

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

13 FIRST APPEAL NO. 494 OF 2004

1. The Special Land Acquisition Officer,
U.T.P.H. No.2, Jalgaon.
2. The Executive Engineer,
Medium Project Divn.,
Jalgaon .. Appellant

VERSUS

Vitthal Jalam Patil
Age : 60 yrs., Occu : Agri,
R/o. Dharagir, Tq. Erandol,
Dist. Jalgaon .. Respondent

...

AGP for Appellant : Mr. S.P. Sonpawale

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CORAM: P. R. BORA, J.
DATE : 20TH JUNE, 2017.

ORAL JUDGMENT :

1. The State has preferred this appeal taking exception to the Judgment and Award passed in L.A.R. No.345/2000 on 06.04.2000 by Civil Judge, Senior Division, at Jalgaon.

2. The land belonging to respondent was acquired for the purpose of Anjani Medium Project at Dhargir, Tal. Erandol, Dist. Jalgaon. Land admeasuring 96 - R, Pot kharaba - 38 R from Gat No.41 and land admeasuring 52 R from Gat No.44, both gat numbers belonging to respondent, were acquired for the aforesaid project. Notification under Sec.4 of the Land Acquisition Act (hereinafter in short 'Act') in that regard was published on 06.03.1997 and the

Award under Sec.11 of the Act came to be passed on 31.03.1999, whereby the Spl. Land Acquisition Officer (hereinafter referred to as 'S.L.A.O.') offered the compensation at the rates ranging in between Rs.700/- to Rs.800/- per Are. Being dissatisfied with the amount of compensation so offered, the claimant preferred an application under Sec.18 of the Act seeking enhancement in the amount of compensation. The claimant had claimed the compensation of Rs.3000/- to Rs.4000/- per Are for jirayat land. The learned Reference Court, after having assessed oral and documentary evidence, brought on record before it determined the market value of the subject lands at the rate of Rs.2,000/- per Are for jirayat land, at the rate of Rs.4000/- for irrigated land and at the rate of Rs.1000/- for pot kharaba land and accordingly, enhanced the amount of compensation. Being aggrieved by the said Judgment and Award, the State has preferred the present appeal.

3. The learned AGP assailed the impugned Judgment on various grounds. The learned AGP submitted that, only one sale instance was brought on record by the claimants and since the same was not of a comparable land and as such, could not have been relied upon by the Reference Court while determining market value of the acquired land. The learned AGP further submitted that, the sale instance which was relied upon was pertaining to the land, which was at far away distance from the acquired land and as such also the market value of the acquired land could not have been determined on the basis of the consideration received to the said land.

4. The learned AGP further submitted that, the Reference Court has also erred in awarding the interest to the claimants under Sec.34 of the Act from the date of possession. The learned AGP,

therefore, prayed for setting aside the impugned Judgment and Award.

5. Though the respondent / Orig. claimant is duly served, has not entered his appearance in the matter.

6. In view of the submissions made by the learned AGP, when I perused the impugned Judgment and Award and the evidence adduced before the Reference Court, it is apparently revealed that, there is a very little scope in causing interference in the impugned Judgment and Award. The Reference Court has relied upon the sale instance proved by the Orig. Claimant. The sale - deed so proved by the claimants is at Exh.15. Vide the said transaction 50 R jirayat land was sold by registered sale deed executed on 25.08.1995 for the consideration of Rs.1,06,250/-. The learned Reference Court found it appropriate to rely upon the said sale instance to determine the market value of the subject land. Perusal of the impugned Judgment, however, shows that, the Reference Court while determining the market value of the acquired land on the basis of the said sale deed has made proper deductions observing that, the land involved in said sale instance was at the considerable distance from the acquired land. Since the sale instance relied upon by the claimant was of the year - 1995 whereas the notification under Sec.4 of the Act in regard to subject land was issued in the year 1997, the Reference Court increased the market value by 15%, which comes to Rs.2,443/- per Are for jirayat land; but they, having regard to the fact that, acquired land was at some distance from the land involved in the sale instance at Exh.15 determine the market value of the acquired land at the rate of Rs.2000/- per Are and accordingly enhanced the amount of compensation.

7. After having considered the evidence on the point, it does

not appear to me that, the Reference Court has committed any error in determining the market value of the subject land on the basis of the sale instance (Exh.15) placed on record by the claimants. No interference is, therefore, required in so far as the market value as has been determined by the Reference Court. However, in so far as the interest part is concerned, there appears substance in the argument advanced by the learned AGP that the Reference Court has grossly erred in awarding the interest to the claimant under Sec.34 of the Act from the date of possession. In view of the full bench Judgment of this Court in the case of *State of Maharashtra Vs. Kailash Shiva Rangari* reported in *2016 (4) Bom.C.R. 1* the Reference Court could not have granted the interest under Sec.34 of the Act from the date of possession. To that extent the impugned Judgment needs to be quashed and set aside. In the result, the following order is passed.

ORDER

- i) The appeal is partly allowed.
- ii) The impugned Award in so far as relates to grant of interest under Sec.34 of the Act from the date of possession stands modified to the effect that, such an interest would be payable from the date of Award.
- iii) Save and except the aforesaid modification, the impugned Award is maintained as it is.
- iv) Pending civil application, if any, stands disposed of.

[P.R. BORA, J.]