IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3177 OF 2018

Muktaram Natha Gandge
Age: 48 Occu: Agri
R/o At post Kasarwadi, Tal-Ambad
Dist – Jalna … Appellant
(Ori Petitioner)

Versus

1. The State of Maharashtra
Through Collector, Jalna

2. The Special Land Acquisition Officer
(B & C), Jalna. At present
Sub-Divisional Officer, Ambad

3. The Executive Engineer,
Minor Irrigation Department
(Local Sector), Jalna … Respondents
(Ori Respondents)

…

WITH
FIRST APPEAL NO.161 OF 2019

Rohidas Balaji Pangre
Age: 25 Occu: Agri
R/o At post Kasarwadi, Tal-Ambad
Dist – Jalna … Appellant
(Ori Petitioner)

Versus

1. The State of Maharashtra
Through Collector, Jalna

2. The Special Land Acquisition Officer
(B & C), Jalna. At present
Sub-Divisional Officer, Ambad

3. The Executive Engineer,
Minor Irrigation Department
(Local Sector), Jalna … Respondents
(Ori Respondents)

…

WITH

FIRST APPEAL NO.3170 OF 2018

Sheshrao Namdev Pangre (Dead)
1. Dadarao Sheshrao Pangre
Age: Occu: Agri

2. Subhash Sheshrao Pangre
Age: Ocu: Agri

2. Narayan Sheshrao Pangre
Age: Occu: Agri

R/o At post Kasarwadi, Tal-Ambad
Dist – Jalna … Appellant
(Ori Petitioner)

Versus

1. The State of Maharashtra
Through Collector, Jalna

2. The Special Land Acquisition Officer
(B & C), Jalna. At present
Sub-Divisional Officer, Ambad

3. The Executive Engineer,
Minor Irrigation Department
(Local Sector), Jalna … Respondents
(Ori Respondents)

…

WITH
FIRST APPEAL NO.2186 OF 2019

Ashok Dhondiba Giri
Age: 47 Occu: Agri
R/o At post Kasarwadi, Tal-Ambad
Dist – Jalna … Appellant
(Ori Petitioner)

Versus

1. The State of Maharashtra
Through Collector, Jalna

2. The Special Land Acquisition Officer
(B & C), Jalna. At present
Sub-Divisional Officer, Ambad

3. The Executive Engineer,
Minor Irrigation Department
(Local Sector), Jalna … Respondents
(Ori Respondents)

...

WITH

FIRST APPEAL NO.160 OF 2019

Ankush Asraji Gandge
Age: 65 Occu: Agri
R/o At post Kasarwadi, Tal-Ambad
Dist – Jalna ... Appellant
(Ori Petitioner)

Versus

1. The State of Maharashtra
Through Collector, Jalna
2. The Special Land Acquisition Officer
(B & C), Jalna. At present
Sub-Divisional Officer, Ambad
3. The Executive Engineer,
Minor Irrigation Department
(Local Sector), Jalna ... Respondents
(Ori Respondents)

...

Mr. Abhijit Kale, Advocate for Appellants
Mr. B.B. Bhise, AGP for Respondents/State

...

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 10th JULY, 2024
PRONOUNCED ON : 09th AUGUST, 2024

JUDGMENT :

1. Admit. Heard finally with the consent of the parties.

2. Being aggrieved by the quantum of compensation awarded by reference Court, appellants/original claimants have challenged judgment and awards passed by learned Joint Civil Judge, Senior Division, Jalna, in L.A.R. No. 118/2011 on 24/11/2016, L.A.R. No.117/2011 on 03/12/2016, L.A.R. No.185/2011 on 05/12/2016, L.A.R. No.119/2011 on 22/11/2016 and L.A.R. No.171/2011 on 30/11/2016.

3. Portion of lands of claimants from Gut Nos.50, 51, 268 and 269, situated at Kasarwadi village, Taluka Ambad, Dist. Jalna, are acquired for Kasarwadi/ Bantakali Percolation Tank. Notification under Section 4(1) in that regard was published in official gazette on 01/01/2004. The award was declared on 01/03/2005. Special Land Acquisition Officer awarded compensation @ Rs.1090/- and Rs.1310/- per R for irrigated land, whereas @ Rs.655/- and Rs.545/- per R for Jirayat land. Reference Court treated all the acquired lands as seasonally irrigated lands and enhanced compensation to Rs.3675/- per R. Claimants have filed these appeals for enhancement of compensation.

4. Heard learned advocate for appellants and learned AGP for respondents – State.

5. Learned advocate for claimants submits that Special Land Acquisition Officer has considered acquired lands as irrigated lands. However, the reference Court has erred in treating the lands as seasonally irrigated lands. There is a well situated in acquired land, but reference Court has erroneously denied compensation of irrigated land on the ground that no sale receipts of crops are placed on record. He submits that reference Court cannot go behind the award of Special Land Acquisition Officer. Reference Court has committed error in deducting 65% while assessing compensation. Though the sale instance is rightly relied upon by the reference

Court, it erred in deducting 65% amount from the consideration amount of sale instance on untenable ground. In spite of there being revenue record, reference Court has proceeded to hold that sale deed is not from the same village. In support of his submissions, learned advocate relied on ***Chindha Fakira Patil (Dead) Through L.Rs. Vs. Special Land Acquisition Officer, Jalgaon, [2012(2) Mh.L.J. 530]*** and ***Raghunath Baba Pathare & Others Vs. State of Maharashtra [2009(4) Mh.L.J. 288]***.

6. Per contra, learned AGP supported the impugned judgment and awards. He submits that lands were acquired from the vicinity of Grampanchayat Narayangao, for percolation tank. The sale instance relied upon by claimants is of Ambad City which is 15 Km away from the acquired land. Further submission is that, the sale instance relied upon is of smaller area whereas the acquisition is of larger area. Therefore, reference Court has rightly made deduction of 65%. There is no material placed on record by claimants to show that acquired lands are irrigated lands. 7/12 extracts placed on record show that the lands of claimants are Jirayat lands. Though well is shown in 7/12 extract, it is not clear as to where the well is situated and who is the owner of well. He, therefore, submits that no case is made out by claimants to interfere in the impugned judgment and awards.

7. Perusal of record shows that in E-statement the Special

Land Acquisition Officer has treated part of land Gut Nos.50, 268 and 269 as partly irrigated and partly Jirayat. 38 R land acquired from Gut No.51 is treated as irrigated land, however, compensation is calculated at Rs.655 per R and the total compensation of Rs.49,780/- is shown in column No.12 i.e. of irrigated land.

There is evidence on record in the form of 7/12 extract of land Gut No.268 (Exhibit-28) which shows that in 59 R land acquired from Gut No.268 there is a common well and crop entries show that cash crops like sugarcane, sweet lime and cotton are taken in the said land.

In 7/12 extract of land Gut No.269 well is shown in other rights column and crop entries of cash crop cotton are reflected. It is also recorded that claimant Rohidas Balaji Pangare has a well in his portion of land in Gut No.269.

The 7/12 extract of land Gut No.50 shows that claimant Ankush Gandge has separate well in the said land and there are crop entries of cash crops like cotton and sweet lime.

8. In view of decision in ***Chindha Fakira Patil*** (supra) lands of claimants are required to be treated as irrigated lands. Presence of well in claimants' lands is supported by 7/12 extract. So far as land Gut No.51 is concerned, Special Land Acquisition Officer has already treated the same as irrigated land. Therefore, merely because claimants failed to place on record receipts showing sell of

cash crops, the said lands cannot be treated as seasonally irrigated lands. Finding to that effect recorded by the reference Court is, therefore, liable to be interfered with.

9. Sale instance at Exhibit-29 relied upon by claimants as well as the reference Court is of the year 1999 and it is of the land from Kasarwadi, Taluka Ambad, Dist. Jalna, by which Baburao Dagaduba Kharat sold 22(III) Gunthe land from Survey No.31/2 to Dwarkadas Ritkaran Joshi for consideration of Rs.1,15,000/-. Reference Court, however, has deducted 65% from the market value of the said sale instance on the specious ground that land under sale deed was abutting to the land of purchaser and therefore, higher value is given by purchaser. In sale instance, the land is sold for consideration of Rs.7,000/- per R. Reference Court has observed that claimants have placed nothing on record to show that land in sale instance is nearby land of acquired lands, so also, claimants have produced sale instance of different villages. While making this observation, reference Court has ignored certificate Exhibit-32 issued by Talathi, Ambad, Dist. Jalna, on 28/12/2015, stating that Narayangaon is a revenue village under Saja Ambad and it is also known as Kasarwadi. Narayangaon and Kasarwadi is one and the same village. In view of certificate Exhibit-32 reference Court has erred in making the observation that claimants have produced sale instance of different villages. Reference Court has

assessed value of Jirayat land at Rs.7,000/- per R. Even if this amount is taken as market value of Jirayat land, reference Court has deducted 65% from the said market value by relying on ***Shrimati Vishwanath Acharya Through L.Rs. Vs. Special Land Acquisition Officer and Others [2011 LAC 607 Bombay]***. Reference Court has misread and misconstrued said decision and misdirected itself by placing reliance on the same.

10. Coming to the objection raised by learned AGP that the sale instance is of smaller piece of land and the acquisition is of larger area, the said argument can be accepted to the extent of land of claimant Ankush Gandge, as from Gut No.50, his 1 Acre 99 R land is acquired, so far as claimant Rohidas Pangre is concerned, from Gut No.269 his 1 Acre 44 R land is acquired. Considering the area under acquisition, 25% can be deducted from the market value assessed by reference Court. Reference Court has assessed market value @ Rs.7,000/- per R for Jirayat land. For irrigated land market value would be Rs.14,000/- per R. 25% will have to be deducted only to the extent of claimants Ankush Asraji Gandge and Rohidas Balaji Pangre, and not for other claimants.

11. Reference Court while assessing compensation has ignored the above aspect and has erroneously proceeded to hold the acquired lands as seasonally irrigated lands by ignoring relevant records. Findings recorded by reference Court to that extent are unsustainable in law and facts of present case.

12. In the result, following order:-

ORDER

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

(II) Claimants in First Appeal Nos.3177/2018, 3170/2018 and 2186/2019 are held entitled for compensation @ Rs.14,000/- per R, along with all consequential statutory benefits.

(III) Claimants in First Appeal Nos.160/2019 and 161/2019 are held entitled for compensation @ Rs.10,500/- per R along with all consequential statutory benefits.

(IV) While paying compensation, the compensation already received by claimants shall be deducted.

(NITIN B. SURYAWANSHI, J.)