IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO.678 OF 2006

1. The State of Maharashtra
through the Collector, Beed.

2. The Executive Engineer,
Public Works Division, Beed,
Taluka and District Beed. ... APPELLANTS

VERSUS

Smt. Maheboobbi alias Gouribi w/o
Sayyed Ali, Age 60 years,
Occ. Household, R/o Bundelpura,
Taluka and District Beed ... RESPONDENT

.....

Shri S.G. Sangle, A.G.P. for appellants
Shri M.V. Deshpande, Advocate holding for
Shri R.P. Dhase, Advocate for respondent

.....

WITH

CROSS OBJECTION STAMP NO. 14106 OF 2007

Smt. Mahboobbi @ Gouribi w/o Sayyed Ali,
Age 67 years, Occ. Household,
R/o Bundelpoora,
Beed – 431 122 … APPELLANT
(Original Petitioner)

VERSUS

1. The State of Maharashtra,
through the Collector, Beed,

2. The Ex- Engineer,
Public Works Division, Beed,
Taluka and District Beed
(Copy to be served on Government
Pleader, High Court, Bench at
Aurangabad for respondents) … RESPONDENTS
(Original Respondents)

…..

Shri M.V. Deshpande, Advocate holding for
Shri R.P. Dhase, Advocate for appellant
Shri S.G. Sangle, A.G.P. for respondents

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CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.

DATED: 5th May, 2015.

Date of reserving judgment : 30/3/2015.
Date of pronouncing judgment : 5/5/2015

JUDGMENT (Per A.I.S. Cheema, J.) :

1. State has filed this appeal against judgment and order of enhanced award passed by 7th Adhoc Additional District Judge, Beed in L.A.R. No.258/1999, dated 20.12.2005.

2. In this matter, there was acquisition of 60 R land from Survey No.36/1; 73 R land from Survey No.30; 15 R land from Survey No.34/2, total 1 Hector 48 R land belonging to

respondent, situated at Beed Taraf Pingale, Taluka and District Beed. Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 10.6.1993. Declaration under Section 6 came to be issued on 5.8.1993. Notice under Section 9(3)(4) was issued and claim was submitted on 10.8.1993. Award came to be passed on 24.7.1996. Notice was issued under Section 12(2) of the Act on 3.12.1998 and compensation was paid on 4.12.1998. The respondent accepted the compensation under protest.

The award fixed compensation at the rate of Rs.4500/- per R, total Rs.6,66,000/-, 30% solatium – Rs.1,99,800/- with component at the rate of 12% p.a. from 16.5.1993 to 15.7.1995 – Rs.1,66,500/-. The total of the award was of Rs.10,32,300/-.

3. Reference came to be filed and respondent claimed that road under acquisition was in plan work programme from 1961 to 1981. The possession of the acquired land was taken without consent by appellant no.2 in May 1972. Respondent claimed in the reference that, land acquired at the relevant time was worth not less than Rs.50/- per sq.ft. i.e. Rs.54,450/- per

guntha and claimed compensation accordingly. According to her, the land was practically within Municipal limits. Beed Parali road was at about 700 ft. to the northern side and Aurangabad-Solapur Highway about 500 ft. away on the western side. There were other facilities like Government Milk Dairy Scheme, Workshop, chilling plant and residential quarters of staff to the north of land acquired at a distance of 100 ft. S.T. Workshop was also nearby. On the Aurangabad-Solapur Highway, there were hospitals, shops, residential houses and business premises. Law College and Shahu Technical Institute was also nearby. Railway Station was proposed near Parli-Beed-Nagar way. For such reasons, higher compensation was calculated and claimed in the reference.

4. The appellants filed written statement in the reference proceedings. There is no dispute regarding other dates, but regarding taking possession of the land, appellants claimed that the same was not taken in May 1972, but claimed that the possession was taken in May 1982. (Even the reference Exh.36 mentions that the possession had been already taken by mutual settlement). The appellants claimed that there was no documentary evidence filed for higher compensation.

The award passed was correct. The amount of compensation had been received under protest. When notice was served under Section 9 (3) (4) of the Act, respondent had not filed any claim with documentary evidence. Special Land Acquisition Officer considered sale transactions of adjoining lands and fixed the correct market value. The land was not in Municipal limits. Distance of Parli - Beed and Beed - Solapur Road was not correctly mentioned. Land was acquired for road purpose and it was agricultural land. The appellants claimed in the reference that the claim of the respondent should be dismissed.

5. The Reference Court took on record the oral and documentary evidence brought by the respondent. The appellants cross-examined the witnesses, but did not lead evidence separately. The Reference Court considered the issues relating to the question whether the market value on the date of acquisition was meagre or inadequate and if the respondent was entitled to enhanced market price. Reference Court found that the market value was at the rate of Rs.6500/- per R (and not Rs.4500/- as found by Special Land Acquisition Officer) on the date of notification under Section 4. In support of the issues,

Reference Court recorded reasons and enhanced the compensation by Rs.2000/- per R. It granted component at the rate of 12% p.a. on the additional market value from the date of notification under Section 4 i.e. 10.6.1993 till the date of award, dated 24.7.1996 under Section 23(1A) of the Act. Reference Court also granted solatium at the rate of 30% on the additional market value under Section 23(2) of the Act. On such enhanced compensation, the Reference Court granted interest under Section 28 at the rate of 9% p.a. from the date of notification under Section 4 i.e. from 10.6.1993 till 9.6.1994 and further interest at the rate of 15% p.a. from 10.6.1994 till realisation under Section 28 of the Act.

6. Thus, the present appeal by the State. It is claimed in the appeal and the learned Assistant Government Pleader submitted that the Reference Court has wrongly enhanced the compensation. The compensation fixed by Special Land Acquisition Officer was correct. The sale instances relied on were of small plots whereas the land acquired was large agricultural land for purpose of road. Sale instances of small pieces were not comparable. The judgment and award passed by Reference Court enhancing the compensation needs to be set aside.

7. Against this, the respondent has filed Cross-Objections and claimed that the possession of the land was taken in May 1972 by direct negotiations. The partial claim of the respondent was wrongly rejected by the Reference Court without appreciating the material placed on record. The State had admitted in the written statement that the possession was taken in May 1982. This was wrongly ignored by the Reference Court. The rejecting of partial claim of the respondent on this count needs to be set aside. The land in question had non-agricultural potential. The Reference Court was in error while granting less rate of compensation.

8. Learned counsel for the respondent relied on the judgment of the Hon'ble Supreme Court in the case of <u>Mehrawal Khewaji Trust (Regd.), Faridkot & ors. Vs. State of Punjab & ors. (Civil Appeal No.4005 of 2012), decided on 27/4/2012</u> to submit that when the Reference Court was relying on judgment of another land in vicinity, in Land Acquisition Reference No.117/1991, which related to acquisition of land of one Dhundiraj Goswami, of 1 Hector 60 R, in which notification under Section 4 was dated 30.11.1989, on the market rate arrived at of

Rs.6/- per sq.ft., 10% increase per year should have been granted till 10.6.1993, the date of Section 4 notification in present matter. Thus, the respondent claims that cross-objection should be allowed and enhanced compensation should be awarded.

9. The point for determination is :

> Whether the judgment and award passed by the Reference Court is correct, legal and proper or does it require to be interfered with.

10. We have heard both sides and gone through the record of the Reference Court. Respondent proved on record copy of the award as passed by Special Land Acquisition Officer, at Exh. 36, which gives a list of sale instances of around 10.6.1993, the date of notification and records reasons for coming to the conclusion that the award was required to be passed with rate at Rs.4500/- per R. The award shows that the land concerned was near Beed city. It was dry land from which at the time of award Beed-Imampur Road had passed.

11. (A) There is oral evidence of respondent Maheboobbee @

Gouribegum (P.W.1) claiming that the land had been taken over by the Government 23 years back. She deposed that it was not fit for cultivation. Her evidence is that, near her land there was Engineering College, Shahu I.T.I. College, Temple of Papneshwar, Office of Railway Board at distance of about 1000 ft. According to her, Law College, S.T. Workshop, School, Branch of D.C.C. Bank were situated near Solapur Highway passing, on the western side at distance of about 1000 ft. She referred to the land of Dhundiraj Goswali @ Patangankar, whose land had been acquired and there was Land Reference Award which has been proved at Exh.14. She filed certified copy of other sale instances at Exh.39 to 41. She deposed that, prevailing market price was Rs.5400/- per R.

(B) The respondent, in support of herself, examined P.W.2 Mahadeo Huljute, who claimed to be Consulting Private Engineer. His evidence is that, he visited the land on 1.4.1999 and regarding his visit, prepared panchanama Exh.46. His evidence is that, he prepared location plan of the land. He has proved the location map at Exh.47 and site plan at Exh.48. According to him, he took note of the plus-minus factors. He considered the commercial development like milk chilling plant, S.T. Workshop, law College, Proposed Railway Station etc., which were nearby. According to him, based on his inspection, he issued certificate Exh.50. It is claimed that he adopted belting method and considered other sale deeds keeping in view guidelines in the matter of Chimanlal Vs. Special Land Acquisition Officer [AIR 1988 SC 1652]. He prepared his report. His opinion evidence is that, the valuation of the land was Rs.35/- per sq. ft. as prevailing in 1993.

(C) The respondent examined P.W.3 Abdul Matin to prove the contents of sale deed Exh.40, who claims to have purchased plot of 50 x 50 ft. near Barshi Naka for Rs.50,000/- on 3.6.1991. According to the witness, the said land was 1000 ft. away from the land of the respondent.

(D) The respondent examined P.W.4 Advocate Dilip Bhavalekar, who claimed to have purchased plot on 24.1.1992 admeasuring 25 x 30 ft. from Survey No.171 for Rs.7000/- as per sale deed Exh.55. He, however, claimed that the actual price was Rs.14,000/- but to save expenditure, it was shown as Rs.7000/-. The plot was purchased for residential purpose. According to him, the plot purchased by him was about 1 Km.

away from the land of the respondent.

12. We have gone through the judgment in the matter of "Chimanlal" referred to by Engineer P.W.2 Huljute and the guiding factors laid down by the Hon'ble Apex Court. We have also gone through the judgment in the matter of "Mehrawal" relied on by the learned counsel for the respondent. Keeping in view the provisions of the Land Acquisition Act and the case law applicable, if the present evidence brought on record by the respondent is perused, following position emerges.

13. The site plan proved by P.W.2 Mahadeo does not give any scale so as to judge the various distances. The picture which the plan gives is that, on the northern side there is Barshi Naka which connects to Beed city. From this Naka or square, one road is going towards Parali via Telgaon from West to North-East. Another road is coming down from the Barshi Naka going North-South towards Osmanabad, which would further go to Solapur. From the Barshi Naka-Parali Road, the Beed Imampur Road now branches down towards South-East direction later taking turn towards East. Exhibit 48 shows habitation near Barshi Naka and Govt. Milk Chilling Plant, S.T. Workshop abutting

Barshi Naka Osmanabad Road. Law College is also abutting on the western side of that road. Exhibit 48 does not give the Survey numbers so as to locate the exact land of respondent in dispute. In evidence also P.W.2 did not give details to identify the Survey Numbers of respondent in Exh. 48.

14. (A) Coming to the sale instances proved by the respondent, Exhibit 39 is sale deed of a plot from Survey No.158, which sale deed is dated 5.8.1991 and shows sale of 2 R land for Rs.15,500/-. Thus, on 5.8.1991, 1 R land was sold for Rs.7750/- and this land had further advantage of having road on the West and South as can be seen from the boundaries.

(B) Other sale instance is Exh. 40, which is dated 3.6.1991 for plot of 50 x 50 ft. for the price of Rs.50,000/-. The evidence of P.W.3 in this regard shows that, this plot was at about 200-250 ft. from Barshi Naka on Beed-Barshi Road and had S.T. Workshop to the South. The sale deed shows that, this land also had road on the North and West.

(C) Other sale instance Exh.41 relied on by respondent shows that this was a transaction dated 27.6.1989 for a plot of

30 ft. x 80 ft. for Rs.54,000/-. This was in the Municipal Council limits of Beed at Beed Taraf Balgujar adjoining Delhi Darbar Hotel and the Barshi Main Road on the eastern side.

(D) As regards Exh. 55, the sale deed proved by P.W.4 Dilip Bhavalekar, although an Advocate, he can be seen deposing that the sale deed does not reflect the correct particulars and his evidence in a way is that it was undervalued to save expenses. Such citizen and witness cannot be reliable. When the sale deed Exh. 55 is taken on its face value, it shows the transaction dated 24.1.1992 for plot of 24 x 30 ft. for Rs.7000/- and even this plot had the benefit of road on West as well as on South.

(E) Respondent proved another certified copy of sale deed at Exh.56, which is dated 12.10.1992 for a plot of 40 x 40 ft. at Rs.18,000/-. Even that plot had road to its South and East as boundaries.

15. Thus, the sale instances relied on by the respondent, if perused, it can be seen that, as regards Exh.41, the sale deed relates to land within Municipal Council limits of Beed. The other sale deeds, although they relate to Beed Taraf Pingale and the

land under acquisition was also in the area of Beed Taraf Pingale, there is no specific or clear evidence regarding the distance of those properties. Clearly they were properties of small plots abutting the existing roads near Barshi Naka whereas the present land under acquisition was away from Barshi Naka. P.W.1-respondent herself stated that her land was about 1000 ft. away from Barshi Naka. She admitted that, in between there were hutments of Mang-Garudi community. Although she claimed that there was development in the neighbourhood of her land, she accepted that she did not produce any evidence about water supply, electricity or drainage facility available in the area.

16. The written statement of the appellant filed in the Reference Court itself mentions that the possession of the land was taken after negotiations on 1.5.1982. In this regard, the respondent herself proved the document Exh.42 from the office of appellant No.2 recording that the possession had been taken on 1.5.1982. Thus, what appears is that, around May 1982, the lands under acquisition were affected. Already there was Notification under Section 4, dated 30.11.1989 for same road relating to another land of one Dhundiraj @ Patangankar. No doubt for present matter the market rate applicable at the time

of notification under Section 4 dated 10.6.1993 is relevant. However, the fact that the respondent and nearby persons would be aware that Beed Imanpur Road is going from the place concerned is relevant. If this fact is kept in view, the sale instances relied on by the respondent must be appreciated with care as apart from being roads abutting small plots, likelihood of the price getting affected due to common knowledge of road passing nearby cannot be ruled out.

17. Material document for consideration is Exh.14, the judgment and award passed in L.A.R. No.117/1991 in favour of Dhundiraj Goswami @ Patangankar. This award related to Plot No.101 and 102, situated at Taraf Pingale, Beed Taluka. Those lands were acquired for then proposed Beed Imampur Road by notification dated 30.11.1989. The Reference Court in that matter, after considering the material brought on record, found the true market rate of the land acquired to be Rs.6/- per sq. ft. on the date of notification dated 30.11.1989. Clearly this was before the present notification dated 10.6.1993. If the present judgment of the Reference Court is perused, it can be seen that the Reference Court considered this evidence. Reference Court discussed that some of the sale deeds relied on by the

respondent Mehboobbi were discussed by that Reference Court and that Reference Court had come to the conclusion that Rs.6454/- per R. was the market price prevailing when those lands were acquired in the year 1989. Reference Court discussed the evidence of P.W.1 that those lands of Dhundiraj were 1000 ft. away from the acquired land. Reference Court discussed the evidence of P.W.2 that the concerned land of Dhundiraj was to the West of the Beed-Imampur Road and land of respondent was about 1000 ft. from Barshi Naka to east of the Beed-Imampur Road. Reference Court discussed the evidence to find that, in the circumstances, the land under acquisition could fetch higher price of Rs.6500/- per R. The Reference Court reasoned that Exh.14 relating to land of Dhundiraj reflected the market price as in 1989. However, it found that 10% price rise could not be blindly applied in the present matter as the land of the respondent No.1 was not fit for cultivation while land belonging to Dhundiraj @ Patangankar was fit for cultivation and useful for plots.

18. Reference Court discussed the evidence of P.W.3 that land of Dhundiraj @ Patangankar could fetch higher value. Reference Court also discussed the evidence of P.W.2 Mahadeo Huljute that the land of the respondent was not level and the

shape was uneven and that the same was a large area which has been acquired for road purpose. For such reasons, the Reference Court, keeping in view the price of Rs.6454/- per R, fixed in the earlier Reference Exh.14 of 1989, found that 10% rise should not be blindly applied in the facts of the present matter and for such reasons, concluded that Rs.6500/- per R would be just and fair. Thus, the advantage of possible price rise was adjusted against the negative points of land in dispute.

19. Going through the material available and reasons recorded by the Reference Court, we find that there is substance in the approach of the Reference Court. The Reference court rightly discussed the negative factors like largeness of the area and uneven shape of the land of the respondent and distance from the main Barshi Naka and the distance from developed locality. The Reference Court rightly discussed that there was no sufficient evidence on record to show as to when developments like Law College, Office, Workshop etc. were constructed. For such reasons, the Reference Court strengthened its judgment that the market rate for the land in dispute should be fixed at Rs.6500/- per R. We agree with the Reference Court on this count.

20. It appears from the record of the Reference Court that the respondent brought to the notice of the Reference Court judgment in Special Civil Suit No.88/1999 which she had filed. By that judgment, respondent had sought interest on compensation amount granted by Special Land Acquisition Officer of Rs.10,32,300/-. The Civil Judge, Senior Division, in Special Civil Suit No.88/1999 had discussed the issues and found that the possession of the land of the respondent had been taken on 1.5.1982. In that judgment, the respondent was granted relief of interest in terms of Section 34 of the Act. The present Reference Court, however, observed that there was no evidence to show what was the urgency clause and observed that there was nothing to show that government had taken possession in 1972. It observed that even if possession was taken before Notification under Section 4, it was in contravention of the provisions of law and de hors the Act. It went on to observe that the interest entitlement was only under Section 28 and passed orders accordingly.

21. Decree obtained by Respondent in Special Civil Suit No.88 of 1999 was dated 3rd October 2000, whereby she was held entitled to relief in the nature of Section 34 of the Land

Acquisition Act. On the amount calculated by the S.L.A.O. of Rs.10,32,300/-, 9% per annum, interest from 1st May 1982 till 30th April 1983 and 15% per annum interest from 1st May 1983 till 4th December 1998 appears to have been decreed.

22. In the matter of <u>State of Maharashtra and others vs. Maimuma Banu and others</u>, reported in <u>(2003) 7 S.C.C. 448</u>, land of the Respondents had been acquired by the State by private negotiations and accordingly possession was taken prior to issuance of notification under Section 4 of the Act. Hon'ble Supreme Court took note of resolutions and instructions which had been issued by the State of Maharashtra vide circulars dated 1st December 1972, 17th September 1977, 2nd April 1979, 24th March 1988 providing for rental compensation. It was observed in Para 8 and 9 of the Judgment as under:-

> "8. It is crystal clear from a bare reading of the provisions of the Act that it does not provide for payment of any rental compensation. Therefore, the appellants are correct in their stand to the extent that the liability for rental compensation does not have its source under the Act. Therefore, the logic of Sections 17(3-A), 23(1-A) and 28 of the Act and Section 34 has no application in law to rental compensation. That being the position, the High Court was not justified in relying on Sections 17(3-A), 23(1-A) or Section 28 of the

Act to grant interest.

9. But the problem does not end there. Admittedly, the possession of land was taken long years back. Thereafter, the land owner does not practically possess any right over the land in question except to the compensation as statutorily provided for. But it would be illogical and improper to turn a Nelson's eye to the factual position as highlighted by the respondents. It is not in dispute that in most of the cases the rental compensation has not been paid. If that factual position continues, it clearly is a case where the amount to which a person is entitled is withheld without any legitimate excuse. The learned counsel for the appellants strenuously urged that in most of the cases the proceedings have not yet attained finality and are pending either before the Reference Court or in appeal. That does not provide a legitimate excuse to the appellants to withhold payment of the rental compensation. The amount calculated on the basis of award by the Land Acquisition Officer cannot be below than the amount to be ultimately fixed. If in appeal or the reference proceedings, there is any variation, the same can be duly taken note of as provided in law. There is no difficulty and we find none as to why the compensation on the basis of value determined by the Land Acquisition Officer cannot be paid. If there is upward revision of the amount, the consequences will follow and if necessary, redetermination of the rental compensation can be made and after adjustment of the amount paid, if any, balance can be paid. If, however, the Land Acquisition Officer's award is maintained then nothing further may be required to be done. In either event, payment of the rental compensation expeditiously would be an appropriate step. Looking at the problem from another perspective, one thing is clear

> that authorities have clearly ignored the sense of urgency highlighted in the various resolutions."

Looking to the above observations of the Hon'ble Supreme Court, it is apparent that what the Respondent was entitled to, was rental compensation. As per the Resolutions referred to by the Hon'ble Supreme Court, the entitlement to the rental compensation was at the rate of 8% per annum.

23. In the present matter, the award was passed on 24th July 1996 and compensation as per what was approved by S.L.A.O. was paid on 4th December 1998. Looking to the fact that as per Government Resolutions the entitlement was only of rental compensation at the rate of 8% per annum on the amount of award, it appears that the Respondent obtained decree of much higher amount claiming the same as interest even if the subsequent enhancement of market price is kept in view. In this view of the matter, there is no equity in favour of the Respondent on this count to claim rental compensation on the enhanced amount which was ordered by the Reference Court. We would, however, leave it to the Collector to calculate, in case the Respondent moves the Collector.

24. We do not find any substance in the Appeal as well as the Cross Objections. We proceed to pass following order:-

ORDER

(A) The Appeal filed by the State is dismissed.

(B) The Cross Objections filed by Respondent are also dismissed.

(C) Parties to bear their own costs.

(D) If the Respondent moves the Collector, the Collector may decide the rental compensation payable and interest on the rental compensation, on the enhanced amount awarded by the Reference Court in the light of Government Resolutions referred in Judgment in the matter of State of Maharashtra and others vs. Maimuma Banu and others, reported in (2003) 7 S.C.C. 448 read with observations of Hon'ble Supreme Court in order dated 19.11.2014, in

Special Leave to Appeal (C) No(s).31222-31223/2009 in the matter of Exe. Eng. Minor Irrigation Division Vs. Dinkar & ors. However, while calculating the amount, amounts as may have been recovered by Respondent vide decree dated 3rd October 2000 in Special Civil Suit No.88 of 1999 passed by Civil Judge, Senior Division, Beed, shall be deducted and only balance if any, shall be paid.

(A.I.S. CHEEMA, J.) (S.V. GANGAPURWALA, J.)

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