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

FIRST APPEAL NO. 1225 OF 2017

1] Godavari Marathwada Irrigation Development Corporation Ltd., through Executive Engineer, Osmanabad Medium Project at Osmanabad,

2] The State of Maharashtra, through Collector,Osmanabad,

3] The Special Land Acquisition Officer No.2 Collector Office, Osmanabad ...Appellants

VERSUS

Subhash Raosaheb Kawade,
age major, occ. Agril.,
R/o Kanherwadi, Tq. Kallam,
Dist. Osmanabad ...Respondent

FIRST APPEAL NO. 1226 OF 2017

1] Godavari Marathwada Irrigation Development Corporation Ltd., through Executive Engineer, Osmanabad Medium Project at Osmanabad,

2] The State of Maharashtra, through Collector,Osmanabad,

3] The Special Land Acquisition Officer No.2 Collector Office, Osmanabad ...Appellants

VERSUS

Ashok Raosaheb Kawade,
age 58 years, occ. Agril.,
R/o Kanherwadi, Tq. Kallam,
Dist. Osmanabad ...Respondent

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Mr. P.P.More, advocate for Appellant no.1
Mr. S.B.Narwade, AGP for Co-appellant nos. 2 and 3
Mr. V.P.Latange, advocate for sole Respondent

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 15.10.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 23.10.2018

J U D G M E N T :

These two appeals are preferred by the acquiring body Godawari Marathwada Irrigation Development Corporation, Osmanabad (hereinafter referred to as 'the Corporation') against the common judgment and award, passed by the Joint Civil Judge, Senior Division, Osmanabad, in Land Acquisition Reference No. 1290 of 2002 and Land Acquisition Reference No. 1288 of 2002. Therefore, these both appeals are disposed of by this common judgment.

2. Respondents are respective claimants.

3. In both Land Acquisition References, documentary and oral evidence is led only in Land Acquisition Reference No. 1288 of 2002. Undisputed facts in between the parties are that in Land Acquisition Reference No. 1288 of 2002, claimant Ashok Raosaheb Kawade was the owner of the acquired land Gat No. 109, admeasuring 2 Hectare 50 Are, situated at Kothalwadi, Taluka Kallam, District Osmanabad. In Land Acquisition Reference No. 1290 of 2002, claimant Subhash Kawade was the owner of the acquired land Gat No. 106, admeasuring 2 Hectare 30 Are, situated in the same village. The land was acquired for the purpose of Kothalwadi Minor Irrigation Tank. Both the Land References are arising out of one and the same award passed by the Collector, Osmanabad.

4. Notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as 'the Act') was published in Government gazette on 2.3.1995. Award was passed on 31.7.1998 offering compensation at the rate of Rs.18,000/- per Hectare. Possession of the land was obtained by

the acquiring body on 15.3.1995.

5. Being dissatisfied with the offer made by the Collector under the award, both the claimants submitted applications and accordingly, these two Land References were referred to the Joint Civil Judge, Senior Division, Osmanabad. After considering two sale instances (Exhs. 24 and 25), the Reference Court determined the average market value of acquired lands on the date of notification under Section 4 of the Act as Rs.1,50,000/- per Hectare. Accordingly, compensation was awarded at the rate of Rs.1,50,000/- per Hectare with all statutory benefits under Section 23(2) and interest in accordance with Section 28 of the Act. Benefit under Section 23(1A) of the Act is not awarded, as meager gap of 13 days is in between the date of taking possession of the acquired land and date of notification under Section 4 of the Act. Even the report of the expert valuer was rejected by the Reference Court. Against those findings, no cross-objection or appeal is preferred by both the claimants.

6. Therefore, in these both appeals, the only point for consideration is whether the compensation awarded by the Reference Court at the rate of Rs.1,50,000/- per Hectare is appropriate or not.

7. Heard Shri P.P.More, learned counsel for the appellant acquiring body, Learned AGP for appellant nos. 2 and 3 and Shri V.P.Latange, learned counsel for sole respondent.

8. Learned counsel for the appellant submits that the area of the land under both the sale instances (Exhs. 24 and 25) is very meager, and therefore, sale instance of small piece of land cannot be considered as comparable sale instance. He submits that the land under sale instance, dated 5.2.1991 (Exh.24) is in respect of irrigated land and land under sale instance, dated 2.9.1994 (Exh.25) is in respect of dry crop land. However, the Reference Court awarded exorbitant compensation at the rate of Rs.1,50,000/- per Hectare.

9. Learned counsel for respondent submits that the acquired land is seasonally irrigated land, as one well is situated in the acquired land. He submits that the Reference Court has rightly considered the escalation of ten per cent in the market value while determining the market value of the acquired land on the basis of sale instance (Exh.25).

His next submission is that under sale instance (Exh.24), 38 Are land was sold and under sale instance (Exh.25) 1 Acre land was sold, and therefore, the land which was subject matter of sale instance, cannot be treated as small piece of land in comparison with the area of acquired land. He prays for dismissal of the appeal.

10. As the Reference Court determined market value of the acquired land, on the date of notification under Section 4 of the Act, on the basis of average market value of both the sale instances (Exhs. 24 and 25), I have to examine whether both the sale instances are comparable sale instances or not. On the basis of proximity in

between the date of execution of sale instance and the date of notification under Section 4 (1) of the Act, proximity regarding quality of the land under sale instance and the acquired land, as well as advantageous and disadvantageous factors need to be considered.

11. So far as, sale instance dated 5.2.1991 (Exh.24) is concerned, after going through this sale instance, it emerges that Gat No.81, admeasuring 38 Are was sold out for the consideration of Rs.40,000/-. The land under this sale instance is irrigated land. The situation of the land under sale instance shows that Lendi river is situated on northern side of the said land. Though the claimants claim that their land is seasonally irrigated by well water, no record of right of the acquired land is placed on record to ascertain whether well is situated in acquired land or not. Therefore, in absence of any documentary evidence, the nature of acquired land is to be treated as dry crop land. Under sale instance (Exh.24), one anna share of the vendor in the well

in adjoining land and share in Mango tree was also purchased by the purchaser. Therefore, considering these advantageous factors annexed with land under sale instance, naturally purchaser must have paid more price for the said land. Therefore, ten per cent value is to be deducted from the consideration of Rs.40,000/- of the land under sale instance. Thus, the value of the land under sale instance is assessed as Rs.36,000/-. So also, the sale deed of the land under sale instance (Exh.24) was executed on 5.2.1991 i.e. four years preceding the date of publication of notification under Section 4 on 2.3.1995. Therefore, considering ten per cent escalation in the market value for each year, the value of the land under sale instance is assessed as Rs.14,400/-. It follows that on the date of notification under Section 4 of the Act, the market value of the acquired land can be assessed as Rs.1,263/- per Are and Rs.1,26,300/- rounded to Rs.1,27,000/- per Hectare.

12. The second sale instance (Exh.25) was executed on 2.9.1994 and this land is Jirayat land

which was sold out for the consideration of RS.75,000/- per Acre. This sale instance is executed before 4 to 6 months from the date of notification under Section 4 of the Act. Considering this meager time gap, there cannot be any escalation in the market value of this land. However, the four boundaries of this land mentioned in sale instance (Exh.25) shows that the land under the sale instance is abutting the public road which goes to village Mandwa. Therefore, considering these advantageous factors, 10 per cent value is to be deducted from the consideration of Rs.75,000/-, and therefore, on the date of notification under Section 4 of the Act, the market value of this land is assessed as Rs.67,500/- per acre i.e. Rs.1,68,750/- per Hectare. Therefore, on the basis of this second sale instance (Exh.25), the market value of the acquired land can be assessed as Rs.1,68,750/- per Hectare.

13. However, the Reference Court, relying on the judgment of this Court in **State of Maharashtra vs Santaram [2008 (5) Mh.L.J. 52]**, considered

average market value of both sale instances (Exhs. 24 and 25) to determine fair market value of the acquired land at the rate of Rs.1,50,000/- per Hectare. I do not find any fault in the mode of determination of fair market value of acquired land by the Reference Court.

14. Accordingly, I have no hesitation to hold that the Reference Court has rightly awarded compensation for the acquired land in both the Land References at the rate of Rs.1,50,000/- per Hectare.

15. The Reference Court declined to award benefit under Section 23 (1A) of the Act on the ground that time gap between the date of notification and the date of taking possession of acquired land is meager i.e. 13 days. Considering this meager time gap, the Reference Court was absolutely correct while declining to award benefit under Section 23 (1A) of the Act. However, while awarding interest on solatium, the Reference Court awarded interest at the rate of four per cent per

annum on 30 per cent solatium amount. This is glaring error on the face of record in view of judgment of Larger Bench of the Supreme Court in **Sundar vs Union of India [AIR 2001 SC 3516],** wherein the Apex Court held that the interest awardable under Section 28 of the Act would include both of market value and statutory solatium. The person awarded compensation is also entitled to get interest on agreegate amount including solatium. Therefore, invoking the powers of this Court under Order 41 Rule 33 of the Civil Procedure Code, the award passed by the Reference Court deserves to be modified to award interest on the solatium amount of 30 per cent of the market value of the acquired land at the rate awarded under Section 28 of the Act on the enhanced amount. In other words, the solatium shall be included in the enhanced market value of acquired land while awarding interest under Section 28 of the Act. The Award passed by the Reference Court deserves to be confirmed so far as grant of enhanced compensation at the rate of Rs.1,50,000/- per acre is concerned. It is to be modified to award interest on solatium amount as awarded on market value under Section 28 of the Act. So also, the compensation which is already received by the claimants needs to be deducted while determining the quantum of compensation payable to the claimants. Accordingly, I hold that though appeal preferred by the acquiring body deserves to be dismissed, the award passed by the Reference Court in Land Acquisition Reference No. 1290 of 2002 and Land Acquisition Reference No. 1288 of 2002 deserves to be modified to the extent of interest on solatium amount as granted by the Reference Court on enhanced compensation under Section 28 of the Act. Accordingly, First Appeal No. 1225 of 2017 and First Appeal No. 1226 of 2017 are dismissed. The award passed by the Reference Court in Land Acquisition Reference No. 1290 of 2002 and Land Acquisition Reference No. 1288 of 2002 be modified to award interest on solatium amount at the rate of 9 per cent per annum from the date of possession i.e. 15.3.1995 till 15.3.1996 and 15 per cent per annum for subsequent years till the date of realization of entire amount. The compensation already paid to the claimants shall be deducted from the amount payable to the claimants. Other part of award is confirmed. Parties to bear their respective costs of the appeals. Both the appeals are disposed of in above said terms.

[**SUNIL K.KOTWAL, J.**]

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