



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1850 OF 2015

Ramrao s/o Madhavrao Salunke
Died Through Legal Heirs

1. Deepak s/o Ramrao Salunke
Age- 60 years, Occ. Agriculture.
2. Ramesh s/o Ramrao Salunke
Age- 55 years, Occ. Agriculture.
3. Sunil s/o Ramrao Salunke
Age- 52 years, Occ. Agriculture
All R/o. Ukadgaon Kopargaon Road
Opp. Jagdham Lawns, Vaijapur
Taluka Vaijapur, Dist. Aurangabad.

...APPELLANTS
[Orig. Claimants]

VERSUS

1. The State of Maharashtra
Through Collector, Aurangabad,
Collectorate, Aurangabad.
2. Nandur Madhmeshwar Kalwa Division,
Through its Engineer, Yeola Road,
Vaijapur, District- Aurangabad.

...RESPONDENTS
[Orig. Respondents]

AND

FIRST APPEAL NO. 1847 OF 2015

Shaikh Jamir s/o Shaikh Amir
Age- 56 years, Occ. Agriculture
R/o. Mustafawadi, Ladgaon Road,
Vaijapur, Taluka- Vaijapur,
District- Aurangabad.

...APPELLANT
[Orig. Claimants]

VERSUS

1. The State of Maharashtra

Through Collector, Aurangabad,
Collectorate, Aurangabad.

2. Nandur Madhmeshwar Kalwa Division,
Through its Engineer, Yeola Road,
Vaijapur, District- Aurangabad.

...RESPONDENTS
[Orig. Respondents]

AND

FIRST APPEAL NO. 1848 OF 2015

Balasaheb s/o Fakirrao Kathawate
Age- 58 years, Occ. Agriculture
R/o. Jadhav Galli, Vaijapur,
Taluka- Vaijapur,
District- Aurangabad.

...APPELLANT
[Orig. Claimants]

VERSUS

1. The State of Maharashtra
Through Collector, Aurangabad,
Collectorate, Aurangabad.
2. Nandur Madhmeshwar Kalwa Division,
Through its Engineer, Yeola Road,
Vaijapur, District- Aurangabad.

...RESPONDENTS
[Orig. Respondents]

AND

FIRST APPEAL NO. 1982 OF 2015

Subhash s/o Trimbak Ponde
Age- 66 years, Occ. Agriculture
R/o. Shivaji Road, Vaijapur,
Taluka- Vaijapur, Dist. Aurangabad

...APPELLANT
[Orig. Claimants]

VERSUS

1. The State of Maharashtra
Through Collector, Aurangabad,
Collectorate, Aurangabad.
2. Nandur Madhmeshwar Kalwa Division,
Through its Engineer, Yeola Road,
Vaijapur, District- Aurangabad.

...RESPONDENTS

AND
FIRST APPEAL NO. 1849 OF 2015

Shaikh Hasham s/o Shaikh Sandu
Since died through L.Rs.

1. Rehana Begum w/o Shaikh Hasham
Age- 66 years, Occ- Agriculture & Household
2. Shaikh Shakil s/o Shaikh Hasham
Age- 29 years, Occ. Agriculture & Business
3. Shaikh Akil s/o Shaikh Hasham
Age- 27 years, occ- Agriculture
4. Shaikh Samir s/o Shaikh Hasham
Age- 25 years, Occ- Agriculture
5. Shaikh Shamim s/o Shaikh Hasham
Age 22 years, Occ- Education
All R/o. Kazi Galli, Vaijapur,
Taluka- Vaijapur, Dist. Aurangabad.

...APPELLANTS
[Orig. Claimants]

VERSUS

1. The State of Maharashtra
Through Collector, Aurangabad,
Collectorate, Aurangabad.
2. Nandur Madhmeshwar Kalwa Division,
Through its Engineer, Yeola Road,
Vaijapur, District- Aurangabad.
3. Shaikh Jamil s/o Shaikh Hasham
Age- 36 years, Occ- Agriculture & Business
R/o. Kazi Galli, Vaijapur, Dist. Aurangabad.

Respondents No.
1 and 2 Orig. Respondents

...RESPONDENTS
Respondent No. 3 Orig.
Claimant No. 2

Mr. Ajit D. Kasliwal, Advocate for appellants
Mr. B.R. Surwase, Advocate for respondent No. 2
Mr. B.B. Bhise, AGP for State

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 10th JULY, 2024

PRONOUNCED ON: 26th JULY, 2024

JUDGMENT:

1. Original claimants by these appeals filed under section 54 of the Land Acquisition Act, challenge judgment and award passed by learned Civil Judge, Senior Division, Vaijapur, in LAR No. 103/2010 (First Appeal No. 1847/2015), LAR No. 124/2010 (First Appeal No. 1848/2015), LAR No. 114/2010 (First Appeal No. 1849/2015), LAR No. 104/2010 (First Appeal No. 1850/2017) and LAR No. 125/2010 (First Appeal No. 1982/2015).

2. Lands of the claimants are acquired for construction of Narangi Medium Project Right Canal Minor No. 2, village Vaijapur, Dist. Aurangabad. Possession of acquired lands was taken on 13.03.2000 and notification under section 4 of the Land Acquisition Act, 1894 (for short "LA Act") was published in Government Gazette on 08.06.2006. Award was passed on 03.11.2008. Special Land Acquisition Officer (for short "SLAO") awarded compensation @ Rs. 2250/- per Are to the claimants. Claimants filed references seeking enhancement of compensation and Reference Court has enhanced compensation

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to Rs. 4500/- per Are. Claimants are seeking enhancement of compensation awarded by the Reference Court.

3. Heard learned advocate for appellants, learned advocate for respondent No. 2 and learned AGP for State. Perused the record, written notes of arguments submitted by acquiring body and citations relied upon by the parties.

4. Learned advocate for appellants submits that Reference Court has erred in treating irrigated lands as dry lands and awarding compensation @ Rs. 4500/- per Are. In support of his case he relied on *Special Land Acquisition Officer, BYDA, Bagalkot vs. Mohd. Hanif Sahib Bawa Sahib*, 2002(4) ALL MR 242 (S.C.), *Meharwal Khewaji Trust (Regd.) Faridkot and Ors. vs. State of Punjab and Ors*, AIR 2012 Supreme Court 2721, *The General Manager, Oil & Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel & Anr*, 2008(6) ALL MR 491 and *Chindha Fakira Patil (D) through L.Rs v. The Special Land Acquisition Officer- Jalgaon*, AIR 2012 Supreme Court 481.

5. Learned advocate for acquiring body supported the impugned judgment and award. He submits that claimants have produced copies of sale deed which are of post notification and

no attesting witnesses were examined by the claimants. He submits that Reference Court has rightly considered the evidence adduced by the claimants and awarded adequate compensation. In support of his submissions he relied on ***Cement Corpn. Of India Ltd., vs. Purya and others***, (2004) 8 SCC 270.

6. Claimants have brought on record the evidence showing that acquired lands are irrigated lands and they were taking cash crops like sugarcane, cotton, onion along with other seasonal crops. Well situated in the lands was the source of irrigation to the acquired lands. 7/12 extracts placed on record by the claimants support the said contention of claimants. It also shows presence of well and taking of cash crops by them. In the light of decision in Chinda Fakira Patil (supra), acquired lands of the claimants are required to be treated as irrigated lands. Without there being any justifiable cause, Reference Court erroneously held acquired lands as dry lands and assessed market value as dry lands.

7. Claimants have relied on following sale instances:

- a) Sale deed bearing Reg. No. 2155/2005 dated 05-05-2006 executed by Tulshidas Bajirao Anarthe in favour of Uddhav Daulatrao Sonawane and Balasaheb Bhimraj

Shinde. Tulshidas Anarthe sold 224 Are dry land from Survey No. 268/5/1 of village Vaijapur, Dist. Aurangabad.

b) Sale deed bearing Reg. No. 2267/2006 dated-12-05-2006 executed by Nirmala Madhavrao Wagh in favour of Balasheb Sadashivrao Kadam and Yuvraj Sudamrao Nikam. Nirmala Wagh sold 95 Are dry land from Survey No. 395/21 of village Vaijapur, Tal- Vaijapur, Dist. Aurangabad.

8. Reference Court has relied on sale deed Reg. No. 2155/2005 dated 05.05.2006, which is of a dry land and said land is situated nearby the acquired lands. Since, land in the said sale deed is situated within the municipal limits of Vaijapur and as said land is purchased for commercial purpose, Reference Court has held that said rate cannot be applied as basis for determination of market value of acquired lands. Another sale deed dated 12.05.2006 is also considered by the Reference Court, however, land under the said sale deed is also situated within the municipal limits of Vaijapur and was sold @ Rs. 4,375/- per Are. Since, acquired lands are not within the municipal limits at the time of issuance of notification under section 4 of the L.A. Act, in the year 2006 and those were situated at the outskirts of municipal area, Reference Court

proceeded to assess market value of acquired lands @ Rs. 4,500/- per Are.

9. Admittedly, land under the sale instance dated 05.05.2006 was sold @ Rs. 8,000/- per Are, which was situated on the road and within the municipal limits of Vaijapur. In terms of decision in Meharwal Khewaji Trust (supra), highest sale instance is to be taken into consideration. Reference Court has observed that acquired lands are situated at the outskirts of Vaijapur and they are not situated on road. Therefore, Reference Court ought to have assessed market value of dry lands at Rs. 5,000/- per Are.

10. Since acquired lands of the claimants are irrigated lands, they are required to be paid double of dry lands. Therefore compensation is required to be assessed at Rs. 10,000/- per Are. Reference Court has erred in awarding compensation to the acquired lands @ 4,500/- per Are. Hence, claimants are entitled for enhanced compensation at Rs. 5,500/- per Are. In the result, following order:

ORDER

- I) First Appeals are partly allowed with proportionate costs.
- II) Judgment and award passed by the Reference Court is

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modified to the effect that claimants shall be paid enhanced compensation at Rs. 5,500/- Per Are along with statutory benefits on enhanced compensation.

- III) Respondents to pay interest @ 6% p.a. to the claimants on enhanced compensation from the date of claim petition, till realization.

[NITIN B. SURYAWANSHI, J.]