

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.1343/2003

The Raver Municipal Council,
through its Chief Officer,
Municipal Council, Raver.
Tq.Raver Dist.Jalgaon.

...Appellant..

Versus

1] Subhachandra s/o Ramchandra Wani,
age 58 yrs., occu.business,
r/o Main Road, Raver Tq.Raver.
Dist.Jalgaon.

2] The State of Maharashtra,
through Collector, Jalgaon.

3] The Special Land Acquisition
Officer (I), Collector Office,
Jalgaon.

...Respondents...

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Shri N.K. Kakade, Advocate for appellant.

Shri G.V. Wani, Advocate for respondent no.1.

Shri A.M. Phule, AGP for respondent nos.2 & 3.

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FIRST APPEAL NO.1345/2003

The Raver Municipal Council,
through its Chief Officer,
Municipal Council, Raver.
Tq.Raver Dist.Jalgaon.

...Appellant..

Versus

Ramchandra Bajirao Wani,
since deceased, through his heirs :-

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- 1] Subhadrabai w/o Ramchandra Wani,
age 85 yrs., occu.household,
r/o Raver Tq.Raver Dist.Jalgaon.
- 2] Subhaschandra Ramchandra Wani,
age 65 yrs., occu.trader, r/o Raver
Tq.Raver Dist.Jalgaon.
- 3] Mangalabai Govind Wani,
age 50 yrs., occu.household,
r/o Raver Tq.Raver Dist.Jalgaon.
- 4] Satischandra Ramchandra Wani,
age 48 yrs., occu.service,
r/o Raver Tq.Raver Dist.Jalgaon.
- 5] The State of Maharashtra,
through Collector, Jalgaon.
- 6] The Special Land Acquisition
Officer (I), Collector Office,
Jalgaon.

...Respondents...

....

Shri N.K. Kakade, Advocate for appellant.

Shri G.V. Wani, Advocate for respondent no.1.

Respondent nos.2 to 4 served.

Shri A.M. Phule, AGP for respondent nos.5 & 6.

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FIRST APPEAL NO.1346/2003

The Raver Municipal Council,
through its Chief Officer,
Municipal Council, Raver.
Tq.Raver Dist.Jalgaon.

...Appellant..

Versus

- 1] Satishchandra s/o Ramchandra Wani,
age 48 yrs., occu.business,
r/o Main Road, Raver Tq.Raver.
Dist.Jalgaon.

- 2] The State of Maharashtra,
through Collector, Jalgaon.
- 3] The Special Land Acquisition
Officer (I), Collector Office,
Jalgaon.

...Respondents...

....

Shri N.K. Kakade, Advocate for appellant.

Shri G.V. Wani, Advocate for respondent no.1.

Shri A.M. Phule, AGP for respondent nos.2 & 3.

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CORAM: M.S. SONAK, J.

DATE: 12.02.2018

ORAL JUDGMENT :

- 1] Heard learned counsel appearing for the parties.
- 2] The learned counsel submit that these three appeals can be disposed of by common judgment since challenge in each of the three appeals is to the common judgment and award dated 5.9.2003 in Land Acquisition Reference Nos.16/1990, 17/1990 and 18/1990 respectively. Taking this into consideration, it is only appropriate that all these three appeals are disposed of by a common judgment and order.
- 3] The Reference Court had treated LAR No.16/1990 as the lead matter in which the parties led the evidence

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and thereafter such evidence was adopted in LAR Nos.17/1990 and 18/1990. If the common judgment and award is perused, it is clear that the discussion relates to LAR No.16/1990 and such discussion and reasoning therein has been adopted in deciding and disposing of LAR Nos.17/1990 and 18/1990 respectively. In these circumstances, First Appeal No.1345/2003, which arises out of LAR No.16/1990 will have to be taken as the lead matter.

4] In these matters, the acquisition was for the purpose of construction of a primary school at Raver. Notification u/s 126 (2) read with Section 126(4) of the Maharashtra Regional and Town Planning Act, 1996 read with Section 8 of the Land Acquisition Act, 1894, was published on 18.6.1981. There is no dispute that this notification is akin to Section 4 notification under the Land Acquisition Act, 1894 and, therefore, compensation is required to be determined with reference to this date.

5] There is also no dispute that the acquired lands were situated within the Municipal areas since the acquisition itself was for setting up of a primary school. The Land Acquisition Officer determined the rate

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at Rs.32/- per Sq.Meter. The respondents – claimants, being dissatisfied with this rate, applied for reference and the Reference Court, by the impugned judgment and award, has determined the rate at Rs.300/- per Sq.Meter. Hence, the present appeals are filed by the acquiring body i.e. Raver Municipal Council, Jalgaon, challenging the said judgment and award.

6] Learned counsel for the appellant submits that there was no evidence justifying any enhancement. He submits that the sale deed, upon which reliance was placed, was not in respect of any open plot, but was in respect of an open plot with a three storeyed building thereon. He submits that the sale instance was in respect of a small plot and, therefore, was not a comparable instance. He submits that CW i.e. Nalinkumar L. Shah was a private Engineer engaged by the respondents – claimants. The learned counsel for the appellant submits that naturally this witness was biased and the Reference Court has seriously erred in relying upon his testimony. The learned counsel submits that there is absolutely no evidence to sustain enhancement from Rs.32/- per Sq.Mtr. to Rs.300/- per Sq.Mtr. and,

therefore, these appeals are required to be allowed.

7] The learned counsel for the appellant points out that even the interest, which has been awarded by the Reference Court, is not according to the provisions of the Land Acquisition Act, 1894, which are clearly applicable in a matter of this nature.

8] Learned counsel for the respondent no.1 – claimants submits that the acquisition itself was not in respect of a very large area in the Municipal Council jurisdiction and, therefore, the sale deed produced is clearly a comparable instance. He submits that as per the sale deed, appropriate rate was almost Rs.550/- per Sq.Mtr. He submits that the Reference Court has made very generous deductions much in excess of requirements of law and, therefore, arrived at the rate of Rs.300/- per Sq.Mtr. As regards interest, the learned counsel for the claimants submits that the Reference Court has incorrectly directed payment of interest from the date of possession i.e. 19.11.1986 when in fact the interest should have been awarded from the date of award i.e. 22.9.1986. For these reasons, the learned counsel for the claimants submits that the appeals are required to be

dismissed.

9] Learned AGP supports and adopts the submissions made by learned counsel for the appellant and on the said basis, submits that the appeals may be allowed and the impugned judgments and awards made by the Reference Court may be set aside.

10] In LAR No.16/1990, the area of the land acquired is 180.6 Sq.Mtrs. In LAR No.17/1990, the area of the land acquired is 1412.5 Sq.Mtrs. from out of CS No.207/341/2 and 231.4 Sq.Mtrs. from out of CS No.206. In LAR No.18/1990, the area of the land acquired is 69.4 Sq.Mtrs. from CS No.211; 102.8 Sq.Mtrs. from out of CS No.212; 18.4 Sq.Mtrs. from out of CS No.212/p and 158 Sq.Mtrs. from out of CS No.213. Thus, except for the land admeasuring 1412.5 Sq.Mtrs. from out of CS No.207/341/2, rest of the acquisition is in small portions. This is obvious because the acquisition is from the Municipal area. There is evidence on record that around the acquired lands, there were several buildings and developments. In fact, this position is reflected from the award of the LAO itself and, therefore, this position is quite indisputable.

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11] The respondents – claimants relied upon a sale instance (Exhibit 27) dated 30.4.1981, which reflects the rate of Rs.550/- per Sq.Mtr. There is evidence on record that this sale instance is in respect of plot, which was hardly 500 Ft. away from the acquired lands. No doubt, the area of the plot in the said sale deed was 14.2 Sq.Mtrs. and further there was a three storeyed building on this plot, however, in the absence of any other evidence produced by the appellant, it cannot be said that this sale deed was irrelevant or could never have been relied upon by the Reference Court for the purpose of determination of compensation in respect of the acquired lands. No doubt, the deductions were required to be made on account of smallness and also on account of the fact that the consideration included the building as well. In this case, the deductions almost to the extent of 50% have been made by the Reference Court.

12] It is not possible to accept the submission of learned counsel for the appellant and merely because CW 2 i.e. Nalinkumar Shah – the expert, was a private consulting Engineer and he had been engaged by the respondents – claimants, the evidence led by him was

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required to be completely excluded. This witness was examined as an expert and full opportunity of cross-examination was afforded to the respondents. This witness has assessed the value of the building separately and from this, concluded that the balance consideration was towards the land component itself. This witness has deposed to the effect that the acquired lands and the sale deed land were both situated within the Municipal jurisdiction and were surrounded by buildings and other developments, which are already taken place.

13] The Reference Court has not blindly accepted the rate in the sale instance. The Reference Court, as noted earlier, has proceeded to make deductions to the extent of almost 50% and thereafter determined compensation at the rate of Rs.300/- per Sq.Mtr., as against the rate of over Rs.550/- per Sq.Meter, as reflected by the sale instance. The sale instance was prior to the date of initial notification for acquisition. Therefore, some amount of appreciation was necessary. Taking into consideration the time lag, this appreciation would have taken the rate of the sale deed plot to atleast Rs.600/- per Sq.Meter. The Reference Court has made deductions to

the extent of almost 50% on account of smallness as also by excluding the building component. In a matter of this nature, some element of guesswork is inevitable. The guesstimate made by the Reference Court is within the bounds of reasonability and, therefore, there is no case made out to warrant any interference.

14] Before the Reference Court, a contention was raised that neither the vendor nor the vendee has been examined. The Reference Court, by reference to the provisions of Section 51A of the Land Acquisition Act, 1894, as also to certain decisions of the Supreme Court on the issue, has rightly negatived this contention. Fortunately, this contention was not once again raised in these appeals.

15] Insofar as the issue of interest is concerned, there is no infirmity, which has prejudiced the appellant. In fact, in this case, the Reference Court has awarded interest from 19.11.1986 i.e. the date on which possession of the acquired land was taken. When in fact the interest ought to have been awarded from the date of declaration of the award i.e. 22.9.1986. Even though there are no cross-objections filed by the

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respondents – claimants, denial of interest from 22.9.1986 i.e. for an additional period of two months, appears to be incorrect and contrary to the statutory provisions, as interpreted by Full Bench of this Court in *State of Maharashtra v. Kailash Shiva Rangari (2016 (3) Mh.L.J., 457)*. Therefore, it is only appropriate that this modification is made to the impugned judgment and award and it is directed that the respondents – claimants be paid interest from 22.9.1986, instead of 19.11.1986.

16] For the aforesaid reasons, these appeals are dismissed. There shall be no order as to costs.

17] Notwithstanding dismissal of the appeals, a slight modification is made to the impugned judgments and awards and it is directed that interest shall be payable to the respondents – claimants from 22.9.1986 and not from 19.11.1986.

18] At the request of the learned counsel for the respondents – claimants, the Registry is directed to remit the amounts deposited in this Court by the appellant, together with interest accrued therein, to the Reference Court as expeditiously as possible and in any case within a period of four weeks from today.

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Thereafter, the respondents – claimants shall be entitled to withdraw the same unconditionally after producing proper documents of their identity.

(M.S. SONAK, J.)