

Received on : 24-03-2015
 Registered on : 24-03-2015
 Decided on : 01-01-2016
 Duration on : Y M D
 00 09 07

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION AT BILOLI
(Presided by R. B. Bhagwat)

L.A.R. No. 242/2015

(Ex. No.32)

1. **Sahebrao Madhavrao Kadam,**
Age 35 yrs. Occu. Agri
2. **Raosaheb Madhavrao Kadam,**
Age- 55 yrs, Occu-Agri,
Both R/o Yellapur,
Tq. Dharmaad Dist. Nanded.

... ***Claimants***

Vs.

- 1- **The State of Maharashtra,**
through District Collector, Nanded.
- 2- **Special Land Acquisition Officer,**
M.I.W., Nanded.
- 3- **The Executive Engineer,**
UPP Project Division No.6,
Nanded.

... ***Respondents***

Received on : 24-03-2015
Registered on : 24-03-2015
Decided on : 01-01-2016
Duration on : Y M D
 00 09 07

L.A.R. No. 243/2015

(Ex. No. 32)

1. **Sugandh Anandrao Kadam,**
Age- 30 yrs., Occu- Agricultural,
2. **Sanjay Anandrao Kadam,**

Age-40 yrs. Occu-Agri.
R/o. Yellapur, Tq. Dharmabad
Dist. Nanded

... ***Claimants***

Vs.

1- The State of Maharashtra,
through District Collector, Collectorate, Nanded.

2- Special Land Acquisition Officer,
M.I.W., Nanded.

3- The Executive Engineer,
UPP Project Division No.6,
Nanded.

... ***Respondents***

Received on : 24-03-2015
Registered on : 24-03-2015
Decided on : 01-01-2016
Duration on : Y M D
00 09 07

L.A.R. No. 244/2015

(Ex. No. 31)

- 1. Khajamiya S/o.Mohiddinsha Shaikh,**
Age- 55 yrs., Occu- Agricultural,
- 2. Maioddin Mohiddinsha Shaikh,**
Age- 50 yrs., Occu- Agricultural,
- 3. Meheboob Ramjansha Shaikh,**
Age- 48 yrs., Occu- Agricultural,
R/o Yellapur, Tq. Dharmabad
Dist. Nanded

... ***Claimants***

Vs.

1- The State of Maharashtra,
through District Collector, Collectorate, Nanded.

2- **Special Land Acquisition Officer,**
M.I.W., Nanded.

3- **The Executive Engineer,**
UPP Project Division No.6,
Nanded.

... ***Respondents***

Received on : 26-03-2015
Registered on : 26-03-2015
Decided on : 01-01-2016
Duration on : Y M D
00 09 05

L.A.R. No. 247/2015

(Ex. No. 29)

Ganesh Nagorao Katlewad,

Age- 30 yrs., Occu.- Agricultural,

All R/o Yellapur, Tq. Dharmabad Dist. Nanded ...

Claimant

Vs.

1- **The State of Maharashtra,**
Through District Collector, Nanded.

2- **Special Land Acquisition Officer,**
M.I.W., Nanded.

3- **The Executive Engineer,**
UPP Project Division No.6,
Nanded.

... ***Respondents***

L.A.R. No. 328/2015

... *Claimant*

1- The State of Maharashtra,
through District Collector, Nanded.

2- **Special Land Acquisition Officer,**
M.I.W., Nanded.

... *Respondents*

Shri. M.L.Bhuse : Advocate for the claimants
AGP Shri. S.B. Kundalwadikar : No W.S. against respondents No.1
 & 2.
Shri. Mohd. Bahauddin : Advocate for respondent No.3.

Claim : References under Section 18 of the Land Acquisition Act,1894.

COMMON JUDGMENT

(Delivered on this 01st day of January, 2016)

- 1- The present references are filed against the award passed by the Dy. Collector (Land Acquisition officer), Nanded dated 30-12-2013. Present references have been filed for redetermination of compensation as well as enhancement in the compensation amount on the ground that the award does not consider the actual market value of the suit lands and other parameters.
- 2- All the five references are being tried and disposed off as they are clubbed together considering the similarity of the fields and as the claims arise out of one and same award.
- 3- In reference No.242/2015 0 H 10-R land out of block No.107 situated at village Yellapur, Tq. Dharmabad, Dist. Nanded was acquired. Similarly in reference No.243/15 0 H 06-R land out of block No.108 situated at village Yellapur, Tq. Dharmabad, Dist. Nanded was acquired, in reference No.244/15 0 H 23-R land out of block No.57 situated at village Yellapur, Tq. Dharmabad, Dist. Nanded was acquired, in reference 247/15 0 H 14-R land out of block No.58 situated at village Yellapur, Tq. Dharmabad, Dist. Nanded was acquired and in L.A.R. no.328/2015 0.H.18 R land out of field block no.106 of village Yellapur, Tq.Dharmabad, Dist.Nanded was acquired. Those lands were acquired for the purpose of submergence area under canal of the Urdhwa Painganga Project, canal of right sub canal of Nimtek distribution no.4, serial no.1510 to 1740 meter and serial no.1115 to 1615 meter of village Yellapur, Tq.Dharmabad. The said fields are hereinafter referred as 'suit fields' for the sake of brevity and convenience.

4- It is the contention of the claimants that the respondent No.1 had initiated proceedings of acquisition of the suit lands and the said proceeding was handed over by the respondent No.1 to the respondent No.2. The respondent no.2 published notification dated 06-09-2012 under section 4(1) of the Land Acquisition Act in the govt. gazette. The said notification was also published in local newspaper Dainik Deshounnati dated 14/09/2012, Dainik Lokpatra on 15/09/2012. Notification u/s.06 of the Land Acquisition Act came to be published on 16-05-2013 on page no.795 of the Maharashtra Official Gazette and it was also published in the local news paper Dainik Wachakmanch on 05/05/2013 and Dainik Shramik Ekjut on 07/05/2013. The claimants had raised objections after publication of the said notices u/s.04 and section 06 of the Land Acquisition Act. But those objections were not considered by the L.A.O.

5- Further according to claimants respondents did not consider the real market value of suit lands. Also they did not consider the fact that the suit lands had high potential value of yielding crops such as sugarcane, turmeric, Soyabean, sunflower, cotton, wheat, chillies, Moong and other vegetables. The village is situated at the bank of river Godavari. Because of the back water of the said river the suit lands were fertile and irrigated. The suit lands are situated beside Umari to Narsi highway. Dharmabad Taluka is at distance of about 20 k.m. from the village and Umari Taluka is at a distance of about 15 k.m. from the village. Both the said Talukas are market places for the claimants. The village is prosperous. The suit lands are situated near Bhaurao Chavan Co-operative Sugar factory Ltd. The village has all necessary facilities such as electricity, drinking water, roads, sanitation, post office and an active Gram Panchayat. All these factors have not been considered while awarding compensation.

6- Further according to claimants the award was passed behind their back. The claimants received notice under section 12(2) of the Land Acquisition Act on 10-05-2014. The claimants had withdrawn the compensation amount under protest. Hence according to them present claims are within limitation.

7- The respondents were served with notices after these references were sent to this Court. In all the references respondent no.1 and 2 did not file any written statement. Accordingly order was passed against them that present references to proceed without their written statement. Only respondent no. 3 has filed his written statement in all the five references. In his written statement the contents in para no. 1 to 3 of the references have been admitted.

8- As per the contention of respondent no.3 the remaining averments of the references are not true. According to him compensation has been determined as per the true market values of the suit lands and taking in to consideration the other parameters. Hence is praying that instant references be dismissed with costs.

9- On the basis of rival contentions of both the sides issues were framed. Following are those issues that arise for my determination. I have recorded my findings to each of them for the reasons that follow.

<u>Sr.No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1	Do the claimants prove that the compensation awarded to them by the respondent No.2 is improper and inadequate?	Negative.

<i>Sr.No.</i>	<u>ISSUES</u>	<u>FINDINGS</u>
2	Are the claimants entitled for enhanced compensation ? If yes, at what rate ?	Negative
3	What relief, order and costs ?	References are dismissed.

REASONS

10- The undisputed facts are that all the suit lands are situated at village Yellapur, Tq. Dharmabad, Dist. Nanded. Suit lands have been acquired by respondents for the purpose of submergence area under canal of the Urdhwa Painganga Project, canal of right sub canal of Nimtek distribution no.4, serial no.1510 to 1740 meter and serial no.1115 to 1615 meter. For acquisition of suit lands notification under Section 4 of the Land Acquisition Act was published on dated 06-09-2012 in the govt. gazette. The said notification was also published in local newspaper Dainik Deshounnati dated 14/09/2012 and Dainik Lokpatra on 15/09/2012. Notification u/s.06 of the Land Acquisition Act came to be published on 16-05-2013 on page no.795 of the Maharashtra Official Gazette and it was also published in the local news paper Dainik Wachakmanch on 05/05/2013 and Dainik Shramik Ekjut on 07/05/2013. The award came to be passed on 30/12/2013 by respondent no.2. The claimants received notices u/sec. 12(2) of the Land Acquisition Act on 10/05/2014. They had withdrawn the compensation amount. There is no dispute about the identity of the lands and their areas which came to be acquired by the respondents. Also there is no dispute about the ownership of the acquired lands i.e. suit lands.

As to issues No. 1 and 2 :

11- To prove the market value of the suit lands at the time of notification under section 4 of Land Acquisition Act published in the official gazette on 06-09-2012 the claimant in each reference has examined himself and has also filed on record certified copies of sale deed pertaining to field block no.116, dated 15/03/2012 for piece of land adm. 20 R, situated at Mouje Atala, Tq.Dharmabad, Dist.Nanded. In all the five references the certified copy of same sale deed has been referred. According to claimants the suit lands are situated near the land pertaining to which the above cited sale deed has been filed on record.

12- On perusal of the cross-examination of claimants it is apparent that the execution of above referred sale deed has not been disputed by the respondent no.3. The contention of respondent no.3 is that the field pertaining to which certified copy of sale deed is filed on record is of irrigated land whereas suit field are dry lands. Further that the land described in sale deed is more fertile than the suit fields. Further that the sale deed pertains to land situated at village Atala and not situated at village Yellapur. The quality of said land and suit fields is not similar in any way. The said land is situated adjacent to the village Atala (Gavthan), whereas suit lands are situated in the interior. Hence according to him the sale deed is of no help to the claimants as there is no similarity between the said lands and suit fields in any way. This contention of counsel for respondent no.3 is supported by the evidence available on record. The certified copy of sale deed filed by claimants on record itself shows that there is no similarity between land mentioned in sale deed and the suit fields.

13- The claimants in their cross-examination have admitted that the suit fields were measured by the respondents and at that time there was no pipe line and trees in the suit fields. They also admitted that they do not have any document to show that the suit fields were irrigated. They also admitted that village Yellapur and village Atala has two separate bus stops. They have mentioned in their examination in chief affidavit itself that suit fields are at the distance of about 2 k.m. from the field pertaining to which they have filed certified copy of sale deed on record. All these admissions by claimants support the contention of advocate of respondent no.3 that the suit fields have no similarity with the field pertaining to which certified copy of sale deed has been filed on record by claimants.

14- The counsel for respondent no.3 contended that the certified copy of sale deed relied upon by claimants cannot be read in evidence because it is not of any land situated at village Yellapur, but is of a land situated at village Atala which is about 2 to 3 k.m. away from village Yellapur. According to him no land of village Atala was acquired by the respondents for the project for which suit fields have been acquired. According to him though the sale deeds of lands situated at village Yellapur were available the claimants have deliberately filed certified copy of sale deed of land situated at Village Atala to claim higher compensation. Further according to him the other reason why the said sale deed cannot be relied upon is that the land mentioned in sale deed is situated just adjacent to the village settlement (Gavthan) of village Atala and it has been purchased by the person who had his land adjacent to the purchased land. As the purchased land was convenient for the purchaser he is bound to have paid higher price for the purchased land which any other person would not have

paid. There is substance in this contention of Advocate for respondent no.3 because the copy of sale deed pertains to land situated village Atala and not of any land situated at village Yellapur. The claimants have admitted in his cross-examination that when notification u/sec. 4 of the Land Acquisition Act was published sell/ purchase transaction of lands were going on at village Yellapur. If this was so, the claimants failed to explain why they did not file copy of sale deed of any land situated at village Yellapur when there were sale instances available. The contents of sale deed support the contention of counsel for respondent no.3 that the said land was purchased by the adjoining field owner and the said land is situated adjacent to the village settlement (Gavthan). There is substance in the contention of counsel for respondent no.3 that only an adjoining field owner would purchase the adjacent field for higher price as the adjoining field would be very convenient and would be of advantage to him.

15. The counsel for respondent no.3 contended that the claimants have not filed the village map to support their contention that the suit fields are situated near field block no.116 pertaining to which they have filed certified copy of sale deed on record. This contention of counsel for respondent no.3 carries much relevance because claimants stated in their cross examination that the suit fields are near to field block no.116. This statement of claimants also contradicts their contention in examination in chief that suit fields are situated at a distance of 2 k.m. from field block no.116. It appears that the claimants are trying to make an attempt to prove that suit fields are situated near field block no.116. However the attempt of claimants was futile. Even by filing a village map on record it would have not help the claimants because admittedly the suit fields are situated at a

distance about 2 k.m. from field block no.116 pertaining to which copy of sale deed is filed on record.

16- The claimants further deposed in their evidence that they used to cultivate the suit fields and take crops such as sugarcane, turmeric, Soyabean, Moong, sunflower, cotton, chillies, wheat, Udid and vegetables. According to claimants they were deriving annual income of Rs.40,000/- to Rs.45,000/- per annum, per acre from the suit fields. The respondent no.3 in their written statement have denied that the suit lands were fertile and were under cultivation. In light of this defence of respondent no.3 the claimants were required to adduce better evidence that the suit lands were fertile for cultivation and they were getting income from suit lands. But other than mere words of claimants there is no other documentary or oral evidence on record to hold that the claimants were taking above said crops from the suit fields and were earning Rs.40,000/- to 45,000/- per annum. The claimants could have filed receipts pertaining to sale of agricultural produce to support their contention that they were getting annual income of Rs.40,000/- to 45,000/- per annum from their fields as they admitted that they used to sell their agricultural produce in the market. No reasons have been given by claimants for not filing those receipts on record.

17- As per the authority of Hon'ble Bombay High Court in the case of State of Maharashtra & another Vs. Goutamchand Punamchand Abad and others (F.A.no.62/1997 dated 19/12/2008) it has been held that concrete evidence as regards annual income from land has to led. Compensation cannot be awarded on the basis of general evidence, surmises and assumptions, though some reasonable guesswork is permissible. In the

instant case the claimants have not filed 7/12 extract pertaining to suit fields for the year 2011-2012 and 2012-2013 to show that they were cultivating the suit fields and were taking the above said crops. Also they have not filed any receipts about selling of their crops in the market. Other than bare words of claimants there is no evidence to believe that there were earning Rs. 40,000/- to 45,000/- per annum from their fields. Hence in the given case, the evidence adduced by claimants about the annual income from suit lands is not sufficient enough to be accepted.

18- The counsel for claimants argued that the certified copies of sale deeds pertaining to field block no.116 of mouje Atala, Tq.Dharmabad be considered for evaluating the market values of suit lands. Apart from this he made no other submissions. He is not relying upon any other documents for the purpose of evaluation of the market values of suit lands. Hence the certified copies of sale deeds pertaining field block no.116 are the only documents filed on record by the claimants to support their contention that the market values of suit land was much higher than the amount given to them as per the award.

19- In view of the evidence and reasons discussed in para10 to 18, it is clear that the claimants have failed to adduce evidence to prove that the compensation granted to them by the respondents is inadequate. The only document relied upon by claimants is the certified copy of sale deed pertaining to field block no.116 of village Atala. On perusal of the said sale deed , description of suit lands mentioned in the evidence of claimants and the admissions given by the claimants in their cross-examination I do not see a single similarity between field block no.116 and the suit fields. The field

block no.116 is of different village, it is irrigated whereas suit fields are dry, it is situated adjacent to village settlement (Gavthan) whereas suit fields are situated in the interior. From field block no.116 Kharip and Rabbi crops would be taken but from suit fields only Kharip crops would be taken. There is no evidence adduced by claimants to prove the similarity of soil and their fertility. Hence the said sale deed is of no help to the claimants. The claimants have failed in adducing evidence that the market value of suit lands was more than the market value considered by the respondents at the time of passing award. I, therefore, answer my findings to issues No. 1 and 2 in negative.

As to Issue No.3:

20- In view of my findings to issues No. 1 and 2 I am of the opinion that the compensation awarded by respondents to the claimants is adequate and proper. I, therefore, pass the following order.

ORDER

- 1- All the five references are dismissed with costs.
- 2- Decree be drawn up accordingly.
3. The original judgment be kept in L.A.R. no.242 and its true copy be kept in other four references.

Sd/-

Date: 01-01-2016

(R. B. Bhagwat)
Civil Judge S.D., Biloli.

CERTIFICATE

I affirm that the contents of this P.D.F. judgment/ order are same word to word, as per the original order.

Name of the Stenographer : S.B.Panchal

Court Name: Civil Judge Senior Division, Biloli.

Date: 01-01-2016

Judgment/Order signed by the Presiding Officer on 01-01-2016.

Judgment/Order uploaded on : 04-01-2016.