IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2239 OF 2015

1. Kisan Shripat Sirsath
   Age – 75 years, Occu.: Agril.
2. Manik Shripat Sirsath
   Age – 70 years, Occu.: Agril.

   Both R/o. Rahimabad, Tq.Sillod,
   Dist. Aurangabad. … Appellants
   (Orig. Claimants)

VERSUS

1. The State of Maharashtra
   Through, the Special Land Acquisition
   Officer, Collector Office,
   Aurangabad.
2. The Executive Engineer,
   Minor Cannel Irrigation (Local Sector),
   Auranabad. … Respondents

AND

FIRST APPEAL NO.2240 OF 2015

1. Smt. Parvatabai Shravan Sirsath
   Age – 75 years, Occu.: Agril.
   R/o. Rahimabad, Tq.Sillod,
   Dist. Aurangabad. … Appellant
   (Orig. Claimant)

VERSUS

1. The State of Maharashtra
   Through, the Special Land Acquisition
   Officer, Collector Office,
   Aurangabad.
2. The Executive Engineer,
   Minor Cannel Irrigation (Local Sector),
   Auranabad. … Respondents

AND

FIRST APPEAL NO.2241 OF 2015

1. Ganpat Sampat Sirsath
   Age – 70 years, Occu.: Agril.
2. Govinda Ukhardu Sirsath,
   Age – 40 years, Occu.: Agril.

   R/o. Rahimabad, Tq.Sillod,
   Dist. Aurangabad. … Appellants
   (Orig. Claimants)

VERSUS

1. The State of Maharashtra
   Through, the Special Land Acquisition
   Officer, Collector Office,
   Aurangabad.
2. The Executive Engineer,
   Minor Cannel Irrigation (Local Sector),
   Auranabad. … Respondents

AND

FIRST APPEAL NO.2242 OF 2015

1. Manohar Eknath Sirsath
   Age – 38 years, Occu.: Agril.
   R/o. Rahimabad, Tq.Sillod,
   Dist. Aurangabad. … Appellant
   (Orig. Claimant)

VERSUS

1. The State of Maharashtra
   Through, the Special Land Acquisition
   Officer, Collector Office,
   Aurangabad.
2. The Executive Engineer,
   Minor Cannel Irrigation (Local Sector),
   Auranabad. … Respondents

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Mr. N.J. Pahune Patil, Advocate for Appellants
Mr. R.B. Dhaware, AGP for Respondent – State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 08th AUGUST, 2024

ORAL JUDGMENT :

1. By these appeals appellants/original claimants challenge the common judgment and award passed by the Reference Court in L.A.R. Nos. 293/2010, 294/2010, 295/2010 and 296/2010 dated 15.09.2012.

2. Lands belonging to claimants out of Gut Nos. 55, 48 and 47 situated at village Rahimabad, Taluka-Sillod, District-Aurangabad, are acquired by respondents for Rahimabad percolation Tank No.6, as follows:

Sr. No.	Claimant	Gut No.	Area of land acquired
1.	Manohar Eknath Sirsath	55	1 Hectare 5 R
2.	Ganpat Sampat Sirsath	48	1 Hectare 82 R
3.	Smt. Parvatabai Shravan Sirsath	48	1 Hectare 2 R
4.	Kisan Shripat Sirsath and Manik Shripat Sirsath	47	88 R

3. Possession of lands was taken in the month of May 2004 (as per Exhibit-15 in L.A.R. Nos.295/2010 and L.A.R. No.296/2010, Exhibit-14 in L.A.R. No.293/2010 and Exhibit-13 in L.A.R. No.294/2010). Notification under section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') was published in the official gazette on 26.04.2006 and the final award was declared by Special Land Acquisition Officer on 23.06.2009.

Lands of claimants were acquired along with wells and pipelines. Special Land Acquisition Officer awarded compensation @ Rs.1,080/- per R by holding the suit lands as dry lands and awarded separate compensation for wells situated in the lands. Claimants, therefore, filed respective references for enhancement of compensation. The Reference Court has enhanced the compensation @ Rs.4,000/- per R by treating the lands has seasonally irrigated lands, and holding that claimants themselves have restricted their claim to Rs.4,000/- per R. Claimants have filed the present first appeals for enhancement of the compensation.

4. Heard learned advocate for claimants and learned AGP for State.

5. Learned advocate for claimants submits that though wells of claimants are acquired, the Special Land Acquisition Officer has erroneously treated the lands as dry lands and the Reference Court erred in treating the lands as seasonally irrigated lands, which is contrary to the decision of the Apex Court in ***Chindha Fakira Patil Vs. State of Maharashtra, (2011) 10 SCC 787***. He submits that sale deed of the year 2002 of dry land was relied upon by the claimants. This sale deed is of highest market value, which ought to have been relied upon

by the Reference Court and since the said sale deed is of the dry land, double the amount of dry land is to be treated as market value and the same has to be enhanced by considering 10% cumulative enhancement per year till the date of acquisition. Reference Court, therefore, ought to have assessed the market value of claimants' lands @ Rs.26,650/-. In support of the said submission, reliance is placed on ***Satish and Ors. Vs. State of UP 2009 SCW 5560*** and ***Mehrawal Khewaji Trust Vs. State of Punjab 2012 AIR SCW 2822***. Further submission is that, possession of claimants' lands is taken by private negotiations before passing of the award, which is also mentioned in the award. Therefore, Reference Court ought to have awarded statutory interest under Section 34 of the Act to the claimants from the date of notification under section 4 of the Act, published in the Government Gazette till the payment of compensation by the Special Land Acquisition Officer.

6. Learned advocate for claimants assailed the finding of the Reference Court, whereby it is held that claimants are not entitled to get compensation than what they have claimed in L.A.Rs. i.e. Rs.4,000/- per R, by relying on decision in ***Ashok Kumar Vs. State of Haryana, AIR 2016 SCW 1210***. He

also relied on the said judgment in support of his submission that, claimants are ready to pay deficit court fees on the enhanced amount of compensations. He therefore prays for enhancement of compensation @ Rs.26,650/- per R.

7. Learned AGP, on the other hand, strenuously opposed the first appeals. He submits that Reference Court is justified in awarding Rs.4,000/- per R to claimants as only that much amount was claimed by them in their references. He also points out that along with the sale deed relied upon by claimants in support of their claims, a certificate is annexed mentioning that the said land does not come within the command area of Rahimabad percolation tank. The said sale deed is between two brothers and it was of only 20 R land, and therefore, according to him, Reference Court is justified in awarding compensation @ Rs.4,000/- per R. He submits that nothing is brought on record by claimants to show that they were taking cash crops in their respective lands. No receipts of sale of cash crops are placed on record, therefore, Reference Court is right in treating the acquired lands as seasonally irrigated lands. He, therefore, supported the impugned judgment and award passed by the Reference Court.

8. Heard learned advocate for claimants and learned AGP for State at length. Perused the written notes of argument filed by claimants and the original record.

9. Admittedly, the lands of claimants are acquired along with wells situated in them and Special Land Acquisition Officer has awarded separate compensation for wells. However, he has treated the lands of claimants as dry lands. Claimants have placed on record copy of electricity bills showing that they have installed 3 HP to 5 HP electric meters on their wells and they claim that they used the wells to irrigate their crops. Ignoring the ratio in ***Chindha Fakira Patil*** (supra), the Reference Court has treated the lands of claimants as seasonally irrigated lands and the said finding is, therefore, unsustainable in law and facts of the said case.

10. The sale deed at Exhibit-12 in L.A.R. No.293/2010 is relied upon by claimants, by which 20 R land out of Gut No. 260 was sold for consideration of Rs.1,82,000/- (Per R value of the land comes to Rs.9,100/-). Admittedly, the said land was dry land. Perusal of sale deed (Exhibit-12) shows that the land under the said sale instance is situated in the same village i.e. Rahimabad. Merely because sale instance is in between two brothers, the Reference Court has refused to rely

on consideration amount to arrive at the market value. The Reference Court has drawn unwarranted inference by ignoring the fact that in the said sale instance, other co-owners have given consent to the sale transaction. There is nothing on record to show that only because the sale instance in between two brothers, incorrect consideration amount is mentioned in the same.

11. Indisputably, the sale instance is of a dry land by which land is sold @ Rs.9,100/- per R. For irrigated land double the amount of dry land is to be given as market value, which in the present case would be Rs.18,200/- per R. Since the sale instance is of the year 2002 i.e. four years prior to the date of notification under section 4 of the Act, 10% increase per year in terms of ***Mehrawal Khewaji Trust*** (supra) has to be added, which comes to Rs.12,740/- per R for dry land. For irrigated land, double the amount of dry land has to be considered as market value, which comes to Rs.25,480/- per R, which is rounded off to Rs.25,500/- per R.

12. In view of the fact that area under sale instance is small area of 20 R and larger area of the claimants' lands is acquired, in view of ***Mehrawal Khewaji Trust*** (supra), 20% needs to be deducted from the compensation amount.

From the compensation of Rs.25,500/- minus Rs.5,100/- (20% deduction) equals to Rs.20,400/-. Thus, claimants are entitled for compensation @ Rs.20,400/- per R.

13. Reference Court has committed serious error in holding that since claimants have claimed Rs.4,000/- per R, their enhancement needs to be restricted to that extent only. The said finding is contrary to the object of the welfare provision of compensation made under the Land Acquisition Act.

14. In ***Bhag Singh and Ors. Vs. Union Territory of Chandiharh, (1985) 3 SCCC 737***, it is held that:

> *"3. ......<u>It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account.</u> Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according*

to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value."

15. In ***Ashok Kumar*** (supra), the Apex Court held :

"7. The pre-amended provision put a cap on the maximum; the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary, put a cap on the minimum; compensation cannot be less that what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the Court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of the claim made by the owner."

Aforestated ratio support the case of claimants.

16. In view of reasons recorded hereinabove, common impugned judgment and award is required to be modified. Hence, the following order:-

ORDER

(i) First Appeals are partly allowed with proportionate costs.

(ii) Common judgment and award passed by the Reference Court in L.A.R. Nos. 293/2010, 294/2010, 295/2010 and 296/2010 dated 15.09.2012 is hereby modified and appellants/claimants are held entitled for compensation for the acquired lands at the enhanced rate of Rs.20,400/- per R along with all statutory benefits.

(iii) Claimants shall pay additional Court fees on enhanced compensation as per rules.

[NITIN B. SURYAWANSHI]
JUDGE