

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.553 OF 2004

- 1 The State of Maharashtra
Through Collector, Nanded.
- 2 The Sub Divisional Officer and
Land Acquisition Officer, Degloor,
Dist. Nanded.
- 3 The M.I.D.C., a corporate body, per its
Regional Officer, Latur,
Regional office at Latur.

... Appellants

... **Versus** ...

Vyankatrao Datta Jadhav,
Age 40 yrs., Occ. Agri.,
R/o Krushnoor, Tq. Biloli,
Dist. Nanded.

... Respondent

...

Mr. A.M. Phule, AGP for appellant Nos.1 and 2

Mr. S.S. Dande, Advocate for appellant No.3

Mr. P.V. Mandlik, Senior Counsel i/b Mr. A.S. Gandhi, Advocate for respondent

...

WITH

CROSS-OBJECTION (STAMP) NO.24810 OF 2006
IN
FIRST APPEAL NO.553 OF 2004

Vyankatrao Datta Jadhav,
Age 40 yrs., Occ. Agri.,
R/o Krushnoor, Tq. Biloli,
Dist. Nanded.

... **Appellant**

... **Versus** ...

- 1 Maharashtra Industrial Development Corporation,
A corporate body having its Divisional Office, at Latur, per its Divisional Officer at Latur.
- 2 The State of Maharashtra
For District Collector, Nanded.
- 3 The Sub Divisional Officer and
Land Acquisition Officer, Degloor,
Dist. Nanded.

... **Respondents**

...

Mr. P.V. Mandlik, Senior Counsel i/b Mr. A.S. Gandhi, Advocate for appellant

Mr. S.S. Dande, Advocate for respondent No.1

Mr. A.M. Phule, AGP for respondent Nos.2 and 3

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 28th AUGUST, 2020

PRONOUNCED ON: 07th SEPTEMBER, 2020

JUDGMENT :

1 Present appeal has been filed by the State challenging the Judgment and Award passed in L.A.R. No.64/2002 (Old No.96/1998) by learned 1st Adhoc Additional District Judge, Biloli, Dist. Nanded on 01.10.2003. It will not be out of place to mention here, that the respondent has also filed cross objection with delay condonation application. The delay has been condoned today itself.

2 Heard learned AGP Mr. A.M. Phule for State-appellant Nos.1 and 2, learned Advocate Mr. S.S. Dande for M.I.D.C.-appellant No.3 and learned Senior Counsel Mr. P.V. Mandlik instructed by learned Advocate Mr. A.S. Gandhi for respondent.

3 At the time of hearing of the appeal and the cross objection it has been pointed out by learned Advocate Mr. S.S. Dande representing M.I.D.C. in Civil Application No.5094 of 2020 and Civil Application No.2046 of 2007, that though the Maharashtra Industrial Development Corporation is one of the appellants herein, now, he is representing the said institution separately in the two civil applications. He pointed out, that some connected appeals arising out of same acquisition proceedings have been decided by this Court. He has made available the copies of orders passed in First Appeal No.641 of

2001 with connected appeals decided on 02.03.2015 (Coram : M.T. Joshi, J.), copy of order passed in First Appeal No.3536 of 2008 decided on 21.02.2013 (Coram : S.V. Gangapurwala, J.), copy of Judgment and order in First Appeal No.348 of 2003 with connected appeals decided on 10.02.2014 (Coram : K.U. Chandiwal, J.), copy of Judgment in First Appeal No.390 of 2004 with connected appeal decided on 07.02.2019 (Coram : PR. Bora, J.) and copy of order in First Appeal No.33 of 2004 with connected appeals decided on 05.05.2015 (Coram : N.W. Sambre, J.).

4 I have perused that Judgment, which is impugned in the present appeal, so also, the Judgments pronounced by this Court in the above referred First Appeals. It can be seen that the appeals, which have been decided by this Court, are also from the same project i.e. when the land was acquired for the establishment of Krushnoor Industrial Area. In those appeals, this Court had dismissed the appeals preferred by State or M.I.D.C.. Further, as regards the Judgment delivered in First Appeal No.641 of 2001 (Coram : M.T. Joshi, J.) on 02.03.2015, not only the appeals filed by State were dismissed; yet, even the cross objections filed by the original claimants for the enhancement in the compensation were also dismissed. This position is required to be placed on record at the first place itself.

5 With the above said background, when it was submitted by

learned AGP, that whatever enhancement has been granted by the reference Court is not proper and the parameters, which were required to be adhered to while considering the enhancement in the compensation, were not considered by the learned reference Court. Further, as regards cross objection is concerned it was submitted, that all those documents, which were produced for the enhancement in the compensation, were considered by the reference Court and similar evidence was led in those other matters also, in which the cross objections in the appeal were filed (the bunch of First Appeals decided on 02.03.2015). It has been specifically observed by this Court, as regards the cross objections are concerned, that the sale instance Exh.27 was executed in January, 1992 and Notification under Section 32(2) of the Maharashtra Industrial Development Act was issued on 23.12.1993 further the sale instance was in respect of 50 R land only. In the present case also copy of the sale deed dated 09.01.1991 was produced on record and it showed, that 50 R land was sold for Rs.35,000/-. Another sale deed was dated 18.08.1992 in respect of two plots sold for Rs.15,000/-. In the present case, for land Gat No.285 the compensation was awarded @ Rs.42,000/- per hectare and for Gat No.282 it is awarded @ Rs.44,000/- per hectare. This Court had considered those sale deeds referred in other matters and then refused to interfere with the amount of the rate, that was enhanced by the reference Court, and therefore, now also the same result should follow, when

the present respondent No.2 is seeking enhancement by way of cross objection.

6 Per contra, the learned Senior Counsel representing the respondent submitted, that the reference Court has failed to consider many aspects. The original claimant was the owner and possessor of two lands i.e. Gat No.282 admeasuring 02 H 80 R (7 acres) and Gat No.285 admeasuring 01 H 72 R (4 acres 12 gunthas) situated in village Krushnoor, Tq. Biloli, Dist. Nanded. The Award was passed by the Special Land Acquisition Officer on 05.03.1997, however, the Notification under Section 32(2) of the Maharashtra Industrial Development Act was published on 23.12.1993, and therefore, market price around the date of Notification should have been determined. The evidence, that was produced, showed that the value of the land Gat No.282 was around Rs.2,50,000/- per hectare i.e. Rs.1,00,000/- per acre and for Gat No.285 it was @ Rs.5,00,000/- per hectare i.e. Rs.2,00,000/- per acre. The quality of the land was good. It was NA potential. The land was adjacent to the city and was within the Municipal Corporation area. It was near to Airport. Village Krushnoor is only 32 k.ms. away from Nanded city, which is a district place. Other facilities like Post Office, Banks, Sub Station of M.S.E.B., etc were available, and therefore, taking into consideration all these facilities, enhancement ought to have been

granted. For L.A.R. No.130/1998 the rate, that was awarded, was Rs.60,000/- per hectare for one land and Rs.62,000/- per hectare for another land from the same village. However, it is only Rs.50,000/- and Rs.52,000/- per hectare in the present case. There is no reason for such discrepancy, and therefore, the enhancement may be granted. Though other appeals have been decided by this Court, yet, each case will have to be decided on its own merits and evidence. It appears, that in those cases also the data was not collected. Further, the soil of the land was different. Here, in this case, both the lands were irrigated lands. 15% increase should have been considered, taking into consideration the sale deed, which was produced at Exh.46, and therefore, similar result cannot be given to the cross objection, which has been filed by the respondent No.1. He further submitted, as regards appeal filed by the State is concerned, in fact, the enhancement, that was granted by the reference Court, as compared to the compensation granted by Special LAO was within four times, and therefore, in view of the Government Resolutions the appeal could not be filed or proceeded with. The State Government has given directions that such matters should be referred to Lod Adalat and even now also he is ready to go before the Lok Adalat. Learned Senior Counsel, therefore, prayed for enhancement.

Adalat is concerned, it is to be noted, that Lok Adalat, as per the Legal Services Authorities Act, would get jurisdiction only when both the parties to the proceeding are ready to submit to the jurisdiction of Lok Adalat. Here, in this case, though the general directions are given by the Government, as per those Government Resolutions, yet, it is to be noted that there is cross objection filed by the present respondent for enhancement and the enhancement is definitely more than four times, to which the Government is not ready, and therefore, the matter cannot be referred to Lok Adalat.

8 Though by and large each case will have to be judged on its own merits and evidence; yet, if the evidence is similar then definitely it should result in the same fashion. Here, perusal of the Judgment in First Appeal No.641 of 2001 delivered on 02.03.2015 would show, that almost same sale instances were submitted and on the basis of those sale instances enhancement was claimed. So also, the cross objections were filed by the original claimants. This Court refused to interfere on the ground, that the sale instance was around one year prior to the Notification, but it was for small area, and therefore, partial enhancement was granted by the reference Court, which was accepted by this Court. Non-production of data or proper evidence at the first court will not give rise for any benefit to the claimants at appellate stage, unless proper reason would be given for non-production of

evidence before Tribunal. The application filed by the respondent for production of additional evidence has been partly allowed today to the extent of production of Government Resolutions only. Therefore, there is almost similar evidence in this case also. As regards the other pronouncements are concerned, subsequent pronouncements have taken into consideration earlier pronouncements. This Court in First Appeal No.390 of 2004 with group matters decided on 07.02.2019 after taking into consideration all the earlier pronouncements has observed thus -

“7 As I noted herein above, there is no dispute that the lands, which were the subject matter of the appeals decided by this Court, vide the aforesaid three judgments and the lands which are the subject matter of the present appeals, were acquired for the establishment of Krushnoor Industrial Area, vide the same notification under Section 4 of the Act and the Award under Section 11 of the Act in that regard, was also of the similar date. In the present appeals, the Special Land Acquisition Officer had offered the compensation at the rates ranging to Rs.40,000/- to Rs.47,000/- per hectare and the Reference Court has enhanced the same at the rates ranging between Rs.50,000/- to Rs.62,000/- per hectare. It is thus evidence that the compensation, as was offered by the Special Land Acquisition Officer towards the acquisition of the lands involved in the present appeals and the compensation as was offered to the lands which were the subject matter of the appeals decided by this Court referred in para 3 above, was also almost at similar rates and the enhancement granted in the said amount of compensation by the Reference Court in all the

decided appeals and the present appeals is more or less similar.”

9 In the group of matters First Appeal No.33 of 2004 decided by this Court on 05.05.2015 also there were First Appeals, which were filed by original claimants or cross objections were filed and it was observed, “*The parties are in agreement that the First Appeals preferred by the original claimants, so also the acquiring body, are already dismissed by this Court, vide Judgment dated 02.03.2015, rendered by this Court in First Appeal No.641 of 2001 and companion appeals and the present proceedings are governed by the said order.*” That means, this Court has taken a consistent view, that when similar evidence is adduced and the categorization of land made by the Special LAO has been upheld, the cumulative enhancement is also upheld, then in respect of the same project, no interference is required. As regards difference in the calculation is concerned, it is on the basis of the categorization of the land, and therefore, no case is made out to interfere in this case also in respect of the appeal as well as cross objection.

10 In the result, the First Appeal stands dismissed without any order as to costs. So also, the cross objection stands dismissed. No order as to costs.

(Smt. Vibha Kankanwadi, J.)

Later on -

11 Learned Advocate Mr. A.S. Gandhi appearing for the respondent submits, that some amount has been deposited by the acquiring body in this Court and the respondent be permitted to withdraw the same.

12 If this is the position, then the respondent is at liberty to withdraw the pending amount, if any, in this Court.

(Smt. Vibha Kankanwadi, J.)

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