

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1339 OF 2008

The State of Maharashtra
Through The Collector,
Osmanabad.

... Appellant

... **Versus** ...

Janardhan Santram Gawade,
Age 59 yrs., Occ. Agri.,
R/o Lanjeshwar, Tq. Bhoom,
Dist. Osmanabad.

... Respondent

...

Mr. A.M. Phule, AGP for appellant
Mr. V.S. Bedre, Advocate for sole respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 31st JULY, 2020

ORDER :

1 The State has preferred the present appeal challenging the Judgment and Award passed in L.A.R. No.335/1997, dated 18.10.2002, by the learned Joint Civil Judge Senior Division, Osmanabad, which is hereinafter referred to as the 'Reference Court'.

2 The land, which is the subject-matter of this appeal, was acquired for the purpose of “Dokewadi Medium Project at village Lanjeshwar, Tq. Bhoom, Dist. Osmanabad”, in File No.1989/LNQ/A-40. The Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') in that regard was published in the official gazette on 11.04.1991. The Special Land Acquisition Officer had granted the compensation @ Rs.40,000/- per hectare/-. Dissatisfied with the amount of compensation so granted, the claimant preferred the application under Section 18 of the Act, which was adjudicated by the reference Court. The reference Court, after having considered the oral and documentary evidence, brought on record before it, has determined the market value of the acquired land @ Rs.1,00,000/- per hectare to the claimant, and has accordingly enhanced the amount of compensation.

3 It is the contention of the appellant in this appeal, that the reference Court has arbitrarily enhanced the amount of compensation without there being any cogent evidence therefor. It is further contended, that the sale instance, which is relied upon by the reference Court while determining the market value of the land, cannot be held to be the sale instance of the comparable land. It was further contended, that the Special Land Acquisition Officer, in fact, had correctly determined the market value

of the acquired land by visiting personally and by considering the relevant sale instances, which have occurred in the relevant period and as such, no interference was called for. The learned Additional Government Pleader, therefore, prayed for setting aside the Judgment and award passed by the reference Court and to restore the Award passed by the Special Land Acquisition officer in the matter.

4 Heard the learned Additional Government Pleader appearing for the acquiring body, who has made submissions in support of contents of appeal memo. Learned Advocate appearing for the respondent resisted the submissions made on behalf of the State. The learned Advocate raised the preliminary objection stating, that in view of the policy adopted by the Government, vide Government Resolution dated 3rd November, 2016 read with Corrigendum dated 25th February, 2017, the present appeal is not liable to be prosecuted. Further, since the market value, as has been determined by the Reference Court, is less than four times of the market value, as was offered by the Special Land Acquisition Officer, the learned Advocate, in the circumstances, prayed for rejection of the appeal on preliminary grounds. The learned Advocate further submitted, that even if the matter is considered on merits, the reference Court has passed a well-reasoned order by considering the evidence on record. The learned Advocate, in the

circumstances, prayed for dismissal of the appeal on both the aforesaid counts.

5 Perused the impugned Judgment. On perusal of the Judgment, it is revealed that the reference Court has elaborately considered the evidence on record, more particularly the sale instances brought on record at Exhs.16 and 17 and has determined the market value of the acquired land. Reference Court has not taken any unreasonable view nor enhanced the market value of the acquired land arbitrarily or on excessive side. Moreover, in view of the policy adopted by the Government vide the aforesaid Government Resolution and Corrigendum, the present appeal, in fact, is not liable to be prosecuted further. The fact remains, that the market value, as has been determined by the Reference Court, is less than four times of the market value as was offered by the Special Land Acquisition Officer. In such circumstances, considering the Government policy, the present appeal could not have been prosecuted further by the State. Even on merits, as I have earlier noted, there seems no case for any interference in the impugned Judgment and Award. No fault is found in respect of interest also. For all above reasons, the appeal deserve to be dismissed and is accordingly dismissed, however, without any order as to costs. Similar view was taken in group of petitions in First Appeal No.1521 of 2016 (The Executive Engineer vs. Ramrao Yashwant

Wadikar (**Died**) Through L.Rs.) and other matters, in First Appeal No.2272 of 2016 (The Executive Engineer vs. Sudam Kishanrao Madale and others) and other matters, and in First Appeal No.2281 of 2016 (The Executive Engineer vs. Tulsabai w/o Nivrutti Madale and others) and other matters, decided on 28.01.2019 by this Court. There is no hesitation in taking same view.

6 The amount of compensation, if deposited by the acquiring body in this Court or with the reference Court, the claimant is permitted to withdraw the same with accrued interest thereon, if not already withdrawn by him.

(Smt. Vibha Kankanwadi, J.)

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