IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1285 OF 2004

The State of Maharashtra,
through the Collector, Aurangabad. Appellant

Versus

Zumbarlal Gambhirlal Kothari,
died, per L Rs

01 Madanbai w/o Gambhirlal Kothari,
age: 88 years, Occ: Household,
R/o Vaijapur, Dist.Aurangabad.

02 Shantilal Zumberlal Kothari,
age: 56 years, Occ: Agri.,
R/o as above. Respondents

Mr.A.M.Phule, A.G.P. for the appellant.
Mr.A.S.Bajaj, advocate for Respondents

WITH
CROSS OBJECTION ST.NO.31428 OF 2004 IN
FIRST APPEAL NO.1285 OF 2004

Zumbarlal Gambhirlal Kothari,
since deceased, through L Rs

01 Madanbai w/o Gambhirlal Kothari,
age: 90 years, Occ: Household,
R/o Station Road, Vaijapur,
Dist.Aurangabad.

02 Shantilal Zumberlal Kothari,
age: 70 years, Occ: Agri.,
R/o Station Road, Vaijapur,
District Aurangabad. Appellants

Versus

The State of Maharashtra,

through the Collector,
Aurangabad. Respondent

Mr.A.S.Bajaj, advocate for appellants.
Mr.A.M.Phule, A.G.P. for the Respondent.

WITH
FIRST APPEAL NO.68 OF 2005

The State of Maharashtra,
through the Collector,
Aurangabad. Appellant

Versus

Mohammed Hameedullah Khan s/o
Mohammed Sadullah Khan,
died, per L Rs:

01 Irfanullah Khan s/o Mohammed
Hameedullah Khan, died,
through LRs:

1-A Tahseen Sultan w/o Irfanullah
Khan, age: 54 years, Occ:
Agriculture, R/o House No.5-
-23-2, Dalalwadi, New Gulmandi
Road, behind Meghdauth Hotel,
Aurangabad.

1-B Mohammed Sufian Khan s/o Irfanullah
Khan, age: 21 years, Occ: Education,
R/o as above.

1-C Mohammed Saif s/o Irfanullah Khan,
age: 13 years, Occ: Education,
R/o as above.

02 Atiqullah Khan s/o Mohammed
Hameedullah Kha, age: 38 years,
Occ: Service, R/o as above.

03 Shoebullah Khan s/o Mohammed
Hameedullah Khan,
age: 36 years, Occ: Service,
R/o as above.

04 Najeebullah Khan s/o Mohammed
Hameedullah Khan,
age: 34 years, Occ: Nil, R/o as above.

05 Obaidullah Khan s/o Mohammed
Hameedullah Kha, age: 32 years,
Occ: Nil, R/o as above.

06 Rafuiullah Khan s/o Mohammed
Hameedullah Khan,
age: 30 years, Occ: Nil,
R/o as above. Respondents

Mr.A.M.Phule, A.G.P. for the appellant.
Mr.Ganesh S. Patil, advocate for Respondents.

WITH
CROSS OBJECTION ST.NO.8075 0F 2005 IN
FIRST APPEAL NO.68 OF 2005

Mohammed Hameedullah Khan s/o
Mohammed Sadullah Khan,
died, per L Rs:

01 Irfanullah Khan s/o Mohammed
Hameedullah Khan, died,
through LRs:

1-A Tahseen Sultan w/o Irfanullah
Khan, age: 54 years, Occ:
Agriculture, R/o House No.5-
-23-2, Dalalwadi, New Gulmandi
Road, behind Meghdauth Hotel,
Aurangabad.

1-B Mohammed Sufian Khan s/o Irfanullah
Khan, age: 21 years, Occ: Education,
R/o as above.

1-C Mohammed Saif s/o Irfanullah Khan,
age: 13 years, Occ: Education,
R/o as above.

02 Atiqullah Khan s/o Mohammed
Hameedullah Kha, age: 38 years,
Occ: Service, R/o as above.

03 Shoedullah Khan s/o Mohammed
Hameedullah Khan,
age: 36 years, Occ: Service,
R/o as above.

04 Najeebullah Khan s/o Mohammed
Hameedullah Khan,
age: 34 years, Occ: Nil, R/o as above.

05 Obaidullah Khan s/o Mohammed
Hameedullah Kha, age: 32 years,
Occ: Nil, R/o as above.

06 Rafiullah Khan s/o Mohammed
Hameedullah Khan,
age: 30 years, Occ: Nil,
R/o as above. Appellants

Versus

The State of Maharashtra,
through the Collector,
Aurangabad. Respondent

Mr.G.S.Patil, advocate for appellants.
Mr.A.M.Phule, A.G.P. for the Respondent.

CORAM : M.S.SONAK, J.
DATE : 05th February, 2018.

ORAL JUDGMENT :

1 Heard learned Counsel for the parties.

2 Learned Counsel for the parties agree that both these appeals and the Cross Objections therein can be disposed of by a common judgment and order, since, both the appeals, challenge common judgment and award dated 19.03.2003, made by the Reference Court in LARs No.219/1996 and 249/1996. First Appeal No.68/2005 arises out of L.A.R. No.219/1996 and First Appeal No.1285/2004 arises out of LAR No.249/1996. In the circumstances, it will be appropriate that both these appeals can be disposed of by a common judgment and order.

3 Mr.Phule, learned A.G.P. for the appellant, submits that the Reference Court has relied upon its earlier award in LAR No.231/96 and connected References, wherein rate of Rs.1000/- per Are has been determined. Mr.Phule submits that there is no evidence as regards comparability and, therefore, the Reference Court has erred in determining the rate @ Rs.1000/- per Are. He submits that interest has been awarded from the date of possession when, in fact, in terms of the decision of the Full Bench of this Court in the matter of **State of Maharashtra Vs. Kailash Shiva Rangari**, 2016 (3) MhLJ 457, the interest could have been awarded only from the date of award and not from the date of possession. He submits that for all these reasons, appeals are liable to be allowed and compensation amount is liable to be reduced to Rs.350/- per Are, as determined by the Land Acquisition Officer.

4 Mr.Bajaj and Mr.Ganesh Patil, learned Counsel for

respective Respondents-claimants, who have filed Cross Objections in these appeals, submit that 9 sale deeds produced on behalf of Respondents-claimants were unduly discarded by the Reference Court. They point out that if such sale deeds were to be taken into consideration, the appropriate rate will come to Rs.3500/- per Are.

5 Mr.Bajaj, learned Counsel for Respondents-claimants in F.A. No.1285/2004, points out that there was absolutely no reason to exclude the sale deed No.1595 dated 09.10.1986, which relates to agricultural property admeasuring 5 Are, on the ground that such sale deed also relates to sale of land for residential purpose and such land was sold in square feet. He submits that, in this case, the lands acquired admittedly fall within Municipal limits of Vaijapur. He further submits that the land sold under the sale deed also fall within the Municipal limits of Vaijapur. He submits that at the highest, deduction of 33% could have been made because the sale instance dated 09.10.1986 relates to an area of 5 Are and the acquisition is in respect area of 11 hectares and 44 Ares. He places reliance on the judgments of the Supreme Court in the case of **Valliyammal and another Vs. Special Tahsildar (Land Acquisition) and another**, (2011) 8 SCC 91; and **Kasturi and others Vs. State of Haryana**, (2003) 1 SCC 354, to submit that where comparison is between two undeveloped plots, deduction has to be minimum. He submits that in this case, although the acquired land may be undeveloped for non-agriculture use, the Reference Court had itself accepted that it has non agricultural potential. He submits that on the basis of this position also, deductions from sale instances, were never exceeded 33%, at the highest. He submits that the rate as per the sale

instance dated 09.10.1986 comes to almost Rs.3500/- per Are. On this basis, he submits that rate of at least Rs.2500/- per Are was due and payable in respect of the acquired lands. Mr.Bajaj submits that in this case, the Reference Court had denied interest under Section 28 of the Land Acquisition Act, 1894, on the enhanced amount coupled with solatium amount. He submits that interest is required to be awarded on the combined figure of enhanced compensation as also solatium. He relies on **Sunder Vs. Union of India**, (2001) 7 SCC 211.

6 The rival contentions now fall for determination.

7 In this case, the Reference Court has determined compensation @ Rs.1000/- per Are on the basis that the Reference Court, in connected References, being LAR No.231/1996 and other matters, had determined compensation @ Rs.1000/- per Are. In the said References, the Reference Court had placed reliance upon evidence of one Zuber s/o Gulam Mustafa, who had sold his land of 1 acre 20 gunthas i.e. approximately 60 Ares for consideration of Rs.60,000/-. On this basis, the Reference Court determined the rate of compensation @ Rs.1000/- per Are. However, this was the rate in the year 1982. The acquisition in the present case was in pursuance of Section 4 Notification dated 03.12.1987. From perusal of the impugned award, it is seen that no escalation has been granted from the year 1982 to the year 1987. Normally, escalation @ 10% was required to be granted on this amount. Besides, in this case, the acquisition is for 4 hectares and 97 Ares in First Appeal No.68/2005 and 11 Hectares and 44 Ares in First Appeal No.1285/2004. Although, the acquisition is for larger

tracts of agricultural lands with non agriculture potential, Zuber's sale deed, which has been relied upon by the Reference Court, cannot be said to be in respect of some very small plots, since, such sale deed was in respect of an area of 60 Ares i.e. one acre and 20 gunthas. On the reasoning of the Reference Court itself, if the rates of such agricultural lands with non agriculture potential, were Rs.1000/- per Are in the year 1982, then by the year 1987, the rate, on escalation, would have been Rs.1610/- per Are in the year 1987. Since, the area of 60 Ares is comparable to the areas, which have been acquired, it was really not much necessary for making significant deductions on account of smallness.

8 Mr.Bajaj is also right in his submission that the sale deed dated 09.10.1986 could not have been rejected on the ground that it relates to sale of land used for residential purpose. Since, the areas were small and referred to in square feet instead of Ares, the rejection of sale deeds at Sr.Nos.1 to 3 i.e. 3 sale deeds of the year 1982, was justified for that reason. However, said reason could not have been extended to sale deed dated 09.10.1986. No doubt, the sale deed dated 09.10.1986, relates only to an area of 5 Ares in comparison with the acquired lands, one, almost 5 hectares and another, almost 11 hectares. In such a situation, deductions on account of largeness of the acquired lands, as compared to the small area of the exemplary is due even according to the decision of **Valliyammal** (*supra*) and **Kasturi** (*supra*), relied upon by Mr.Bajaj. The deductions, no doubt, range between 25% and even up to 70%, depending upon the situation spell out from the evidence on record. In this case, when the sale instance in respect of 60 Ares was available, there is really no much necessity

to go to a sale instance in respect of 5 Ares. In any case, even if the sale instance in respect of 5 Ares is to be taken into consideration, then, a deduction of at least 50% is due in the facts of the present case, which would, again, establish rate of Rs.1750/- per Are in the year 1986 or with a 10% escalation in the said rate in the year 1987. Since, the sale instance relied upon by the Reference Court relating to sell of land by Zuber, admeasuring 60 Ares, is a comparable sale instance to be safer to rely upon the said sale instance. Further, some appreciation can be granted to the rate determined by the Reference Court by relying upon the sale instance dated 09.10.1986, particularly, since, said sale instance is hardly one year prior to Section 4 Notification. Taking into consideration, both these sale instances, and considering the law laid down by the Hon'ble Supreme Court in the case of **Valliyammal** (*supra)* and **Kasturi** (*supra*), it will be appropriate if the rate in respect of acquired land is determined at Rs.1700/- per Are in place of Rs.1000/- per Are, as determined by the Reference Court. To that extent, the appeals instituted by the State will have to be dismissed and the Cross Objections will have to be allowed.

9 Insofar as determination of interest amount is concerned, it will be appropriate to direct that the interest will be determined as per the directions of the Hon'ble Supreme Court in the case of **Sunder** (*supra*) and the Full Bench decision of this Court in the case of **Kailash** (*supra*). To that extent, interest directed to be paid by the Reference Court is inconsistent with the law laid down by the Hon'ble Supreme Court and the Full Bench of this Court, the impugned award will have to be modified.

10 To that limited extent, appeals instituted by the State will have to be allowed.

11 In the Cross Objections, compensation is applied for trees, severance and wells. However, upon perusal of the record, there is really no evidence to sustain such claim. Accordingly, same is rejected.

12 As a result, both the appeals and both the Cross Objections are disposed of with the following order:-

(A) The appeals instituted by the State, as regards determination of rate by the Reference Court, are hereby dismissed.

(B) Cross Objections instituted by the claimants are allowed and the rate determined by the Reference Court is enhanced to Rs.1700/- per Are. Respondents-claimants shall be entitled to statutory benefits and interest on the enhanced amount.

(C) The interest calculations shall be made in accordance with the decision of the Supreme Court in the case of **Sunder Vs. Union of India**, (2001) 7 SCC 211 and the Full Bench decision of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari**, 2016 (3) MhLJ 457. To that extent, First Appeals of the State are partly allowed; so also Cross Objections of the Respondents-claimants are partly allowed.

(D) The State to compute the compensation amount in terms of the aforesaid, within a period of twelve weeks from today and to deposit the compensation amount together with interest, etc., payable to the claimants, in this Court. Upon deposit, the claimants shall be at liberty to withdraw the same unconditionally.

13 Both these appeals and Cross Objections are accordingly disposed of.

14 Pending Civil Applications, if any, do not survive and stand disposed of.

M.S.SONAK
JUDGE

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