

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 629 OF 2008

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur ...Appellant

Versus

Shri. Basavraj Parappa Teli and Ors. ...Respondents

WITH

FIRST APPEAL NO. 631 OF 2008

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur ...Appellant

Versus

Shri. Shetteppa Bhimappa Dhab ...Respondent

WITH

FIRST APPEAL NO. 630 OF 2008

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur ...Appellant

Versus

Shri. Shivputra Neelappa Dhab ...Respondent

WITH

FIRST APPEAL NO. 632 OF 2008

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur ...Appellant

Versus

Shri. Basawanni Shivalingappa Galati ...Respondent

WITH

FIRST APPEAL NO. 633 OF 2008

**SNEHA
NITIN
CHAVAN**

Digitally signed
by SNEHA
NITIN CHAVAN
Date: 2023.12.22
18:20:19 +0530

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur ...Appellant
Versus
Shri. Ishar Ningappa Hanjibutti ...Respondent

**WITH
FIRST APPEAL NO. 634 OF 2008**

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur ...Appellant
Versus
Shri. Shivmal Neelappa Dhab ...Respondent

**WITH
FIRST APPEAL NO. 635 OF 2008**

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur ...Appellant
Versus
Shri. Balappa Bhimappa Dhab ...Respondent

**WITH
FIRST APPEAL NO. 1444 OF 2009
WITH
CIVIL APPLICATION NO. 2955 OF 2008**

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur ...Appellant
Versus
Shri. Bhimrao Subharao Bhogane and ...Respondents
Ors.

**WITH
FIRST APPEAL NO. 1747 OF 2009**

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur ...Appellant
Versus
Shri. Babu Neelappa Dhab ...Respondent

WITH
FIRST APPEAL NO. 624 OF 2012
WITH
CIVIL APPLICATION NO. 2959 OF 2008

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur ...Appellant
Versus
Shri. Baswani Shivalingayya Hiremath
D/H Malutai B.Hiremath and Ors. ...Respondents

WITH
FIRST APPEAL NO. 1155 OF 2011

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur ...Appellant
Versus
Shri. Shivaputra Ningappa Hanjibuthi ...Respondent

WITH
FIRST APPEAL NO. 1748 OF 2009

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur ...Appellant
Versus
Shri. Balappa Ningappa Hanjibutti ...Respondent

WITH
FIRST APPEAL NO. 1733 OF 2009

The State of Maharashtra through

Special Land Acquisition Officer,
Kolhapur

...Appellant

Versus

Shivputra Mallappa @ Kallappa Agasagi
D/H 1A. Neelabai w/o. Shivaputra
Agasagi and Ors.

...Respondents

**WITH
FIRST APPEAL NO. 426 OF 2007**

The State of Maharashtra through
Special Land Acquisition Officer,
Kolhapur

...Appellant

Versus

Ningappa Peeraji Magdum and Ors.

...Respondents

Ms. Tanaya Goswami, AGP for the Appellant/ State in all appeals.
Mr. S.A. Rajeshirke for the Respondents/Claimants in all appeals.

**CORAM : M.M.SATHAYE, J.
DATE : 5th DECEMBER 2023**

PC. :

1. First Appeal Nos. 1155/2011 and 1748/2009 are not on board. They are taken on board.

2. These are groups of 14 first appeals arising out of the common notification under the Land Acquisition Act, 1894 ("the said Act" for short). 12 First Appeals are arising out of a common impugned Judgment and Order dated 03.08.2005 passed by Addl. Dist. Judge, Gadhinglaj in group of 12 land references u/s. 18 of the said Act. First Appeal No. 426/2007 is filed challenging Judgment and Order

dated 13.12.2004 passed by the Addl. District Judge, Gadhinglaj in LAR No. 226/1996. First Appeal No. 1733/2009 is filed challenging Judgment and Award dated 21.12.2006 passed by the District Judge-1, Gadhinglaj in LAR No. 225/1996 (old No.19/1995). Necessary details such as First Appeal numbers, Land Reference numbers & claimant's name are given in chart below. In the list of above first appeals, although First Appeal Nos. 1155/2011 and 624/2012 are numbered in the year 2011 and 2012 respectively, the filing date of the said appeals are 07.06.2006 and 08.06.2006 respectively as per the High Court Official Website and therefore they are also within the assignment of this Court as on date (First Appeals upto 2010).

Sr no	First Appeal No.	LAR No	Date of Judgment	Short title of Respondent	Enhanced Amount including Market value+solatium +12% component in Rs
1	629/08	143/96	3/08/05	Basavaraj Pirappa Teli	35,826/
2	631/08	145/96	3/08/05	Shetteppa Bhimappa Dhab	27,290/-
3	635/08	194/96	3/08/05	Balappa Bhimappa Dhab	27,290/-

4	630/08	147/96	3/08/05	Shivaputra Nilappa Dhab	82,184/-
5	634/08	188/96	3/08/05	Shivmala Nellappa Dhab	82,184/-
6	1155/11	148/96	3/08/05	Shivputra Ningappa Hanjibutti	27,265/-
7	1748/09	150/96	3/08/05	Balappa Ningappa Hanjibuthi	29,110/-
8	1444/09	174/96	3/08/05	Bhimrao Subram Bhonge	83,934/-
9	632/08	175/96	3/08/05	Basawanni Shivlingappa Galati	48,517/-
10	633/08	187/96	3/08/05	Ishwar Ningappa Hanjibuthi	26,198/-
11	1747/09	203/96	3/08/05	Babu Nillappa Dhab	92,000/-
12	624/12	210/96	3/08/05	Baswani Shivalingayya Hiremath	49,090/-
13	426/07	226/96	13/12/04	Ningappa Piraji Magdum	82,780/-
14	1733/09	225/96	21/12/06	Shivputra	3,06,887/-

				Mallappa Kallappa	
--	--	--	--	----------------------	--

3. The appeals are arising out of compensation for acquisition of respective lands or part thereof of the respective Respondent/Claimant/s for the same purpose of *Terni* minor Irrigation Tank. Subject matter lands are covered under the same notification published in Government Gazette on 17.10.1991 under Section 4 of the said Act. In all the matters, declaration u/s. 6 of the Said Act is issued on 27.02.1992. The concerned Land Acquisition Officer No. 6, Kolhapur (“concerned SLAO” for short) passed common Award No. *Bhusampadan*/6/SR/No. 410 dated 17.03.1993. Possession of the lands was taken on 18.06.1993 and 11.06.1993. By the said common Award, the Respondents/Claimants were granted certain amounts of compensation. Being aggrieved by the amounts awarded by the concerned SLAO, the Respondent/Claimants filed aforesaid references u/s. 18 of the said Act

4. The learned Reference Court (the Additional District Judge, Gadhinglaj) granted enhancements in all the references as indicated in the chart above. In the aforesaid set of facts, the Appellant/State has chosen to file aforesaid 14 appeals not accepting the said Judgments and Awards therein.

5. Heard learned AGP for the Appellant/State and learned counsel for the Respondents/Claimants.

6. Mr. Rajeshirke, learned counsel for the Respondents/Claimants submitted that the present 14 appeals are from the group of 51 total lands covered under the same notification and same award, details as above. He submitted that out of these 51 matters, in 28 land References, the State has not filed appeals and has accepted Judgments and Awards passed therein. The State has adopted pick and choose policy in the present matter. He submitted that, though the Judgments and Awards passed in 28 matters are accepted and no challenge is raised by State, for the reasons best known to the Appellant/State, it has chosen to file present 14 appeals and challenge the Judgments and Awards passed therein. He further submitted that in remaining 9 matters, other First Appeals (being First Appeal Nos. 544/ 2008, 549/2008, 545/2008, 546/2008, 548/2008, 550/2008, 551/2008, 547/2008 and 636/2008 arising out of L. A. R. Nos. 142/1996, 212/1996, 184/1996, 291/1996, 211/1996, 221/1996, 234/1996, 205/1996 and 223/1996 respectively) are already disposed of by this Court. Learned AGP has not factually disputed this position that the present appeals are arising out of common award and common notification.

7. In these set of facts, Mr. Rajeshirke submitted that the State cannot be permitted to adopt pick and choose policy and if in majority of the References (28 out of 51), the State has not filed appeals and has accepted the respective Judgments/Awards, it cannot be permitted to prosecute the present Appeals or maintain this challenge. For this submission, he relied upon the case of

Mahadev V/s. The Assistant Commissioner/Land¹, where in the similarly situated facts and circumstances, the Hon'ble Supreme Court has held as under:

“9. Having heard the counsel for the parties and perused the records, we do not think the High Court was justified in interfering with the award of the reference court. The High Court ought to have seen that the acquiring authority, viz., the government has accepted the award in regard to similar lands, all of which were sought to be acquired under the same notification. The High Court has not come to the conclusion that the lands of the appellant are in any way inferior to the lands of those owners in whose favour the reference court award has become final. In such a situation, we find it difficult to agree with the view taken by the High Court mainly because of the fact that the acquiring authority itself has accepted the award of the reference court. The appeal before the High Court was not based on any question of law applicable to the peculiar facts of the appeal before it. It was also an appeal on facts on the basis of which the learned district judge confirmed the award. If the very same evidence was acceptable to the acquiring authority in regard to six other owners, we fail to understand why it should not be acceptable to the acquiring authority in regard to the appeal before us. At the cost of repetition, it may be stated that it is not the case of the acquiring authority that the land of the appellant is, in any way, inferior to that of the other lands acquired under the same notification.

10. Therefore, in our opinion, the High Court fell in error in trying to re-appreciate the material on record

¹ (2002) 9 SCC 487

and coming to a conclusion different from that arrived at by the reference court, mainly because the acquiring authority has accepted finding based on the said evidence in regard to six other claimants.”

[Emphasis Supplied]

8. Learned AGP, for the Appellant/State, on the other hand, though submitted that the State can file appeals in certain References and choose not to in others, she found it difficult to meet the aforesaid observations of Hon'ble Supreme Court in facts of these appeals.

9. I have carefully considered the submissions of both the sides. It is not disputed that factually in 28 References, out of total group of 51 References, covered under the same notification, the State has not filed appeals. The State has accepted Reference Court orders and has released amounts in favour of those claimants and deposited it in the concerned District Court (Reference Court). In support of this, learned counsel for the Respondents/Claimants has relied upon a letter dated 22.01.2010 (both xerox and typed copies). In other words, it means that State has accepted the Judgment passed in at least 28 References out of 51.

10. The Hon'ble Supreme Court in the case of Mahadev (supra), has held that if the acquiring authority itself has accepted the Award of the Reference Court in respect of 6 owners, it cannot be understood why the same evidence should not be acceptable to the acquiring authority/government in respect of the remaining appeals.

11. The facts of the present case are therefore squarely covered by the said Judgment of Mahadev (supra). It is not the case of the Appellant/State that these 14 appeals stand on any different legal footing or that it is based on any different question of law in the peculiar facts of each appeal. It is also not the case of the Appellant-State that lands of present Respondents are in any way inferior to that of 28 other lands acquired under the same notification.

12. In that view of matter, and in the teeth of the above view taken by the Hon'ble Supreme Court, in my considered view, the Appellant/State cannot be permitted to continue with their challenge in these 14 appeals. Therefore, the aforesaid appeals are dismissed. No order as to costs.

13. In view of the dismissal of the appeals, the Respondents/Claimants or their legal heirs, as the case may be, are at liberty to withdraw the amounts of compensation, if deposited by the Appellant/State in the concerned Reference Court along with accrued interest, if not already withdrawn. Needless to mention that the impugned orders of Reference Court are executable now.

14. In view of the dismissal of the main appeals, all the pending interim applications therein, are also disposed of.

[M.M.SATHAYE,J.]