

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD**

FIRST APPEAL NO. 3868 OF 2017

Mahadeo s/o Haribhau Shinde
age 52 yrs. Occ. Agril.
r/o Kedarwakadi, Tq. Mantha,
Dist. Jalna

... Appellant
Orig. Petitioner

VERSUS

- 1] The State of Maharashtra,
through Collector, Jalna,
 - 2] The Special Land Acquisition Officer,
Minor Irrigation Works, Jalna,
 - 3] The Executive Engineer,
Nimna Dudhana Project, Sailu,
Dist. Parbhani
- ... Respondents

WITH

FIRST APPEAL NO. 3869 OF 2017

Sakhubai w/o Tukaram Shinde,
age 52 years, occ. Agril.,
R/o Kedarwakdi, Tq. Mantha,
District Jalna.

... Appellant
Orig. Petitioner

VERSUS

- 1] The State of Maharashtra,
through Collector, Jalna,
District Jalna,

- 2] The Special Land Acquisition Officer,
Minor Irrigation Works, Jalna,
- 3] The Executive Engineer,
Nimna Dudhana Project, Sailu,
Dist. Parbhani ... Respondents

FIRST APPEAL NO. 3285 OF 2017

Balasaheb s/o Tulshiram Late
(died L.Rs.)

- 1] Sarubai w/o Babasaheb Late,
age major, occ. Agril.,
r/o Kedarwakadi, Tq.Mantha,
Dist. Jalna,
- 2] Sudhakar s/o Babasaheb Late,
age major, occ. Agril.,
r/o as above,
- 3] Kamlakar s/o Babasaheb Late,
age major, occ. Agril.,
r/o as above ... Appellants
Orig. Petitioners

VERSUS

- 1] The State of Maharashtra,
through Collector, Jalna,
District Jalna,
- 2] The Special Land Acquisition Officer,
Minor Irrigation Works, Jalna,
- 3] The Executive Engineer,
Nimna Dudhana Project, Sailu,
Dist. Parbhani ... Respondents

FIRST APPEAL NO. 3287 OF 2017

Sheshrao s/o Thavra Rathod,
age 42 years, occ. Agril.,
r/o Kedarwakadi, Tq.Mantha,
Dist. Jalna,

... Appellant
Orig. Petitioner

VERSUS

- 1] The State of Maharashtra,
through Collector, Jalna,
District Jalna,
 - 2] The Special Land Acquisition Officer,
Minor Irrigation Works, Jalna,
 - 3] The Executive Engineer,
Nimna Dudhana Project, Sailu,
Dist. Parbhani
- ... Respondents

FIRST APPEAL NO. 3288 OF 2017

Kundlik s/o Ashroba Kavhale,
age 43 years, occ. Agril.,
r/o Kedarwakadi, Tq.Mantha,
Dist. Jalna,

... Appellants

Orig. Petitioners

VERSUS

- 1] The State of Maharashtra,
through Collector, Jalna,
District Jalna,
 - 2] The Special Land Acquisition Officer,
Minor Irrigation Works, Jalna,
 - 3] The Executive Engineer,
Nimna Dudhana Project, Sailu,
Dist. Parbhani
- ... Respondents

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Mr. Kailas B. Jadhav, advocate for the appellants
Mr. A.M.Phule, Mr. B.A.Shinde, Mr. S.S.Dande
A.G.P. for respondent nos. 1 and 2
Mr.S.G.Bhalerao, Mr. S.C.Arora, advocate for
respondent no.3

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CORAM : K.L.WADANE, J.

Reserved On : 26.09.2017

Pronouncement on : 05.10.2017

J U D G M E N T :

Heard Mr. K.B.Jadhav, learned counsel
appearing on behalf of the appellants in all
Appeals.

2. First Appeal Nos. 3868 and 3869 of 2017
have been already admitted by this Court on
9.8.2017 and are pending.

There are connected First Appeal Nos.
3285, 3287 and 3288 of 2017. **Admit.**

Mr. A.M.Phule, Mr. B.A.Shinde and
S.S.Dande learned A.G.P. for respondent nos. 1 and
2 and Mr. S.C.Bora, learned counsel for respondent
no.3 waive service of notice on admission in above
appeals.

3. With the consent of learned counsel for the parties, the appeals are taken up for final hearing.

The parties are referred by their original status.

4. The present appeals are filed by the appellants for enhancement of compensation awarded to them by the learned District Judge-2, Jalna by judgment and award, passed in Land Acquisition Reference Nos. 41 of 2001 and No. 202 of 2002 on 22.8.2008, and in Land Acquisition Reference Nos. 23 of 2001, 338 of 2002 and No. 38 of 2001 on 25.7.2008. Lands of the appellants in all the appeals were acquired for Nimna Dudhana Project from the village Kedarwakadi, Taluka Mantha, District Jalna.

5. The appellants in First Appeal Nos. 3868 and 3869 of 2017 claimed that their lands acquired for the said project were of irrigated, non-irrigated with fruit bearing trees. In First

Appeal Nos. 3285, 3287 and 3288 of 2017, the appellants claimed that their lands acquired for the said project were of non-irrigated/Jirayat lands. Therefore, the claim of the appellants is to be determined as per their categorization of the acquired lands.

6. The evidence in support of claim of the claimants/appellants is considered in Land Acquisition Reference No. 181 of 2001 as the basis for deciding other Land Acquisition References. Hence, the said evidence is adopted for decision of these appeals.

7. It was the case of the appellants before the Special Land Acquisition Officer that Lands owned by the appellant situated at village Kedarwakadi, Taluka Mantha, District Jalna are irrigated, non-irrigated with fruit bearing trees in First Appeal Nos. 3868 and 3869 of 2017 and non-irrigated/Jirayat in First Appeal Nos. 3285, 3287 and 3288 of 2017. As aforesaid, lands were

acquired by the respondents for Nimna Dudhana Project. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was published in the Maharashtra Government Gazette on 13.5.1995. Notice under Section 12(1) of the Act was issued on or about 2.6.1999. The possession of the acquired lands and other structures and trees were taken on different dates as per the documents produced on record and payment of compensation was made on or about 2.6.1999, which was accepted by the petitioner under protest.

8. The Special Land Acquisition Officer has awarded total compensation for the lands acquired of the respective appellants at the rate of Rs.1,800/- per Are in First Appeal Nos. 3868 and 3869 of 2017 and Rs.1,200/- per Are in First Appeal Nos. 3285, 3287 and 3288 of 2017 and for Potkharab land at the rate of Rs.600/- per Are as follows : -

In Land acquisition Reference No. 41 of 2001 for land 1 Hectare 06 Are from Gut No. 43/1C, the claimants claimed compensation before the Special Land Acquisition Officer Rs. 2,07,112/- and the Special Land Acquisition Officer has awarded total compensation of Rs. 1,10,888/-.

In Land acquisition Reference No. 202 of 2000 for land 0.35 Hectare from Gut No. 43/2A, the claimants claimed compensation before the Special Land Acquisition Officer Rs. 1,10,567/- and the Special Land Acquisition Officer has awarded total compensation of Rs. 38,903/-.

In Land acquisition Reference No. 23 of 2001 for land 0.82 Hectare from Gut No. 7/4, the claimants claimed compensation before the Special Land Acquisition Officer Rs. 82,935/- and the Special Land Acquisition Officer has awarded total compensation of Rs. 53,792/-.

In Land acquisition Reference No. 338 of 2002 for land 1.24 Hectare from Gut No. 22/4B, the claimants claimed compensation before the Special Land Acquisition Officer Rs. 1,50,000/- and the

Special Land Acquisition Officer has awarded total compensation of Rs. 82,366/- including for Potkharab land 0.02 Hectare.

In Land acquisition Reference No. 38 of 2001 for land 4.43 Hectare from Gut No. 10/1, the claimants claimed compensation before the Special Land Acquisition Officer Rs. 4,07,667/- and the Special Land Acquisition Officer has awarded total compensation of Rs. 3,01,883/- including potkharab land of 0.10 hectare.

9. Being aggrieved by the amount of compensation awarded by the Special Land Acquisition Officer, the appellants preferred Applications under Section 18 of the Act to the Collector, Jalna, who forwarded it for adjudication to the District Judge, Jalna. Before Reference Court, the appellants claimed compensation at the rate of Rs.2,00,000/- per hectare for non-irrigated land, Rs.3,00,000/- for seasonally irrigated land and Rs.4,00,000/- for perennially irrigated land including consequential

benefits such as solatium, component and interest as provided under the Act. The claimants also claimed additional compensation for trees and well in their acquired lands.

10. Common grounds raised by the appellants before the Reference Court were that the the Special Land Acquisition Officer has not considered the quality of land, fertility and advantageous situation. No legal inquiries were made. The appellants claim that the Special Land Acquisition Officer has not considered the income of the lands. The respondents have totally ignored the factors required to be considered while determining the compensation as provided under Section 23 of the Act. The method compared and adopted of the ready recknor is unsuitable for awarding just compensation to the petitioners. The sale instances considered by the Special Land Acquisition Officer did not reflect correct and proper market value of the acquired lands.

11. Petitioners have also submitted that village Kedarwakadi is connected to Bageshwari Sahakari Sakhar Karkhana. The lands acquired of the petitioners were fertile lands. The Special Land Acquisition Officer ought to have awarded compensation at the rate of Rs.25,000/- to Rs.30,000/- per Are. Thus, the petitioners have prayed to grant enhanced compensation for their lands acquired.

12. The State/respondents resisted the claim contending that the enhancement in compensation claimed by the petitioners is exorbitant and liable to be rejected. The Special Land Acquisition Officer has properly considered the situation of lands under acquisition and assessed the market price for determining the compensation by considering the other factors on the date of Section 4 notification. The Special Land Acquisition Officer has classified the lands on the basis of its quality of soil assessment and other factors. The Special Land Acquisition

Officer has also considered the genuine sale instances. The award passed by the Special Land Acquisition Officer is based upon sound and cogent reasons. The amount of compensation awarded is adequate and hence, the respondents contended that the petitioners are not entitled for enhanced amount of compensation. Thus, the respondents have prayed that the Applications deserve to be dismissed.

13. Reference Court has observed in the judgment that the petitioners have not produced and proved the valuation report in support of their claim for fruit bearing trees. No expert opinion as mentioned in the petition as regards additional compensation for well is produced on record. Hence, no separate amount of compensation is granted by the Reference Court in respect of well and trees.

14. Considering the oral and documentary evidence produced on record, the Reference Court

held that the compensation awarded by the Special Land Acquisition Officer is inadequate, and therefore, the petitioners in First Appeal Nos. 3868 and 3869 of 2017 are entitled for enhanced compensation at the rate of Rs.1,800/- per Are for their irrigated/non-irrigated lands with fruit bearing trees and in First Appeal Nos. 3285, 3287 and 3288 of 2017 the petitioners are entitled for compensation at the rate of Rs.1,200/- per Are for their non-irrigated/Jirayat lands, with other benefits considering the crop inspection column of 7/12 extracts. Reference Court granted the amount of compensation as below : -

LAR No	Gut No.	Area H. Are	Ref. Court awarded	SLAO awarded	Diff.
41/01	43/1C	1.06	190800	110888	79912
202/00	43/2A	0.35	63000	38903	24097
23/01	7/4	0.82	98400	53792	44608
338/02	22/4B	1.24	148000	82336	67634
38/01	10/1	4.43	531600	301683	235767

15. The present appeals are filed by the claimants seeking enhancement in the amount of compensation awarded by the Reference Court.

16. I have heard the arguments of both the learned counsel for the parties and perused the oral and documentary evidence produced on record.

17. Learned counsel for the appellants contended that the award under challenge is erroneous and is passed without proper appreciation of evidence on record. The amount of compensation awarded by the Reference Court is very meagre, insufficient, inadequate looking to the quality of lands, fertility and advantages situation. The Reference Court ought to have enhanced the compensation properly for the acquired lands.

18. Learned counsel for the appellants produced on record the judgment delivered by this Court in First Appeal No. 2649 of 2017 along with

group of appeals, decided on 31.8.2017 arising out of the Land Acquisition References in respect of the lands acquired from village Kedarwakdi, Taluka Mantha, District Jalna for Nimna Dudhana Project.

19. I have gone through the said judgment. This Court held that appellants in those appeals are entitled for compensation for the acquired lands at the rate of Rs.1,500/- per Are for non-irrigated lands, Rs./2250/- per Are for semi-irrigated lands and Rs.3,000/- per Are for perennially irrigated lands along with the statutory benefits and interest on the enhanced amount of compensation as per provisions of the Act in respect of the lands acquired from village Kedarwakdi, Taluka Mantha, District Jalna for Nimna Dudhana Project. As stated above in First Appeal Nos. 3868 and 3869 of 2017 the lands of appellants are irrigated/non-irrigated lands with fruit bearing trees and in First Appeal Nos. 3285, 3287 and 3288 of 2017 the lands of appellants are non-irrigated/Jirayat lands. Therefore, the

appellants in First Appeal Nos. 3868 and 3869 of 2017 are entitled for enhanced compensation for their acquired lands at the rate of Rs.2,250/- per Are and in First Appeal Nos. 3285, 3287 and 3288 of 2017 the appellants are entitled for enhanced compensation for their acquired lands at the rate of Rs.1,500/- per Are.

20. In the result, I pass following order.

- (i) Appeals are partly allowed.
- (ii) The market value of the lands involved in the present appeals shall be determined as per their categorization. The appellants in First Appeal Nos. 3868 and 3869 of 2017 are entitled for enhanced compensation for their acquired lands at the rate of Rs.2,250/- per Are and in First Appeal Nos. 3285, 3287 and 3288 of 2017 the appellants are entitled for enhanced compensation for their acquired lands at the rate of Rs.1,500/- per Are.

(iii) The appellants are held entitled to the statutory benefits and interest on the enhanced amount of compensation in accordance with the provisions of the Act. Interest under Section 34 of the Act shall be paid from the date of Award under Section 11 of the Act even on the amount of compensation awarded by the Reference Court.

(K.L.WADANE, J.)

dbm