

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.937 OF 2016

- 1) The State of Maharashtra
Through Collector, Nanded.
 - 2) The Special Land Acquisition
Officer, Percolation Tank,
Minor Irrigation Works No.2,
Nanded, Dist. Nanded.
 - 3) The Executive Engineer,
M.I.W. (Medium Project)
Division, Nanded.
- = **APPELLANTS**
(orig. Respondents)

VERSUS

Mahadu s/o Nagorao Shirde
Age: 35 Yrs., occu. Agril.
R/o Jaldhara, Tq. Kinwat,
District Nanded.

= **RESPONDENT**
(orig. Claimant)

Mr.SN Morampalle, AGP for Appellants;
Ms.MR Jamdhade, Advocate for Respondent.

CORAM : P.R.BORA, J.

DATE : 20th September, 2016.

ORAL JUDGMENT:

- 1) Heard. Admit. By consent of the learned
Counsel appearing for the parties, taken up for
final disposal.

2) The State has filed the present appeal taking exception to the judgment and award passed by 2nd Ad hoc District Judge, Nanded on 23rd January, 2006 in LAR No.184/1998.

3) The subject land admeasuring 2 hectares and 58 Ares situated at village Jaldhara was acquired for the percolation tank to be constructed at village Jaldhara, Tq. Kinwat, District Nanded. Notification under Section 4 of the Land Acquisition Act, 1894 (for short, the Act) in that regard was published in Government Gazette on 13th March, 1993 and the Award under Section 11 of the Act came to be passed on 27th March, 1996.

. The Special Land Acquisition Officer, (for short, SLAO) fixed the market value of the acquired land @ Rs.24000/- per hectare and accordingly offered the amount of compensation to the present respondent. Being dissatisfied with the amount of compensation so offered, the

claimant presented an application under Section 18 of the Act to Collector, Nanded, who in turn, forwarded the said application for adjudication to the Civil Court at Nanded (herein after referred as Reference Court).

. Before the Reference Court, the claimant had claimed the compensation @ Rs.50,000/- per hectare. In order to substantiate the claim so made, the claimant adduced his oral evidence as well as placed on record two sale instances. No oral or documentary evidence was adduced by the State. The Reference Court, after assessing the oral and documentary evidence brought before it, determined the market value of the acquired land @ Rs.42,500/- per hectare and accordingly enhanced the amount of compensation. Aggrieved by the same, the State has filed the present appeal.

4) Shri Morampalle, learned AGP appearing for the State has assailed the judgment and award on the ground that without there being any cogent

and sufficient evidence therefor the Reference Court has arbitrarily enhanced the amount of compensation almost twice to the rate as was fixed by the SLAO. The learned AGP submitted that out of the two sale instances, one was out of consideration, for the reason that it was executed after four years of issuance of the notification under Section 4 of the Act.

. The learned AGP further submitted that the another sale instance, which was of the year 1986, was pertaining to 61 Ares land and the consideration received was Rs.14,250/-. The learned AGP further submitted that the Reference Court, while determining the amount of compensation, has unnecessarily increased the amount of market value while placing the reliance on the said sale instance. The learned AGP, therefore, prayed for setting aside the impugned judgment and award and to re-determine the market value of the acquired land and accordingly to refix the amount of compensation.

5) Learned Counsel appearing for the original claimant – respondent has supported the impugned judgment and submitted that no interference is warranted in the judgment and award so passed.

6) On perusal of the impugned judgment, it reveals that the Reference Court has thoroughly examined the oral and documentary evidence brought on record before it. The discussion made by the Reference Court in its judgment further reveals that it has not blindly relied upon the sale instances placed on record by the claimant, but has also considered the plus and minus factors attached to the acquired land while determining the amount of compensation.

. It is further revealed that the Reference Court has declined to rely upon the sale instance dated 7.5.1997, observing that it was of the period after issuance of Section 4 notification. While relying on the sale instance dated 8.4.1986 pertaining to 61 Ares land, the

Reference Court has elaborately discussed as to how the price needs to be increased by taking into account the relevant circumstances and has accordingly enhanced the amount to the tune of Rs.42,500/- per hectare. The Reference Court has observed that the land, which was the subject matter of sale deed executed on 8.4.1986 was dry land whereas there was reason to believe that the acquired land was semi-irrigated land. The Reference Court has observed that the 7/12 extract of the acquired land, which is at Exh. 23, show existence of well in the said land. It is further observed by the Reference Court that taking into account the crops, which were being taken in the acquired land, though it cannot be accepted that it was fully irrigated land, there was reason to believe that it was semi-irrigated land and accordingly, by applying the settled norms, the Reference court has determined the amount of compensation.

7) After having gone through the entire

material on record, it does not appear to me that any mistake has been committed by the Reference Court in determining the amount of compensation. Admittedly, no oral as well as documentary evidence was adduced by the State so as to take any different view. In the circumstances, I do not see any reason for causing any interference so far as the market value determined by the Reference Court and the compensation accordingly assessed by the Reference Court.

. However, there appears substance in the submissions made by learned AGP that the Reference Court has committed an error in awarding the interest under Section 34 of the Act. In view of the Full Bench Judgment delivered by this Court in the Case of The State of Maharashtra Through Sub-Division Officer Vs. Kailash Shiva Rangari – 2016(4) Bom CR 1, no such interest can be awarded. To this extent, the appeal needs to be allowed by setting aside the impugned order to that extent.

8) In the result, the following order,

ORDER

i) The appeal is partly allowed;

ii) The impugned order so far as it relates to grant of interest under Section 34 of the Act, is quashed and set aside. The other part of the impugned order is maintained as it is.

iii) No order as to costs. Pending Civil Application, if any, stands disposed of.

(P . R . BORA)
JUDGE

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