

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

FIRST APPEAL NO. 1075 OF 2005

Jagannath s/o Tukaram More,
age 47 years, Occ. Agril.,
R/o Hanuman Takali,
Tq. Pathardi, Dist. Ahmednagar ...Appellant
[Orig. Claimant]

VERSUS

1] The State of Maharashtra,
through the Collector,
Ahmednagar ...Respondent

FIRST APPEAL NO. 1076 OF 2005

- 1] Madhav s/o Maruti Kajale,
age 60 years, occ. Agril.,
- 2] Nirmalabai w/o Manohar Kajale,
deceased through L.Rs.
- 2A] Madhav s/o Maruti Kajale,
age 60 years, occ. Agril.,
- 2B] Dipak s/o Madhav Kajale,
age 30 years, occ. Agril.,
- 2C] Yogesh s/o Madhav Kajale,
age 25 years, occ. Agril.,
- 2E] Pushpa w/o Sambhaji Zine,
age 37 years, occ. Household,

All R/o Hanuman Takali,
Tq. Pathardi,
Dist. Ahmednagar ...Appellants
[Orig. Claimant]

VERSUS

- 1] The State of Maharashtra,
through the Collector,
Ahmednagar
- 2] Nirmalabai w/o Manohar Kajale,
deceased through Lrs.
- 2D] Shobha w/o Rajendra Wandekar,
age 40 years, occ. Household,
- 2F] Manisha w/o Khushaba Akolkar,
age 30 years, occ. Household,
- 2G] Anita w/o Karbhari Guhgarkar,
age 25 years, occ. Household,
- R/o Hanuman Takali,
Tq. Pathardi, Dist. Ahmednagar ...Respondents

FIRST APPEAL NO. 1077 OF 2005

Sonabai w/o Narayanrao Kajale,
age 60 years, Occ. Agril.,
R/o Hanuman Takali,
Tq. Pathardi, Dist. Ahmednagar
...Appellant

[Orig. Claimant]

VERSUS

- 1] The State of Maharashtra,
through the Collector,
Ahmednagar ...Respondent

FIRST APPEAL NO. 1078 OF 2005

Babu s/o Ananda Jivale,
age 60 years, Occ. Agril.,
R/o Hanuman Takali,
Tq. Pathardi, Dist. Ahmednagar

...Appellant
[Orig. Claimant]

VERSUS

1] The State of Maharashtra,
through the Collector,
Ahmednagar ...Respondent

...
Mr. P.R.Nangre, advocate for Appellants
Mr. R.B.Bagul, advocate for State
...

CORAM : SUNIL K.KOTWAL, J.

**DATE OF RESERVING
THE JUDGMENT : 21.9.2018
DATE OF PRONOUNCEMENT
OF JUDGMENT : 26.9.2018**

J U D G M E N T :

First Appeal No. 1075 of 2005 is directed against the common judgment and award, passed by the Civil Judge, Senior Division, Ahmednagar, in L.A.R. No. 193 of 1991; First Appeal No. 1076 of 2005 is directed against the same common judgment and award in L.A.R. No. 438 of 1990; First Appeal No. 1077 of 2005 is directed against the same common judgment and award in L.A.R. No. 168 of 1994; and First Appeal No. 1078 of 2005 is directed against the same common judgment and award in L.A.R. No. 119 of 1991. This judgment and award

is passed in one and the same acquisition proceeding and these all Land References are decided by one and the same judge by common judgment. Therefore, these all appeals are disposed of by this common judgment.

2. Learned counsel for the appellants — original claimants submits that these appeals are not filed for enhancement of compensation, which is awarded by the learned Trial Court. He submits that the appeal is restricted only on the point pertaining to grant of statutory benefits under Sections 23(1A) and 23 (2) of the Land Acquisition Act, 1894 (herein after referred to as, 'the Act'). He submits that under Section 23 (1A) of the Act, it is the duty of the Court to award, in addition to the market value of the land, the component at the rate of 12 per centum per annum on such market value for the period commencing on the date of publication of notification under Section 4 (1) of the Act in respect of the land to the date of award of Collector or the date of taking possession of land whichever is earlier. The Trial Court did not

award additional component of 12 per cent per annum along with the additional market value of the land. He submits that in view of Section 23 (2) of the Act, the claimants are also entitled for 30 per centum of market value in consideration of compulsory nature of acquisition, in addition to the market value of the land. However, the learned Trial Court, for no acceptable reason, refused to grant benefits under Sections 23 (1A) and 23 (2) of the Act.

3. Learned AGP for the State submits that provision of additional sum towards solatium of 30 per cent on the market value was amended with effect from 24.9.1984 and before that date, this amount was 15 per centum. He submits that the notification was issued on 9.2.1984, and therefore, up to the date 24.9.1984 i.e. amendment to Section 23 (2) of the Act, the benefit under Section 23 (2) of the Act can be given at the rate of 15 per cent.

4. In the case at hand, notification under Section 4 (1) of the Act was published on 9.2.1984,

the award was passed on 10.2.1988 and possession of acquired land is taken by the Collector on 27.2.1988. Therefore, the component under Section 23 (2) of the Act is to be awarded in accordance with the rate prevailing on 10.2.1988 i.e. the date of passing the award by the Land Acquisition Officer. At the outset, I must observe that the objection raised by the learned AGP regarding grant of solatium at the rate of 15 per cent to the claimants up to 24.9.1984 is not acceptable.

5. After going through the judgment, passed by the learned Trial Court, it emerges that the learned Trial Court, in para 19 of the judgment, observed that, as the petitioner lost possession on 27.2.1988, the question of directing to pay solatium or component does not arise. This interpretation of learned Trial Court is totally against the provisions of Sections 23 (1A) and 23 (2) of the Act. The component under Section 23 (1A) of the Act is an additional amount to the market value of the land, that is, to be calculated at the rate of 12 per cent per annum on the market

value, commencing on the date of publication of notification under Section 4 (1) of the Act till the date of passing of award or the date of taking possession, whichever is earlier. In the case at hand, notification under Section 4 (1) of the Act is published on 9.2.1984 and possession is taken on 27.2.1988 and award was passed on 10.2.1988. Therefore, the component at the rate of 12 per cent per annum is to be awarded from the date of publication of notification under Section 4 (1) of the Act i.e. from 9.2.1984 to the date of passing of award on 10.2.1988, which is earlier than date of taking possession.

6. The Trial Court erroneously refused to award this statutory benefit under Section 23 (1A) of the Act. So also, under Section 23 (2) of the Act, award of solatium of 30 per cent on the market value is mandatory, because it is awarded in consideration of compulsory nature of acquisition. In the case at hand, the lands of the claimants are compulsorily acquired, and therefore, they all are entitled to solatium of market value at the rate of

30 per cent. The learned Trial Court erroneously rejected this claim, for the reason of obtaining possession of acquired land on 27.2.1988. In fact, Section 23(2) of the Act has no relevance with the date of taking possession of the acquired land.

7. Accordingly, I hold that the award passed by the Trial Court in all above said Land References needs to be modified for awarding statutory benefits under Sections 23 (1A) and 23 (2) of the Act. It follows that, these appeals deserve to be allowed.

8. In the result, First Appeal Nos. 1075, 1076, 1077 and 1078 of 2005 are allowed. The award, passed by the Civil Judge, Senior Division, Ahmednagar, in L.A.R. No. 193 of 1991, L.A.R. No. 438 of 1990, L.A.R. No. 168 of 1994 and L.A.R. No. 119 of 1991 be modified and under Section 23 (1A) of the Act, in addition to the market value of the acquired land, an amount at the rate of 12 per cent per annum, on such market value, from the date of notification under Section 4(1) of the Act i.e.

9.2.1984 to 10.2.1988 i.e. date of award, be awarded to the claimants. In addition to this, under Section 23 (2) of the Act, sum of 30 per cent on such market value is also awarded. The award, passed in L.A.R. No. 193 of 1991, L.A.R. No. 438 of 1990, L.A.R. No. 168 of 1994 and L.A.R. No. 119 of 1991 be modified accordingly. All the appeals are disposed of in the above said terms. In the circumstances, there shall be no order as to costs.

[SUNIL K.KOTWAL, J.]

dbm