

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

**901 FIRST APPEAL NO. 2299 OF 2016**

Vitthal s/o Govindrao Tamake,  
Since died through Legal Heir,  
Bhanudas s/o Vitthal Tamake,  
Age 64 years, Occ. Agri.,  
R/o. Bhatsangavi, Tal.Ahmedpur,  
District Latur.

**...APPELLANT  
(Orig.Claimant)**

**VERSUS**

1. The State of Maharashtra,  
Through District Collector, Latur.
2. The Executive Engineer,  
Minor Irrigation,  
Zilla Parishad, Latur,  
Tal. & District Latur.

**...RESPONDENTS  
(Orig.Respondents)**

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Advocate for Appellant : Mr. Solanke Shrikrashna B.  
AGP for Respondent State:Mr. S.P.Sonpawale

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CORAM : P.R. BORA, J.  
Dated: July 11, 2017

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**ORAL JUDGMENT :-**

. Heard finally with consent of learned Counsel  
appearing for the parties.

1. The appellant has filed the present appeal seeking  
enhancement in the amount of compensation as awarded by

the Court of Extra Joint Civil Judge, Senior Division, at Latur (hereinafter referred to as the Reference Court) in LAR No.87/2002 (Old LAR No.880/1992 = 384/2001) decided on 9.12.2015.

2. The land admeasuring 1 Hectare 12 Are, owned by the present appellant, was acquired for construction of percolation tank at village Bhatsangavi, Tal. Ahmedpur, district Latur. Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as the said 'Act'), was published on 6th of October, 1988. The compensation of the acquired land was taken prior to that. After having complied with other procedure, award under Section 11 of the Act was passed on 4th of December, 1991. The Special Land Acquisition Officer (hereinafter, for short, referred to as the 'S.L.A.O.') offered compensation to the appellants at the rate of Rs.7200/- per acre. Dissatisfied with the amount of compensation so offered, appellant presented an application under Section 18 of the Act to the Collector of the district which was in turn forwarded to the Civil Court for adjudication. The appellant had claimed the compensation of his acquired land at the rate of Rs.50,000/- per acre before the Reference Court. In order to substantiate his claim, appellant himself deposed before the Reference Court

and also placed on record certain sale instances. No oral or documentary evidence was adduced by the State or acquiring body. Learned Reference Court, after having assessed the oral as well as documentary evidence brought before it, determined the market value of the acquired land at the rate of Rs.23,600/- per acre and, accordingly, enhanced the amount of compensation. The appellant has filed the present appeal seeking enhancement in the amount of compensation so awarded.

3. Shri S.B.Solanke, learned Counsel appearing for the appellant, submitted that the Reference court has failed in appreciating that for the adjacent lands acquired for the same purpose, in LAR No.111/2002 and 112/2002, commonly decided by the Court, the market value was determined of the said lands at the rate of Rs.30,000/- per acre. Learned Counsel further submitted that the sale instances which were relied upon by the Reference Court while deciding the said Reference Applications were also relied upon by the appellant in the present matter. Learned Counsel submitted that the Reference Court, however, made some incorrect and wrong observations that, the land involved in the sale instance at Exh.41 cannot be held to be comparable, and the compensation for the subject

land cannot be as same as the consideration received to the land which was the subject matter of Exh.41. Learned Counsel further submitted that in the circumstances, the Reference Court by improperly reducing the amount of consideration received to the said land, determined the market value of the acquired lands at the rate of Rs.23,600/- per acre. Learned Counsel submitted that, injustice thus has been caused to the appellant. Learned Counsel submitted that, according to the knowledge of the appellant, the State or the acquiring body did not prefer any appeal against the common judgment delivered in Land Acquisition Reference Nos. 111/2002 with 112/2002. Learned Counsel submitted that though the land of the present appellant is similar in all respects to the lands in LAR Nos.111/2002 and 112/2002, and when the claimants in the said Reference Applications had received the compensation at the rate of Rs.30,000/- per acre, the appellant did receive the compensation only at the rate of Rs.23,600/- per acre. Learned Counsel submitted that the Reference court has also not appreciated that there was a well in the field adjacent to the subject land which is also owned by the appellant and the appellant was having right to use water of the said well. Learned Counsel further submitted that though 7/12 extract was very well on record, evidencing that the appellant was

taking two crops, the Reference Court has declined to award compensation to the subject land treating the same to be irrigated land. Learned Counsel submitted that on all other grounds, the amount of compensation, as enhanced by the Reference Court, needs to be adequately enhanced.

4. Shri Sonpawale, learned A.G.P. appearing for the State, supported the impugned judgment and award. Learned Counsel submitted that the Reference Court has elaborately discussed the evidence which was before it and has rightly determined the market value of the acquired land. Learned A.G.P. submitted that the land which was involved in Exh.41 was admittedly from village Chakur and was adjacent to Highway and, as such, it was quite evident that the consideration received to the said land was obviously on higher side and the same criteria should not have been applied while determining the market value of the subject lands of village Bhatsangavi which were admittedly not adjacent to the road. Learned A.G.P. has submitted that the Tribunal has rightly determined the market value of the acquired land at the rate of Rs.23,600/- per acre after making some deductions. Learned A.G.P. submitted that no interference is warranted in the impugned judgment and award. Learned A.G.P., therefore,

prayed for dismissal of the appeal.

5. I have carefully considered the submissions made on behalf of the appellant as well as the respondents. I have also perused the impugned judgment, the evidence on record and the other material available on record. It is not in dispute that the lands which were the subject matter of LAR No.111/2002 and 112/2002 were the survey Nos. 51 and 52 respectively from village Bhatsangavi whereas subject land is Gat No.50. It is, thus, quite clear that all these lands are adjacent to each other. No information is placed on record to rebut the contention of the appellant that the State did not prefer any appeal against the common award passed in LAR No.111/2002 and 112/2002.

6. I have carefully read the common judgment and award passed in aforesaid Reference applications. In the said matter, learned Reference Court, which has decided the said Reference Applications, had relied upon the sale instances pertaining to 8 Are land from village Chakur which was executed on 29th of April, 1987, and the consideration received was to the tune of Rs.60,000/- i.e. around Rs.30,000/- per acre. The same sale deed is relied upon in the present matter

also. In the circumstances, it appears to me that there was no reason for the Reference Court to take any contrary view while determining the market value of the subject land. From the evidence on record it is further clear that all these lands are of same nature and quality and, as such, deserve to be granted the same compensation.

7. For the reasons stated above, it appears to me that in the present matter also the Reference Court must have determined the market value of the acquired land at the rate of Rs.30,000/- per acre. To that extent, the award needs to be modified and the amount of compensation accordingly needs to be enhanced. It was further pointed out by the learned Counsel for the appellant that previously Reference Application filed by the present appellant was dismissed in default whereupon First Appeal Stamp No.34952/2014 was preferred by the appellant and the same was allowed by this Court ( Coram: M.T.Joshi, J.) vide order passed on 12th of March, 2015. Learned Counsel submitted that in the said order, this Court has dis-entitled the present appellant for statutory interest in case of enhancement in the compensation by the Reference Court for the delay period i.e. from the date of his absence in the trial Court till the decision of the said appeal.

From the record it is evident that the appellant did remain absent before the Reference Court on 23rd July, 2012, and onwards and that was the reason that the Reference Application was dismissed in default. First Appeal filed by the appellant on Stamp No.34952/2014, was dismissed by this Court on 12th of March, 2015. The appellant is, thus, not entitled for interest of the period from 23rd July, 2012, to 12th of March, 2015. Learned Counsel pointed out that the Reference Court has awarded interest on the enhanced amount of compensation from 12th of March, 2015, whereas the same ought to have been awarded from the date of the award. Learned Counsel submitted that the only period for which the appellant is disentitled from interest is from 23rd of July, 2012, to 12th of March, 2015.

8. After having gone through the record, I am convinced that the Reference Court has committed an error in not awarding interest on the enhanced amount of compensation from the date of award under Section 28 of the Act. The said mistake also needs to be rectified.

9. For the reasons stated above, the following order is passed:

**ORDER**

1. The amount of compensation as determined by the Reference Court at the rate of Rs.23,600/- per acre is enhanced to Rs.30,000/- per acre.

2. The appellant is entitled for the statutory benefits and the interest under the provisions of the Act from the date of award till realization of the amount excluding the period from 23rd July, 2012, to 12th of March, 2015.

3. The First Appeal stands allowed in aforesaid terms.  
No costs.

**( P.R. BORA )**  
**JUDGE**

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