

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

FIRST APPEAL NO. 4054 OF 2016

KASHINATH MAHADA KUMBAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH

FIRST APPEAL NO.: 4055 OF 2016

VISHWANATH MAHADA KUMBHAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Appellants : Mr. R. P. Adgaonkar, h/f Mr. Mahesh S. Patil.
AGP for Respondent Nos.1 & 2 : Mr.S.S.Dande.
Advocate for Respondent No.3 : Ms Kavita K. Teware.

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CORAM : **V. K. JADHAV, J.**
DATE : 30th January, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the common judgment and award passed by the learned Joint Civil Judge Senior Division, Nilanga dated 17th July, 2008 in LAR No.133 of 2003 and LAR No.346 of 2002, the original Claimants have preferred these two separate appeals.

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

 The land of the Appellants / Claimants of village Talikhed has been acquired for Hangarga Minor Irrigation Tank. The Land Acquisition Officer has awarded compensation at the rate of Rs.18,000/- per Acre. The market price as fixed by the Land Acquisition Officer is quite low and therefore, the Appellants / Claimants have preferred the land acquisition references as aforesaid. The Respondent / State and acquiring body have strongly resisted the reference petitions by filing the written statement. The Appellants / Claimants have adduced oral and documentary evidence in support of their contentions. The Respondents have not adduced any evidence. The learned Joint Civil Judge Senior Division, Nilanga vide its impugned judgment and award dated 17th July, 2008, partly allowed the reference petitions and thereby granted the compensation by enhanced rate of Rs.1,35,000/- per Acre alongwith interest @ 9% per annum from the date of notification till 28th August, 1999 and @ 15% per annum for the subsequent years till depositing the amount by the Respondents in the Court. Being aggrieved by the same, the Appellants /

Claimants have preferred these two separate appeals to the extent that though the Reference Court in para 22 of the impugned judgment and award has discussed about grant of solatium @ 30% and 12% third component from the date of notification and further held that the Claimants are entitled for the same, has not awarded the same in the operative part of the judgment.

4 The learned counsel for Appellants / Claimants submits that the Reference Court though discussed in para 22 of the judgment as aforesaid, failed to direct about the same in the operative part of the judgment.

5 The AGP for the State and the learned counsel appearing for the acquiring body also not disputed this position.

6 On perusal of the impugned judgment and award most particularly para 22 of the judgment, it appears that the Reference Court held that the Claimants are entitled to the legal benefits i.e. 30% solatium and 12% third component. Para 22 of the judgment reads thus:

“22. Claimants have also claimed all legal benefits i.e. 30% Solatium and 12% third component from the date of notification under section 4 of the L. A. Act i.e.

29-8-1998 till the date of award 14-2-2001. The L.A.O. has acquired the land of the claimant after amendment in Section 23 and 28 of the L. A. Act, therefore, claimants are entitled to the claim the legal benefits i.e. 30% solatium and 12% third component.”

7 In view of the above, the Appellants / Claimants are entitled for the said statutory benefits. The impugned judgment and award requires modification to that effect. Hence, the following order:

ORDER

- I. First Appeal No.4054 of 2016 and First Appeal No.4055 of 2016, are hereby partly allowed.
- II. The common impugned judgment and award passed by the learned Joint Civil Judge Senior Division, Nilanga dated 17th July, 2008 in LAR No.133 of 2003 and LAR No.346 of 2002, is hereby modified to the extent that, in addition to the judgment and award passed by the Reference Court, the Claimants are also entitled for the statutory benefits i.e. 30% of solatium and

12% third component.

III. Award be modified accordingly.

IV. Both the appeals are accordingly disposed of.

[V. K. JADHAV, J.]

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