

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 539 OF 2014

WITH

CA/14725/2010 IN FA/539/2014

WITH FA/540/2014 WITH CA/14787/2010 IN FA/540/2014
WITH FA/541/2014 WITH CA/14735/2010 IN FA/541/2014
WITH FA/542/2014 WITH CA/14713/2010 IN FA/542/2014
WITH FA/543/2014 WITH CA/14746/2010 IN FA/543/2014
WITH FA/545/2014 WITH CA/14715/2010 IN FA/545/2014
WITH FA/546/2014 WITH CA/14756/2010 IN FA/546/2014
WITH FA/547/2014 WITH CA/14711/2010 IN FA/547/2014
WITH FA/548/2014 WITH CA/14637/2010 IN FA/548/2014
WITH FA/549/2014 WITH CA/14641/2010 IN FA/549/2014
WITH FA/550/2014 WITH CA/14631/2010 IN FA/550/2014
WITH FA/551/2014 WITH CA/14744/2010 IN FA/551/2014
WITH FA/552/2014 WITH CA/14709/2010 IN FA/552/2014
WITH FA/553/2014 WITH CA/14795/2010 IN FA/553/2014
WITH FA/554/2014 WITH CA/14760/2010 IN FA/554/2014
WITH FA/555/2014 WITH CA/14758/2010 IN FA/555/2014
WITH FA/556/2014 WITH CA/14717/2010 IN FA/556/2014
WITH FA/557/2014

THE EXECUTIVE ENGINEER BEED IRRIGATION DIVISION
VERSUS
YESHWANTA LIMBAJI VAVHALE (DIED) LRS GYANBA YESHWANT
VAVHALE AND ORS

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Advocate for Appellant :Smt. Deshpande Geeta L.

AGP for Respondents:Mr. S.P.Dound

Mr. Deshmukh Ramraje A. Adv.for R/1(1),(2),(3)

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CORAM : K. K. TATED, J.

Dated: August 28, 2014

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PER COURT :-

1. Heard learned Counsel for the parties.
2. Earlier, this Court (Coram: T.V.Nalawade, J.), by order dated 8th July, 2014, made it clear that all these matters will be disposed of finally at agp/-

the stage of admission. Hence, all these matters are taken on Board for final hearing at the stage of admission itself.

3. These appeals are filed by original defendant no.2 / acquiring body, challenging the judgment and award dated 12th June, 2008, passed by the Additional District Judge-I, Ambejogai, in Land Acquisition References, awarding enhanced compensation in respect of the acquired property.

4. Learned Counsel Mrs. Geeta Deshpande appearing on behalf of the appellant submits that the Reference Court specifically recorded in paragraph nos. 11 and 14 that the respondent / original claimants failed to place on record any evidence to show that they are entitled for enhanced compensation in respect of the acquired property. She submits that in the present proceedings, the Special Land Acquisition Officer issued notification under Section 4 of Land Acquisition Act dated 11th Feb., 1979, for acquiring respondent / original claimants properties for Borna Medium Project. After following due process of law, the Special Land Acquisition Officer passed award dated 15th August 1982, and awarded compensation in respect of acquired property. Being aggrieved by the said award, the respondents / claimants preferred References under Section 18 of the Land Acquisition Act for enhancement of the compensation. Those References were decided by the Reference Court by common judgment dated 12th June,

agp/-

2008, and awarded enhanced compensation.

5. Learned Counsel Mrs. Geeta Deshpande for the appellant acquiring body submits that similar issues were involved in connected First Appeal Nos.901/2008 to 906/2008. She submits that this Court (Coram: Abhay S.Oka, J.), by judgment dated 13th June, 2008, held that the Reference Court has no jurisdiction to grant enhanced compensation if the claimant failed and neglected to place on record evidence / documents to that effect. She mainly relies in paragraph nos. 6 and 7 of that order which reads thus:

"6. The learned Judge has invoked the clause 'fifthly'. The learned Judge has noted that as a result of acquisition of the house properties, the claimants were required to shift from their respective places of residence and this fact is accepted by the appellant. In paragraphs 17 and 18 of the judgment, the learned Judge has discarded the evidence adduced by the claimants regarding the market value of the acquired house property. The learned Judge recorded a specific finding that there was no material on record as regards the particulars of place to which the claimants have shifted. He also held that there was no evidence as regards the extent of expenditure required to be incurred by the claimants. After recording the finding regarding absence of evidence, the learned Judge came to the conclusion that each claimant is entitled to the symbolic amount of Rs.1,000/-. The said approach of the learned Judge is obviously contrary to the law. A claimant in the claim petition under Section 18 of the said Act is in the position of a plaintiff and initial burden to prove that the compensation offered by the Land Acquisition Officer is inadequate is always on the claimant."

"7. After having recorded a finding that the claimants have failed to discharge the burden on them, the symbolic compensation of Rs.1000/- could not have been granted by the learned Judge. On plain reading of Section (1A) of Section 23, the benefit mentioned thereunder could not have been awarded on the compensation payable under the head 'fifthly'. The said

component of benefit can be awarded only on the market value. The same is the case with the benefit under sub-section 2 of Section 23 of the said Act."

On the basis of these submissions, learned Counsel for the appellant submits that the impugned judgment passed by the Reference Court needs to be set aside.

6. Learned A.G.P. Mr. S.P.Dound appearing on behalf of respondent State submits that he is adopting the submissions made by the learned Counsel for the appellant.

7. On the other hand, learned Counsel Mr. R.A.Deshmukh appearing on behalf of respondents / original claimants, vehemently opposed the present First Appeals. He submits that the amount awarded by the Reference Court is a meager amount. He further submits that the appeals, as it is filed by the appellant, are not maintainable in this Court in view of provisions of Section 96(1)(4) of Code of Civil Procedure. He further submits that in some of the matters, the respondents / claimants filed affidavit of evidence. Therefore, whatever enhancement granted by the Reference Court is based on evidence on record and there is no substance in the present First Appeals and the same needs to be dismissed with costs.

8. After hearing both the sides at length, following issues involve in the present First Appeals for my consideration:

agp/-

ISSUES:

1) Whether the First Appeals, as it is, filed by the appellant are maintainable in view of provisions of Section 96(1)(4) of Code of Civil Procedure ?

2) Whether the additional compensation awarded by the Reference Court is based on evidence on record ?

9. The objection raised by the respondents / original claimants about maintainability of the First Appeals in this Court as per provisions of Section 96(1)(4) of Code of Civil Procedure is not maintainable because, as per Section 54 of the Land Acquisition Act, 1894, appeal against judgment and award passed by the Reference Court under Land Acquisition Act is maintainable in the High Court being a special enactment. Hence, that issue is accordingly answered.

10. Admittedly, in the present proceedings, the Reference Court specifically recorded in the judgment that the respondents / original claimants failed and neglected to place on record any evidence to show that they are entitled for additional compensation in respect of the acquired property. In spite of this finding, the Reference Court, on humanitarian ground, awarded enhanced compensation in respect of the acquired property. In law, there is no provision for enhancement of compensation on humanitarian ground. Not only that, this Court (Coram: Justice Abhay agp/-

S.Oka, J.), in judgment dated 13th June, 2008, held that unless and until claimants place on record proof / evidence for additional compensation in respect of the acquired property, the Reference Court has no jurisdiction to grant additional compensation. Hence, I am of the opinion that the additional compensation awarded by the Reference Court is required to be set aside.

11. In view of above mentioned facts, all appeals preferred by the acquiring body are required to be allowed. Accordingly, I pass following order:

ORDER

a) The impugned judgments and awards passed by Ad hoc District Judge-1, Ambejogai, are quashed and set aside.

b) The References filed by Respondents / original claimants under Section 18 of the Land Acquisition Act, 1894, stand dismissed.

c) The First Appeals are accordingly allowed with no order as to costs.

d) Civil Applications for stay pending in these First Appeals do not survive and the same are disposed of.

(K. K. TATED, J.)

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agp/-