IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3508 OF 2019

Mrs. Ushabai W/o Balasaheb Pawar,
Age : Major, Occup.: Agriculture,
R/o. : Borsar, Tq. Vaijapur, … APPELLANT
District Aurangabad. (Original Claimant)

VERSUS

1. The State of Maharashtra,
Through -Special Land Acquisition Officer,
J.P-1 Aurangabad, through
Sub-Divisional Officer, Vaijapur,
Dist. Aurangabad.

2. The Executive Engineer,
Minor Irrigation, Local Sector,
Near Hegdewar Hospital, Aurangabad,
Dist. Aurangabad. ...RESPONDENTS
(Original Respondents)

…

FIRST APPEAL NO. 3507 OF 2019

Manesh S/o Balasaheb Pawar,
Age : Major, Occup.: Agriculture,
R/o. : Borsar, Tq. Vaijapur, … APPELLANT
District Aurangabad. (Original Claimant)

VERSUS

1. The State of Maharashtra,
Through -Special Land Acquisition Officer,
J.P-1 Aurangabad, through
Sub-Divisional Officer, Vaijapur,
Dist. Aurangabad.

2. The Executive Engineer,
Minor Irrigation, Local Sector,
Near Hegdewar Hospital, Aurangabad,
Dist. Aurangabad. ...RESPONDENTS
(Original Respondents)

FIRST APPEAL NO. 3509 OF 2019

Balasaheb S/o Shamrao Pawar,
Age : Major, Occup.: Agriculture,
R/o. : Borsar, Tq. Vaijapur, … APPELLANT
District Aurangabad. (Original Claimant)

VERSUS

1. The State of Maharashtra,
Through -Special Land Acquisition Officer,
J.P-1 Aurangabad, through
Sub-Divisional Officer, Vaijapur,
Dist. Aurangabad.

2. The Executive Engineer,
Minor Irrigation, Local Sector,
Near Hegdewar Hospital, Aurangabad,
Dist. Aurangabad. ...RESPONDENTS
(Original Respondents)

…

Mr. D. A. Bide h/f. Mr. Vitthal B. Wayal, Advocate for Appellants.
Mr. S.N. Morampalle, AGP for Respondents No.1 and 2.

…

CORAM : K.K. SONAWANE, J.

DATED : 3rd MARCH, 2020.

JUDGMENT :

Admit. The matters are taken up for finality on merit with consent of both sides.

2. These appeals are directed against the impugned Judgment and Award rendered by the learned Civil Judge, Senior Division, Vaijapur, District Aurangabad, in Land Acquisition References No. 46, 47 and 48 of 2011, dated 17-02-2016 and 15-02-2016, filed under Section 18 of the Land Acquisition Act, 1894 (for short "Act of 1894"). The matter-in-issue in all the appeals are pertains to valuation of acquired lands for payment of compensation to the appellants-claimants, therefore, all these appeals are dealt with simultaneously for its decision on merit by this common Judgment.

3. Being aggrieved by the quantum of enhancement of compensation amount awarded by the learned Reference Court under Section 18 of the Act of 1894, the appellants-original claimants preferred the present appeals to redress their grievances.

4. It has been contended that the appellants-original claimants were the owner and in possession of Land Gut No. 65 admeasuring 1H-60R, 1H-04R and 2H-40 R respectively situated at village Borsar Taluka Vaijapur, District Aurangabad. The respondent - Government of Maharashtra acquired the lands of the appellants-claimants for the purpose of construction of percolation tank No. 6 at village Borsar. The notification under Section 4(1) of the Act of 1894 was published on 30-08-2007 in the official Gazette. The Special Land Acquisition Officer (SLAO), after compliance of procedural formalities, declared the Award on 05-03-2010. The SLAO offered the market price for acquired land @ Rs.1,300/-per R. The appellants-claimants found reluctant to accept the market value of the acquired land determined by the SLAO. Therefore, they accepted the compensation under protest and preferred the reference petition under Section 18 of the Act of 1894 for enhancement of compensation @ Rs.7,500/- per R for their acquired land. The learned Reference Court dealt with the matters and after appreciation of evidence adduced on record, partly allowed the Reference Petitions and calculated the market price of acquired lands @ Rs.5,000/- per R in place of price @ Rs.1,300/- per R determined by the SLAO. *Albeit*, the claimants–land owners did not get themselves satisfied with the quantum of compensation amount allowed to be

enhanced by learned Reference Court. Therefore, they knocked the door of this Court and preferred the present appeals.

5. The learned counsel appearing for appellants-claimants vehemently submits that the impugned Judgment and award of learned Reference Court is erroneous, imperfect and not as per the provisions of law. The learned Reference Court did not appreciate the evidence adduced on record in its proper perspective and committed error in awarding inadequate compensation for acquired lands to the appellants-claimants. The documents of sale-instances (Exhibit-15 and 16) produced on record were from the same village and proximate to the period of Notification published under Section 4 of the Act of 1894 in this case. According to learned counsel for the appellants, the Reference Court ought to have classified the acquired land as Bagayat/ perennially irrigated lands. The claimants used to take crops of sugarcane, onion, wheat etc. There was ample source of water from the wells for irrigation purpose. But, the Reference Court did not appreciate all these factual aspects and erroneously held that the acquired lands were seasonally irrigated lands for assessment of its market value. Learned counsel contends that the compensation for acquired land was to be paid double to the price of market rate for dry land in the vicinity. According to learned counsel, the market value of the acquired lands calculated @ Rs.5,000/- per R being seasonally irrigated lands caused injustice and prejudice to the claimants-land owners. However, the market value of the acquired lands of claimants was required to be calculated @ Rs.7,500/- per R after its classification as perennially irrigated lands. The learned counsel drawn attention of

this Court towards 7/12 extracts of the acquired lands to show the entries of cultivation of sugarcane, wheat, onion, cotton etc.. He further contends that all the appellants-claimants are the members of one and the same family, being father, mother and son *inter-se*. They all are the co-sharers in the acquired land Gut No. 65. There was common well in the land having ¾th share in well water for family of appellants. The 7/12 extracts of acquired land pointed out all these relevant circumstances. He requested that the acquired lands be valued as Bagayat/Perennially irrigated land. According to learned counsel, in view of ratio laid down in the case of ***State of Maharashtra Vs.Vitthal Shinde*** reported in ***1993 (5) LAC 233,*** the valuation of Bagayat lands is to be assessed double to the market rate fixed for Jirayat (dry) land.

6. The learned AGP appearing for respondent-State of Maharashtra raised objection and submits that the learned Reference Court correctly appreciated the attending circumstances on record and calculated the compensation amount @ Rs.5,000/- per R which would be just and fair market price for the acquired lands. He fervidly contends that the interference in the findings of learned Reference Court at the behest of appellants-original claimants is unwarranted and appeals deserve to be dismissed.

7. In the matter-in-hand, the appellants-claimants adduced the evidence and filed the affidavits by way of examination-in-chief on record. The claimants testified that the acquired lands were Bagayat lands, having ample source of water from well located in the land Gut No. 65. They used to cultivate the crops like sugarcane, onion, wheat,

etc. during the relevant period. They produced the 7/12 extract (Exhibit-12) and documents of sale-instances (Exhibits- 15 and 16) on record in the proceeding of LAR No. 46 of 2011. According to claimants both these sale deeds were executed in the month of January and April, 2007. The lands under sale-instances were seasonally irrigated land and both the lands were sold @ Rs.5,000/- and Rs.5,969/- per R respectively. The claimants claimed the market value for acquired land @ Rs.7,500/- per R being perennially irrigated land

8. The intense scrutiny of the oral and documentary evidence adduced on record reveals that the arguments canvassed on behalf of appellants-claimants appear to be formidable and considerable to some extent for assessment of market value of the acquired lands. It is not in dispute that the market value would mean the price which a willing vendor might reasonably expect to obtain from willing purchaser. The value to be ascertained would be the value to the vendor and not to the purchaser. The price fetched by similarly located land with similar advantage under *bonafide* sale-transaction executed at or about time of notification under Section 4(1) of the Act, 1894, would be and indeed the best evidence to ascertain the market value of land-in-question. It is worth to mention that there cannot be hard and rigid rules for calculation of just and fair market price of acquired land. It cannot be determined with mathematical accuracy, but the common sense and some guess work would facilitate to explore the surrounding circumstances for assessment of reasonable market price of acquired land.

9. The learned Reference Court identified the two sale instances (Exhibits-15 and 16) to determine the market value of the acquired land. It was not put into controversy that these two sale deeds were the most comparable sale instances to provide the index of market value and the price reflected from these sale-instances would be the guiding factor to determine the market value of acquired lands after making suitable adjustment for plus and minus factor. The sale-deed (Exhibit-15) was executed on 22-01-2007 for a consideration of Rs.2,50,000/- and the land admeasuring 0.50 R. located within the vicinity of same village Borsar of acquired land was sold out @ Rs.5,000/- per R. The another sale instance was of land admeasuring 0.52 R. located in the same village and it came to be executed on 23-04-2007 for a consideration of Rs.3,00,000/- i.e. @ Rs.5,769/- per R. The notification under Section 4(1) of the Act of 1894 in this case was published on 30-08-2007. Admittedly, after due consideration of its proximity from time angle as well as from situation angle, there is no impediment to draw inference that these two sale instances are the most comparable sale instances for appreciation in this case. Moreover, the lands under sale in these exemplars were from the same village Borsar, Taluka Vaijapur.

10. The recitals of sale deed (Exhibit-15) indicate that the land admeasuring 0.50 R. was sold for a consideration of Rs.2,50,000/- being an seasonally irrigated land. It has been mentioned that there was a common well in the Gut No. 35 and vendor was having 4 Aana share in the well water. He sold out the land to the vendee with the right of two anna share from his 4-Aana share in the common well

water. It appears that the purchaser would get only two anna shares in the common well water from four anna share of vendor. Be that as it may, the land was purchased @ Rs.5,000/- per R as seasonally irrigated land on 22-01-2007.

11. The sale-instance (Exhibit-16) also shows that the land Gut No. 275/1 located within the vicinity of acquired land was purchased as Bagayat land @ Rs.5,769/- per R. It is to be noted that there was no independent well located in the land under sale, but the source of water was shown available from well located in another Gut No. 274. The registered sale deed came to be executed on 23-04-2007. The comparison of both these sale instances reveals that both the lands under sale were located in the vicinity of same village Borsar. There was limited source of water available for irrigation purpose to lands under sale from respective wells. These lands were classified as seasonally irrigated lands for the purpose of sale transaction by the purchaser. The sale-deed (Exhibit-15) was executed in the month of January-2007 for a price of Rs.5,000/- per R. The sale-instance (Exhibit-16) came to be executed after about four month i.e. in the month of April-2007 for a higher price @ Rs.5,769/- per R. It can be perceived that there was an escalation in the market price of land @ Rs.769/- per R. within the span of four months in the vicinity.

12. Admittedly, the notification under Section 4(1) of the Act, 1894, was published in this case on 30-08-2007 i.e. after about span of four month from the date of sale-instance (Exhibit-16) executed on 23-04-2007. In such circumstances, inference can be drawn that pursuant to

escalation of prices of the lands in the vicinity @ Rs.769/- (say @ 770/-) per R. within a span of four month, obviously, the market rate for seasonally irrigated land on the date of notification under Section 4(1) of Act, 1894, would have escalated double the price of Rs.770/- per R. i.e. Rs.1,540/- per R. (say Rs.1,500/- per R). Therefore, the market price for seasonally irrigated lands in the vicinity must have been accrued to Rs.6,500/- per R. (i.e. Rs.5,000/- + Rs.1,500/- = Rs.6,500/-) during the relevant period of August, 2007 of notification under Section 4(1) of the Act of 1894

13. Now, in regard to the market value of the acquired land Gut No. 65, the circumstances demonstrate that the acquired lands were owned and in possession of appellant claimants who are the members of one and the same family. They are the father, mother and son *inter-se*. The appellants-claimants are the co-sharer in the acquired land Gut No. 65. The 7/12 extract (Exhibit-12) and certificate (Exhibit-17) issued by the village Talathi indicate that there was common well in the acquired land Gut No. 65 and these appellants-claimants as well as one Saraswatibai w/o Gulabrao all were the share-holder in the water source from well. The appellants-claimants were shown entitled for ¾th share in the water of common well for irrigation purpose of the acquired land Gut No. 65.

14. In view of aforesaid factual aspect, it is hard to believe that the acquired lands were required to be classified as perennially irrigated land. There was no independent and separate source of water available for acquired lands for irrigation purpose, but, the claimants

used to cultivate the acquired lands by utilizing their ¾th share in the common well located in the acquired land Gut No. 65 . Therefore, it would difficult to accede the arguments canvassed on behalf of appellants-claimants to determine the market value of the acquired land after its classification as Bagayat/perennially irrigated land.

15. However, if the escalation rate of land prices occurred in the vicinity from January-2007 till August-2007 is considered as discussed above, the inference can be drawn that the seasonally irrigated lands would fetch market price @ Rs.6,500/- per R i.e. double to Rs. 770/- per R. escalated cost in April-2007 vide (Exhibit-16). After consideration of minus and plus factor of both lands under sale instances (Exhibits-15 and 16) as well as lands under acquisition in juxtaposition, it transpired that in view of availability of advantage of ¾th shares in the water source from respective wells, the acquired lands would have fetch more market price than the rate calculated @ Rs.6,500/- per R. for seasonally irrigated lands during the period of notification under Section 4 of Act, 1894. After exercise of some guesswork, it would justifiable and reasonable to perceive that the market price @ Rs.7,000/- per R. would be the just and fair price for acquired land. Definitely, it would sub-serve the purpose in the interest of justice.

16. The learned Reference Court has correctly identified the sale instances (Exhibits-15 and 16) as most comparable sale instances. But, the learned Reference Court did not pay attention to the advantageous factors relating to water sources available to lands under

sale instances and land Gut No. 65 under acquisition. It cannot be ignored or over-looked that the acquired lands were cultivated by the appellants-claimants being co-sharers and members of one and the same family. The appellants-claimants are the father, mother and son *inter-se*. They have ¾th share i.e. more than one-half share in the common well located in the acquired land for irrigation purpose. Therefore, in comparison with the lands under sale instances (Exhibits-15 and 16), the acquired land would have fetch more price than market rate calculated @ Rs.6,500/- per R. during the relevant period of August-2007, in the vicinity. In the aftermath, there is no impediment to calculate the market price of acquired land @ Rs.7,000/- per R.

17. In view of aforesaid discussion, I find that the present appeals of the appellants-claimants are required to be partly allowed. Definitely, the appellants-claimants are entitled to get more enhancement of compensation than awarded by learned Reference Court. It would sub-serve the purpose for substantial justice.

18. Accordingly, all these appeals are partly allowed. The impugned Judgment and Award of the learned Reference Court is hereby modified to the extent that the appellants-claimants are entitled to get compensation for their acquired lands Gut No. 65 of village Borsar, Taluka Vaijapur, District Aurangabad, @ Rs.7,000/- (Rs. Seven Thousands Only) per R. After deducting the compensation amount @ Rs.1,300/- per R. paid by SLAO, the balance compensation amount be disbursed in favour of claimants with statutory benefits prescribed under the provision of Sections 23(1-A) and 23(2) of the Act, 1894, for

the period as stipulated by learned Reference Court in the impugned Awards. The appellants-claimants are also eligible to get the amount of interest as contemplated under Section 28 of the Act, 1894, on the enhanced compensation amount for the period more specifically mentioned in the impugned Award by learned Reference Court.

19. In the result, the proceedings of First Appeal No. 3508, 3507 and 3509 of 2019 stand partly allowed and disposed of in above terms. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

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