

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

CIVIL APPLICATION NO. 5698 OF 2015
IN FAST/8415/2015
WITH
CIVIL APPLICATION NO. 5699 OF 2015
IN/WITH
FAST/8415/2015

The Executive Engineer,
Lower Terna Cannal,
Division No.2, Latur.

... Applicant

versus

1. Jaiprakash S/o Kashinsthappa Gaokare,
Age : 53 Years, Occu : Agril.,
R/o Killari, Tq. Ausa,
Dist. Latur.

2. The State of Maharashtra,
Through District Collector,
Latur.

... Respondents

WITH
CIVIL APPLICATION NO. 5700 OF 2015
IN FAST/8508/2015
WITH
CIVIL APPLICATION NO. 5701 OF 2015
IN/WITH
FAST/8508/2015

The Executive Engineer,
Lower Terna Cannal,
Division No.2, Latur.

... Applicant

versus

1. Fulchand S/o Vishwanath Birajdar,
Age : 60 Years, Occu : Agril.,
R/o Killari, Tq. Ausa,
Dist. Latur.

2. The State of Maharashtra,
Through District Collector,
Latur. ... Respondents

WITH
CIVIL APPLICATION ON. 5702 OF 2015
IN FAST/8514/2015
WITH
CIVIL APPLICATION NO. 5703 OF 2015
IN/WITH
FAST/8514/2015

The Executive Engineer,
Lower Terna Cannal,
Division No.2, Latur. ... Applicant

versus

1. Vishwanath S/o Sambhaji Birajdar,
Age : 85 Years, Occu : Agril.,
R/o Killari, Tq. Ausa,
Dist. Latur.
2. The State of Maharashtra,
Through District Collector,
Latur. ... Respondents

WITH
CIVIL APPLICATION NO. 5704 OF 2015
IN FAST/8505/2015
WITH
CIVIL APPLICATION NO. 5705 OF 2015
IN/WITH
FAST/8505/2015

The Executive Engineer,
Lower Terna Cannal,
Division No.2, Latur. ... Applicant

versus

1. Sunil S/o Chandrakant Gaokare,
Age : 40 Years, Occu : Agril.,
R/o Killari, Tq. Ausa,
Dist. Latur.

2. The State of Maharashtra,
Through District Collector,
Latur. ... Respondents

WITH
CIVIL APPLICATION NO. 5706 OF 2015
IN FAST/8511/2015
WITH
CIVIL APPLICATION NO. 5707 OF 2015
IN WITH
FAST/8511/2015

The Executive Engineer,
Lower Terna Cannal,
Division No.2, Latur. ... Applicant

versus

1. Smt. Malama W/o Subhash Gaokare,
Age : 60 Years, Occu : Agril.,
R/o Killari, Tq. Ausa,
Dist. Latur.
2. The State of Maharashtra,
Through District Collector,
Latur. ... Respondents

Mr. Umakant P. Giri, Advocate for Applicant/appellant.
Mr. G. L. Awale, Advocate for Respondent No.1.
Mr. P. P. More, A. G. P. for respondent/State.

CORAM : N.W. SAMBRE, J.

DATE : 12th August, 2015

ORAL ORDER :

. Heard.

2. There is delay of 929 days caused in preferring the first

appeals.

3. In view of no objection by the non-applicant and for the reasons stated in the applications, the delay stand condoned. Civil Applications for condonation of delay are allowed.

4. With the consent of the learned Counsel, matter is taken for final disposal at admission stage.

5. Mr. Giri, learned Counsel for the appellant made two-fold contentions (a) that the reference which was initiated under Section 18 was time barred and (b) the enhancement granted is exorbitant.

6. Learned Counsel for the respondent/claimant supports the award. According to him, the issue of limitation was specifically dealt with by issue No. 3 by the Reference Court and though objection as regards the limitation was raised before the Reference Court, the appellant has failed to establish the same. In addition to above, he would urge that, the enhancement granted is based on sale instance and judgment delivered in L.A.R. No. 5 of 2006 by the District Judge-2, Latur, when notification in the present case was issued and in relation to land which is located in the same vicinity. He would further urge that, he has placed on record enough oral and documentary evidence so as to substantiate the claim.

7. So as to consider the rival pleadings of the parties, with the assistance of the learned Counsel for the parties I have perused the findings recorded by the Reference Court. In the present case, Section 4 notification was issued on 04/09/2003 acquiring the land in question for the purpose of irrigation project. In the award passed by Land Acquisition Officer under Section 11, Land Acquisition Officer has granted compensation @ Rs. 1,18,000/- per Hectar for Jirayat land and Rs. 2,62,400/- per Hectar for irrigated land.

8. The award, according to the present appellant was delivered in 2006, whereas present reference was filed in 2011, which according to him, is admittedly after lapse of six weeks i.e. beyond limitation as prescribed in Land Acquisition Act. It is required to be observed that, though the said issue was raised before the Reference Court which was dealt with by issued No. 3, however, the appellant herein has not come out with the case as appellant has not brought on record as to the date when notice under Section 12(2) of the Act was served on land owner and the date of filing of reference. The fact as regards date of service of award on the claimant was also not brought on record. Reference Court while dealing with the issue of limitation has in clear terms observed that, the reference which was filed before the learned Collector under Section 18 of the Act was raised within time and was not barred by limitation. Though

the ground is sought to be canvassed to that effect, however, nothing contrary on the part of the claimant to the requirement of the statute was brought on record by the appellant so as to substantiate the issue of claim barred by limitation. As such, the said contentions are rejected.

9. So far as the next contention as regards grant of enhancement which according to the appellant is exorbitant, it is required to be noted that, the claimant in support of his claim for enhancement, has placed on record 7/12 extract of the land in question at Exhibits 17 to 21 alongwith the copy of map at Exhibit-27, copy of sale instance which is relied upon at Exhibit-28 and copy of judgment in L.A.R. No. 5/2006 delivered by the learned District Judge in exercise of power under Section 18 at Exhibit-13.

10. In support of the claim, the claimants/respondents have examined themselves and have specifically stated that the land mentioned in the sale instance i.e. Exhibit-28 is of 1 Hector 77 Are out of Survey No. 123 of village Killari. It is further brought on record through oral evidence that the quality, quantity and location of the land covered under sale instance is similar to that of land under acquisition and only difference that was brought on record, was availability of irrigation facility. The location of the land was sought to be established by virtue of village map which is brought on record vide Exhibit-27. It is required to be noted that the sale

instance at Exhibit-28 is dated 29/05/2003, whereas Section 4 notification is 04/09/2003. Vide sale instance, the land was sold @ Rs. 3000/- per Are.

11. In L.A.R. No. 5 of 2006, the learned Reference Court In exercise of power under Section 18 of the Act, for the similar land, has awarded compensation @ Rs. 2700/- per Are in the year 2003. Both these considerations were weighed before the learned Reference Court for reaching to the conclusion for Jirayat land the compensation should be fixed @ Rs. 2700/- per Are and 5400/- per Are for irrigated land.

12. The enhancement, in my opinion, since is based on sale instance which was proved by claimant and location of land was proved by virtue of village map which was produced at Exhibit-27, was rightly appreciated and taken into account. The judicial pronouncement by learned District Judge under Section 18 in relation to L.A.R. No. 5 of 2006 was also rightly appreciated.

13. In my opinion, the enhancement granted by the Reference Court is reasonable. No case for interference is noticed, as such the appeals fail, same stand dismissed. Consequently, Civil Applications for stay stand disposed of.

(N.W. SAMBRE, J.)

Tupe/