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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.383 OF 2019

Dnyaneshwar Shenfal Bhute
Age - 45 years, Occ - Agriculture
R/o Rahimabad, Taluka - Sillod
District - Aurangabad

APPELLANT

VERSUS

1. The State of Maharashtra
Through the Collector, Aurangabad
2. The Special Land Acquisition Officer,
Krushna Khore Vikas Mahamandal
Collector Office, Aurangabad
3. The Executive Engineer,
Minor Irrigation (Local Sector)
Aurangabad

RESPONDENTS

AND

FIRST APPEAL NO.384 OF 2019

1. Shenfald Laxman Bhute (Deceased)
Through LRs

APPELLANTS

1A Dwarkabai Shenfad Bhute (Deceased)
Through LRs

1A-1 Bhagwat Shenfad Bhute
Age - 38 years, Occ - Agriculture

1B-2 Dnyaneshwar Shenfad Bhute
Age - 42 years, Occ - Agriculture

1C-3 Sulochanabai Laxman Sarode
Age - 48 years, Occ - Agriculture

All R/o Rahimabad, Taluka - Sillod
District - Chh. Sambhajinagar

VERSUS

1. The State of Maharashtra
Through the Collector, Aurangabad
2. The Special Land Acquisition Officer,
Krushna Khore Vikas Mahamandal
Collector Office, Aurangabad
3. The Executive Engineer,
Minor Irrigation (Local Sector)
Aurangabad

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Mr. N. J. Pahune Patil, Advocate for the appellants
Mr. D. J. Patil, AGP for respondents - State
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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 5th SEPTEMBER, 2024
PRONOUNCED ON : 26th SEPTEMBER, 2024

JUDGMENT :

1. Admit.
2. Heard finally with the consent of learned advocates for the parties.
3. These appeals are filed by original claimants challenging common Judgment and Award dated 8th January, 2014 passed by learned 3rd Joint Civil Judge, Senior Division, Aurangabad in Land Acquisition References No. 447 of 2006 and 453 of 2006.
4. Lands belonging to the claimants from Gut No. 329/p, admeasuring 58 R and from Gut No. 345 admeasuring 66 R, respectively, are acquired by the respondents for construction of Rahimabad Percolation Tank No. 3.

5. Notification under section 4 of the Land Acquisition Act was published in the village on 8th June, 2003 and the Special Land Acquisition Officer declared final Award on 22nd June, 2005 and granted compensation @ Rs.650/- per *R*, treating the acquired lands as dry lands. In the Land Acquisition References, the Reference Court enhanced the compensation @ Rs.3,000/- per *R*. By the present First Appeals, the claimants seek enhanced compensation for their acquired lands.

6. Heard learned advocate for the appellants - claimants and learned AGP for the respondents. Perused the Record, the impugned Judgment and Award and the short written notes submitted by learned advocate for the claimants.

7. In support of their claim, that the acquired lands were irrigated lands, the claimants have placed on record electricity bills of 5 HP pumps, fitted on the wells situated in their remaining lands. Certificate issued by Talathi of village Rahimabad mentions that the Record of 7/12 extract of the acquired lands of the years 1999-2000, 2000-2001, is not available in Tahsil Office. In the note, it is stated that the acquired lands are irrigated lands.

8. This evidence is sufficient to hold that the acquired lands were irrigated lands. The Reference Court has ignored the ratio in

“Chindha Fakira Patil V/s State of Maharashtra” (2011) 10

SCC 787, while treating the acquired lands as seasonally irrigated lands. The said finding of the Reference Court is, therefore, unsustainable in law and facts of the present case.

9. Claimants have relied on sale deed Exhibit-21 in LAR No. 447 of 2006, by which 20 R land out of gut No. 260 of village Rahimabad was sold for a consideration of Rs.1,82,000/- (i.e. @ Rs.9,100/- per R). Admittedly, this land was a dry land. The Reference Court has refused to rely on the consideration amount mentioned in the said sale instance, on the ground that the same is in between two brothers. It is ignored that other co-owners have given consent to the said sale transaction. There is nothing on record to show that only because the sale instance is in between two brothers, incorrect consideration amount is mentioned in the same. It is, thus, clear that the Reference Court has drawn unwarranted inference and has erroneously ignored this sale instance without justifiable reason.

10. Indisputably, sale instance at Exhibit-21 is of a dry land, by which land is sold @ Rs.9,100/- per R. This sale instance, since is of the year 2002, i.e. one year prior to the date of notification under section 4 of the Land Acquisition Act, in term of **“Mehrawal Khewaji Trust V/s State of Pubjab” 2012 AIR**

SCW 2822 10% increase per year needs to be added in the said market value. Thus, market value of dry land comes to Rs.10,010/- per *R*. For irrigated land, double the amount of dry land needs to be taken as market value. Hence, in the present case, market value of irrigated land comes to Rs.20,020/- per *R*.

Taking into consideration sale instance at Exhibit-21, is of a smaller area, it would be appropriate in the facts of the present case, to deduct 10% from the market value. By deducting 10% from Rs.20,020/-, market value of the acquired land comes to Rs.18,020/- per *R*, to which claimants are entitled to. Since the Reference Court has awarded compensation @ Rs.3,000/- per *R* to the claimants, the said amount needs to be deducted from the enhanced compensation. Thus, the claimants are entitled for enhanced compensation of Rs.15,020/- per *R*.

11. Claimants from the same village, Rahimabad, whose lands were acquired for construction of Percolation Tank No. 6, filed First Appeals for enhancement of compensation. The only difference in those First Appeals and the present First Appeals is that in those cases, notification under section 4 of the Land Acquisition Act was published on 26th April, 2006 and final Award was declared by the Special Land Acquisition Officer on 23rd June, 2009. In those First Appeals also, the same sale instance (Exhibit-

21 in present First Appeals) was relied upon and this Court, by order dated 8th August, 2024, passed in First Appeal No. 2239 of 2015 and connected matters, enhanced compensation @ Rs.20,400/- per *R* for irrigated lands, to the claimants therein.

Admittedly, lands involved in the present First Appeals are from the same village and are situated at a close distance from the acquired lands in those matters.

12. In the light of aforesaid reasons, First Appeals deserve to be allowed. Hence, following order:

ORDER

- A. First Appeals are partly allowed with proportionate costs.
- B. Common Judgment and Award passed by Reference Court in LAR Nos. 447 of 2006 and 453 of 2006 dated 8th January, 2014, is hereby modified and appellants / claimants are held entitled for enhanced compensation of Rs.15,020/- per *R* for their acquired lands, along with all statutory benefits.
- C. Claimants shall pay additional Court fees on the enhanced compensation as per rules.

**[NITIN B. SURYAWANSHI]
JUDGE**