has to be decided on its own merits and in the present matters, the claimants were under an obligation to bring on record sufficient evidence so as to establish their demand of enhancement in the amount of compensation. The learned Counsel submitted that since the said procedure has not been followed in the present matters and the compensation has been enhanced by the Reference Court merely relying on its earlier Judgment, the Judgments and orders impugned in these appeals cannot be sustained and deserve to be set aside. The Learned Counsel further submitted that the SLAO infact had considered all the aspects of the matters and has correctly determined the market value of the acquired lands and has accordingly offered the compensation and as such awards passed under Section 11 of the Act needs to be restored.

7 The learned Counsel tendered across the bar a map showing the position of the lands from different villages, which were acquired for Lower Dudhana Project. The copy of the map

is taken on record and marked 'X' for identification. It is contended by the learned Counsel that village Ekrukha and village Satona (Kh.) are not adjacent to each other and as such the market value of the lands acquired from village Satona (Kh.), could not have been determined by the Reference Court on the basis of the market value determined of the lands of village Ekrukha.

8 The submission so made on behalf of the Acquiring Body are strongly resisted by the learned Counsel appearing for the original claimants. The learned Counsel were common in making submission that Judgment and award passed by the Reference Court in LAR No.701 of 2010, has not been challenged by the Acquiring Body or the State in any higher Court and the same has attained finality. The learned Counsel further submitted that village Ekrukha is adjacent to village Satona (Kh.) and as such the Reference Court has rightly considered the market value received to the lands, which were acquired from village Ekrukha. The learned Counsel further submitted that in LAR No.701 of 2010, the Reference Court has considered the relevant sale instances and has passed a well reasoned order determining the market value of the acquired lands, which were the subject matter in the present matters. The learned Counsel submitted

that in absence of any contrary evidence brought on record by the State as well as the Acquiring Body, no fault can be found in the Judgments and orders passed by the Reference Court.

9 The learned Counsel further submitted that even otherwise, the appeals are not liable to be prosecuted further by the Acquiring Body in view of the Policy adopted by the State Government vide Government Resolution date 03.11.2016 read with Corrigendum dated 23.02.2017 and 13.08.2018. The learned Counsel pointed out that the Reference court has enhanced the amount of compensation within the prescribed limit and in all these matters, the enhancement granted is less than four times of the amount of compensation offered or the market value determined by the SLAO of the acquired lands.

10 The contention raised by the learned Counsel for the Acquiring Body that village Ekrukha and village Satona (Kh.) are not adjacent to each other was also resisted by the learned Counsel appearing for the claimants. The learned Counsel submitted that all the villages from where the lands were acquired for Lower Dudhana Project are adjacent to each other. The learned Counsel, in the circumstances, prayed for dismissal of these appeals.

11 I have given due consideration to the submissions made by the learned Counsel appearing for the Acquiring Body, the learned AGP and the learned Counsel appearing for the respondents – original claimants. I have perused the Judgments, which are impugned in the present appeals as well as the evidence brought on record in all these matters.

12 Perusal of the Judgments impugned in the present appeals reveal that though the Reference Court has passed separate Judgments, the analogy adopted by the Reference Court and the ultimate finding recorded by it are based on its earlier decision rendered in LAR No.701 of 2010 decided on 11.02.2011. The copy of the Judgment in the said LAR is made available for my perusal. I have carefully perused the Judgment passed by the Reference Court in the said LAR No.701 of 2010. It is not in dispute that the land, which was involved in the said LAR was also acquired for Lower Dudhana Project from village Ekrukha, Tq.Partur. In the said matter, the claimants therein had relied upon three sale instances. One of the sale instance was pertaining to the irrigated land. The reference Court did not rely upon the said sale instance since the land which was subject matter of the said LAR was dry land. The second sale instance,

which was pertaining to 10 Are land was also not considered by the Reference Court being a small piece of land. The third sale instance was considered by the Reference Court, which was pertaining to non-irrigated land ad-measuring 70 Are. The said land was situated at Partur town and was sold by registered sale deed executed on 11.03.1997 for the consideration of Rs.1,40,000/- i.e. Rs.2,000/- per Are. In the said matter, the map was placed on record showing the location of village Ekrukha and Partur town. As has been observed by the Reference Court, Ekrukha was neighbouring village of Partur town. The Reference Court in the circumstances, determined the market value of the land situated at village Ekrukha @ Rs.2,000/- per Are and enhanced the amount of compensation.

13 As was submitted by learned Counsel appearing for the claimants neither the State Government nor the Acquiring Body has preferred the appeal against the Judgment and award in LAR No.701 of 2010 decided in the year 2011. The Reference Court while deciding the Reference Applications involved in the present appeals has determined the market value of the subject lands @ Rs.2,000/- per Are observing that since for the land acquired for the same project from adjoining villages has been given the rate of Rs.2,000/- per Are, the same rate would apply for determining

the market value of the subject land. I see no infirmity in the observation so made and finding recorded by the learned Reference Court.

14 It is not in dispute that the lands, which are involved in the present appeals have also been acquired for Lower Dudhana Project. Though, village Ekrukha and village Satona (Kh.) are not adjacent villages, however, from the map, which has been placed on record, there is reason to believe that from several villages the lands were acquired for Lower Dudhana Project and all these villages are adjacent to each other. From the evidence, which has come on record and from perusal of the map, it is also clear that the distance between these villages is not much. The Hon'ble Apex Court in the case of ***Ali Mohammad Beigh and Others Vs. State of Jammu and Kashmir [(2017) 4 Supreme Court Cases 717]***, relying on its earlier judgment in the case of ***Union of India Vs. Bal Ram [(2010) 5 SCC 747]***, has held that “*if the purpose of the acquisition is same and when the lands are identical and similar though lying in different villages, there is no justification to make any discrimination between the landowners to pay more for some of the landowners and less compensation to others.*”

15 It has to be further noted that the land, which was the subject matter of LAR No.701 of 2010, was acquired from village

Ekrukha vide Notification under Section 4 of the Act published in the official Gazette on 11.04.1999 and the award under Section 11 of the Act in respect of the said land was passed on 19.09.2003. The lands, which are subject matter of the present appeals were acquired vide Section 4 Notification dated 26.06.2002 i.e. after a period of about three years of the acquisition of the land, which was the subject matter in LAR No.701 of 2010. The sale instance, which was relied upon in LAR No.701 of 2010 was of the year 1997. Considering the fact that the prices of the lands ordinarily increase by 10% every year, it does not appear to me that the Reference Court has committed any error in determining the market value of the lands, which are involved in the present appeals @ Rs.2,000/- per Are on the date of their acquisition i.e. 26.06.2002. I, therefore, see no reason to cause interference in the Judgments and awards impugned in the present appeals.

16 Further, as has been contended by the learned Counsel for the claimants, the Acquiring Body could not have prosecuted these appeals further in view of the policy adopted by the Government vide Government Resolution dated 03.11.2016 with Corrigendum dated 23.02.2017 and 13.08.2018 in view of the fact that 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. Thus, for the aforesaid reasons, the following order is passed:-

ORDER

- I) All the appeals are dismissed, however, without any order as to the costs.
- II) The amounts of compensation, if any, deposited by the Acquiring Body in this Court in the present appeals, are permitted to be withdrawn alongwith interest accrued thereon by the respective claimants in the respective appeals, if the same are not already withdrawn by them.
- III) Pending civil applications stand disposed of.

(P.R.BORA)
JUDGE

SPT