



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 919 OF 2017

Jagdish s/o Kishanlal Joshi
Age : 57 years, Occupation : Agril.,
R/o Shiradhon, Taluka Kallam,
District Osmanabad.

... Appellant
[Orig. Claimant]

Versus

1. The State of Maharashtra
Through the Collector,
Osmanabad.
2. The Executive Engineer,
Minor Irrigation Division,
Osmanabad.
3. The Special Land Acquisition
Officer No.2, Osmanabad.

... Respondents

.....
Mr. Aashish T. Jadhavar, Advocate for the Appellant.
Mr. N. D. Batule, APP for Respondent Nos. 1 and 3.
Mr. Anand Chavre, Advocate for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 11.07.2025

Pronounced on : 16.07.2025

JUDGMENT :

1. In this First Appeal, the judgment and order dated 05.02.2014 passed by learned Joint Civil Judge Senior Division, Osmanabad, partly allowing Land Acquisition Reference No. 549 of 2001 is taken exception to, on various grounds.

2. It is pointed out by learned counsel for the appellant that, land of the appellant along with lands of other land-owners located in village Shiradhon came to be acquired for medium project. All lands were in same block number. After Notifications issued under both, Section 4 and Section 6 of the Land Acquisition Act, the Special Land Acquisition Officer issued notice as required under Section 9 of the Act, calling upon appellant to submit his claim for compensation.

3. Learned counsel further pointed out that, the Special Land Acquisition Officer failed to consider the market price, quality of the land and awarded Rs.22,500/- per Hector which is grossly inadequate. He further pointed out that, the land in question being in close proximity to taluka Kallam, taluka Murud as well as Terna Sugar Factory, it carries high value. However, there is no proper consideration and assessment of market value. There is non consideration of quality of the land to be irrigated one. Crucial factors while determining compensation, like existence of well, trees, pipeline, fertility of the land, its potential, have not been kept in view and therefore, reference was preferred. However, even reference court has not correctly appreciated the above aspects and therefore, appellant is constrained to file the instant appeal.

4. Learned counsel pointed out that this Court, in similarly situated other First Appeals, i.e. First Appeal No. 2217/2024 decided on 30.04.2025, First Appeal No. 593/2024 decided on 30.04.2025, relying on the judgment dated 02.04.2019 while deciding First Appeal No. 654/2014, awarded just and fair compensation and hence, he urges similar treatment and similar rate of compensation. Learned counsel placed on record copies of judgments in above matters for ready reference.

5. Learned counsel for the acquiring body i.e. respondent no.2 would raise objection on two counts, i.e. firstly, in above referred matters, there was evidence about acquired lands to be perennially irrigated and there being no evidence in that regard in the instant cases; and secondly, the subject matter of present First Appeal is distinct than other lands in which First Appeals have been decided and the same cannot be taken recourse to on the ground of parity, being identical.

6. Heard at length. Perused the orders passed by this Court in above referred First Appeals. On comparative analysis, this court is more than convinced that the land of appellant is also located in the

same village namely Shiradhon and acquisition of lands in which First Appeals are dealt and decided, are also of the same village. In this connection, it would be fruitful to refer to the judgment of the Hon'ble Apex Court in ***Lal Chand v. Union of India and another*** [(2009) 15 SCC 769], wherein it has been held that, "if the acquisition is in regard to a large area of agricultural lands in a village and the exemplar sale deed is also in respect of an agricultural land in the same village, it may be possible to rely upon the sale deed as prima facie evidence of the prevailing market value, even if such land is at the other end of the village." Here, as stated above, land in question and lands in decided matters are of same village and therefore, same parameters would be attracted and would be rather decisive in taking call on the quantum of compensation. Moreover, applicant has asserted in appeal that the village is in proximity to taluka places like Osmanabad, Kallam, Murud and which are district and taluka places. Needless to say that, rates have to be higher with such fact situation.

7. It has been pointed out by learned counsel that this Court, while deciding First Appeal No. 2217 of 2024 as well as First Appeal No. 593 of 2024, has relied on the judgment of Hon'ble Apex Court in the case of ***Ningappa Thotappa Angadi (died) through Legal***

Representatives v. The Special Land Acquisition Officer and others (2020) 19 SCC 599 ; *Union of India (UOI) v. Bal Ram and others* AIR 2004 SC 3981 ; *Ali Mohammad Baig and others v. State of Jammu and Kashmir* AIR 2017 SC 1518, and has categorically emphasized the necessity of maintaining parity of compensation and avoid discrimination between the land owners who lost lands in the same acquisition.

8. Applying the above settled legal position also, apart from above discussion, which is indicative and demonstrative of the fact that in the First Appeals decided by this Court from same village having proximity to developed district and taluka places, even present appellant is entitled for similar treatment on the ground of parity.

9. As regards to objection raised by learned counsel for acquiring body, about land to be not irrigated and there to be no evidence, is concerned, the observations of this Court while deciding First Appeal No. 654 of 2014, i.e. in para 11 are borrowed wherein, after discussing the law set down by the Hon'ble Apex Court in the case of *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Pune* 1988 (3) SCC 751, this Court has quoted the observations that, the Land Reference is to be decided by making use of comparable sale

instance i.e. while determining just and reasonable market value, and that the Hon'ble Apex Court has clarified that the comparable sale instance is to be selected on the basis of proximity in between the date of publication of notification under Section 4(1) of the Act and the date of execution of sale deed (sale instance) and on the basis of the proximity in between situation of acquired lands and land under sale instance. On such lines, there are specific observations of this court in para 12 that, the acquired land in that acquisition was in Shiradhon and the land under sale instance (Exhibit 53) was of village Nipani which is just adjoining to the Shiradhon. Applying the proximity test, this Court has enhanced the compensation and has further categorically observed in para 17 that, though crop statement of the land in question therein, bearing Gat No. 420, did not show cultivation of irrigated crops, in view of existence of a well in the acquired land, though acquired land was not perennially irrigated, it was considered as seasonally irrigated land. Some crop yield is obtained which is not denied. A reference is also made to the observations of the Full Bench of this Court in ***State of Maharashtra v. Prashram Jagannath Aute and another*** AIR 2007 Bombay 167 that, market value of irrigated land is to be determined after considering the quality of land, its location and advantageous factors

10. Therefore, indisputably when land of present appellant is also of similar nature, being located in the same village, being proximate to district place and taluka place having development facilities, rule of parity does come into play.

11. In view of the above, following order is passed :

ORDER

I. The First Appeal is partly allowed.

II. The claimant is held entitled for enhanced compensation @ Rs.2890/- per are for acquired land. He shall also be entitled for statutory benefits in terms of Section 23(1A), 23(2) and 28 of the Land Acquisition Act. However, the appellant shall not be entitled for the interest and statutory benefit for the period of delay, if any, from the date of decision of Reference Court i.e. 05.02.2014 till filing of appeal before this Court.

III. Award be drawn up accordingly.

IV. The First Appeal is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]