

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

**FIRST APPEAL NO. 71 OF 2019
WITH
FIRST APPEAL NO. 72 OF 2019**

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The Executive Engineer .. Appellant
Minor Irrigation Division,
Jalna, Tq. & Dist. Jalna.

Versus

1. Saraswati w/o. Pandit Thombare .. Respondents
Age. 57 years, Occ. Agri.,
2. Ganesh s/o. Vinayak Thombare
Age. 62 years, Occ. Agri.,
3. Pandit s/o. Shripat Thombare
Age. 60 years, Occ. Agri.,
- All above R/o. Chandai Thombari,
Tq. Bhokardan, Dist. Jalna.
4. The State of Maharashtra
Through the Collector, Jalna.
5. The Special Land Acquisition Officer,
(Gaothan), Jalna.

**WITH
FIRST APPEAL NO. 72 OF 2019**

The Executive Enigneer .. Appellants
Minor Irrigation Division,
Jaljna, Tq. & Dist. Jalna.

Versus

1. Sakharam s/o. Ananda Gadekar .. Respondents
Age. 57 years Occ. Agri.,
R/o. Chandai Thombari,
Tq. Bhokardan, Dist. Jalna.
2. The State of Maharashtra,
Through the Collector, Jalna.
3. The Special Land Acquisition Officer,
(Gaothan), Jalna.

Mr. Sham B. Patil, Advocate for the appellant.

Mr. A. H. Koralkar, Advocate for the respondents/claimants.

Mr. S. S. Dande, AGP for the respondent/State.

CORAM : KISHORE C. SANT, J.
DATED : 09.11.2023

ORAL JUDGMENT :-

01. Both the appeals are preferred by the acquiring body arising out of judgment and award passed by the 2nd Jt. Civil Judge, Senior Division, Jalna in Land Acquisition Reference Nos. 2124 of 2010 and 1627 of 2010 respectively. The appellant/acquiring body is the same in both the appeals. The notification and project for which the lands in both the appeals are acquired is the same. The lands are from same village. Therefore, both

the appeals are being taken up for hearing together.

02. Heard finally by the consent of learned Advocates for the parties. The record and proceedings is received.

03. Learned Advocate Mr. Sham Patil for the appellant-acquiring body submits that in case of Land Acquisition Reference No.2124 of 2010, the learned Reference Court has wrongly taken the lands Gat Nos.77 and 87 to be semi irrigated lands and enhanced compensation @ Rs.3750/- per R. For land Gat No.79 said rate is taken as Rs.2500/- per R considering the land to be dry land. He submits that the learned Special Land Acquisition Officer (SLAO) had in-fact granted fair and reasonable compensation by considering the appropriate value of the land. The rate of Rs.575/- was granted by the SLAO. Now, the enhancement is more than five times, which is totally unreasonable. The learned Reference Court has further granted compensation for the fruit

bearing trees by relying upon evidence of Mr.Ghogare, who was not approved valuer on the date on which the inspection was conducted i.e. on 16.09.2004; whereas he became approved valuer on 14.03.2009. Thus, the Reference Court has committed illegality by relying upon evidence of a person who is not a Government valuer on the said date, even considering his evidence the Court has granted exorbitant compensation to towards fruit bearing trees.

04. So far as LAR No.1627 of 2010 in the case of Sakharam Gadekar is concerned, he submits that in this case also the learned Reference Court has granted exorbitant compensation towards trees by relying upon evidence expert Mr.Ghogare. In that case also the learned SLAO has rightly granted rate of Rs.575/- per R, which is enhanced to Rs.2500/-.

05. The learned Advocate for the respondents – original claimants vehemently opposes the appeals submitting that the acquiring body has adopted selective

approach in filing the appeals. He has given chart, which is reproduced as below :-

Land Number	Ref.	Name of Parties	Sr. No. in "E" statement
1576/2010		Rameshwar Uttam Thombre	1
1532/2010		Parmeshwar Uttam Thombre	2
2253/2010		Balu Kundlik Thombre	3
1998/2010		Jhumkabai Uttam Thombre and Kasabai Ramkishan Gadekar	15 & 29
2492/2010		Vimalbai Rangnath Thombre	8
2254/2010		Kaduba Vitthal Dethe	26
2290/2010		Pundlik Shripat Thombre	38
2208/2010		Sanjay Pundlik Thombre	12
2439/2010		Gajanan Dadarao Thombre	10
2640/2010		Leelabai Vinyak Thombre Vinayak Shripat thombre	6
First Appeal preferred by Acquiring Body			
2124/2010		Saraswati Pandit Thombre	F.A.No.71/2019
1627/2010		Sakharam Ananda Gadekar	F.A.No.72/2019

. Total 12 reference were preferred. Out of 12 in 10 references the appellant has acquiesced and preferred not to file appeals. The compensation is also awarded in the year 2017 itself. It is only in these two cases the acquiring body preferred the appeals. All these lands are acquired from three Gat numberS by the same notification. There is nothing on record to show that

the quality of the land is different or that market value is different. He submits that in other 10 references also the compensation towards fruit bearing trees is given based upon evidence of same expert Mr.Ghogare. In the Trial Court, the expert is not cross-examined by the claimant and the Government. He, thus, submits that the appeals deserve to be dismissed on this count.

06. The learned Advocate for the respondent also relied upon judgment of the Hon'ble Apex Court in Civil Appeal No.2694-2700 of 2023 in the case of Shivappa etc. Vs. Chief Engineer and Ors. He further relied upon judgment reported in 2002(9) SCC 487 in the case of Mahadev Vs. Asstt. Commissioner, Land Acquisition. This Court finds that in the case of Shivappa (Supra), the Hon'ble Apex Court considered that the respondent/State had filed application before the High Court for withdrawal of nine appeals, arising out of same acquisition proceeding. In para 10, the Hon'ble Apex Court held that the State or its instrumentalities cannot

be permitted to adopt attitude of pick and chose. In that case considering this factor, the Hon'ble Apex Court was pleased to allow those appeals.

07. In the case of Mahadev (Supra), the award passed by the Reference Court was interferred by the High Court. It is observed that the in regard to award in respect of similar lands, the Government accepted the award. Only in some cases, appeals were preferred and in that view it was held that the High Court was not justified in interferring with the award.

08. Coming to the present appeals, it is admitted position that there were 12 references filed by the claimants, whose lands were acquired from total 3 Gat numbers. The evidence was also led in respect of fruit bearing trees by examining an expert. This expert witness is not cross-examined by the acquiring body. Out of 12 references in 10 reference the appellant acquiesced the award passed by the Reference Court. They have filed

appeals only in two awards. This Court finds that in view of the judgment in the case of Shivappa (Supra), it is not permissible for the State or its instrumentalities to adopt an attitude of pick and chose. In view of the judgment in the case of Mahadev (Supra) also the Hon'ble Apex Court has held that when there are number of awards passed in respect of the same land acquired under the same notification, there should be equal treatment given to all the awards. The State or the acquiring body cannot prefer appeal only in selected cases. In this case, even on merits this Court finds that no case is made out. Even considering the evidence independently, no case is made out to call for interference in the impugned judgments and awards. The appeals are dismissed and disposed off.

09. In view of dismissal of the First Appeals, connected Civil Applications also stand disposed off.

10. It is submitted that entire amount is deposited

in the office of this Court. The claimants shall be entitled to withdraw the said amount with accrued interest, if any. In case the entire amount is not paid, the remaining amount shall be deposited within a period of 12 weeks from today with accrued interest. Needless to say that the claimants shall be entitled to receive the amount along with interest, if any, accrued thereon, after the same is deposited in this Court.

[KISHORE C. SANT, J.]