IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1812 OF 2018

BHAUSAHEB KASHINATH GAIKWAD AND ORS
VERSUS
THE STATE OF MAHARASHTRA AND ORS
WITH
CIVIL APPLICATION NO. 844 OF 2021
IN FAST/13992/2020

THE EXECUTIVE ENGINEER, NANDUR MADHAMESHWAR OFFICE, VAIJAPUR, AURANGABAD
VERSUS
BHAUSAHEB KASHINATH GAIKWAD AND ORS
WITH
CIVIL APPLICATION NO. 843 OF 2021
IN FAST/13992/2020

THE EXECUTIVE ENGINEER, NANDUR MADHAMESHWAR OFFICE, VAIJAPUR, AURANGABAD
VERSUS
BHAUSAHEB KASHINATH GAIKWAD AND ORS

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Mr. A. D. Kasliwal, Advocate for Appellants/Claimants
Mr. B. V. Virdhe, AGP for Respondent No.1 – State
Mrs. Chaitali R. Kutti - Choudhary, Advocate for Respondent No.2/Acquiring Body

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CORAM : AJIT B. KADETHANKAR, J.

DATED : 8th September 2026

P.C. :-

. **Subject Matter :**

a. Feeling aggrieved by the judgment and award dated 01.02.2018 passed by the learned Civil Judge, Senior Division,

Vaijapur in Land Acquisition Reference No.01 of 2010, the appellants/claimants have filed this First Appeal.

b. Considering the short controversy arising in the appeal, the matter is taken up for final disposal at the stage of admission by consent of the parties.

c. The appellants' land comprised in Gut No.149, admeasuring 0.32 R, situated at village Vaijapur Tq. Vaijapur Dist. Aurangabad was acquired by the respondent-acquiring body for the construction of Left Canal for Narangi Medium Project. The land acquisition proceedings were completed and the award came to be passed. The total compensation awarded was Rs.38,464/-. Feeling aggrieved thereby, the appellants lodged a reference under Section 18 of the Land Acquisition Act, 1894.

d. During the trial, the claimants relied upon two sale instances at Exhibit 19 and Exhibit 20. Suffice to note, the first sale instance was dated 05.05.2001 and the second sale instance was dated 17.05.2001. The first sale instance was in respect of 0.20 Guntha land, whereas the second sale instance was in respect of 0.23 R land. Placing reliance upon these two sale instances, the claimants claimed compensation at the rate of Rs.7,500/- per R.

e. The Reference Court heard the parties and accepted the evidence tendered by the claimants. However, while accepting the sale instances for enhancement, the Reference Court considered the subsequent sale deed dated 17.05.2001, wherein lesser consideration was shown.

2. <u>Submissions on behalf of the Appellants/Claimants :</u>

a. Mr. A. D. Kasliwal, learned Advocate for the appellants/claimants would submit that when two sale instances were before the Reference Court, the Reference Court ought to have considered the sale instance which was for higher consideration.

b. He would further submit that the sale deed which was executed earlier ought to have been taken into consideration, wherein the consideration was shown at Rs.14,250/- per R.

c. The second contention of Mr. Kasliwal is that although the Court relied upon one of the sale instances produced by the claimants, it still observed that the claim was filed for a lesser amount. The Court could not grant an amount higher than what was claimed.

d. Thus, on these two counts, Mr. Kasliwal, learned Advocate for the appellants/claimants prays for allowing the First Appeal and for escalation of the enhancement.

3. **Submissions on behalf of the Acquiring Body :**

a. Mrs. Chaitali R. Kutti – Choudhary, learned Advocate for the acquiring body would strongly oppose the appeal.

b. She would submit that evidently the sale instances relied upon by the appellants/claimants are subsequent to the notification under Section 4 of the Land Acquisition Act, 1894.

c. Considering the area covered by the sale instances, the Reference Court ought to have relied upon the said sale instances. She would submit that the acquiring body has also filed First Appeal, which is tagged together challenging the enhancement on these two counts.

d. Mrs. Kutti submits that, considering that the sale instances were post Section 4 notification, it ought to be held that there was nothing on record to seek enhancement in the compensation.

e. In view of this, the SLAO was justified in not granting compensation on the formula which she produces before this Court from the office record. She would submit that, hence, the award at the rate of Rs.1,202/- per R stands justified.

f. With this, Mrs. Kutti submits that the appeal filed by the claimants be dismissed and the appeal filed by the acquiring body be allowed.

4. **Consideration :**

a. I have heard both the learned Advocates for the parties at length.

b. True that the sale instances produced by the claimants in support of their claim for enhancement were post the Section 4 notification. The Section 4 notification was published in the Official Gazette on 09.11.2000 and, hardly within six months therefrom, the sale transactions were executed.

c. The Reference Court relied upon the judgment rendered by this Court in ***Chandrashekhar Vs. Land Acquisition Officer,*** reported in ***2012(3) Mh.L.J. 8***, and observed that reliance could be placed upon such sale deeds by deducting 10% of the consideration annually.

d. Thus, the Reference Court considered the sale deed at Exhibit 20 deducting 10% per annum from the rate of consideration under the said sale deed. I do not find that the analogy applied by the Reference Court warrants interference. However, I have reservation about considering Exhibit 20 instead of Exhibit 19.

e. This is a piece of beneficial legislation. When two sale instances are before the Court, it is expected that the Court

should opt for the one which is executed for higher consideration.

f. In view of this, I accept the contention of Mr. Kasliwal, learned Advocate for the appellants/claimants that the escalation ought to have been done by taking the rate of Rs.14,250/- per R.

g. Considering the sale instance at Exhibit 19 obviously, the deduction applied by the Reference Court at the rate of 10% per annum would be applicable to the escalation placing reliance upon Exhibit 19.

h. Now, so far as the other issue in the matter is concerned, in my view, the Reference Court erred in restricting the compensation to the extent of the claim made by the claimants in the reference proceedings.

i. It is trite law that once the Court has arrived at a conclusion that the claimants deserve a certain amount of enhancement, the claimant must not be deprived of the enhancement only for the reason that the claim was made for a lesser amount.

j. In such a situation, the enhancement must be granted at the deserving rate directing the claimants to deposit the additional court fees.

k. A beneficial reference can be made to a latest order passed by this Court in First Appeal No.1937 of 2020. In the said case too, this Court held the claimant therein entitled for the enhancement as agreed by the Reference Court. Declination by the Reference Court to grant the entitled enhancement for want of appropriate claim was disapproved. Reliance was placed on the observations made by the Honorable Supreme Court in the case of ***Narendra and ors. Versus State of Uttar Pradesh and Another*** reported in ***2017 INSC 882.*** At later part of paragraph No.2 of the judgment identified the issue as below :

> ***Paragraph No.2***
> *……Notwithstanding the same, insofar as the appellants are concerned, the High Court has limited the compensation to Rs.115/- per square yards because of the reasoning that the appellant had demanded compensation at that rate only and had paid the court fees also accordingly. Therefore, opined the High Court, it was difficult to allow compensation at a rate higher than the rate claimed by the appellants.*

Concluding paragraph Nos. 16 and 17 of the judgment read thus :

> ***16)*** *Simply because the appellants had paid court fee on the claim at the rate of Rs.115/- square yards could not be the reason to deny*

> *the compensation at a higher rate. This could be taken care of by directing the appellants to pay the difference in court fee after calculating the same at the rate of Rs.297/- per square yards.*
> ***17)*** *In fine, the judgment of the High Court is set aside and these appeals are allowed holding that appellants are also entitled to compensation at the rate of Rs.297/- per square yards. The difference in compensation along with other statutory benefits under the Act shall be calculated and paid to the appellants within a period of three months from today. It is also directed that the appellants shall make good in deficiency of court fee before the High Court. Appellants shall also be entitled to costs of these appeals.*

Thus, the appeal must succeed in view of the settled guiding principles enunciated by the Honorable Supreme Court (supra).

l. In view of the above discussion, I find that First Appeal No.1812 of 2018 filed by the claimants deserves to be allowed. Hence I pass following order :

O R D E R

I. The First Appeal is allowed.

II. The claimants shall be entitled to compensation at the rate of Rs.12,825/- per R.

III. The acquiring body shall deposit the enhanced compensation before this Court within a period of six months from today, together with accrued interest thereon.

IV. The interest part shall be governed by the law laid down by the Full Bench judgment in the case of ***State of Maharashtra v. Kailash Shiva Rangari,*** reported in ***2016 (4) ALL MR 513***.

V. The appellants/claimants shall not be entitled to the interest and statutory benefits for the delayed period.

VI. The appellants/claimants shall be entitled to withdraw the amount deposited with interest, without making any separate application for withdrawal.

VII. In view of allowing First Appeal No. 1812 of 2018 filed by the claimants, the First Appeal filed by the acquiring body which is tagged with the present appeal stands dismissed.

VIII. While depositing the enhancement, any amount already deposited shall be adjusted.

IX. The appellants/claimants shall pay the requisite additional court fees on the enhanced compensation, if applicable.

X. Pending Civil Applications, if any, stand disposed of.

(AJIT B. KADETHANKAR, J.)

PRW