

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 728 OF 2003

Hiralal Kanheeram Rajput,
Deceased through legal heirs

1. Smt. Chotabai w/o Hiralal Rajput,
(Zuawat), Age : 60 Years,
Occu. : Household and Agril.,
R/o Bendwadi, Tq. Vaijapur,
Dist. Aurangabad.
2. Ashok S/o Hiralal Rajput (Zurawat),
Age : 40 Years, Occu. : Agril.,
R/o As above.
3. Raju S/o Hiralal Rajput (Zurawat),
Age : 31 Years, Occu. : Service,
R/o As above. .. Appellants

Versus

1. State of Maharashtra,
Through the Collector at Aurangabad.
2. The Special Land Acquisition Officer
at Aurangabad. .. Respondents

Shri V. G. Mete, Advocate for Appellants.
Shri D. R. Korde, A.G.P. for Respondents/State.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 15TH SEPTEMBER, 2015.**

ORAL JUDGMENT :-

. The present appellants had filed reference U/Sec. 18 of the Land Acquisition Act (for short "L.A. Act") and the reference Court arrived at conclusion that the appellants are entitled for enhanced compensation of Rs. 11,08,173/-. However, as in the original application the claimants had restricted the enhanced compensation to Rs. 7,72,500/-, the Court granted enhanced compensation of Rs. 7,72,500/-. Aggrieved thereby claimants have filed present appeal.

2. Mr. Mete, the learned counsel for the appellant relies on the judgment of the Apex Court in a case **Ambya Kalya Mhatre (dead) through L.Rs. Vs. State of Maharashtra** reported in **2012(1) Mh.L.J. 09** to submit that, in fact while making a reference the claimant is not even required to claim a particular amount. He has only to file reference seeking enhanced compensation. The present appellants have paid the court fees for the enhanced compensation of Rs. 5,22,510/-. According to the learned counsel, in fact in other references for pomegranate trees Reference Court awarded compensation at the rate of Rs. 1,100/-, wherein in the present case it has awarded the compensation at the rate of Rs. 1,000/-. The same is required to be enhanced. According to the learned counsel even interest U/Sec. 34 and 28 of the L. A. Act has been awarded from the date of award, which is illegal. It ought be from the date of

possession.

3. The learned Assistant Government Pleader submits that, the appellants have not made any particular claim for enhanced compensation amount. The same has been rightly decided.

4. The possession is taken prior to Sec. 4 notification. Thus, in that case the interest U/Sec. 34 and 28 of the L. A. Act cannot be awarded from the date of possession. In the present case as submitted by the learned counsel, the possession has been taken on 20.01.1986 and the notification U/Sec. 4 of the L. A. Act is published in November 1986. In the light of that interest from the date of possession certainly could not have been awarded.

5. As far as enhancement is concerned, the Reference Court has come to the conclusion that the appellants are entitled for total compensation amount of Rs. 15,08,360/- and after deducting the amount awarded by the Special Land Acquisition Officer appellants are entitled for an amount of Rs. 11,08,173/-. However, has not granted the said compensation amount on the ground that the appellants have claimed lessor amount. It would be seen that, the appellants have paid court fees on the said higher amount. In the light of that, there would be no impediment to award enhanced compensation of Rs. 5,22,510/-.

6. In the light of the above, the order of the Reference Court as far as part 2 of the operative order is concerned is modified. It is ordered that the respondents shall pay an amount of Rs. 11,08,173/- to the appellant towards enhanced compensation amount i. e. after deducting Rs. 4,00,187/- awarded by the Special Land Acquisition Officer. The said amount is inclusive of amount awarded by the Reference Court. Rest of the operative part is maintained and upheld. The first appeal is accordingly partly allowed. No costs.

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15