

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

FIRST APPEAL NO.154 OF 2015

Maharashtra State Electricity
Distribution Company Limited,
through the Executive Engineer
(Civil), CCM Division, Latur,
District Latur

..Appellant

Versus

1. Vishwambhar s/o Kerba Gaikwad,
Age 70 years, Occu. Agriculture,
R/o Ashta Taluka Chakur,
District Latur

2. The State of Maharashtra,
through the Collector,
Collector Office, Latur

..Respondents

Mr A.S. Shelke, Advocate for appellant
Mr A.B. Kale, Advocate for respondent No.1
Mr P.P. More, A.G.P. for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 20th July 2015

PER COURT

1. The land of the claimant/respondent was acquired for 33 K.V.P. Sub-station Ashta, which is located four fields inside the connecting road viz. Latur-Udgir road which runs parallel to Latur-Nanded highway.

2. The Special Land Acquisition Officer, pursuant to Section 4 notification dated 18th January 2001 has awarded compensation of Rs.59,000/- per hectare on 30th March 2002, which was subject matter of challenge at the behest of present respondent-claimant in Land Acquisition Reference No.8 of 2004. The reference Court

enhanced the compensation from Rs.59,000/- per hectare to Rs.1,50,000/- per acre, as such present appeal under Section 54 of the Land Acquisition Act.

3. The learned Counsel for the appellant-acquiring body has sought to canvass that the enhancement granted is by way of guess work. According to him, even if the guess is proper, the same has to have some basis. According him, the reference Court concluded the guess work in para 14 of the judgment which is required to be upset, as the compensation awarded is exorbitant. In addition to above, he would urge that the rental compensation which was ordered to be paid to the claimant carries an interest at the rate of 8% p.a. from the date of possession till the realisation of the enhanced amount of compensation. While relying upon the judgment of the Apex Court in the matter of **Executive Engineer (C) MSEB, Nagpur Vs. Uttamrao s/o Bapurao Ratu and ors.**, reported in **2009 LAC 743 (Bom)**, would urge that the rental compensation is liable to be paid from the date of possession till the date of issuance of Section 4 notification and not thereafter and as such, according to him, the reference Court has committed error of law.

4. Mr A.B. Kale, learned Counsel for claimant would oppose the abovesaid contentions and has urged that Exh.33 a sale instance dated 29th September 1999 is of a plot, situated at Ashta which was sold at that time for a consideration of Rs.35/- per square feet. According to him the land under acquisition which is located about 4

to 5 fields inside from the said Latur-Udgir road, was formed to be the basis for granting rental compensation. Apart from above, the crop statement and cropping pattern were also taken into account.

5. So far as the claim as regards rental compensation is concerned, learned Counsel for the appellant has placed reliance upon the order of this Court in the matter of **Dinkar Sandipan Gholve & Ors. Vs. State of Maharashtra & Ors.**, reported in **2009 (Supp) Bom.C.R.891**, which was further confirmed in Special Leave to Appeal No.31222-31223/2009 by the Apex Court so as to claim that the rental compensation carries an interest from the date of possession till the date of realisation of the amount. According learned Counsel for the appellant, even if the claim of the present appellant is accepted, the appellant will be at loss if the amount is calculated taking into account the date of possession and the date of payment. He supports the award.

6. Having considered the rival contentions of the parties, it is required to be noted that in present case, Section 4 notification was issued on 8th January 2001. The sale instance which was placed on record at Exh.33 though was discarded by the Court itself for the purpose of forming the base for enhancement, however, while doing the guess work, as permissible by the law laid down in a case reported in **2007 (10) LJ Soft 138**, the reference Court has proceeded to fix the compensation at the rate of Rs.1,50,000/- per acre.

7. While doing so, the reference Court was alive to the fact as regards the location of the land from Latur-Udgir road which is though somewhat away from Latur-Nanded highway. Apart from above, the sale instance Exh.33 of 1998, in which the compensation was awarded at the rate of Rs.35/- per square feet, the cropping pattern and revenue record was well within the knowledge of the reference Court.

8. In my opinion, the guess work as done by the reference Court, particularly in view of location of the land appears to be just and proper. As such, the award granting compensation at the rate of Rs.1,50,000/- per acre does not call for interference.

9. So far as the issue as regards payment of rental compensation from the date of possession till the date of realisation is concerned, it is required to be noted that the rental compensation admittedly carries interest as ordered by the Apex Court in catena of judgments. In the present case, the reference Court has not awarded any interest on rental compensation. The fact is not in dispute that the possession of land was taken in 1999 prior to issuance of Section 4 notification which is 8th January 2001. In view thereof, it is the liability of present appellant to pay the rental compensation.

10. The point that is sought to be canvassed as regards the payment of rental compensation from the date of possession till the issuance of Section 4 notification is required to be accepted in the light of judgment in the matter of **Executive Engineer (C) MSEB,**

Nagpur Vs. Uttamrao s/oBapurao Ratu and ors (cited supra). This Court also cannot lose sight of the judgment of this Court in **Dinkar Sandipan Gholve & Ors. Vs. State of Maharashtra & Ors,** which was further confirmed in the Special Leave Petition by the Apex Court. Admittedly, this Court has given finding as regards the payment of rental compensation and the interest on the same.

11. Once the reference Court has not awarded any interest on the rental compensation in the present matter, in my opinion, the same aspect as regards award of rental compensation from the date of possession till the date of realisation does not call for any interference. If the above contentions are accepted, this Court will be required to modify the award to the extent of awarding interest on the rental compensation. The amount of rental compensation awarded in this case is higher than the claim for amount of interest on the rental compensation. Appropriate support can be drawn from the judgment of **Dinkar Sandipan Gholve & Ors. Vs. State of Maharashtra & Ors** (cited supra). Paragraphs 3 and 9 of the said judgment reads thus :

“ 3. Alternatively it is submitted that the petitioners are entitled to rental compensation in terms of the Government G.R. dated 1st December, 1972 read with Government Resolution dated 2nd April, 1979. It is submitted that in terms of this G.R. the petitioners are entitled for rental compensation which is 8% of the Award value. The Award value, it is submitted, is not only the market value of the land, but all ingredients including trees standing on the land and appurtenant thereto as are set out in Section 23 of the Land Acquisition Act.

. On behalf of the respondent State it is submitted that considering the judgment of the Supreme Court in R.L. Jain (D) by L.Rs. Vs. D.D.A. and ors. 2004 AIR S.C.W. 1627 the petitioners are neither entitled to the benefit Section 23 (1-A) between the date of taking possession and the issuance of notification under Section 4 nor are they entitled to interest in terms of Section 34 of the Act. It is further submitted that issue of rental compensation is not issue in the present petition and the Court should not suo moto decide the same. Alternatively, it is submitted that rental compensation payable is only on the market value and that will be payable between the date of taking possession and the notification issued under Section 4 of the Land Acquisition Act.

4. The larger Bench of the Supreme Court answered the issue as under:-

"For the reasons already indicated, we are of the opinion that the view taken in Special Tehsildar is legally correct and the view to the contrary taken in Assistant Commissioner, Gadag (supra) is not in accordance with law and is hereby overruled."

9. The law as laid down in Special Tahsildar (LA) P.W.D. Schemes, Vijaywada Vs. M.A. Jabbar) 5, 1995 DGLS (Soft) 44 : AIR 1995 SC 762 held that the claimant would not be entitled to additional sum for the period anterior to publication of Notification under Section 4(1) of the Act.

. In our opinion considering that the provisions of either both directly Section 23 (1-A) as well as Section in consideration or considered 34 were and answered, it would

be clear that the land owners whose possession was taken by private agreement before notification under Section 4(1) is not entitled to the additional amount under Section 23 (1-A) nor the interest as contemplated under Section 34. However, as noted by the Supreme Court the land owner would be entitled to rent or damages for use and occupation for the period the Government retains the possession of the property. The power is conferred on the Collector to determine the rent or damages. The Supreme Court also noted that in determining the amount of compensation payable to the land owner for such period interest at prevailing bank rate may be awarded. Considering this position of law the persons interested whose land was taken possession before the notification under Section 4(1) would be entitled to compensation and/or damages which would normally have to be calculated at the rate of interest which a Nationalised Bank would pay on a Fixed Deposit at the prevailing rate. The claim of the applicant to that extent will have to be rejected.”

12. In view of above, in my opinion, no case for interference in appellate jurisdiction is made out. The appeal fails, stands dismissed.

(N.W. SAMBRE, J.)

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