

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

FIRST APPEAL NO.425 OF 1999

1. Sambhaji s/o Ganpati Langade
Age - 60 years, Occupation -
Agriculture, R/o Aronapur,
Taluka and District Nanded.
 2. Pralhad S/o Ganpati Langade
Through Legal Representatives
 - 2A) Vimalbai W/o Pralhad Langade,
Age: 60 Years, Occu: Household,
 - 2B) Randhir S/o Pralhad Langade,
Age: 42 Years, Occ: Agriculture,
 - 2C) Radheshyam S/o Pralhad Langade,
Age: 35 Years, Occ: Agriculture,
- All R/o Ardhapur, Tq. Ardhapur,
District Nanded.

- APPELLANTS

VERSUS

1. The State of Maharashtra
through the Collector, Nanded.
2. Special Land Acquisition Officer,
Nanded PT MIV-2, Nanded.
3. The Executive Engineer,
U.P.P. No.3, Nanded.

- RESPONDENTS

Mr.M.V.Ghatge, Advocate for Appellants;
Mr.N.T.Bhagat,AGP for Resp.Nos.1 to 3.

CORAM : P.R.BORA,J.

DATE OF RESERVING JUDGMENT: 24th MAY, 2016

DATE OF PRONOUNCING JUDGMENT:5th JULY,2016

JUDGMENT :

1) Heard. The appellants have challenged the Judgment and Award passed in L.A.R.No. 197/1996 on 16th September, 1998 by Civil Judge, Senior Division, Nanded by filing the present appeal. The aforesaid LAR was filed by the appellants under Section 18 of the Land Acquisition Act, 1894 (for short, the Act) for the determination, fixation and enhancement of the amount of compensation awarded by the Special Land Acquisition Officer, towards the acquisition of the agricultural land bearing Gut No.466 admeasuring 42 R. situated at village Ardhapur, Tq. And Dist. Nanded owned by the appellants/claimants. The Reference Court has dismissed the aforesaid LAR vide the impugned order.

2) A common Judgment and Award was passed by the Reference Court in LAR No.197/1996 with the companion references. The agricultural land

of the appellants was acquired for construction of Nimgaon Branch Minor (Kalwa) Chari No.7, Tq. And District Nanded along with some other agricultural lands. A notification under Section 4 of the Act pertaining to said acquisition, was issued on 23rd August, 1990. Possession of the land was, however, taken by the Government much prior to the said notification, i.e. on 5th February, 1986. The Award under Section 11 of the Act came to be passed on 13th July, 1995. The Special Land Acquisition Officer granted the compensation to the appellants at the rate of 31,000/- per hectare. According to the petitioners, the compensation awarded by the Special Land Acquisition Officer was inadequate and the petitioners, therefore, preferred the Land Acquisition Reference invoking the provisions under Section 18 of the Act. The petitioners claimed the compensation at the rate of Rs.60,000/- per acre.

3) In order to substantiate the claim so

raised by them, the petitioners had relied upon four sale instances and had also examined one witness in order to prove one of such sale transaction. Petitioner No.1 – Sambhaji had also deposed before the Reference Court in order to substantiate the claim raised by the petitioners. It was the case of the petitioners before the Reference Court that the lands, as similar in quality and potentials, situated in the same area, were sold at the rate more than Rs.60,000/- per acre and as such, the petitioners were also entitled to receive the compensation at the said rate. No witness was examined on behalf of the respondents before the Reference Court.

4) The learned Reference Court however, on his assessment of the oral and documentary evidence brought before him, dismissed the Reference Application vide the impugned order on merits as well as on the point of limitation. According to the Reference Court, since the Reference Application was filed after the period

of about eight months from the date of passing of the Award under Section 11 of the Act, it was time-barred. Though a plea was raised by the present appellants and other petitioners, that they acquired the knowledge about passing of the Award only after a notice under Section 12(2) of the Act was served upon them on 8th January, 1996, the Reference Court has rejected the said contention holding that from the evidence on record there was reason to believe that the present appellants and other petitioners were quite aware of passing of the Award since the date of passing of such Award. Being aggrieved by the Judgment and Award passed, as aforesaid, the appellants have preferred the present appeal.

5) Shri Ghatge, learned counsel appearing for the appellants, submitted that in para 5 of the Reference Petition, the appellants had categorically averred that the petitioners acquired the knowledge that the Award has been passed by the Special Land Acquisition Officer

under Section 11 of the Act, only after the notice under Section 12(2) of the Act was served upon the petitioners on 8th January, 1996. The learned counsel submitted that within six weeks from the said date, the petitioners did file the Reference Petition and as such, it was well within the period of limitation.

. The learned counsel further submitted that in absence of any contrary evidence as about the averments made by the petitioners in para 5 of the Reference Application, on some erroneous assumptions, the Reference Court has recorded a finding that the Reference Petition filed by the petitioners was barred by limitation and consequently, has rejected the said petition being time-barred. According to the learned Counsel, the words "date of the Collector's Award" in proviso (b) to Section 18(2) of the Act has to be read as referring to the date of knowledge of the essential contents of the Award and not the actual date of the Collector's Award. In order to substantiate his contention, the

learned Counsel relied upon the judgment of the Hon'ble Apex Court in the case of **Bhagwandas & Ors. Vs. State of U.P. And Ors. - 2010 (4) Mh.L.J. 564.**

. The learned counsel further submitted that the Reference Court has failed in appreciating the evidence adduced on behalf of the petitioners in the form of sale-instances of the comparable lands. The learned counsel further submitted that for wrong and incorrect reasons, the Reference Court has preferred not to rely upon the said sale instances brought on record by the petitioners for determining the amount of compensation. The learned counsel further submitted that the Reference Court in a very cursory manner has refused to accept the evidence as about the amount of compensation. The learned counsel submitted that by adducing the evidence of an independent witness viz. Balaji Vitthalrao Bhalerao, the petitioners have aptly brought on record market value of the agricultural lands in the vicinity. The learned

counsel submitted that the said witness had sold 2 acres of land on 16th March, 1988 for the consideration of Rs.80,000/-. The learned Counsel submitted that there was no reason for the Reference Court to disbelieve the evidence of the said witness.

. The learned counsel, taking me through the evidence on record and more particularly to the sale instances at Exhibits-17, 18, 19 and 20, submitted that the petitioners have sufficiently proved that at the relevant time, the market value of the agricultural land in the subject area was around Rs.60,000/- per acre. The learned counsel, therefore, prayed for determining the market value of the acquired land at the said rate and accordingly award the compensation at the said rate. The learned counsel further submitted that the petitioners are also entitled for all statutory benefits provided under Sections 28 and 34 of the Act and prayed for grant of the said benefits in favour of the petitioners.

6) Shri N.T.Bhagat, learned AGP, opposed the submissions advanced on behalf of the petitioners. The learned AGP supported the impugned judgment. He further submitted that the Special Land Acquisition Officer had considered as many as 25 sale instances while determining the market value of the land under acquisition. The learned AGP further submitted that the Special Land Acquisition Officer has correctly taken into account the two sale instances out of the aforesaid 25 sale instances, considering the fact that the lands, which were the subject matter of the said two sale instances, were in all respect comparable with the lands under acquisition.

. In so far as point of limitation is concerned, the learned AGP submitted that the petitioners were having full knowledge of the fact of passing the Award and as such, the petitioners must have filed the Reference Application within the stipulated period of six months.

. The learned AGP further submitted that the Reference Court has not committed any error in dismissing the Reference Application. He, therefore, prayed for dismissal of the appeal with costs.

7) I have considered the submissions made on behalf of the petitioners as well as the respondents. I have also perused the impugned Judgment and the record of the case, more particularly, the evidence orally and documentary adduced in the matter.

8) First, I would like to deal with the point of limitation. As stated herein above, the petitioners have taken a specific plea that they come to know about passing of the Award under Section 11 of the Act only after the notice under Section 12(2) of the Act was served upon them on 8th January, 1996. The averments made in this regard in the Reference Application have not been specifically denied or disputed by the

respondents. In absence of any contrary evidence on record, I see no reason to disbelieve the submission so made by the petitioners.

9) The application for reference under Section 18 of the Act must be made within the period prescribed under proviso to said Section 18(2) of the Act. The relevant provision reads thus,

"18. Reference to Court –

(1)

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice

from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire". (emphasis supplied)".

10) In view of the law laid down by the Hon'ble Apex Court in the case of Bhagwandas and Ors. Vs. State of U.P. and Ors. (cited supra), the words "date of Collector's Award" in proviso (b) to Section 18(2) of the Act must be read as referring to date of knowledge of the essential contents of the Award and not the actual date of the Collector's Award. I find it appropriate to reproduce the observations made by the Hon'ble Apex Court in Para 11 of the said judgment, which read thus, -

"11. When a land is acquired and an award is made under section 11 of the Act, the Collector becomes entitled to take possession of the acquired land. The award being only an offer on behalf of the Government, there is always a tendency on the part of the

Collector to be conservative in making the award, which results in less than the market value being offered. Invariably the land loser is required to make an application under section 18 of the Act to get the market value as compensation. The land loser does not get a right to seek reference to the Civil Court unless the award is made. This means that he can make an application seeking reference only when he knows that an award has been made. If the words six months from the 'date of the Collector's award' should be literally interpreted as referring to the date of the award and not the date of knowledge of the award, it will lead to unjust and absurd results. For example, the Collector may choose to make an award but not to issue any notice under section 12(2) of the Act, either due to negligence or oversight or due to any ulterior reasons. Or he may send a notice but may not bother to ensure that it is served on the land owner as required under section 45 of the Act. If the words 'date of

the Collector's award' are literally interpreted, the effect would be that on the expiry of six months from the date of award, even though the claimant had no notice of the award, he would lose the right to seek a reference. That will lead to arbitrary and unreasonable discrimination between those who are notified of the award and those who are not notified of the award. Unless the procedure under the Act is fair, reasonable and non-discriminatory, it will run the risk of being branded as being violative of Article 14 as also Article 300A of the Constitution of India. To avoid such consequences, the words 'date of the collector's award' occurring in proviso (b) to section 18 requires to be read as referring to the date of knowledge of the essential contents of the award, and not the actual date of the Collector's award."

11) In view of the law laid down by the Hon'ble Apex Court as above, there remains no

doubt that the Reference Application filed by the petitioners was filed well within the prescribed period of limitation. The negative finding recorded in this behalf by the Reference Court thus deserves to be quashed and set aside and it has to be held that the Reference Application filed by the petitioners was filed well within the period of limitation.

12) Now, about the amount of compensation, as has come on record, the appellants were claiming compensation of the land under acquisition at the rate of Rs.60,000/- per acre. In order to substantiate that during the relevant period, same was the market value of the lands as similar to the land under acquisition, situated in the area nearby the land under acquisition, the petitioners have relied upon four sale instances. The sale-deeds of all these transactions have filed on record at Exhibits-17 to Exhibit-20. One of such sale deeds has been duly proved by the petitioners by examining the

vendor viz. Balaji Vitthalrao Bhalerao.

. The land, which was the subject matter of the sale-deed at Exhibit-17, was admeasuring 24 R. and was sold at the price of Rs.50,000/- by a registered sale-deed executed on 18.12.1985. The land, which was sold vide sale-deed at Exhibit-18 on 16th March, 1988, was admeasuring 81 R. and the value received to the said land was Rs.80,000/-. The sale deed at Exhibit-19 pertains to sale transaction occurred on 17th September, 1990 in respect of 4 R. land, which was sold for the consideration of Rs.40,000/-. The land which was the subject matter of the sale-deed at Exhibit-20 was admeasuring 40 R. and was sold by a registered sale-deed executed on 2nd July, 1991 for the consideration of Rs.1,00,000/-. For some or other reason, the learned Reference Court did not rely upon any of the aforesaid sale instances. Instead, the learned Reference Court has relied upon the sale instances referred to in the Award passed by the Special Land Acquisition Officer.

. The contents of the Award passed under Section 11 of the Act reveal that the Special Land Acquisition Officer has relied upon the sale instance occurred on 26th October, 1989 in relation to Gut No.448 situated at village Ardhapur, wherein, the market value received to the concerned land was at the rate of Rs.28,787/- per hectare. As discussed in the award, according to Special Land Acquisition Officer, the aforesaid was the comparable sale instance for determining the market value of the land under acquisition. Assuming that the market rate of the land would normally increase by 6% in a year, the Special Land Acquisition Officer has determined the market value of the land under acquisition at the rate of Rs.31,000/- per hectare. However, it is the matter of record that during the course of hearing of the LAR No.197/1996, the respondents did not adduce any oral or documentary evidence. The law is well-settled that the Reference Court cannot take into account the material relied upon by the Land

Acquisition Officer in his Award, unless the said material is produced and proved before the Reference Court. Admittedly, the sale instance on which reliance seems to have been placed by the learned Reference Court, has not been legally proved by the respondents. The respondents have not placed on record a copy of the concerned sale deed nor any witness has been examined to prove the said sale instance.

. The learned Reference Court has grossly erred in placing implicit reliance on the discussion made in the Award by the Special Land Acquisition Officer while rejecting the Reference Application. What was incumbent upon the learned Reference Court was to analyze the sale instances brought on record by the petitioners by adducing necessary evidence therefor. The Reference Court has kept out of consideration the sale instance at Exh.17 for the reason that it was pertaining to the irrigated land. The sale instance at Exh.18 has not been considered and relied upon by the Reference Court, recording a reason that the

said land was purchased by the adjacent land holder, who was bound to pay higher price than the market rate. Similar was the reason for rejecting the sale instance at Exh.19 by the Reference Court. As noted by the Reference Court, the purchaser- Afsari Begum was possessing her own land towards the eastern side adjacent to the land which was the subject matter of Exhibit-19. The sale instance at Exh.20 was also kept out of consideration by the Reference Court.

13) After having perused the discussion made in the impugned judgment as about the sale instances at Exhibits-17 to 20, it appears that the Reference Court has failed in properly appreciating the said evidence. It is the matter of record that the petitioners have examined one Balaji Vitthalrao Bhalerao, in whose evidence, the sale instance at Exh.18, was duly proved. The said sale instance is of the date 16th March, 1988. Section 4 notice was admittedly issued on 23.8.1990. As such, there was no reason for the

Reference Court for not considering the aforesaid sale instance. Even if it is presumed that the person, who purchased the subject land of Exh.18, for the reason that he was having his own land towards southern side of the subject land, the entire said transaction cannot be branded as not genuine transaction. No doubt, adjacent land holder would certainly pay some more price, but, it cannot be accepted that he would pay twice or thrice of the market value.

14) As has come on record, the land, which was the subject matter of Exh.18, admeasuring 81 R., was sold on 16.3.1988 for value of Rs.80,000/-. Admittedly, the said land was purchased by the adjacent land holder. Even if it is assumed that being adjacent land, the purchaser might have paid higher price for the said land. It can be reasonably inferred that the market value of the said land may be around Rs.25,000/- to 30,000/- per acre. The sale instance at Exh.17 pertains to the transaction

held on 18th December, 1985, wherein 24 R. land was sold for the consideration of Rs.50,000/-. Admittedly, the said land was irrigated land. When the aforesaid transaction had taken place, neither the notification under Section 4 of the Act was issued nor the lands were taken in possession for the subject project. When for the irrigated land, value was received at the rate of around Rs.2,000/- per R., i.e. Rs.80,000/- per acre, even if most conservative approach is taken, a reasonable inference can be drawn that the price at the relevant time of the non-irrigated land in the said area, may be around Rs.25,000 to Rs.30,000/- per acre.

15) After having considered the available evidence on record, as discussed herein above, I determine the market value of the land under acquisition at the rate of Rs.25,000/- per acre. According to me, this would be the just and adequate price of the land under acquisition and the compensation needs to be paid to the

petitioners at said rate with all statutory benefits. The impugned order so far as it relates to LAR No.197/1996, stands quashed and set aside. Hence, the following order.

ORDER

I) The Judgment and Award dated 16th September, 1998 passed in L.A.R.No.197/1996 by Civil Judge, Senior Division, Nanded, is quashed and set aside;

II) The market value of the subject land, as determined, by the Collector at the rate of Rs.31,000/-, per hectare, is enhanced to Rs.62,500/- per hectare;

III) The respondents do jointly and severally pay the enhanced amount of compensation to the petitioners along with interest at the rate of 12% per annum, as special component from the date of publication of the notification

under Section 4(1) of the Act till the date of Award;

IV) The respondents do jointly and severally pay to the petitioners a sum of 30% on the enhanced amount of compensation, as solatium, as provided under Section 23(2) of the Act;

V) The respondents do jointly and severally pay to the petitioner 9% interest on the enhanced amount of compensation from the date of possession, i.e. 23.8.1990 to 22.8.1991 and at the rate of 15% per annum from 22.8.1991 till the realisation of the entire amount, vide Section 28 of the Act;

VI) The Award be drawn accordingly;

sd/-
(P.R.BORA)
JUDGE

bdv
fldr 25.5.2016