



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2673 OF 2006

1. The State of Maharashtra,)
(The Special Land Acquisition Officer,)
Scarcity No.1, Nashik))
2. The Executive Engineer,)
Nandur Madhameshwar Project Division,)
Nashik)..Appellants

versus

- I. Shri Namdeo Shankar Govardhane,)
(deceased) through legal heirs)
1. Santosh Namdeo Govardhane)
2. Dhananjay Namdeo Govardhane, age 25,)
Occ. Agri.)
3. Devidas Namdeo Govardhane, age 21)
Occ. Agri.)
4. Smt. Laxmibai Namdeo Govardhane,)
Age 62, Occ. Agri.)
All r/o Sanjegaon, Tal. Igatpuri,)
Dist. Nashik)
- II. The Godawari Marathwada Irrigation)
Development Corporation, through the)
Executive Engineer, Nandur, Madhmeshwar)
Project Division, Near Ved Mandir, Trimbak)
Road, Nashik-2.)..Respondents

WITH

FIRST APPEAL NOS. 2674 TO 2714 OF 2006

WITH
CIVIL APPLICATION NOS. 4709 OF 2006 TO 4750 OF 2006
WITH
CIVIL APPLICATION NOS. 4536 AND 4537 OF 2007
WITH
CROSS OBJECTION ST. NO. 20108 OF 2007

Mr. K.K. Tated, Assistant Government Pleader, for the appellants in FA Nos.2673 to 2695 of 2006.

Mr. Y.M. Nakhwa, Assistant Government Pleader, for the appellants in FA Nos.2696 to 2703 of 2006.

Mr. B.H. Mehta, Assistant Government Pleader, for the appellants in FA Nos.2704 to 2708 of 2006.

Mrs. G.P. Mulekar, Assistant Government Pleader, for the appellants in FA Nos.2709 to 2714 of 2006.

Mr. P.L. Bhujbal for respondent Nos. I (1 to 4).

Mr. K.B. Sonwalkar for respondent No.2.

CORAM: SWATANTER KUMAR, C.J. &
DR. D.Y. CHANDRACHUD, J.

Judgment reserved on : October 05 , 2007
Judgment delivered on: October 11, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

1. The Special Land Acquisition Officer, acting on behalf of the State Government, issued a notification dated 3rd March, 1994 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") intending to acquire the lands from village Sanjegaon, Tal.

Igatpuri, Dist. Nashik, for Mukne Dam project. The declaration under section 6 of the Act was issued on 10th June, 1994. After complying with the provisions of the Act and after opportunity being given to the claimants, the Special Land Acquisition Officer pronounced the Award on 14th July, 1995 and awarded compensation to the claimants ranging from Rs.40,000/- to Rs.55,000/- per hectare depending upon the nature of the acquired lands.

2. Dissatisfied with the amount of compensation awarded by the Special Land Acquisition Officer, on 31st August, 1995, the claimants preferred References under Section 18 of the Act.

3. The parties led oral and documentary evidence before the Reference Court. The learned Jnd Ad-hoc Additional District Judge, Nashik, vide his judgment and Award dated 24th March, 2006, enhanced the compensation payable to the claimants ranging from Rs.84,616/- per hectare for potkharab land, Rs.1,69,231/- per hectare for jirayat land to Rs.2,11,439/- per hectare for Bagayat land. The claims of different claimants were disposed of by the same judgment.

4. Aggrieved by the enhancement of the compensation by the

Reference Court, the State has filed in all 42 First Appeals. In one of the First Appeals, i.e. First Appeal No.2689 of 2006, Cross-objection bearing (Stamp) No.20108 of 2007 has been filed. However, the only objection raised in this cross-objection is that the Reference Court has fallen in error on facts and in appreciation of the evidence inasmuch as the lands admeasuring about 2.26 hectares, which was Bagayat land belonging to the claimants in that appeal, has been treated as Jirayat land. The total land belonging to this claimant is stated to be 3.58 hectares. Resultantly, by this judgment we will be disposing of all the above mentioned 42 appeals as also the cross-objections.

5. The claimants had prayed for enhancement of compensation on various grounds before the Reference Court. It is their contention that the SLAO classified the lands on the basis of assessment of land revenue and ignored the comparative sale instances as well as the location and potentiality of the acquired land viz. industrial potential and proximity to Mumbai-Agra Road. Thus, according to the claimants, they were entitled to much higher compensation than what had been awarded to them by the SLAO. Obviously, according to the State, the amount awarded by the SLAO was sufficient and there was no scope for enhancement of the awarded compensation. The Reference Court, while dealing with the respective contentions, computed the

compensation payable to the claimants and recorded the following reasons:-

“18. The claimants relied on the evidence of P.W.5 Muktabai. She deposed about the sale instance Exh. 125. Her evidence reveal that she purchased 13R land from field Gat No. 810 for Rs. 15,000/-. As per her evidence, the price was fixed as per the market value at the time of the transaction. She deposed that the land is Jirayat land. Her evidence also disclose that her field is at the distance of half kilometer from the acquired lands. She deposed that the quality of the acquired lands was superior as compared to the quality of the lands purchased by her. During her cross-examination, it is brought on record that she was summoned as witness and her sale deed was produced in few more cases of acquisition of lands. She deposed that her field was paddy crop land. She denied all the suggestions put to her during the cross examination. The counsel for the claimants argued that the Mukane Dam Project, lands of most of the cultivators of the village Sanjegaon are acquired by different notifications. So, most of the land acquisition cases are in respect of the fields at village Sanjegaon. Muktabai is examined as a witness in the cases pertaining to village Sanjegaon as her sale deed is comparable sale instance to the acquired properties. He, therefore, submitted that only on the ground of examination of Muktabai in the land acquisition cases it cannot be said that the transaction in the sale deed Exh. 125 is not bona fide.

19. Evidence of Muktabai and contents of the sale deed Exh. 125 reveal that it is the bona fide transaction. The transactions was entered in the year 1989 i.e. much before the notification under Sec. 4 of the Land Acquisition Act, for acquiring the lands at village Sanjegaon. As discussed in the foregoing paras most of the acquired fields are paddy crop lands. The land purchased by Muktabai is also paddy crop land. As discussed above the land purchased by Muktabai is in the vicinity of the acquired lands.

Considering these reasons, I come to the conclusion that the sale instances between Laxman and Muktabai is comparable sale instance to determine the market values of the acquired lands.

20. In view of the above discussion, I come to the conclusion that the sale instance Exh. 125 is the comparative sale instance to determine the market value of the acquired lands. The sale instance is dated 4/7/1989, whereas the date of notification under Section 4 in the present case is 3/3/1994. Contents of the sale deed Exh. 125 reveal that the land was purchased by Muktabai at the rate of Rs. 115385/- per hecter on 4/7/1989. There is a gap of 56 months in between the sale instance and the date of notification. Hon'ble Apex Court in the case of *Special Land Acquisition Officer vs. Mohamad Hanif* (AIR 2002 SC 1558) held that the market value of the acquired property can reasonably be determined by taking the price fixed in old comparative sale transaction as a base value and granting appreciation in the value of land at 10% per annum for every subsequent year. So, considering these observations appreciation at the rate of 10% p.a. For 56 months which comes to Rs. 53,846/- is to be added in the above market rate of Rs. 115385/- per hecter. Hence, the market price of the acquired land on the date of notification under section 4 of Land Acquisition Act comes to Rs. 169231/- per hecter for Jirayat land.

21. As discussed above, fields Gat No. 109, 114, 102 and 250 are Bagayat lands. In the case of *Kantaben Manibhai Amin and another vs. The Special Land Acquisition Baroda*, AIR 1990 SC 103) Their Lordships come to the conclusion that when there is no evidence about the extent of superiority of the Bagayat land to Jirayat land, some excess compensation over and above the market value to the Jirayat land should be provided to the Bagayat land. Hon'ble Apex Court awarded 25% excess compensation over and above the market value of the Jirayat land for the Bagayat land. I, therefore, come to the conclusion that the market value of the Bagayat land at Village Sanjegaon, on the date of notification under Sec. 4 of L.A. Act by giving 25% excess compensation over and

above that market value of Jirayat land, comes to rs. 211539/- per hector.”

6. As is evident from the above discussion, the Reference Court considered various sale instances placed before it and while differentiating between three kinds of lands awarded comparatively higher compensation to the bagayat land. In the light of the evidence led by the parties, it can hardly be disputed that the acquired land was agricultural land at the time of acquisition. Paddy crop was there in some part of the land whereas in other parts different crops were grown and some of the land was not even cultivated. In Exhibit No. 22 (LR No. 29/98), the claimant Digambar Runjaji Govardhan had stated that he used to get double crop from the acquired land and used to get nearly 40 to 50 quintals per acre the price of which used to be Rs. 800 to Rs. 850/- per quintal. According to this witness, office of the Gram Panchayat is located in the village and there are Banks and Primary Schools, and S.T. Stand at Sanjegaon. The lands located in Sanjegaon village are nearly 27 kilometres from Nashik. Mumbai-Agra Highway is at a distance of 3 to 4 kilometres from the acquired land. It must be noticed that according to this witness, the revenue assessment of the agricultural land is same since last many years and it was not increased even though the yielding capacity of the acquired

land got increased. In support of his claim, he produced on record 7/12 extracts at Exhibits 25 to 32.

7. According to Muktabai Vithoba Medhane, Witness No.5 (Exh. 124), she had purchased land Gat No. 810 from village Sanjegaon somewhere 16 years back for Rs. 15,000/-. The quality of the acquired land was much superior than the quality of the land purchased by her. Certified copy of sale deed is placed on record at Exh. 125.

8. In terms of location and potentiality there is not much differentiation. However, the lands being agricultural lands at the time of acquisition were correctly divided by the Reference Court into three categories i.e. Irrigated land, non-irrigated land and potkharab land and computed the market value accordingly. This approach of the Reference Court can hardly be faulted with. The main argument raised on behalf of the State is that even if the Reference Court was to rely upon the sale instances, then a high scale of deduction was necessary on different counts including development, huge acquisition and small pieces of land involved in the sale instances relied upon by the Claimants. According to the learned Assistant Government Pleader, the Reference Court has erred in law in relying upon sale deed Exh.

125 and in granting 10 per cent increase per year for the intervening period and thereafter computing compensation at the rate of Rs. 1,69,231/- for jirayat land and 25 per cent increase in the case of bagayat and 50 per cent decrease in the case of potkharab land. This method of computation is faulted on the ground that at least deduction of 20 to 30 per cent ought to have been applied and resultantly the amounts should have been reduced. On the contrary, the learned counsel appearing for the claimants, while relying upon the judgment of the Supreme Court in the case of *Thakarsibhai Devjibhai and others vs. Executive Engineer, Gujarat and another*, [(2001) 9 SCC 584], argued that the compensation should be determined with reference to the holding of each landholder in the acquired area and as each landholder was holder of a small chunk of land, the impact of larger or huge acquisition should not be permitted to the prejudice of the claimants.

9. Exhibits 23, 24, 109 and 125 are the sale instances produced and proved by the claimants while Exhibits 119 and 120 were proved by the State. Exhibit-24 relates to a sale transaction of village Rayambe while rest of the sale instances relate to the revenue estate of village Sanjegaon. Exhibits 118, 119 and 120 relate to Sanjegaon. The

Reference Court, while relying upon Exh. 125 which is a sale instance of land admeasuring about 13 acres in village Sanjegaon of which the sale took place on 4th July, 1989 at the rate of Rs. 1,15,385/- per hector, rejected the other sale instances on the ground that they were of small pieces of land or related to other villages. As far as evidence produced by the State, the sale consideration reflected in all such instances were even lower to the price given by the SLAO and as such were of no consequence.

10. While granting the benefit of 10 per cent increase per annum and relying upon the judgment of the Supreme Court in the case of *SLAO, Bagalkot vs. Mohd. Hanif*, AIR 2002 SC 1558, the Reference Court awarded the aforestated compensation to the claimants. The only question that arises for consideration in the present case is whether element of deduction should have been applied or not in the facts and circumstances of the case. This question need not detain us any further inasmuch as in a recent judgment of a Division Bench of this Court in the case of *The State of Maharashtra vs. Smt. Fulyabai Kisan Govardhane* (First Appeal No. 1171 of 2007 and others) where the lands from the same village i.e. Sanjegaon were acquired for the same project and the notification was issued on 2nd February, 1994 i.e. just a

few days before the notification in question in the present case, the Bench after discussing all the relevant evidence as well as the law on the subject partially accepted the State Appeals and passed the following order.

“In view of the above discussion, while allowing the appeals of the State partially, we hold and award the following compensation to the Claimants depending upon the nature of the lands which they own:

- Jirayat land:** Compensation payable in terms of Exhibit 42 Rs. 1,15,385/- per hectare plus Rs. 53,846/- (10 per cent annual increase on this value for the intervening period 4-7-1989 to 2-2-1994) = Rs. 1,69,231/- minus Rs. 42,307/- (25 per cent aggregate deduction for small piece of land). Thus the total comes to Rs. 1,26,924 per hectare for Jirayat land.
- Bagayat land:** Rs. 1,26,924/- (market value of Jirayat land) plus Rs. 31,731/- (25 per cent of market value of Jirayat land) = Rs. 1,58,655/- . Thus the total market value for Bagayat land comes to Rs. 1,58,655/- per hectare.
- Pot kharab land** Rs. 1,26,924/- (market value of Jirayat land) minus Rs. 19,038/- (15% market value of jirayat land) =Rs. 1,07,886/-. Thus, market value of Pot Kharab land is Rs. 1,07,886/- per hectare.

Claimants would also be entitled to statutory benefits of Section 23 (2) and 23 (1A) of the Act. The claimants shall also be entitled to interest on the enhanced amount in terms of Section 28 of the Act.”

11. The judgment of the Division Bench in the case of Smt. Fulyabai Kisan Govardhane (supra) is squarely applicable on fact and

law to the present case and for the reasons stated in the said judgment, we find no reason as to why similar deduction should not be applied to the facts of the present case. It may be noticed that the entire evidence with the exception of oral evidence of claimant in this case was duly considered by the Reference Court as well as by the High Court. We have no reason to take any different view either in law or on evidence on record.

12. Resultantly, the appeals filed by the State are partially allowed. The Claimants would be entitled to the relief granted in First Appeal No. 1171 of 2007 and the consequential benefits granted in that case. There is no distinguishing evidence led by the parties in the present case which can persuade the Court to take any different view.

12. The cross objections filed by one of the claimants being Cross Objection (St.) No. 20108 of 2007 is allowed in view of the conceded position on behalf of the State that the Claimants in that case would be entitled to compensation awarded to the bagayat land to the extent of 2 acres and 26 ares and for remaining area of 1 acre 32 ares as Jirayat land. To that extent, the cross objection is allowed. No other point has been raised in the cross objection and as such no further orders are called for.

13. Civil Application No. 4536 of 2007 for bringing the heirs of the original claimant is allowed subject to just exceptions. Civil Application No. 4537 of 2007 taken out by the cross objectors for condoning the delay in filing the cross objection is also allowed.

13. In view of the above discussion, the State Appeals as well as the Cross Objection are allowed to the limited extent stated hereinabove, while leaving the parties to bear their own costs.

14. In view of the disposal of the main appeals filed by the State, no orders on the Civil Application Nos. 4709 to 4750 of 2006 taken out by the State and the same are accordingly disposed of.



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CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.