

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 977 OF 2004

Dasharath Namdeo Gadge,
(Deceased) Through L.Rs.

1-A) Janardhan Dasharath Gadge,
Age 38 years, Occu. Labour
and agriculture,

1-B) Babasaheb s/o Dasharath Gadge,
Age Major, Occu. Agriculture and
Labour,

1-C) Rukhaminibai Dasharath Gadge,
Age 70 years, Occu. Household
and Labour,

r/o Kapurwadi,
Taluka and District Ahmednagar,

1-D) Shashikala Govardhan Kardile,
Age 23 years, Occu. Labour,
R/o Buranagar,
Taluka and District Ahmednagar.

... Appellants

Versus

The State of Maharashtra,
Through Govt. Pleader,
High Court of Bombay,
Bench at Aurangabad.

... Respondent

WITH
FIRST APPEAL NO. 1268 OF 2004

Ramdas s/o Namdeo Gadge
Age 45 years, Occu. Agriculture,
r/o Kapurwadi,
Taluka and District Ahmednagar.

... Appellant

Versus

The State of Maharashtra,
Through Govt. Pleader,
High Court of Bombay,
Bench at Aurangabad.

... Respondent

.....
Advocate for Appellants : Mr. S. L. Bhapkar
AGP for Respondent State : Mr. K. D. Mundhe
.....

CORAM : V. K. JADHAV, J.

DATED : 30th MARCH, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award passed by learned Joint Civil Judge Senior Division, Ahmednagar dated 30.04.1996 in LAR No. 573 of 1993, the original claimants have preferred the present First Appeal No. 977 of 2004, whereas, being aggrieved by judgment and award dated 30.04.1996 passed by learned Joint Civil Judge Senior Division, Ahmednagar in LAR No. 574 of 1993, the original claimant has preferred the present First Appeal No. 1268 of 2004. Since both the Land Reference Applications arise out of one and the same award, the present First Appeals are decided by this common judgment and order.

2. Brief facts giving rise to the present appeals are as follows:

Both the appellants-original claimants were having 2H 35R of land each, and the same is acquired for the purpose of construction of percolation tank. The SLAO has carried out classification of the lands under acquisition and treated the acquired lands as *Jirayat* lands. Consequently, claimants challenged the award mainly on the ground of classification of land on the market rates. The State has resisted the claim by filing written statement. Learned Judge of the reference court has partly allowed the reference applications and thereby awarded compensation at the rate of 25,000/- per Hecter for the acquired lands to both the claimants. Being aggrieved by the same, the original claimants have preferred these two separate appeals.

3. Learned counsel for the appellants submits that even though there is a well in the acquired land, the reference court has treated and classified the land as *Jirayat* land and accordingly, awarded compensation. Learned counsel further submits that the reference court has not considered the *potkharaba* of the acquired land and even though the claimants have claimed compensation for the same, the reference court has not awarded any compensation separately for the *potkharaba* area. Learned counsel for the appellants submits that the elder brother of the appellants, whose land is also acquired by the Government along with the appellants under the same award,

preferred First Appeal No. 540 of 1997. Learned counsel has produced copy of the judgment delivered by this Court in the said First Appeal and has pointed out that this Court, by judgment and order dated 9.2.2016, partly allowed the said appeal and thereby enhanced the compensation by granting compensation at the rate of Rs.500/- per R. in place of Rs.250/- per R.

4. Learned AGP for respondent State submits that the reference court has considered the acquired area and accordingly, awarded compensation as per the market rate by relying upon the judgment delivered in LAR No. 137 of 1993, which has been decided on 30.03.1996. Learned AGP submits that admittedly, both the lands are acquired under the same award and are of the same village. Learned AGP submits that therefore, the reference court has rightly awarded enhanced compensation at the rate of Rs.25,000/- per Hectar which is just and reasonable. Learned AGP submits that there is no merit in the appeals and thus, the appeals are liable to be dismissed.

5. It appears that the Reference court has given compensation at the rate of Rs.25,000/- per Hectare i.e. Rs.250/- per R. by relying upon the judgment delivered in L.A.R. No. 137 of 1993. There is no dispute that the land under the said Reference No.137 of 1993 and

the present lands are acquired under the same award and from same village. On perusal of the record, it appears that the judgment delivered in L.A.R. No.137 of 1993 is produced before the Reference court and the same is marked at Exh. 22. The learned Judge of the Reference court has relied upon the sale transaction between one Machindra and Minabai. The said sale deed is produced on record and marked Exh.40. As per the contents of the sale deed it appears that said Machindra Sold out of 20 R land for consideration of Rs.20,000/- to said Minabai on 2.5.1989. The land from the sale instance is also Jirayat land. This Court has considered the said sale instance alongwith judgment delivered by the Reference Court in L.A.R. No. 137 of 1993. This Court while deciding First Appeal No. 540 of 1997, has observed that road of 15 ft width was given to the purchaser by the vendor for approaching the land of purchaser and even considered the market price of the land under sale instance at the rate of Rs.1.00 lac per Hectare. Consequently, this Court has held that even considering addition of road of 15 ft in width, the value of the land cannot be reduced much. This Court while deciding First Appeal No. 540 of 1997 considered the reduction in the valuation of the land to the extent of 50% and accordingly, held that the market price was at least Rs.50,000/- per hectare i.e. Rs.500/- per R.

6. Admittedly, the land owned and possessed by three real

brothers came to be acquired under the same award. In the appeal preferred by elder brother, this Court, while disposing of First Appeal bearing No. 540 of 1997, awarded compensation at the rate of Rs.500/- per R. Thus, there is no reason to take any other view and the present appeals also can be disposed of by awarding the same rate.

7. Learned A.G.P. submits that the Apex Court has made it clear that in case the possession is taken prior to the notification, the claimant has no right to claim interest on compensation under Section 34 or Section 29 of the Act and the interest on compensation can be granted from the date of award under section 11 of the Land Acquisition Act and not from the date of possession. Learned A.G.P. submits that reference court in the present case, has awarded interest from the date of possession till the date of realization of entire amount. Learned A.G.P. submits that the same is required to be quashed and set aside. Learned A.G.P. in order to substantiate his submissions, places reliance on the judgment of this Court in the case of ***Lalitkumar Himmatlal Shah vs. State of Maharashtra and others, reported in 2013 (1) Bom. C. R. 132.***

8. In the light of above submissions, learned counsel appearing for the appellant-original claimants brought to the notice of this Court

the written statement submitted by the State, most particularly paragraph No. 10 of the said written statement which reads as under:-

“10. The opponent submit that section 4 notification was published on 8.6.1989. The award bearing No. LAQ/SR/32/88 dated 12.9.1992. The date of possession is not taken and the purpose of acquisition is percolation tank. The land is from village Kapurwadi, Taluka Ahmednagar. District Ahmednagar”.

9. It appears from the pleadings of the State that the award came to be passed on 12.9.1992 and possession of the acquired land was not taken prior to notification. In view of this, I do not find any fault in the impugned judgment and award directing interest to be paid from the date of possession till realization of the amount. Hence, I pass the following order:-

ORDER

- I. Both the first appeals are hereby partly allowed.
- II. The impugned judgment and award dated 30.4.1996 passed by learned Joint C.J.S.D. Ahmednagar in L.A.R. No. 573 of 1993 and 574 of 1993 is modified in the following manner;-

The opponent do pay to each of the appellants an amount of Rs.98,700/- (Rupees Ninety eight thousand seven hundred only) (i.e. @ Rs.500/- per R for total area of 2 Hectare 35 R. less amount awarded by the S.L.A.O.)

- III. The rest of the judgment and award in respect of interest and statutory benefits stand confirmed.
- IV. Needless to say that as per the award passed by the Reference Court, if the amount, is paid to claimants the same shall be deducted.
- V. Award be drawn up accordingly.

(V. K. JADHAV, J.)

rlj/