

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

**901 FIRST APPEAL NO. 34 OF 2004
WITH
CA/10948/2018 IN FA/34/2004**

- 1) The State of Maharashtra
Through the Collector, Dhule.
 - 2) The Special Land Acquisition Officer
No.1, Dhule.
 - 3) The Executive Engineer,
Narmada Development Division,
Nandurbar, Dist.Nandurbar.
- ..Appellants
(Ori. Respondents)

Versus

Chandrakant Ambadas Wani
Age: 51 years, Occu.: Agri,
R/o. Taloda, Dist. Nandurbar.

..Respondent
(Ori. Claimant)

...
AGP for Appellant - State : Shri A.M.Phule
Advocate for Respondent : Shri A.R.Devkate
...

**WITH
FIRST APPEAL NO. 35 OF 2004**

Chandrakant S/o Ambadas Wani
Age: 54 years, Occu.: Agriculture,
R/o. Brahmangalli, Taloda, Tq.Taloda,
Dist. Nandurbar.

..Appellant
(Ori. Claimant)

Versus

- 1) The State of Maharashtra
Through the Collector, Dhule,
Dist.Dhule.
- 2) The Special Land Acquisition Officer

No.1, Dhule, Dist.Dhule.

- 3) The Executive Engineer,
Narmada Development Division,
Nandurbar, Dist.Nandurbar.

..Respondents
(Ori. Opponents)

...
Advocate for Appellant : Shri A.R.Devkate
AGP for Respondent - State : Shri A.M.Phule
...

CORAM : P.R.BORA, J.

DATE: 23rd October, 2018

ORAL JUDGMENT:-

1. Both these appeals are arising out of the decision rendered by the Court of Civil Judge, Senior Division, Shahda in Land Acquisition Reference No.51 of 2001 decided on 10.04.2003.

2. First Appeal No.34 of 2004 has been filed by the State, whereas First Appeal No.35 of 2004 has been filed by the original claimant. I have, therefore, heard the common arguments in both these appeals and I deem it appropriate to decide both these appeals by common reasoning.

3. The land, which is the subject matter of the present appeals was acquired for the construction of office of Narmada Development and residential quarters for office staff. Notification under Section 4 of the Land Acquisition Act, 1894

(hereinafter referred to as 'the Act') in that regard was published in the official gazette on 01.01.1998. The possession of the said land is stated to have taken prior to that in the year 1996 itself. Award under Section 11 of the Act came to be passed on 30.03.1999. The land, which was acquired was a plot bearing No.22 out of Gut No.240/1+2 ad-measuring 6565 sq.mtrs. The Special Land Acquisition Officer offered the compensation @ Rs.178/- per sq.mtr. for the area ad-measuring 2000 sq.mtr., whereas offered compensation @ Rs.106.80 per sq.mtr. for the area ad-measuring 4548 sq.mtrs. Dissatisfied by the amount of compensation so offered, the claimant filed an application under Section 18 of the Act to the Collector, Dhule, who in turn forwarded the said application for adjudication to the Civil Court. The said Court hereinafter is referred to as 'the Reference Court'. The claimant had claimed the compensation of the acquired land @ Rs.2,000/- per sq.mtr. before the Reference Court. In order to substantiate the claim so raised by him, claimant - Chandrakant Ambadas Wani deposed before the Court and examined two more witnesses Aasifkha Hasankha Pinjari (AW-2) and Arvind Govind Wani (AW-3). No evidence was adduced from the side of the original respondents. The claimant has brought on record certain sale instances, which according to him, were of the comparable lands to support his claim. The learned Reference

Court, after having assessed the oral as well as documentary evidence brought on record before it, determined the market value of the entire acquired land as measuring 6548 sq.mtrs. @ Rs.733/- per sq.mtr. and accordingly enhanced the amount of compensation. The Reference Court also held the claimant entitled for the statutory benefits under Section 23(1A) and 23(2) of the Act and also granted interest under Sections 28 and 34 of the Act. Aggrieved by the Judgment so passed, the State has preferred First Appeal No.34 of 2004 as noted herein above and dissatisfied with the amount of compensation so offered, the claimant has also preferred First Appeal No.35 of 2004 seeking enhancement in the amount of compensation.

4. Shri A.M.Phule, learned AGP appearing for the appellant - State assailed the impugned Judgment on various grounds. The learned AGP submitted that the Reference Court has manifestly erred in relying upon the sale instances of small pieces of land for determining the market value of the acquired land, which is admittedly a big chunk of land. The learned AGP submitted that two sale instances, which were brought on record by the claimants and on the basis of which the enhancement in the amount of compensation was sought by the claimant, were from the same piece of land. The learned AGP submitted that the land

- plot, which was purchased by Bhavna Nagari Patsanstha was ad-measuring only 24.01 sq.mtrs., whereas the plot, which was sold by Amarjit Bargal on 19.05.1995 for the consideration of Rs.15,000/- was more smaller and was ad-measuring only 11.60 sq.mtrs. In the circumstances, according to the learned AGP, though in the said transaction, the value received for the said land was respectively @ Rs.1,016/- per sq.mtr. And Rs.1,074/- per sq.mtr., in no case the aforesaid sale instances could have been considered by the Reference Court while determining the market value of the acquired land.

5. The learned AGP further submitted that from the discussion made by the Reference Court, it appears that the sale instance pertaining to Plot No.59/2-A out of Gut No.240/1-A had more weighed in the mind of the Reference Court while determining the market value of the acquired land. The learned AGP submitted that even the said sale instance could not have been taken as a base by the Reference Court for determining the market value of the acquired land for the reason that the said sale instance was pertaining to a plot ad-measuring 63 sq.mtr. The learned AGP submitted that the Hon'ble Apex Court as well as this Court in plenty of matters has consistently held that the market value of big chunk of land cannot be determined on the

basis of a small piece of land. The learned AGP submitted that the claimant has thus failed in bringing on record any comparable sale instance on the basis of which the Reference Court could have determined the market value of the acquired land. In the circumstances, according to the learned AGP, there was no reason for the Reference Court to take any different view and determine the market value at any different rate than determined by the Special Land Acquisition Officer (hereinafter referred to as 'the SLAO'). The learned AGP submitted that the perusal of award under Section 11 of the Act reveals that more than 37 sale instances were considered by the SLAO and only thereafter, the market value of the acquired land was determined by him. The learned AGP submitted that the market value of the acquired land was methodically determined by the SLAO and as such no interference could have been caused in the same by the learned Reference Court.

6. The learned AGP further submitted that the Reference Court has also committed an error in awarding interest under Sections 28 and 34 of the Act from the date of issuance of Section 4 Notification. Relying on the Judgment of the Full Bench of this Court in the case of ***The State of Maharashtra Vs. Kailash Shiva Rangari [2016 (4) ALL M.R. 513]***, the learned AGP prayed for

setting aside the clauses of the said order in that regard and to substitute it making the claimant entitled for the interest under Sections 28 and 34 of the Act, from the date of declaration of the award under Section 11 of the Act, instead from the date of issuance of Section 4 Notification.

7. Learned AGP submitted that when the SLAO had rightly awarded the compensation for the prominent portion of the acquired land @ Rs.178/- per sq.mtr. and for the remaining area @ Rs.106.80 per sq.mtr., the Reference Court has wrongly awarded same rate for the entire land ignoring the fact that price which could have been received for the front portion of the said land could not have been received for the rear portion of the said land/plot.

8. Shri A.R.Devkate, learned Counsel appearing for the claimant submitted that the Reference Court did not properly appreciate the evidence brought on record by the claimant and has not properly determined the market value though, there was sufficient evidence adduced by the claimant in that regard. The learned Counsel submitted that though, it appears that the Reference Court has relied upon the sale instances of the small pieces of land, from the market rate as has been determined by

the Reference Court of the acquired land, it is quite evident that while determining the market value on the basis of the sale instances pertaining to small pieces of land, the market value has been proportionately brought down and decreased having regard to the fact that the acquired land is a big chunk of land. The learned Counsel submitted that in fact, when the claimant had claimed compensation @ Rs.2,000/- per sq.mtr. and the sale instances, which were brought on record by the claimant, were sufficiently demonstrating that the market value of the acquired land was at the relevant time around Rs.2,000/- per sq.mtr, the Reference Court must have determined the market value of the acquired land @ Rs.2,000/- per sq.mtr. or around the said rate. The learned Counsel submitted that injustice has been caused to the claimant by determining the market value of the acquired land @ Rs.733/- per sq.mtr. The learned Counsel submitted that though, the Reference Court has relied upon the sale instance of a plot out of Gut No.240/1-A, has failed in considering that the said transaction had taken place prior to about three years of issuance of Section 4 Notification towards the acquisition of the said land. As such according to the learned Counsel, the rate which could have been received for the acquired land would have been much more than determined by the Reference Court. The learned Counsel in the circumstances prayed for enhancement in

the amount of compensation on the basis of evidence on record.

9. I have given due consideration to the submissions made by the learned AGP and learned Counsel appearing for the claimant. I have perused the impugned Judgment and award as well as evidence on record. The material on record shows that the evidence was adduced only on behalf of the claimant and no oral or documentary evidence was adduced by any of the respondents. It is, thus, evident that the only material which was before the Reference Court for deciding the Reference Application preferred by the claimant, was the evidence brought on record by the claimant. As noted above, in addition to his own testimony, the claimant has examined two witnesses namely Aasifkha Hasankha Pinjari (AW-2) and Arvind Govind Wani (AW-3) in order to prove the sale transactions of the sale deeds, copies of which were placed on record by the claimants. The discussion made by the Reference Court and evidence on record reveal that the claimant had relied upon the sale instance pertaining to the plot purchased by Bhavna Nagari Patsanstha from Dagadu Shivdas Choudhari. The said transaction had taken place on 10.09.1993. The plot ad-measuring 24.1 sq.mtrs. was sold for the price of Rs.23,000/- i.e. @ Rs.1,016/- per sq.mtr. The another sale instance, which was relied upon was pertaining to a

plot ad-measuring 11.16 sq.mtr., which was sold by one Amarjit Bargal to Nasirkha Hasankha Pindjari (AW-2) by registered sale deed executed on 19.05.1995 for the value of Rs.15,000/- i.e. @ Rs.1,074/- per sq.mtr. One more sale instance was relied upon by the claimant, which was pertaining to plot No.59/2-A out of Gut No.240/1-A. The said plot was ad-measuring 63 sq.mtrs. and was sold by registered sale deed on 15.12.1995 for Rs.47,000/- i.e. @ Rs.746/- per sq.mtr.

10. The Reference Court in paragraph No.23 of its Judgment has observed that the subject land was situated in the middle of the city and surrounded by residential houses. It has been observed by the Reference Court that the subject land was in proximity of the High School Building and also the Court area. It is further stated that all facilities were available in the nearby area of the said land. The SLAO has admitted high potentiality of the acquired land. The further discussion made in the said paragraph reveals that though, there were atleast three sale instances relied upon by the claimant, the Reference Court has ultimately considered the sale instance pertaining to plot No.59/2-A out of Gut No.240/1-A, which was also considered by the SLAO while passing the award under Section 11 of the Act. The Reference Court has observed that the acquired land i.e. plot

No.22 since was from the same Gut No.240/1-A, it could not have fetched less price than was received to the another plot No.59/2-A out of the said Gut number, the transaction in relation of which had taken place in the year 1995. The Reference Court in paragraph No.24 of the Judgment has noted that the transaction, which took place in the year 1995 pertaining to the plot out of the same Gut number when was indicating the price of Rs.740/- per sq.mtr., the market value of the subject land was liable to be determined around the said price. The Reference Court, therefore, determined the market value of the acquired land @ Rs.733/- per sq.mtr.

11. After having considered the discussion made by the Reference Court in light of the evidence on record, apparently, it does not appear to me that the market value as has been determined by the Reference Court was in any way unreasonable or on higher side. On the contrary, it appears to me that the Reference Court must have taken into account the sale instances, which were brought on record and were duly proved by the claimant. Though, they were of the small pieces of land, some guess work could have been done by the Reference Court. The Reference Court also could have considered the plus and minus factors and could have also proportionately decreased the

market value considering the area of the subject land and the area of the plots which were the subject matter of the said sale instances placed on record. It appears to me that even if that exercise would have been done by the Reference Court, the market value would have come around the same rate, which has been determined by the Reference Court.

12. It is also to be noted that an application has been filed in the present appeal by the State seeking permission to produce on record the additional evidence in the form of the sale deeds pertaining to the lands/plots in the vicinity of the acquired land and executed during the period in proximity of the issuance of Section 4 Notification. Total eleven sale instances are sought to be produced on record by additional evidence. The learned AGP has placed on record the consolidated information in tabular form pertaining to the said sale instances and referring to the said information, it was argued by the learned AGP that the plots which were the subject matter of the said sale instances are out of Survey No.259/A-1, which is at the distance of 500 to 600 mtrs. From the acquired land and for all these plots, which are small plots ad-measuring around 100 sq.mtrs. sale deeds of which were executed in the year 1997, have received market value of maximum Rs.172/- per mtr.

13. The learned AGP has also placed on record the village map showing position of the acquired land i.e. Gut No.240 and another Gut number of which the sale instances were relied upon i.e. Gut No.259. Inviting my attention to the location of the said lands/plots, the learned AGP submitted that considering the distance between these two lands, it is quite evident that the Reference Court has arbitrarily enhanced the market value of the acquired land and has accordingly enhanced the amount of compensation. The submission so made by the learned AGP was strongly refuted by Shri Devkate, learned Counsel appearing for the claimant. The learned Counsel pointed out that when the acquired land is in the middle of the town surrounded by the residential as well as commercial area, Gut No.259 is situated at different end of the city and as such no comparison can be made of the price received to the said land while determining the market value of the acquired land. After having perused the village map and the evidence on record, I find substance in the submission made by learned Counsel Shri Devkate that sale instances of plots out of Gut No.259-A could not have been considered for determining the market value of the acquired land.

14. After having considered the entire evidence on record, it appears to me that the Reference Court has not committed any error in determining the market value on the basis of the price received to the plot out of said Gut No.240/1-A i.e. plot No.59/2-A. As noted above, the said plot ad-measuring 63 sq.mtrs. has received price @ Rs.746/- per sq.mtr. The said transaction had admittedly taken place in the year 1995 i.e. prior to about three years of the issuance of Section 4 Notification for acquisition of the subject land. In the circumstances, considering the norms settled by the Hon'ble Apex Court, increase @ 10% p.a. if is given to the price received to the said lands and thereafter, if taking into account the fact that it was small piece of land and acquired land was possessing large area, even then the rate, which has been determined by the Reference Court of Rs.733/- per sq.mtr. in any way cannot be held to be arbitrarily determined. It appears to me that the Reference Court has correctly determined the market value of the acquired land @ Rs.733/- per sq.mtr. The submissions made by both the parties i.e. by the State that the same was on higher side and the counter submission made by the claimant that it was on the lower side, therefore, deserve to be rejected. No case is made out by the claimant for any more enhancement in the market rate of the said land; neither any case is made out by the State

so as to cause any interference in the market value as has been determined by the Reference Court.

15. In so far as the argument, which was advanced by the learned AGP justifying the decision of the SLAO to award two rates for the acquired land is concerned, the submission so made must be rejected in view of the fact that the acquired land was one homogeneous plot for which no such bifurcation could have been made and no two different rates could have been determined for deciding market value of the said plot. However, there appears substance in another submissions made by learned AGP that the Reference Court has erred in awarding interest under Sections 28 and 34 of the Act, from the date of issuance of Section 4 Notification. The learned AGP referred to the Full Bench Judgment of this Court in the case of **Kailash Shiva Rangari** (supra), to support his contention that interest under Section 34 of the Act, cannot be awarded from the date prior to the declaration of the award under Section 11 of the Act. The learned AGP also relied upon the Judgment of learned Single Judge of this Court in First Appeal No.383 of 2004 wherein it has been held that the same interpretation as has been made of Section 34, would apply to interest to be awarded under Section 28 of the Act, meaning thereby the interest under Section 28 of

the Act, also cannot be awarded from any prior date than declaration of the award under Section 11 of the Act. The legal position as has been canvassed by the learned AGP has not been disputed by the learned Counsel appearing for the claimant.

16. The learned Counsel for the claimant, however, pointed out that in paragraph No.31 of the Judgment, wherein the Reference Court has particularized the amount of compensation payable to the claimant, the figure shown in clause No.2 of the said paragraph as Rs.12,20,503/- is incorrectly mentioned. The learned Counsel submitted that the market value paid by the Special Land Acquisition Officer in the award under Section 11 of the Act, is Rs.8,41,726/-. The amount mentioned as Rs.12,20,503/- includes the amount of solatium as well as 12% component. The learned Counsel submitted that the amount of market value of the acquired land enhanced by the Reference Court thus comes to Rs.39,57,958/- and not Rs.35,79,181/- as shown in clause No.3 of paragraph No.31 of the impugned award. I found substance in the submission so made by learned Counsel Shri Devkate. Considering the market value determined by the Reference Court @ Rs.733/- per sq.mtr., the enhancement in the market value as has been given by the Reference Court comes to Rs.39,57,958/-. In the circumstances, the amount of solatium,

the amount of 12% component as well as the interest under Sections 28 and 34 of the Act need to be calculated on the said amount.

17. For the reasons recorded herein above, the impugned award needs modification to the extent of interest under Sections 28 and 34 of the Act from the date of declaration of the award under Section 11 of the Act, instead from the date of Section 4 Notification as has been awarded by the Reference Court. Similarly, the enhanced market value of the suit land is to be corrected as Rs.39,57,958/- in place of Rs.35,79,181/- and the amount of solatium, the amount of 12% component as well as the amount of interest under Sections 28 and 34 of the Act, need to be computed on the aforesaid amount, from the date of declaration of the award under Section 11 of the Act. In the result, the following order is passed:-

ORDER

- I) The impugned award is modified as under:-
 - a) The appellant - claimant is held entitled to receive the market value of his acquired land ad-measuring 6548 sq.mtrs. out of Gut No.240/1+2 situated at Taloda, @ Rs.733/- per sq.mtr., which comes to Rs.47,99,684/- as has been determined by the Reference Court. The market value of the

acquired land is thus enhanced by Rs.39,57,958/-

b) The appellant - claimant is held entitled for 30% solatium on the aforementioned enhanced market value under Section 23(2) of the Act.

c) The appellant - claimant is also held entitled for the component @ 12% p.a. on the aforesaid enhanced market value from the date of Notification under Section 4(1) of Act, i.e. from 01.01.1998 to the date of award i.e. 30.03.1999.

d) The appellant - claimant is held entitled for the interest under Sections 28 and 34 of the Act, on the enhanced amount of compensation, which will include the amount of solatium + 12% p.a. component, @ 9% p.a. from the date of declaration of the award i.e. 30.03.1999 to 29.03.2000 and @ 15% p.a. from 29.03.2000 till the date of actual payment.

II) The modified award be prepared accordingly.

III) The State shall pay the amount of compensation to the claimant, which may be re-determined in the modified award, within a period of six months, since the acquisition is of the year 1998.

IV) The appellant - claimant is permitted to withdraw the amount which has been deposited by the State in the present appeals alongwith interest accrued thereon.

V) Both the appeals thus stand decided in the aforesaid terms.

VI) Pending civil applications stand disposed of.

(P.R.BORA)
JUDGE

SPT